

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4808/Mum/2023 (A.Y. 2016-17)

Mohammed Iqbal Mulla 601/701, Atlantis, Seven Bungalow, Andheri West Maharashtra-400 061. PAN : AAEPM2197E	Vs.	ITO-11(1)(1) Aayakar Bhavan M.K. Road Churchgate Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri Rishab Jain
Department by	Shri R.R. Makwana
Date of Hearing	04.06.2024
Date of Pronouncement	24.06.2024

ORDER

1. This appeal is filed by Mr. Mohammad Iqbal Mulla, (the assessee appellant) against the appellate order passed by National faceless appeal Centre, Delhi (the learned CIT – A) for assessment year 2016 – 17 on 30/10/2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the income tax act, 1961 (the act) dated 27/12/2018 passed by the income tax Ofc, Ward – 11 (1) (2), Mumbai (the learned AO) wherein the total income of the assessee was assessed at Rs. 1,655,770/- on account of addition of salary income, unsecured loan under section 68, advanced against sale of agricultural land under section 68 and agricultural income , total addition amounting to Rs. 5,401,802/-, was dismissed.
2. Therefore, the assessee is aggrieved with the appellate order and has preferred to appeal raising grounds against all the additions confirmed.
3. Brief facts of the case show that the assessee is an individual and director in cities in world travels private limited and messes present

tourism Corporation Limited carrying on the business of coach hiring, etiquette bookings and Visa services et cetera. The assessee furnished his return of income on 3/3/2007 declaring total income of Rs. 1,283,130/-. This return was revised on 16/9/2017 at a total income of Rs. 653,970/-. The return was picked up for complete scrutiny and notice under section 143 (2) of the act was issued to the assessee on 9/8/2018.

4. During assessment proceedings it was found that the assessee has received salary income of Rs. 7 lakhs from 2 companies aggregating to Rs. 14 lakhs however the assessee has shown salary income only of rupees to lakhs 40,000/- only from one company. Therefore, the assessee was asked to explain. The assessee submitted a TDS reconciliation. Wherein he submitted that assessee has received only salary as performed number 16 of rupees to lakhs 40,000/- and how the salary is appearing of Rs. 7 lakhs in form number 26AS he is not aware. And therefore, the salary income as performed number 26AS cannot be taken as income but as per form number 16 should be considered. The learned AO rejected the contention as there is no revision of form number 26AS he made the addition to the extent of difference of Rs. 460,000.
5. During the course of assessment proceedings, it was found that the assessee has taken an unsecured loan of Rs. 3,617,990/- from life of the assessee for acquiring any immovable property. Assessee was asked to justify the identity, creditworthiness, and genuineness of the transaction. Assessee did not submit anything and therefore the learned assessing officer made the addition of the unsecured loan of Rs. 3,617,990/- as unexplained cash credit under section 68 of the act.
6. Assessee has also received Rs. 423,584/- against the sale of agricultural land assessee was asked to justify the same however assessee did not furnish any information and therefore the addition

was made under section 68 of the act. Similarly, the assessee has shown agricultural income of Rs. 900,228/-. Assessee was asked to justify the same however assessee merely submitted form 7/12 and further claimed that income shown agricultural income was generated from the said land. As the assessee could not submit the details of agricultural produce, details of sale and purchase and other expenses, the AO considered that the agricultural income of the assessee of Rs. 900,228/- on by the assessee is income from undisclosed sources.

7. Accordingly, the assessment order was passed under section 143 (3) of the act on 27/12/2018 determining total income of the assessee at Rs. 1,655,770/- on this the returned income of the assessee as per revised return of Rs. 653,970/-.
8. Assessee aggrieved preferred appeal before the learned CIT – A contesting all the above for additions. The learned CIT – A in paragraph number 5 held that assessee was given several opportunities of hearing, assessee did not furnish any information and therefore appeal of the assessee was dismissed in limine for non-prosecution.
9. Aggrieved with the order of the learned CIT – A assessee is in appeal before us. The learned authorized representative submitted that assessee has submitted complete detail before the learned AO. A paper book containing 63 pages was produced before us. It was submitted that the assessee did not produce form number 26AS has been updated by the employer before the assessing officer, as well as advances received against the transfer of property. Therefore, those were the evidence not before the learned assessing officer, the authorized representative stated that if those evidence are looked into the addition on account of salary and advance received in the transfer of property are confirmed. It was further stated that ICICI bank Ledger account and bank statement placed at page number 43 – 47. Shows that assessee has taken a loan of Rs. 9,792,874/- to repay the

existing loan taken for purchase of property. The appellant along with his wife purchased the said property. Out of the loan of Rs. 9,792,874/- assessee has transferred 50% of the loan to the wife of the assessee. This evidence is available in the statement of ICICI bank. Therefore, there is no cash credit available/received by the assessee. With respect to the agricultural income, it was submitted that the assessee has given his agricultural land to the other parties for agricultural activity assessee received agricultural income from those farmers who cultivated the land. The assessment has given evidence of holding of agricultural land and confirmation from the farmers of receipt of agricultural share. With respect to the advance against the sale of agricultural land he enclosed a copy of the deed showing such advances are received by the assessee. Therefore, he submitted that all the additions deserve to be deleted. He submitted that the learned CIT – A has dismissed the appeal of the assessee for non-prosecution but has not decided the issue on merit. Therefore, he does not have any objection if the issues restored back to the file of the learned CIT – A.

10. The learned departmental representative vehemently supported the order of the learned AO and submitted that assessee has not given the details required for despite issue of several notices. Further the learned CIT – A also was not provided for any information and therefore the appeal of the assessee was decided on non-prosecution.
11. We' have carefully considered the rival contention and perused the orders of the lower authorities. We find that the learned CIT – A has not passed the order on the merits of the case but has decided the issue on non-prosecution as the learned CIT – A was not provided with any of the information despite sufficient opportunities granted to the assessee. The learned CIT – A cannot pass an order dismissing the appeal of the assessee for non-prosecution, it has to be on merits of the case discussing the facts available on record. Further even before the learned assessing officer the assessee is not furnish the updated

form number 26AS by the employers of assessee as well as the bank statement of ICICI bank for the loan. It is also apparent from the details given by the assessee that assessee has not received any loan from wife of the assessee, but it is merely a transfer of 50% of the loan liability to her account and therefore there is no applicability of section 68 on the same. The details of the agricultural produce as well as the advance received against the sale of agricultural property were also not available before the assessing officer. Therefore, in the interest of justice it would be fair and proper if the issues restored back to the file of the learned AO instead of the learned CIT – A as he would be able to appreciate all this evidence independently and may make any enquiry which he wishes to make on this evidence. Therefore, all the grounds of the appeal are restored back to the file of the learned assessing officer with a direction to the assessee to substantiate the evidence before him, the learned AO may after examination of such evidence, decide the issue on its own merits after giving assessee opportunity of hearing, if asked for. In the result all the grounds of appeal are allowed with above direction.

12. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24th June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai