

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 218/MUM/2024
(Assessment Year : 2011-12)**

M/s. M. K. Shah & Co. 528, J.S.S.Road, Chira Bazar, Mumbai-400002	Vs.	ITO Ward 23(2)(6) Piramal Chamber, Mumbai-400013
PAN/GIR No. AABFM0064F		
(Appellant)	..	(Respondent)

Assessee by	Shri. Vimal Punmiya
Revenue by	Smt. Mahita Nair (SR. DR.)
Date of Hearing	29/05/2024
Date of Pronouncement	21/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 23.11.2023 passed in Appeal no. CIT(A), Mumbai-29/10280/2018-19 by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s.

250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment year [A.Y.] 2011-12.

2. The brief facts state that the assessee is a partnership firm engaged in the business of jewellery. Assessee has filed original return of income for A. Y. 2011-12 on 29.09.2011 declaring total income of Rs. 9,11,250/-. On the basis of specific information received from the office of DDIT(Inv.) Unit-1(2) Ahemdabad, a survey action u/s. 133A of the Act was carried out in the case of M/s. Mudra Finevest (Guj.) Ltd. on 08.12.2016. During post survey proceedings, on examination of the digital data found during survey action, tally data of an entity M/s. Mudra Real Estate Pvt. Ltd. was found. It was a group of entity engaged in the activity of construction and development of a commercial project viz. 4-D square beside the Ahmedabad-Gujarat Road near Visat, Ahmedabad. The tally data of M/s. Mudra Real Estate pvt. Ltd contained ledgers of various parties, cash book, trial balance, P&L account, balance sheet, etc. It was further noticed that huge amount was paid in cash to the assessee. It was also seen that the assessee was paid an amount of Rs. 1,90,00,000/- in cash during the year under consideration. Accordingly the case was reopened with

prior statutory approval of principal commissioner of income tax-18, Mumbai. Statutory notice u/s. 148 of the Act was issued and served upon the assessee. Assessee e-filed return on 22.05.2018 in compliance of notice u/s. 148 of the Act, declaring total income same as Rs. 9,11,250/-. Further notices u/s. 143(2) and 142(1) of the Act were issued but the assessee did not respond to these notices. Thereafter a show cause notice was issued, assessee filed objections & details called for through his CA Shri Hansraj S Sanghvi. Assessing Officer found that the aforesaid undisclosed amount was not recorded in the books of account of the assessee to evade the tax liability. Hence, Rs. 1,90,00,000/- was added to the income of assessee firm on protective basis u/s. 69A of the Act. Further, the same amount was added in the hands of Shri Jayantilal M Shah, a partner of the assessee firm. Penalty proceedings u/s.271(1) (C) of the Act were also initiated separately for the concealment of income. Being aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who dismissed assess's appeal by impugned ex-parte order.

3. The appellant assessee has approached this tribunal on the following grounds:

“1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition made by the learned Assessing Officer of Rs.19000000/- u/s 69A of the Act on the ground that assessee had received said amount from M/s. Mudra Real Estate P Ltd which is appearing in ledger account found in the course of survey in the case of M/s. Mudra Real Estate.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to adjudicate applicability of provision of section 69A of the Act to the facts of the case of the appellant and thereby erred in confirming addition of Rs. 19000000/- to the total income of the appellant.

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) failed to appreciate that notice dated 10.11.2023 has not been served on the appellant either on email or via SMS.

4. On the facts and circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in arriving at the conclusion that notice issued under section 148 of the Act is valid one and not without jurisdiction, bad in law and void ab-initio, contrary to the provisions of the Act which the appellant pray on following grounds

(a) Proceeding initiated under section 147/148 of the Act is on the basis of reason to suspect and not on reason to believe.

(b) There is no new tangible material in possession of the Assessing Officer which justify issuance of notice u/s 148 of the Act

(c) The notice under section 148 of the Act has been issued on the direction of DDIT (Inv), Unit 1(2), Ahmedabad and not on the basis of any belief of Assessing Officer.

d) The learned Assessing Officer failed to obtain sanction as provided in section 151 of the Act.

4. The learned Commissioner of Income Tax (Appeals) erred in confirming order made under section 143(3) rws 147 of the Act which is without jurisdiction, illegal, bad-in-law, ultra virus and without allowing reasonable opportunity of the hearing, and without appreciating facts, submission and evidences in their proper perspective, without providing copies of material relied upon and without providing cross examination of persons whose statements relied upon.

5. The learned Commissioner of Income Tax (Appeals) erred in confirming charging of interest under section 234A, 234B and 234C and 234D of the Act.....”

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.

5. We have perused the records and heard learned representatives for both the parties.

6. Learned representative for the assessee has argued that the assessment on protective basis cannot be carried out in the reassessment proceedings. It was also submitted that the same amount of Rs. 1,90,00,000/- was also added in the hand of the Shri Jayantilal M Shah on the substantive basis who is also the partner of the assessee firm. It is further submitted that the appeal in respect of partner Shri Jayantilal M Shah is still pending before the learned CIT(A) and has prayed to remand the matter back to learned CIT(A) to decide assessee's appeal along with the pending appeal of co-partner Mr. Jayantilal and Shah.
7. Learned DR has agreed that the appeal of the co-partner Mr. Jayantilal M Shah, in whose hand, the aforesaid amount has also been added on substantive basis, is still pending before learned CIT(A).
8. Considering the submissions made before us, we find that the learned CIT(A) has decided the appeal of the present assessee confirming the addition of Rs. 1,90,00,000/- in his hands as cash amount received from M/s. Mudra Real Estate Pvt. Ltd., treating it as deemed income u/s. 69A of the Act on protective basis. However, the same amount

having being added in the hands of co-partner of assessee's firm Mr. Jayantilal M Shah on substantive basis which seems to be pending before learned CIT(A). Learned representative for the assessee has specifically argued that the assessee is not challenging the reopening of the case but the protective assessment made against him. Considering the submissions made before us we are of the consistent view that learned CIT(A) should have decided both the appeals together. We, accordingly remit the file back to the learned CIT(A) to decide this appeal afresh along with the appeal related to the co-partner Mr. Jayantilal M Shah. Needless to say that the principles of natural justice be observed by affording an opportunity of hearing to the appellant assessee. We direct the assessee to be diligent and responsive to the notices issued by the learned CIT(A) and make prompt appearance before the first appellate authority and place his point of view so that learned CIT(A) is able to decide both the appeals together conveniently. The appeal is thus liable to be allowed.

9. In the result, the appeal is allowed in aforesaid terms. Impugned order dated 23.11.2023 is set aside. The appeal

is restored to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 21.06.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai; Dated 21/06/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL 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, Mumbai