

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", MUMBAI**

**Before Shri Narendra Kumar Billaiya, Accountant Member &
Shri Anikesh Banerjee, Judicial Member**

ITA No.1515/Mum/2024: Asst.Year : 2017-2018

Shri Vishwesh Venkatraman C/o.CS Amit Negandhi 6 Meghdoot Opp: Kikabhai Hospital, Sion East Mumbai – 400 022. PAN : ALSPV7691R	vs.	The Income Tax Officer Ward 4(3)(1) Mumbai.
(Appellant)		(Respondent)

Appellant by: S/Shri Harshavardhana Datar / Amit Negandhi
Respondent by: Shri Anil Sant, Addl.CIT-DR

Date of Hearing : 20.06.2024	Date of Pronouncement: 21.06.2024
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ORDER

Per Narendra Kumar Billaiya, AM :

This appeal by the assessee is preferred against the order dated 13.03.2024 framed u/s.147 read with section 144C(13) of the Income-tax Act, 1961, pertaining to assessment year 2017-2018.

2. The assessee has assailed the assessment order / order of the CIT(A) by raising following grounds of appeal:-

“1. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in initiating the reassessment without appreciating the fact that assessee is the non-resident and was never required to file the return of income, hence, assessment is erroneous on facts and bad in law and liable to be annulled. Hon. ITAT is prayed to quash the assessment order.

2. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in framing the assessment order, in absence of the valid approval under section 151 to initiate reassessment, as approval is not of the specified authority u/s 151 and hence, reassessment initiated in absence of the valid approval is erroneous on facts and bad in law and liable to be annulled. Hon. ITAT is prayed to quash the assessment order.

3. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in framing the assessment order, in absence of the valid approval under section 151, as approval does not contain the Document Identification Number as specified in CBDT circular 19/2019 and hence, reassessment is initiated in absence of the valid approval under section 151, hence, assessment is erroneous on facts and bad in law and liable to be annulled. Hon.ITAT is prayed to quash the assessment order.

4. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in framing the assessment order, in absence of the valid approval under section 151, as approval is granted mechanically and does not establish any application of mind and hence, reassessment initiated in absence of the valid approval under section 151, hence, assessment is erroneous on facts and bad in law and liable to be annulled. Hon. ITAT is prayed to quash the assessment order.

5. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in making the addition, by invoking the provisions of section 69 without appreciating the fact that assessee established own capacity of investment, genuineness of transaction and source of funds, hence such addition is erroneous on facts and bad in law and liable to be deleted. Hon. ITAT is prayed to delete such addition.

6. Without prejudice to Ground No.5, On the facts & circumstances, Ld. Assosing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in making the addition by invoking the provisions of section 69, without appreciating the fact that payments have been made during various other years, hence such addition is erroneous on facts and bad in law and excessive and liable to be reduced. Hon. ITAT is prayed to restrict the addition to the extent of amount paid during the year under consideration.

7. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in making the addition by invoking the provisions of section 69, without appreciating the fact that such addition is not taxable in India due to provisions of India-Norway DTAA, hence such addition is erroneous on facts and bad in law and liable to be deleted. Hon. ITAT is prayed to delete the addition.

8. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in making the addition by invoking the provisions of section 69, without granting the personal or virtual hearing, such addition is violative of natural justice and hence such proposed addition is erroneous on facts and bad in law and liable to be deleted. Hon. ITAT is prayed to quash the assessment order.

9. On the facts & circumstances, Ld. Assessing Officer, Pursuant to directions from Ld. Dispute Resolution Panel (DRP-2), erred in levying the interest under section

234B & Section 234C of Income Tax Act. Hon. ITAT is prayed to grant the consequential relief.

10. Assessee prays for permission of Hon.ITAT to add, to amend any or all grounds of appeal stated above.”

3. The representatives of both the parties were heard at length, case records perused and the relevant documentary evidences brought on record in the form of paper books duly considered.

4. The undisputed facts are that the assessee did not file return of income for the impugned assessment year. The Assessing Officer (AO) had information in relation to purchase of property by the assessee amounting to ₹ 2,13,87,250. On the basis of this information, invoking the provisions of section 148(1) of the Act, the A.O. issued notice for reopening the assessment. In response to which the assessee filed its return of income. Subsequently, statutory notices u/s.142(1) and 143(2) were issued and served upon the assessee.

5. The assessee challenged the reopening of the assessment and the objections raised by the assessee were duly replied by the A.O. vide notice u/s.142(1) of the Act dated 16.05.2023 explaining the validity of notice issued u/s.148 of the Act.

6. When sought explanation for the purchase of property, the assessee submitted that the said immovable property has been bought in the name of assessee's sister and assessee's father. It was explained that the impugned property was purchased from Godrej Vikhroli Properties LLP (PAN : AAKFG2614G) and the sale agreement was registered on 21.09.2016 and the payments were made from 22.02.2016 to 11.11.2019. It was emphatically mentioned that there was no cash payment and all the payments have been routed through banking channels. The complete details were filed and it was also brought to the notice of the A.O. that the tax has been deducted at source as per the relevant provisions of law.

7. The A.O. was not convinced with the source of the investments and accordingly issued a show cause notice pointing out to the assessee the following:-

“You have failed to furnish bank account statement reflecting all the payments made towards the purchase of property worth ₹2,13,87,250, therefore, you are required to show cause as to why this amount should not be added to your total income on account of unexplained investments u/s.69 along with documentary evidences clearly explaining the said investment.”

8. The assessee reiterated what he has stated earlier. Simultaneously, the assessee sought directions from the Addl.CIT u/s.144A of the Act, who issued suitable directions. The sum and substance of the directions issued by the Addl.CIT are that there is no dispute that the assessee has purchased an immovable property for a consideration of ₹2,13,87,250 and did not file return of income in India. Insofar as the documents are concerned, the Addl.CIT observed that the assessee has not furnished complete bank statement and further failed to co-relate through documentary evidences that the income earned in Norway was invested in immovable property in India. According to the Addl.CIT, India-Norway DTAA will come into picture only when the assessee has proved that the investment made in India was part of income earned in Norway and the same was already declared for taxation in Norway. Thereafter, the A.O. completed the assessment proceedings by making addition of ₹2,13,87,250.

9. The assessee raised objection before the Dispute Resolution Panel (DRP). It was brought to the notice of the DRP that the assessee has furnished property sale deed, tax residency certificate of Norway, tax returns in Norway, ledger confirmation from Norway and statement of bank account in India, from which the payments were made to the builder. After considering the documentary evidences furnished by the assessee, the DRP was of the opinion that the assessee could not convincingly explain how the income earned in Norway has been routed to the Indian bank

account for subsequent payments to the builders. The DRP further observed that the assessee has earned ₹2,70,86,015 during the period 2013 to 2018, but no details of disposable income post-tax and post-expenditure has been furnished by the assessee. The DRP confirmed the assessment.

10. Before us, the Counsel reiterated that all the payments have been routed through banking channels, which are duly reflected in the bank statement and none of the lower authorities has found any defect in the documentary evidences furnished by the assessee, therefore, it can be safely presumed that the assessee has successfully discharged the onus cast upon him for explaining the source of investment in the impugned immovable property.

11. Per contra, the Departmental Representative strongly supported the findings of the A.O. and the DRP.

12. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee has made investment in the impugned property as evidenced from the property sale deed. It is also not in dispute that the assessee is a resident of Norway as per the tax residency certificate. The assessee has also filed copies of tax returns filed in Norway from which it can be seen that the assessee has earned income of ₹2,70,86,015 during the period from 2013 to 2018. Be that as it may, the onus is upon the assessee to show that the money has flown from Norway to India and the investment has been made out of the money flown from Norway. The bank statement furnished by the assessee shows that the payments have been made from his bank account, but there is no documentary evidence to show that the impugned amount has come from Norway. We have carefully perused the entries in the bank statement. No doubt, the amounts credited in the bank statement are transfer amount but it is not coming out that this transfer was made from Norway. We are of the considered view that the assessee ought to have furnished certificate

from his bank in India certifying that the money deposited in his bank account has come from Norway. This primary evidence go to the root of the matter, therefore, in the interest of justice and fair play, we are of the opinion that the assessee should get a fresh opportunity to furnish this clinching evidences before the A.O. Therefore, the issues are restored back to the files of the A.O. The assessee is directed to furnish the clinching evidences to show that the money has come from Norway in his bank account in India and the impugned property has been purchased out of that amount received from Norway. The assessee is also directed to furnish certificates from the bank to substantiate his claim. The A.O. is directed to verify the evidences furnished by the assessee and decide the issue afresh after affording a reasonable and adequate opportunity of being heard to the assessee.

13. The other issues raised in the grounds of appeal are left open.

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

Order pronounced on this 21st day of June, 2024.

Sd/-
(Anikesh Banerjee)
Judicial Member

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Mumbai; Dated: 21st June, 2024
 Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals).
4. The CIT concerned.
5. The Sr. DR, ITAT, Mumbai.
6. Guard File.

Asst.Registrar
 ITAT, Mumbai