

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI SUNIL KUMAR SINGH, JM

ITA No. 4850/Mum/2023
(Assessment Year: 2013-14)

Rushikesh Jagdishchandra naik
10 2nd Floor, Sandeep building
tilak nagar,
M.P. Vaidya Marg, Ghatkopar Vs.
East, RAjawadi S.O.
Mumbai-400 077

Income Tax Officer
Ward No.16(3)(1)
Aaykar Bhavan,
Mumbai-400 020

(Appellant)

(Respondent)

PAN No. AAAPN7066R

Assessee by : Mr. Satyaprakash Singh, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 28.05.2024
Date of pronouncement : 31.05.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.4580/Mum/2023, is filed by the assessee /appellant, Mr. Rushikesh Jagdishchandra Naik for A.Y. 2013-14, against the appellate order passed by National Faceless Appeal Centre, Delhi [the learned CIT (A)], dated 24th November, 2023, wherein the appeal filed by the assessee against the assessment order passed under Section 144 of the Income-tax Act, 1961 (the Act) dated

29th September, 2021, passed by the Income Tax Officer, Ward, 16(3)(1), Mumbai was partly allowed.

02. The assessee is aggrieved with the above appellate order raising five grounds of as under:-

“1. The order dated 24/11/2023 bearing No. ITBA/NFAC/S/250/2023-24/1058222336(1) passed under section 250 of Income Tax Act, 1961 by the Honorable C.I.T.[Appeal], National Faceless Appeal Centre [NFAC], Delhi, is excessive unreasonable, arbitrary, against the provisions of Income Tax Act, 1961 and therefore liable to be quashed.

2. ADDITION ON ACCOUNT OF ESTIMATED PROFIT OF RS.7,12,808/- IN SPECULATION BUSINESS.

(A) On facts and circumstances of the same, the Honorable C.I.T(A) has erred in confirming the addition of Rs.7,12,808/- being estimated profit @ 0.5% on the alleged speculation turnover,

(B) Honorable C.I.T(A) ought to have appreciated the fact that profit in the speculation business activities can never be estimated at any percentage and further as requested by the Appellant, Global Report should have been referred to ascertain actual amount of profit & loss instead of confirming 0.5% of the turnover.”

3. ADDITION ON ACCOUNT OF PROFESSIONAL FEES.

(A) On facts and circumstances of the case, the Honorable C.I.T(A) ha"s erred in confirming the addition of Rs.1,72,397/-on account of receipt of income by way of alleged interest. (which in fact is professional receipt)

B) Honorable CIT(A)-ought-to-have appreciated that said sum of Rs.1,72,397/-is not in the nature of interest but is professional fees received by the Appellant and Appellant is entitled to deduction in respect of expenses which was claimed @ 50% of the gross receipts as provided in Section 44ADA of Income Tax Act, 1961.

4. ADDITION ON ACCOUNT OF CASH DEPOSIT OF RS.2,00,000/-

(A) On facts and circumstances of the case, the Honorable C.I.T(A) has erred in confirming the addition of Rs.2,00,000/- being cash deposit in the bank, rejecting the contention of the Appellant that the same was out of past savings.

5. ADDTION OF RS.1,01,28,895/- ON ACCOUNT OF UNEXPLAINED INVESTMENT IN SHARES UNDER SECTION 69.

(A) On facts and circumstances of the case and in law, the Honorable C.I.T(A) has erred in confirming the addition of Rs.1,01,28,895/- being unexplained investment in the purchase of the shares.

6. Addition of ₹1,01,28,895/- on account of unexplained investment in shares under Section 69.

(A) The appellant craves leave to add to, amend or alter the above grounds as may be

(B) Honorable C.I.T(A) ought to have appreciated that no amount was invested by the Appellant and it was only periodical settlement and hence profit & loss needs to be added and not the whole amount of purchases. Even bank account of Appellant (copy enclosed) will not reflect any such investment being done by the Appellant.

03. The brief facts of the case shows that the assessee is an individual and Doctor by profession. He did not file any return of income for the assessment year and therefore, as per the non-filers of Income Tax Return, project the individual transactions were captured. It was noted that assessee has deposited cash of ₹2 lacs. Further, he has made sale of equity share in stock exchange of 1,01,80,102/- and also purchased equity shares of 1,01,28,895/-. Further, he has a turnover in equity shares settled otherwise than the actual delivery of ₹14,25,61,616/- and earned professional fees of ₹1,72,397/- on which tax has been deducted.
04. Therefore, proceedings, under Section 147 of the Act were initiated stating all these facts and notices under Section 148 of the Act was issued on 27th February, 2020. Assessee did not comply with the above notices. Subsequently, notice under Section 142(1), was issued on 28th September, 2020, which was also not replied to. During the course of assessment proceedings, seven



notices were issued to the assessee but none of them was replied. Therefore, the learned Assessing Officer proceeded to make the assessment under Section 144 of the Act. Accordingly, the learned Assessing Officer assessed the total income of the assessee at ₹2,13,94,202/- as per assessment order passed under Section 147 read with section 144 of the Act dated 29th September, 2021.

05. The assessee aggrieved with the above order, preferred the appeal before the learned Commissioner of Income-tax (Appeals). Before the learned CIT (A), notices were issued on 2 occasions, wherein the assessee filed its written submission. The assessee submitted that non-compliance before the learned Assessing Officer is because of mail id of earlier Chartered Accountant of the assessee and such mails could not be replied as assessee was not aware. Therefore, the assessment proceedings resulted in ex-parte assessment order. The assessee submitted explanation with respect to each of the additions. With respect to the additions of ₹7,12,808/- on account of 0.5% profit estimated by the learned Assessing Officer on alleged total turnover of ₹14.25 crores. Assessee submitted that the report may be called for and the actual amount of profit and loss account from this speculation business may be added. With respect to the profession and fees income it was submitted that provisions of 44ADA of the Act relied on and therefore, only 50% of the gross receipt is chargeable to tax. With respect to the addition of ₹2 lacs on account of bank deposit, it was submitted

that same is out of the past savings and stated that the total cash deposited in the year is much less than ₹2 lacs and accordingly, the addition is incorrect. With respect to the addition of ₹1.01 crores under Section 69 of the Act and 1.01 crores under Section 68 of the Act, it was submitted that the learned Assessing Officer has made an addition with respect to the purchases of the security as well as the sale of the securities. It was stated that the assessee has earned merely ₹51,207/- only. It was further stated that the assessee may be given an opportunity as no proper representation was made before the learned Assessing Officer. Time and again the assessee requested to call for the report. The learned CIT (A) categorically held that non-compliance is on account of the assessee. The change in the residential address was also not intimated to the Department and therefore, the appellant has been granted sufficient opportunity. Further, he stated that before him also assessee has been granted opportunity. After consider the reply of the assessee he dismissed ground related to the addition of ₹7,12,808/-, addition of ₹1,72,397/- on account of professional fees and addition on account of cash deposit of ₹2 lacs, with respect to the addition under Section 69 and 68 of the Act. He held that only investment in shares should be taxed as unexplained investment under Section 69A of the Act. He confirmed, thus the addition under Section 69 of the Act of unexplained investment in equity shares of ₹1,01,28,895/- and deleted the addition under Section 68 of the Act of ₹1,01,80,102/- on account of unexplained sale of equity

shares. Accordingly, the appellate order was passed on 24th November, 2023, and assessee is now in appeal before us.

06. The learned Authorized Representative referred to paragraph no.1.4 of his written submission. Before the learned CIT (A), wherein it is stated that the notices issues by the learned Assessing Officer were at the email address of the Chartered Accountant and further, assessee has changed his residential address. Therefore, the notices issued by the learned Assessing Officer did not reach to the assessee and therefore, the same were not responded. He submitted that during the course of appellate proceedings, before the learned CIT (A) assessee repeatedly requested to call for remand report and given an opportunity of hearing but the learned CIT (A) did not call for the remand report and decided the issue on the written submission of the assessee. It was stated that on account of estimated profit of speculation business if the purchase and sale are considered real income only for actual amount of profit and loss is required to be taken into account. He further submits that so far as professional receipts are concerned assessee is entitled to the benefit of Section 44ADA of the Act. With respect to the cash deposit, it was submitted that the bank statement is furnished which shows that there is no deposit to the extent of ₹2 lacs but is less than that. With respect to the purchase and sale of shares, he submits that the addition is sustained under Section 69 of the Act to the question of purchases as unexplained investment.

According to him, this whole of the investment cannot be considered as income of the assessee. He submits that only ₹51,207, is the income. It was stated that because of the above stated reasons and despite request of the assessee the learned CIT (A) did not call for the remand report and therefore, if an opportunity is given, the assessee would be submitting the details before the lower authorities.

07. The learned Departmental Representative submitted that assessee has been given enough opportunity before the learned Assessing Officer as well as the learned CIT (A) and therefore, orders of the lower authorities may be sustained.
08. We have carefully considered the rival contentions and perused the orders of the lower authorities. The facts clearly shows that the assessee is a doctor by profession but largely carry on the speculation as well as the trading activity at the exchange. Assessee has not filed his return of income which has resulted into reopening and because of his failure to respond to several notices, resulted into re-assessment order passed ex-parte. The reasons given by the assessee is that mail id of Chartered Accountant was mentioned and further change in the residential address. He could not remain present before the learned Assessing Officer. Admittedly, before the learned CIT (A), the assessee made a request for calling remand report, however, the learned CIT (A) refused to call for the report stating that assessee has been given many opportunities

and further he has an opportunity to submit before him also. Thus, according to him, the assessee has opportunity available for him to explain the case. We find that assessee stated before him that the estimated profit at the rate of 0.5% on speculative transaction of ₹14.25 crores is not correct. But whatever may be the loss or profit arising on account of such speculation profit may be taxed. Without addressing this issue and without calling for the report, he upheld 0.5% as profit. He also denied the benefit of Provisions of Section 44ADA of the Act for the reason that the assessee has not filed his return of income and assessee has earned interest income. It is apparently wrong to state that this is the interest income because various receipts show that this amount is professional fees. With respect to the cash deposit of ₹2 lacs, it was submitted that assessee has not deposited cash to that extent but is much less than ₹2 lacs. Assessee submitted his bank account. Without looking at the bank account, the addition was confirmed. Admittedly, the assessee has made purchase of ₹1,01 lakhs and sold shares of ₹1,01 lakhs at stock exchange. Assessee submitted that the profit is only ₹51,207/- but the learned CIT (A) confirmed the addition under Section 69A of the Act about the unexplained investment in equity shares. The whole of the appellate order is only because of non-appearance by the assessee before the learned Assessing Officer but when the assessee furnishes certain arguments before the learned CIT (A), he is duty bound to look into these aspects. When assessee is specifically requesting him for



calling for remand report, in the facts and circumstances, there would not have been any harm if remand report would have been called. Even otherwise, when same actual evidences such as bank statement etc, are filed before the learned CIT (A), he should have himself called for the remand report of additional evidence for its admission as well as an opportunity to the learned Assessing Officer. In view of these reasons, we set aside the appeal back to the file of the learned Assessing Officer with a direction to the assessee to submit all the relevant details before the learned Assessing Officer within 90 days from the receipt of the order. The learned Assessing Officer may consider the same and thereafter decide the issue afresh.

09. In the result, the appeal of the appeal is allowed for statistical purposes.

Order pronounced in the open court on 31.05. 2024.

Sd/-
(SUNIL KUMAR SINGH)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05. 2024

Sudip Sarkar, Sr.PS



Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai