

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA Nos. 356 & 357/Mum/2024
(Assessment Years: 2008-09 & 2009-10)

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| Vivek Ramsing Padvi A/302, Kumar Co-op. Soc., Mahada Colony, Mulund (E), Mumbai-400 081 | Vs. | Income Tax Officer, Ward 29(3)(5) Kautilya Bhavan, Mumbai-400 051 |
| PAN/GIR No. AMUPP 6138 L | | |
| (Assessee) | : | (Respondent) |
| Assessee by | : | Shri Shahank Mehta |
| Respondent by | : | Ms. Rajeshwari Menon |
| Date of Hearing | : | 08.05.2024 |
| Date of Pronouncement | : | 21.06.2024 |

ORDER

Per Kavitha Rajagopal, J M:

These appeal have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2008-09 and 2009-10.

2. As the facts and circumstances are common in both the appeals, we take ITA No. 356/Mum/2024 as the lead case.

ITA No. 356/Mum/2024

3. The grounds of appeal raised by the assessee reads as under:

1. *In the facts and in the circumstances of the case and in law, the earned Commissioner Income Tax (Appeals) has erred in upholding the action of the ld. Assessing Officer in reopening*

the assessment for the relevant AY 2008-09 in contravention of the provisions of section 147 to section 151 of the Act.

2. *In the facts and in the circumstances of the case and in law, the learned Commissioner Income Tax (Appeals) has erred in upholding the action of ld. Assessing Officer in making addition of Rs.2,53,26,125/- to the total income of the appellant; alleging it to be unexplained investment/deposits from undisclosed sources under section 69; disregarding the factual and legal matrix of the case, inter-alia the following:*

a) that the bank account of the appellant was operated and misused by third party for fund transfers (which was also accepted by such person) and under such circumstances no addition should be made in the hands of the appellant.

b) Without prejudice to above, that the bank account of the Appellant was misused by third party for fund transfer and under such circumstances entire credits in the bank account cannot added to total income disregarding the corresponding debits in the said bank account.

c) Without prejudice to above, that under such circumstances the addition can only be made amount for the commission involved as held by Hon'ble Jurisdictional High Court in the case of PCIT vs. Alag Securities Pvt. Ltd. (ITA No. 1512/2017 order dated 12.06.2020).

4. The brief facts are that the assessee is an individual and had e-filed his original return of income declaring total income of Rs.1,04,980/- on 22.01.2010 and the same was processed u/s. 143(1) of the Act. Based on the information received from the DDIT, the learned Assessing Officer (ld. A.O. for short) reopened the case of the assessee u/s. 147 of the Act vide notice dated 31.03.2015 u/s. 148 of the Act for the reason that the assessee is said to have deposited Rs.2,33,35,290/- and is alleged to be a benami of one Shri Mohd. Shafi Ansari. The ld. A.O. then passed the assessment order dated 14.03.2016 u/s. 144 r.ws. 147 of the Act, thereby determining the total income at Rs.2,54,31,110/- after making an addition of Rs.2,53,26,125/- u/s. 69 of the Act on account of unexplained investment.

5. The assessee was in appeal before the first appellate authority, challenging the assessment order and the ld. CIT(A) vide an *ex parte* order dated 28.11.2023, upheld the order of the ld.A.O. for the reason that inspite of several opportunity the assessee has

failed to substantiate his claim and has been non compliant throughout the appellate proceedings.

6. The assessee is in appeal before us, challenging the impugned order of the Id. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the Id. A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding. The assessee has also not furnished any details pertaining to the impugned addition before the Id. A.O. where the assessment was then passed u/s. 144 of the Act being the best judgment assessment.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee during the appellate proceeding prayed that the assessee may be given one more opportunity to present his case before the Id. CIT(A) and undertakes to furnish the documentary evidences to substantiate the assessee's case.

9. The learned Departmental Representative ('Id.DR' for short) vehemently opposed to setting aside the issue to the file of the Id. CIT(A) for the reason that the assessee was given several opportunity by the Id. CIT(A) which was not availed by the assessee.

10. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present his case before the first appellate authority by adhering to the principles of natural justice. We, therefore, remand all these

issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply and co-operate with the proceedings without any undue delay on his side.

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11. As the facts are identical, the observation in ITA No. 356/Mum/2024 applies mutatis mutandis to this appeal also.

12. In the result, both the appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 21.06.2024.

Sd/-

Sd/-

(B R Baskaran)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 21.06.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai