

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

ITA NO. 3934/MUM/2023 (A.Y: 2013-14)

DCIT - CIRCLE-1 Room No. 22, B Wing 6 th Floor, Ashar IT Park Wagle Industrial Area, Thane (W) Maharashtra - 400604	v.	SHREE MAHAVEER ASSOCIATES Block No 6, 2 nd Floor Sandeep Apartment Ram Ganesh Gadkari Road Opp Namaskar Hotel, Thane (W) Thane, Maharashtra-400602 PAN: ABDFS9024N
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Subodh Ratnaparkhi
Department Represented by	:	Shri Paresh Deshpande
Date of conclusion of Hearing	:	09.05.2024
Date of Pronouncement	:	09.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against the order dated 07.09.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2013-14.

2. The sum and substance of the grievance of the revenue is that the Ld. CIT(A) erred in deleting the addition of ₹.6,59,12,000/- on account of short term capital gain.

3. Briefly stated the facts of the case are that, pursuant to the AIR information the Assessing Officer came to know that the assessee has entered into transaction of sale of immovable property valued at ₹.6,59,12,000/-, on the basis of this information the Assessing Officer issued notice under section 148 of Income-tax Act, 1961 (in short "Act"). In response to which the assessee filed its return of income declaring taxable income at ₹.NIL.

4. During the course of the assessment proceedings, assessee was asked to explain the sale of immovable property amounting to ₹.6,59,12,000/- and why it has not been disclosed in his return of income. In its reply the assessee categorically stated that it does not have any transaction related to properties during Financial year 2012-13. The Assessing Officer asked assessee to furnish supporting documentary evidences and on receiving no plausible reply, the Assessing Officer made the addition of ₹.6,59,12,000/-.

5. When the matter was agitated before Ld. CIT(A), assessee challenged the reopening of assessment as well as the addition made by the Assessing Officer. After considering the facts and submissions, the Ld. CIT(A) was of the opinion that the entire assessment proceedings revolve around the AIR information without any further evidences brought on record. The Ld. CIT(A) deleted the entire addition for want of evidences.

6. Before us also Ld. DR could not bring any evidences to show that AIR information was correct. The counsel relied upon the findings of the Ld. CIT(A).

7. We have given a thoughtful consideration to the order of the authorities below. The undisputed fact is that the Assessing Officer has made the addition on the basis of the AIR information. We do not see any merit in the contention of the Assessing Officer that the assessee has not furnished any evidences in respect of not selling the impugned immovable property. It would be pertinent to refer to the observations of the Hon'ble Jurisdictional High Court of Bombay in the case of Deepak Rakhamaji Hadavale [157 taxmann.com 545] **"we fail to understand how a person can prove the negative. The onus was on the**

Assessing Officer to prove that what the Petitioner has stated in the Reply was incorrect and in fact there were two transactions linked to Petitioner as against Petitioner's stand that there was only one transaction during the relevant assessment year."

8. The facts of the case in hand also show that the assessee denied the entire allegation made by the Assessing Officer by categorically stating that it has not entered into any sale transaction of any immovable property and the Assessing Officer has asked the assessee to furnish evidences.

9. Considering the facts of the case in the light of the decision of the Hon'ble Jurisdictional High Court of Bombay (supra), we do not find any reason to interfere with the findings of the Ld. CIT(A).

10. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 09th May, 2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Mumbai / Dated 09.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT 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, Mum