

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.59/PUN./2024
Assessment Year 2015-2016

Shri Balasaheb Sopan Yelwande, At Post-Nighoje Dongar Wasti, MIDC Phase-III, Khed, Pune. PIN – 410 501. PAN ABKPY4720A	vs.	The Income Tax Officer, Ward-8(3), Pratyakshakar Bhawan, Dr. Ambedkar Marg, Nr. Akurdi Rly. Station, PUNE – 411 044. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Kishor B Phadke
For Revenue :	Shri Somnath M Wajale

Date of Hearing :	23.04.2024
Date of Pronouncement :	14.05.2024

ORDER

This assessee's appeal for assessment year 2015-16, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1055751821(1), dated 05.09.2023, in proceedings u/s.147 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. The CIT(A) NFAC (hereinafter referred to as learned CIT(A)) erred in law and on facts in upholding the addition made by learned AO amounting to Rs 22,90,000 thereby confirming the assessed income to the tune of Rs 25,57,650 as against the returned income of Rs. 2,67,650.
2. The learned AO erred in law and on facts in not extending the opportunity of cross-examination of Mr Nitin G Shelke, Mr. Ganesh Sabale, and Ramesh Sabale w.r.t alleged cash deposit and not extending any copies of alleged incriminating material based on which such addition is made.
3. The learned CIT(A) and the learned AO, NFAC (hereinafter referred to as learned I-T authorities) erred in law and facts in making/confirming the addition of Rs 9,90,000 u/s 69 of the ITA, 1961 on account of investment in immovable property. The learned I-T authorities ought to have appreciated the fact that the payment for the purchase of such immovable property was made out of proceeds from the maturity of fixed deposits and agricultural income.
4. The learned I-T authorities erred in law and on facts in making/confirming the addition of Rs 10,00,000 with a contention that the appellant has made a cash payment to the seller of immovable property situated at village Sablewadi, Taluka Khed. The learned I-T authorities ought to have appreciated the fact that there was no any cash payment to the seller and all the payments for the purchase of immovable property were made out of approved banking channels.
5. The learned I-T authorities erred in law and on facts in making/confirming addition of Rs. 3,00,00 for cash deposit in the Rajgurunagar Sahakari Bank Ltd. The learned I-T authorities ought to have appreciated that the cash deposit was out of past withdrawals, proceeds from maturity of fixed deposits, and agricultural income.
6. Appellant craves leave to add/ alter/ delete/ modify, all/ any of the above grounds of appeal.

3. The first and foremost issue herein is that of sec.69 unexplained investment addition of Rs.9,90,000/- alleged to have been made by the assessee in the relevant previous year. There is no dispute about the fact that the assessee had indeed made the impugned investment which was duly disclosed in the balance-sheet. This being the clinching fact, learned DR could hardly dispute that sec.69 herein would not come into play once the assessee had duly recorded the said land purchase in his balance-sheet in the relevant previous

year. The impugned addition is deleted for this precise reason alone.

4. Next comes the second issue of cash payment addition of Rs.10 lakhs made in assessee's hands on the ground that he had made on-money payment to his corresponding vendor(s). The relevant facts of the instant issue appears little bit confusing as per Assessing Officer's assessment discussion dated 15.02.2022 wherein the learned departmental authorities appears to have conducted their enquiries from one Shri Nitin G Shelke who had deposited Rs.30 lakhs belonging to Shri Ganesh Sabale and Shri Ramesh Sabale. These latter people happen to be the assessee's vendor(s). It is on the basis of this crucial link that both the learned lower authorities have concluded the relevant facts emanating from the foregoing enquiry to make the impugned addition in assessee's hands. The Revenue vehemently supported the same during the course of hearing. I find in this factual backdrop that there is hardly any justification to make the impugned addition once the assessee's vendor(s) have not even deposited the cash amount in their own bank account(s). The same stands deleted in very terms.

5. Lastly comes the assessee's very substantive grounds seeking to delete unexplained cash deposit(s) addition

of Rs.3 lakhs made by both the learned lower authorities. It emerges that neither the assessee has been able to prove satisfactorily the source of the impugned cash deposit(s) nor the department has given the benefit of his socio-economic status vis-à-vis past savings. Faced with this situation, I deem it appropriate in the larger interest of justice to re-compute the impugned addition of Rs.3 lakhs to a *lump sum* amount of Rs.1.50 lakhs only with a rider that the same shall not be treated as a precedent in other case(s). The assessee gets relief of Rs.1,50,000/- in otherwords. Necessary computation shall follow as per law. Ordered accordingly.

6. Delay of 59 days in filing the instant appeal is condoned as per assessee's solemn averments in light of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) having settled the law long back that all such technical aspects must make a way for the cause of substantial justice.

7. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open Court on 14.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 14th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.