

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"F" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3649/MUM/2023  
(Assessment Year: 2017-18)**

**Jagdish Kaniyalal Shah,**  
Plot No. 309, Krishna Kunj,  
Sector No. 6, Charkop,  
Kandivali (West), Mumbai - 400067  
[PAN: AACPS6895F]

..... **Appellant**

**Income Tax Officer,  
Ward 33(2)(1), Mumbai,**  
Room No. 845, 8<sup>th</sup> Floor,  
Kautilya Bhavan, C-41 To C-43,  
G Block, Bandra Kurla Complex,  
Bandra (East), Mumbai - 400051

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri Priyanshu Shah  
For the Respondent/Department : Shri P.D. Chougule

**Date**

Conclusion of hearing : 26.03.2024  
Pronouncement of order : 18.04.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 11/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2017-18, whereby the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 23/12/2019, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

*"Ground No. 1-Addition on account of unexplained investment*

1. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in considering the amount of Rs. 53,95,000 paid by the Appellant for purchase of immovable property as unexplained investment and taxing the same under section 69 of the Act*

*Ground No. 2-Addition on account of unexplained Cash Credit*

2. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in confirming the addition of Rs. 10,79,000 on account of cash deposit by treating the same as unexplained cash credits under section 68 of the Act.*

*Ground no. 3-Levy of interest under section 234A and 234B*

3. *On the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the interest levied under section 234A and 234B of the Act.*

*I reserve my right to add, amend & alter anything as stated here in above or may be stated here in after and all the grounds are alternative and independent to each other."*

3. The relevant facts in brief are that the Appellant, a resident individual, filed return of income for the Assessment Year 2017-2018 on 28/03/2018 declaring total income of INR 3,54,930/-. The case of the Appellant was selected for regular scrutiny. During assessment proceedings, the Assessing Officer noted that the Appellant has purchased immovable property and made payment of INR 89,55,000/- for the same, out of which INR 35,60,000/- was claimed by the Appellant to be sourced from

housing loan taken from bank. The Assessing Officer observed that the Appellant had failed to furnish relevant documents/evidence to explain the source of investment into immovable property and therefore, the entire purchase consideration of INR 89,55,000/- was treated as unexplained investment under Section 69 of the Act. Further, the Assessing Officer noted that the Appellant had deposited cash aggregating to INR 10,79,350/- in the bank account during the relevant previous year. According to the Assessing Officer, the Appellant had failed to submit any information/documents regarding the business activity to justify the source of cash deposits. Accordingly, an addition of INR 10,79,350/- was made in the hands of the Appellant holding the same to be unexplained cash credits under Section 68 of the Act. Thus, the Assessing Officer assessed the income of the Appellant at INR 1,03,89,280/- as against returned income of INR 3,54,930/- vide Assessment Order, dated 23/12/2019, passed under Section 143(3) of the Act.

4. Being aggrieved by the above additions made by the Assessing Officer, appeal was preferred before the CIT(A). In the said appeal it was contended on behalf of the Appellant that the transaction of purchase of immovable property was recorded in books of accounts, and therefore, provisions of Section 69 of the Act were not attracted. Further, in the show-cause notice dated 12/12/2019 the Appellant was asked to show cause why addition of INR 28,33,340/- should not be made in the hands of the Appellant whereas the in the Assessment Order, addition of entire purchase consideration of INR 89,55,000/- was made in the hands of the Appellant. Copy of the purchase agreement filed during the assessment proceedings clearly showed that part

of the consideration was met by the loan of INR 35,60,000/- taken from the bank, despite this the Assessing Officer made addition of loan amount of INR 35,60,000/- in the hands of the Appellant without making independent inquiry from the bank. As regards, the addition of INR 10,79,350/- made under Section 68 of the Act, it was contended that deposits made by the Appellant were sourced from cash withdrawals, gifts received and commission income as reflected in the cash summary submitted by the Appellant during the assessment proceedings. Notices dated 26/12/2020, 21/10/2021, 07/12/2021, 16/03/2023 and 26/07/2023 were issued by the CIT(A) for hearing of the appeal. However, the authorised representative only sought adjournment, and did not file any written submissions/information/documents before the CIT(A). Therefore, the CIT(A) proceeded to decide the appeal on the basis of material on record, being memorandum of appeal in Form No. 35, and copy of interest certificate issued by bank. In the aforesaid background, vide order, dated 11/08/2023, the CIT(A) disposed the appeal preferred by the Appellant as partly allowed by sustaining the addition of INR 10,79,350/- made by the Assessing Officer under Section 68 of the Act and restricting the addition of INR 89,55,000/- made by the Assessing Officer under Section 69 of the Act to INR 53,95,000/- by accepting the submission of the Appellant that purchase consideration to the extent of INR 35,60,000/- was sourced from the housing loan taken by the Appellant from the bank.

5. Being aggrieved by the order, dated 11/08/2023, passed by the CIT(A), the Appellant has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. When the appeal was taken up for hearing the Learned

Authorised Representative for the Appellant submitted that the Appellant had provided relevant documents/details to the tax professional pursuing appeal before CIT(A). However, the said tax professional failed to furnish/file relevant documents/details/submissions before CIT(A). While filing the return of income for the Assessment Year 2023-2024, the mobile number and email ID of the Appellant were updated in the income tax portal, and it was at that time the Appellant got to know about the order dated 11/08/2023, passed by the CIT(A) for the Assessment Year 2017-2018 and that the concerned tax professional has not placed relevant material before the CIT(A). It was submitted that at the relevant time the Appellant was tied up in family disputes with his brother and therefore, could not pursue the appeal before CIT(A) properly. The Learned Authorised Representative for the Appellant submitted that the Appellant had a good case on merits and therefore, another opportunity be granted to the Appellant to present case before CIT(A). The Learned Authorised Representative for the Appellant also invited our attention to the application for admission of additional evidence filed on behalf of the Appellant, and the documents annexed thereto in support of the aforesaid contention.

7. Per Contra, the Learned Departmental Representative supported the disallowance/addition made by the Assessing Officer and the order passed by CIT(A). It was submitted on behalf of the Revenue that despite having been granted sufficient opportunities, the Appellant had failed to provide explanation about the transaction and source of payment towards purchase consideration and cash deposits made in bank account. In absence of any evidence having been furnished by the Appellant

before the Assessing Officer or the CIT(A), no fault could be found with the order passed by the Assessing Officer and the CIT(A). It is further submitted that the Appellant was grossly negligent in pursuing the appeal and therefore, it was submitted that no further opportunity be granted to the Appellant.

8. We have heard the rival submissions and perused the material on record.
9. We note that the CIT(A) had issued various notices of hearing to the Appellant. Admittedly, no written submission/documents were filed in response to the said notices by or on behalf of the Appellant. The case of the Appellant is that though relevant documents/details were furnished by the Appellant to the tax professional engaged for pursuing the appeal before the CIT(A), however, the said tax professional failed to take the necessary steps. Since the Appellant was dealing with family disputes, the Appellant also could not pursue the appeal diligently. On perusal of grounds of appeal raised by the Appellant before the CIT(A), we find that it was contended by the Appellant before the CIT(A) that the provisions of Section 69 of the Act were not attracted in the facts of the present case since the action of purchase of immovable property was properly recorded in the books of accounts. It was also contended that in the show-cause notice dated 20/12/2019, the Appellant was asked to show cause why an amount of INR 28,33,340/- should not be added as unexplained investment whereas the Assessing Officer had made an addition of the entire purchase consideration of INR 89,55,000/-. We note that while the CIT(A) reduced the amount of loan taken by the Appellant from the bank, and restricted the addition made under Section 69 of the Act INR 53,95,000/-, the aforesaid contentions raised by the Appellant were not

addressed by the CIT(A). Similarly, in relation to addition of INR 10,79,350/- made under Section 68 of the Act it was contended on behalf of the Appellant that the Appellant had sufficient material to justify that the additions under Section 68 of the Act were incorrectly made in the hands of the Appellant since the source of the cash deposits were cash withdrawals made by the Appellant from the bank account and the gifts received from relatives. However, the tax professional failed to file relevant documents/submission before CIT(A). The Appellant has now filed application for admission of additional evidence which is accompanied by the following additional evidence:

- (a) Copy of Purchase Agreement (paper-book Pg No 68 to 100)
- (b) Copy of Annexure showing Source of Funds (paper-book Pg No 41)
- (c) Copy of Bank Sanction Letter (paper-book Pg No 42 to 44 )
- (d) Income Tax Return copy of Vijay Kaniyalal Shah (Jagdish Shah Real brother )( paper-book Pg No 55)
- (e) Income Tax Return Copy of Jyoti Vijay Shah (Wife of Vijay Kaniyalal Shah) (paper-book Pg No 54)
- (f) Income Tax Return Copy of Ankit Vijay Shah (Son of Vijay Shah) (paper-book Pg No 53)
- (g) Bank Statement of Ankit Vijay Shah (paper-book Pg No 51 to 52)
- (h) Copy of Bank Statement (paper-book Pg No 56 to 67)
- (i) Sale of HDFC Mutual Fund (paper-book Pg No 45)
- (j) Cash Deposited and Withdrawals details (paper-book Pg No 46)
- (k) Cash Summary (paper-book Pg No 47)
- (l) Property Payment Schdule (paper-book Pg No o 48)
- (m) Sangeeta Shah (Appellant wife) Bank Statement (paper-book Pg No 49 to 50)

10. It has been contended that the above additional support the contention of the Appellant that cash deposits of INR 10,79,350/- were sourced from cash withdrawals, gifts and commission income, as also the contention of the Appellant that the purchase consideration of INR 89,55,000/- has been sourced from the following parties:

<i>Source of Property Investment</i>		
<i>Source</i>	<i>Amount (INR)</i>	<i>Documents relied upon</i>
<i>Home Loan</i>	<i>35,60,000</i>	<i>Loan Documents</i>
<i>Received from Ankit Vijaykumar Shah</i>	<i>43,00,000</i>	<i>Ankit Vijaykumar Shah HDFC Bank Statement Dated 30/08/2016, 08/09/2016. Ankit Vijay Kumar Shah is Son of his real brother Mr. Vijay Kumar Kanayalal Shah. Attached HDFC Bank Statement of Ankit Shah highlighted transaction also attached Ankit Shah Income tax return filing copy as well as Vijay Kaniyalal Shah return filing copy as well as Vijay Kaniyalal Shah Return Filing Copy</i>
<i>Received from Jyoti Vijaykumar Shah</i>	<i>2,00,000</i>	<i>Jagdish Kaniyalal Shah Bank Statement dated 26/09/2016. Jyoti Kaniyalal Shah is wife of Jagdish Shah's real brother Vijay Kaniyalal Shah</i>
<i>Sale of HDFC Mutual Fund Investment</i>	<i>4,32,127</i>	<i>Jagdish K Shah Bank Statement dated 11/08/2016</i>
<i>Old Savings used- Cash Deposited and Paid</i>		<i>Own Savings</i>
<i>Total</i>	<i>89,55,000</i>	

11. It has been claimed by the Appellant that the failure to place the aforesaid document/details on record before CIT(A) was on account of mistake of the tax professional and the Appellant should not be punished for the same. Further, the failure on the part of the Appellant to diligently pursue the appeal before

CIT(A) was on account of dispute with family members. Having examined the above documents/details, we find that the same go to the root of the matter and were necessary for adjudication of the issue at hand. Further, on perusal of order impugned we find that CIT(A) has not dealt all the contentions raised by the Appellant in the memorandum of appeal. We also note that the Assessing Office has in paragraph 2 of the Assessment Order recorded that the Appellant had filed balance sheet as on 31/03/2017, cash flow summary, details of investment in the immovable property and the bank statement. However, on perusal of the order impugned passed by the CIT(A), we find that the same were not taken into consideration by the CIT(A). Accordingly, keeping in view the overall facts and circumstances of the present case we are inclined to accept the submission/contention of the Appellant and grant another opportunity to the Appellant to make out a case before the CIT(A). However, in our view, the Appellant could have been more diligent in pursuing the appeal and therefore, should be subjected to cost. Accordingly, subject to deposit of cost of INR 5,000/- in the Prime Minister Relief Fund within a period of 30 days from the date of the present order, we deem it appropriate and in the interest of justice to set-aside the order, dated 11/08/2023, passed by the CIT(A) to the extent challenged by the Appellant by way of present appeal and restore the issue of addition of INR 53,95,000/- [*INR 89,55,000 Less INR 35,60,000/-*] under Section 69 of the Act as well as the issue of addition of INR 10,79,350/- under Section 68 of the Act back to the file of the CIT(A) for fresh adjudication. The CIT(A) is directed to consider the additional evidence filed by the Appellant before the Tribunal after calling for a remand report from the Assessing Officer in compliance with the provisions contained in Rule 46A

of the Income Tax Rules, 1962. In terms of the aforesaid, Ground No. 1 to 3 are allowed for statistical purposes.

12. In result, the present appeal preferred by the Assessee is allowed for statistical purposes

Order pronounced on 18.04.2024.

***Sd/-***  
**(Om Prakash Kant)**  
**Accountant Member**

***Sd/-***  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 18.04.2024  
Alindra, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai