

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHARI, ACCOUNTANT MEMBER**

**ITA No.4317/M/2023
Assessment Year: 2012-13**

Mr. Rajeev Suresh Patodia, Flat No.C 1801, C-Wing, Jaswanti Woods, Near Vaishali Nagar, Mulund West, Mumbai – 400 080 PAN: ALKPP1008N	Vs.	Income Tax Officer- 26(3)(6), Kautilya Bhawan, G Block, BKC, Bandra (E), Maharashtra-400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Neelkanth Khandelwal, A.R.
Revenue by : Shri Himanshu Kumar, D.R.

Date of Hearing : 14 . 05 . 2024

Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order dated 06.11.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2012-13.

2. In the instant case, as per ITS data it was revealed that the assessee had purchased an immovable property for a consideration of Rs.39,74,760/- and the source of fund utilized for making payment towards the purchase of immovable property remained unexplained. Consequently the Assessing Officer (AO) vide letter dated 06.03.2019 requested the assessee to furnish the information qua financial activities held during the financial year 2011-12, copy of ITR along with computation of total income, statement of all bank accounts for the F.Y. 2011-12, details of property purchased during the F.Y. 2011-12 along with the details of source of funds and other necessary documentary evidences and details of other immovable property held during the relevant period.

2.1 The assessee filed no response and therefore the AO formed a reason to believe that the assessee had escaped assessment of income exceeding Rs.1,00,000/- and accordingly reopened the case under section 147 of the Act and consequently issued the notice dated 30.03.2019 under section 148 of the Act, in response to which the assessee on 26.05.2019 by filing his return of income declared income at Rs.2,590/-.

2.2 Subsequently, the Ao also issued other statutory notices whereby the assessee was asked to furnish certain details/documents. However, the assessee failed to furnish the same, therefore, the AO by considering the particular facts and circumstances in totality made the addition of Rs.23,74,760/- out of total amount of purchase of immovable property of Rs.39,74,760/- after allowing Rs.16,00,000/- being the loan against the property and added the same to the total income of the assessee as undisclosed source of income.

3. The assessee, being aggrieved, challenged the said addition as well as assessment order before the Ld. Commissioner, however, in spite of sending three notices, neither filed any reply nor any documents before the Ld. Commissioner through ITBA portal and therefore the Ld. Commissioner decided the appeal of the assessee based on the Assessment Order and ultimately affirmed the addition of Rs.23,74,760/- on account of disallowance made by the AO by dismissing the appeal of the assessee.

4. The assessee, being aggrieved, is in appeal before us. At the outset, the Ld. A.R. drew our attention to the e-proceeding response acknowledgment No.249349301120923 dated 12.09.2023 (page No.164-165 of the paper book) issued by the ITBA portal and demonstrated that the assessee on 12.09.2023 has filed the paper book containing pages No.1 to 109 in the first appellate proceedings which are documents including application under rule 46A of the Income Tax Rules (in short 'the Rules') for producing the additional evidences and relevant extract of bank statement of Mr. Rajeev Patodia and Mrs. Daya Patodia and Mr. Suresh Patodia.

The Ld. Counsel further by drawing our attention to the e-proceeding response acknowledgment No.499767051021123 i.e. dated 02.11.2023 (page No.169 and 170) contended that the assessee has submitted an application, under rule 46A of the Rules along with certain documents as well as written submissions in support of Assessee's claim, which goes to show that the non-consideration of the documents/submissions/reply of the assessee in spite of filing the same on ITBA portal in the first appellate proceedings by the Ld. Commissioner also reflects non-application of

mind and also goes to show that Ld. Commissioner did not act diligently and decided the appeal of the assessee without considering the relevant reply/documents and therefore the impugned order is liable to be set aside.

5. The Ld. D.R. though submitted that the assessee failed to file the relevant documents/submissions before the authorities below, however, not refuted the aforesaid factual aspects as demonstrated by the Ld. Counsel/A. R. of the assessee.

6. Having heard the parties and perusing the material available on record and giving thoughtful considerations to the peculiar facts and circumstances of the case, we observe that it is strange that in spite of filing relevant documents on ITBA portal during the appellate proceedings, the same have not been considered by the Ld. Commissioner and therefore on this aspect itself the impugned order is liable to be set aside. However, by considering the probable causes such as technical glitches and/or oversight and/or overburdened with the work, the documents/reply filed before the Ld. Commissioner remained to be considered and therefore, we are inclined to consider the case in totality.

6.1 We have considered the application dated 02.11.2023 filed by the assessee under rule 46A of the Rules before the Ld. Commissioner, wherein the Assessee has claimed that at the time of assessment proceedings, the assessee was residing in Japan for the purpose of his employment and since the matter is old therefore, he was unable to contact his bank and obtain the relevant bank statement. The said fact was communicated by the assessee to the AO during the course of assessment proceedings as well (refer page

3 & 8 of the paper book). However, post assessment the assessee was finally able to obtain the relevant bank statement from the respective banks which are being filed as additional evidence along with application under rule 46A of the Rules and therefore the assessee was prevented by sufficient causes from producing the aforesaid documents during the course of assessment proceedings and therefore the assessee urged to admit the additional evidence. The Assessee with regard to residing in Japan for the purpose of his employment has also filed the copy of passport .

7. Considering the claim made by the assessee as genuine and the peculiar facts that the assessee though was prevented for sufficient cause for not filing the relevant documents before the AO/assessment proceedings, however, it is an un-controverted fact that the assessee during the appellate proceedings before the Ld. Commissioner filed the relevant application under rule 46A of the Rules along with documents and submissions and hence for the proper and just decision of the case and for the ends of substantial justice, we are inclined to remand the instant case to the file of the AO for decision afresh by taking into consideration the relevant reply/documents supposed to be filed by the assessee before him.

8. We also direct the assessee to cooperate with the appellate proceedings and to file the relevant submissions/documents which would be essential and required by the AO for proper adjudication of the case. We clarify that in case of further default, the assessee shall not be entitled for any leniency. Hence, the case is remanded accordingly.

9. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(RENU JAUHARI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.