

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3994/Mum/2023
(Assessment Year :2012-13)**

ITO-19(1)(5) Mumbai	Vs.	Irfan Mohamed Yusuf 12B, 3 rd Floor Meher Building Dadi Seth Road Chowpaty Band Stand Mumbai-400 007
PAN/GIR No.AAFPY8421N		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri H.M. Bhatt
Date of Hearing	01/05/2024
Date of Pronouncement	08/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 13/09/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s.147 r.w.s. 144 for A.Y.2012-13.

2. None appeared on behalf of the respondent-assessee despite of service of notice through RPAD and mail, accordingly, the appeal is being decided *ex parte* after hearing the ld. DR.

3. In the grounds of appeal, the Revenue has raised following grounds:-

1. *"Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has ignoring the fact that the assessee has purchased two properties totaling 3,05,53,800/- during the F.Y. 2011-12, but not filed his ROI for the Assessment year 2012-13, within the time allotted as per the provisions of the Act, hence the source of purchase of property remained unexplained ?"*

2. *"Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred by ignoring the fact that, this case was selected for the scrutiny on perusal of information on NMS (Non filed Management system)of 1-TAX NET, which is reliable Source for Information for high value transactions and assessee case has been identified due to non-filer of ROI for the Assessment Year 2012-13?"*

3. *"Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred by ignoring the fact that despite given opportunity by issuing notices u/s 148 of the Act and showcases notices, the assessee has not showed any compliance to that, hence the source of purchase of property remained unexplained and the Assessing officer has no option to complete the Assessment but u/s 144 of the Income-Tax Act ?"*

4. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in admitting the new evidences without waiting for the Remand Report from the assessing officer as prescribed in Rule 46B of the Income Tax Rule, 1962?"*

5. *Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in appreciating the fact that despite having been given opportunity by issuing notices u/s 148 of the Act and show cause notice, the assessee has failed to submit any documentary evidences/submissions, during the assessment Proceedings to explain his source of purchased properties ?"*

6. *"The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary".*

4. The brief facts are that assessee was NRI during the year under consideration and therefore, he has not filed any return of income for A.Y. 2012-13 as his income from India was below the taxable limits. On verification of NMS data available on ITD system during the F.Y. 2011-12, it was informed that assessee had purchased two immovable properties aggregating to Rs.3,05,53,800/-. Accordingly, a notice u/s.148 was issued on 25/03/2019, however, there was no response on behalf of the assessee to any of said notices sent by the ld. AO. Accordingly, in absence of any response by the assessee, ld. AO held that source of property purchased by the assessee amounting to Rs.3,05,53,800/- remained unexplained which has to be taxed as unexplained investment u/s 69 during the year.

5. Before ld. CIT(A) it was brought on record that the time when notice u/s.148 was issued assessee was not in India and in support of that passport of the assessee was also furnished to show that during that period, he was not present in India. On merits, the facts which were brought on record were as under:-

1. The appellant jointly with Mrs. Tasneem Irfan Vaid and Mr. Aamir Irfan Vaid on 31/01/2010 purchased residential Flat No. residential Flat No. 1101, 11th Floor, B Wing, Orchid Tower for a consideration of Rs.2,22,03,800/- as is evident from the ledger account of the Appellant as appearing in the books of M/s. Neelkamal Realtors & Erectors (1) Pvt. Ltd from whom the Appellant has purchased the said Flat Photocopy of ledger account of the assessee in the books of Neelkamal Realtors & Erectors Pvt. Ltd., from whom the said Flat was purchased for the period 31-01-2010 to 13-02-2013 is enclosed herewith (Pgs. 3) Names of the co-owners from whose account cheques were Issued to Neelkamal Realtors & Erectors Pvt. Ltd. have been mentioned against the

amounts credited towards the purchase of the said Flat in the said ledger account TRAUE

2. Agreement for purchase of the said Flat was executed on 01-07-2011 and the same was registered with the Sub-registrar, Mumbai City - 2 under registration no. BBE2- 05120-2011 (Stamp Duty Valuation Rs.2,19,63,000/-) Photocopies of relevant pages of Purchase Agreement dated 01-07-2011 is enclosed herewith (Pgs. 6).

3. On perusal of the aforesaid agreement, it will be noticed that Rs.1,41,40,000/- were paid on various dates on or before 01-08-2010 and balance consideration of Rs.80,63,800/- was to be paid after execution of the said agreement.

4. Balance consideration of Rs.80,63,800/- was paid on 13-02-2013 by Mrs. Tasneem Irfan Vaid (Rs.40,63,800/-) and Mr. Aamir Irfan Vaid (Rs.40,00,000/-). Thus, no consideration for purchase of the above Flat has been paid by the assessee or other two co-owners during the year under consideration i.e. A.Y. 2012-13.

5. Out of the above, Rs. 1,41,40,000/- was paid on or before 01-08-2010. Rs. 10,93,000 and Rs.32,660/- were paid on 27-06-2011 towards stamp duty and registration fees respectively by Mr. Aamir Irfan Vaid. The Appellant has paid VAT 1% on the agreement value of Rs. 2,22,03,800/- amounting to Rs. 2,22,038/- Therefore, the total purchase consideration of the said Flat No. 1101 works out to Rs.2,33,29,460/- as under

Agreement Value	Rs. 2,22,03,800/-
VAT 1%	Rs. 2,22,038/-
SUB TOTAL	Rs. 2,24,25,838/
Stamp Duty	Rs. 10,93,000/-
Registration Fees	Rs. 32,660/-
GRAND TOTAL	Rs. 2,35,51,498/

9. A statement showing details of year wise payments alongwith its mode and by whom the same is made to Neelkamal Realtors & Erectors (1) Pvt. Ltd. for purchase of the said Flat No. 1101, B Wing, Orchid Towers, is enclosed herewith (Pg. 1). On perusal of the said statement, it will be noticed that during the year under consideration a payment of Rs. 2,22,038/- on 05/09/20211 was made by the Appellant towards 1% VAT The same was paid by Cheque No. 260941 dtd 29/06/20211 drawn on Bank of india Null Bazaar Branch. The same was made out of the opening balance as on 01-04-2010. Photocopy of the passbook of Bank of India, Null Bazaar Branch (SB A/c No.006010100014558) of the Appellant showing the above payment and the source of the same duly highlighted is enclosed herewith (Pg. 1)

10. The said residential Flat No. 1101 was sold on 23-12-2011 for a sale consideration of Rs.2.22.03.800/- Therefore, the appellant, Jointly with Mrs. Tasneem Irfan Vaid and Mr. Aamir Irfan Vaid has incurred a loss of Rs. 13,47,698/ A statement showing details of payments received towards sale of the said Flat No. 1101 is enclosed herewith (Pg. 1). Photocopies of bank statements of the Appellant highlighting the relevant entries wherein the sale proceeds of the said flat aggregating to Rs. 1,27,00,000/-are deposited are also enclosed herewith (Pgs. 4).

11. During the year under reference, the assessee jointly with Mrs. Afreen Ashfaq Merchant purchased residential Flat No. 1202 12th Floor, Dudhwala Complex from Mrs. Rashida Rafiuddin Mora and Mr. Murtaza Hakimuddin Merchant as per agreement did. 30-12-2011 for a consideration of Rs. 83,50,000/- registered with the Sub-registrar, Mumbal City 3 under registration no, BBE3 2115 2012 (Stamp Duty Valuation Rs.79,62,800/-) Photocopies of relevant pages of Purchase Agreement dtd. 30-12-2011 is enclosed herewith (Pgs. 8). Rs.4,00,380/- and Rs. 30,820/- were paid towards stamp duty and registration fees respectively. Total cost has been paid by the assessee out of the sale proceeds Rs. 1,27,00,000/- of his share received as per agreement for sale did. 23-12-2011 of Flat No. 1101 at Orchid Tower A statement showing sources of funds utilised for purchase consideration (Pg. 1) along with photocopies of bank passbook highlighting the relevant entries are enclosed hereinabove at Para 10.

12. In the absence of any response from the appellant, the learned A.O. held that the sources of both the properties purchased by the appellant aggregating to Rs.3,05,53,800/- remained unexplained and has treated as appellant's income from unexplained investment and added to the income of the appellant.

6. In so far as the issue of validity of notice u/s.148 of various grounds, the ld. CIT(A) had dismissed the assessee's appeal, however, on merits he deleted the addition after observing and holding as under:-

8. Ground No 3 is directed against the A.O making an addition of Rs 3,05,53,800/- on account of unexplained investment. Information was received by the AO on NMS module that the appellant has purchased two properties totaling Rs 3,05,53,800 during the FY 2011-12. Therefore, the source of the property purchased remained unexplained. In absence of details available from the department, AO presumed that it is the consideration towards purchase of residential Flat No.1101 at Orchid Tower as per Agreement for sale dated 01/07/2011 for Rs.2 22,03,800/- and Rs.83,50,000/- towards Flat No. 1202 at Dudhwala Complex as per Agreement dated 30/12/2011. As the appellant had not filed return of income and no response was filed to any of the notices issued, the source of the property purchased remained unexplained and AO treated it as Appellant's income from unexplained investment and added to the income of the Appellant

8,1 The appellant during the course of appeal proceedings has submitted that with regard to the purchase of Flat No, 1101, 11th Floor, B Wing, Orchid Tower for a consideration of Rs. 2,22,03,800, the appellant submitted that the appellant jointly with Mrs. Tasneem Irfan Vaid and Mr. Aamir Irfan Vaid on 31/01/2010 purchased residential Flat No. residential Flat No. 1101, 11th Floor, B Wing, Orchid Tower for a consideration of Rs.2,22,03,800. The agreement for purchase of the said Flat was executed on 01-07-2011 and the same was registered with the Sub-registrar, Mumbai City 2 under registration no. BBE2 05120-2011 (Stamp Duty Valuation Rs.2,19,63,000). The appellant submitted that Rs. 1,41,40,000 was paid on various dates on or

before 01-08-2010 and balance consideration of Rs.80,63,800 was paid on 13-02-2013 by Mrs. Tasneem Irfan Vaid (Rs.40,63,800) and Mr. Aamir Irfan Vald (Rs.40,00,000), Thus, the appellant contented that no consideration for purchase of the above Flat has been paid by the appellant or other two co-owners during the year under consideration i.e. A.Y. 2012-13. Out of the above, Rs.1,41,40,000 was paid on or before 01-08-2010. Rs. 10,93,000 and Rs.32,660 were paid on 27-06-2011 towards stamp duty and registration fees respectively by Mr. Aamir Irfan Vaid. The Appellant has submitted that he paid VAT @ 1% on the agreement value of Rs. 2,22,03,800 amounting to Rs. 2,22,038. Therefore, the total purchase consideration of the said Flat No. 1101 works out to Rs.2,33,29,460/- as under:

Agreement Value	Rs. 2,22,03,800
VAT @ 1%	Rs. 2,22,038
SUB TOTAL	Rs 2,24,25,838
Stamp Duty	Rs. 10,93,000
Registration Fees	Rs. 32,660
GRAND TOTAL	Rs. 2,35,51,498

8.2 The appellant further submitted that the said residential Flat No. 1101 was sold on 23-12-2011 for a sale consideration of Rs.2.22:03,800 and the appellant jointly with Mrs. Tasneem Irfan Vaid and Mr. Aamir Irfan Vaid has incurred a loss of Rs. 13,47,698. During the year under reference, the assessee jointly with Mrs. Afreen Ashfaq Merchant purchased residential Flat No. 1202, 12th Floor, Dudhwala Complex from Mrs. Rashida Rafiuddin Mora and Mr. Murtaza Hakimuddin Merchant as per agreement dtd. 30-12-2011 for a consideration of Rs. 83,50,000 registered with the Sub-registrar, Mumbai City 3 under registration no. BBE3-2115-2012 (Stamp Duty Valuation Rs.79,62,800). The appellant submitted that the total cost has been paid by the assessee out of the sale proceeds Rs. 1,27,00,000 of his share received as per agreement for sale dtd. 23-12-2011 of Flat No. 1101 at Orchid Tower,

8.3 I have carefully considered the facts of the case, the submission of the appellant and evidences on record. From the details and documents submitted by the appellant giving details and documents in support, It is clear that during the year under consideration neither the appellant nor the other two co-owners have paid any consideration for purchase of the flat No. 1101, 11th Floor, B Wing, Orchid Tower. Further with regard to the purchase of Flat No. 1202, 12th Floor, Dudhwala Complex for a consideration of Rs. 83,50,000, it is clear that during the year under consideration the cost of purchase has been paid by the appellant out of sale proceeds of Flat No. 1101 at Orchid Tower received by him on various dates aggregating to Rs.1,27,00,000. In view of the above, the addition of Rs 3,05,53,800 made by the AO is not sustainable and is directed to be deleted. The appeal on this ground is treated as allowed.

7. From the perusal of the aforesaid order of the ld. CIT(A), when the entire facts were brought on record it was found that assessee had purchased flat for a consideration of Rs.2,22,03,800/- jointly with two other persons, Mrs. Tasneem Irfan Vaid and Mr. Aamir Irfan Vaid on 31/01/2010. The agreement for purchase of said flat was executed on 01/07/2011 and same was registered with Sub-Registrar on the stamp duty value of Rs. 2,19,63,000. The assessee has paid Rs.1,41,40,000/- on or before 01/08/2010 and balance consideration of Rs.80,63,800/- was paid on 13/02/2013 by Mrs. Tasneem Irfan Vaid (Rs.40,63,800/-) and Mr. Aamir Irfan Vaid (Rs.40,00,000/-). Thus, assessee had not paid any consideration for purchase of above flat for the year under consideration. The said residential flat was sold on 23/12/2011 for a sale consideration of Rs.2,22,03,800/- and thereby, incurred loss of Rs.13,47,698/- i.e. for A.Y.2012-13. Out of the

said sale proceeds, assessee again jointly with Mrs. Afreen Ashfaq Merchant purchased residential Flat No. 1202 12th Floor, Dudhwala Complex from Mrs. Rashida Rafiuddin Mora and Mr. Murtaza Hakimuddin Merchant as per agreement dtd. 30/12/2011 for a consideration of Rs. 83,50,000/-. The Total cost out of sale proceeds Rs. 1,27,00,000/- of his share received as per agreement for sale out of which assessee had made the payment. Thus, once neither the assessee nor the co-owner has paid any consideration for purchase of the flat in question during the year and further purchase of earlier flat No. 1101 at Orchid Tower and another flat was purchased for a consideration of Rs.83,50,000/, then how the source of purchase of property remained unexplained investment in the hands of the assessee and that to be for the amount of Rs.3,05,53,800/-. Accordingly, in view of these facts we do not find any infirmity in the order of the Id. CIT(A) in deleting the addition. Accordingly, the order of the Id. CIT(A) is confirmed and Revenue's appeal is dismissed.

8. In the result, appeal of the Revenue is dismissed.

Order pronounced on 8th May, 2024.

Sd/-
(RENU JAUHRI)

ACCOUNTANT MEMBER

Mumbai; Dated 08/05/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai