

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.4759/Mum/2023
(A.Y. 2014-15)**

Pramod Kumar Singh, A Wing Room No. 2, Shalaka CHSL, Manpada Road, Gandhinagar, Dombivali East, Kalyan - 421204	Vs.	ITO Ward 17(2)(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ATZPS5807M		
Appellant	..	Respondent

Appellant by :	Rahul Bombale
Respondent by :	H.M. Bhatt

Date of Hearing	13.05.2024
Date of Pronouncement	21.06.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order National Faceless Appeal Centre (NFAC) CIT(A) dated 29.03.2022 passed u/s 147 r.w.s 144 read with section 144B of the Income Tax Act, 1961 for the assessment year 2014-15. The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and law, the Ld. Commissioner of Income Tax (Appeals), Income Tax Department, erred in consideration of filed Return u/s 148 on 14.02.2022 by the appellant

declaring Gross Total Income amounting to Rs.2,40,000/- and Net Taxable Income amounting to Rs.2,40,000/- after recoding deduction under chapter VI-A amounting to Rs. 0/- vide Acknowledgement No-188800270140222

2. On the facts and in the circumstances of the case and law, the Ld. Commissioner of Income Tax (Appeals) erred in adding ADDITION TOWARDS UNEXPLAINED CREDIT IN BOOKS OF ACCOUNTS AS PER SECTION 68 R.W.S. 115BBE OF THE INCOME TAX ACT, 1961. As per the 26AS statement of the Appellant, the assessee has provided services to M/s APM Terminals India Pvt Ltd for Rs. 4,05,28,034/- and on which the M/s APM Terminals India Pvt Ltd has deducted the applicable TDS.

But, the actual turnover from M/s APM Terminal India Pvt Ltd was only Rs.22,85,403/- The M/s APM Terminals India Pvt Ltd has shown many entries twice/thrice in its TDS returns and the same has been reflected in 26AS of the Appellant. This is a default from M/s APM Terminal India Pvt Ltd. After multiple times communicating with them, they have not revised its TDS returns. The reconciliation has also been provided in earlier submissions as well but the same has not been considered by the Assessing officer. Also, there were no receipt entries in the Appellant's bank statement during the FY 2013-14 for Rs. 4,05,28,034/- Merely, due to the default of another party M/s APM Terminal India Pvt Ltd, the 26AS statement has got reductant entries and only based on 26AS, the differential amount of Rs.3,82,42,631/- (Rs. 4,05,28,034/- Rs. 22,85,403/-) shall not be added to the Assessee's Income & impose tax liability, and therefore, section 68 shall not be Invoked

3. On the facts and in the circumstances of the case and law, the Ld. Commissioner of Income Tax (Appeals) erred in adding ADDITION TOWARDS UNEXPLAINED INVESTMENT AS PER SECTION 69 OF THE IT ACT 1961.

The Assessee had purchased under-construction property at (Patharli Panvel) having project address Flat No 702, building no 02, Balaji Krupa CHSL, Plot no 36, Patharli, Kalyan, Thane at an agreed value of Rs. 41,39,850/-. The said property was purchased under the joint name of the Assessee's wife, Mrs. Munni Promod Singh. The Assessee has paid Rs. 14,01,000 towards the booking of the flat and Rs. 2,34,350/- towards stamp duty and Rs. 30,000/- towards Registration charges from their past & current hardcore savings and loans from relatives and friends. As stated in the sale agreement, the remaining amount of Rs. 25,04,500/- is to be paid in future, construction phase-wise. The remaining amount of Rs. 25,04,500/- has been paid construction phase-wise in future years. Therefore, execution of the sale agreement and making part payment of Rs. 14,01,000, the assessee has explained its sources, therefore section 69 of the Income Tax Act, 1961 shall not be invoked

4. On the facts and in the circumstances of the case and law, the learned Commissioner of Income Tax (Appeals) erred in making an addition to the appellants' returned income and passed order u/s 250 of Income Tax Act

1961, the same ought to be deleted and the notice of demand to be set aside.

5. *The above grounds are independent and without prejudice to one another.*
6. *Your appellant craves leave to add, alter, amend or delete any of the grounds of appeal.”*

2. Fact in brief is that as per information available on AIMS module of ITBA the assessee has received payment from contract amounting to Rs.4,05,28,034/- and also purchased an immovable property valued at Rs.4,13,9,850/-. The case of the assessee was reopened by issuing of notice u/s 148 on 19.03.2021. In response to notice u/s 148 the assessee has filed return of income declaring income of Rs.2,40,000/- on 14.02.2022. During the course of assessment the assessing officer has also issued notice u/s 133(6) of the Act to the deductor (Section 194C) for confirmation, however, no response has been received from the deductor, therefore, the assessee was asked to furnish the detail along with supporting documents. In this regard, the assessee submitted that in fact he has only received an amount of Rs.22,85,403/- from M/s APM Terminals India Ltd. and said company had wrongly filed details showing that assessee had received an amount of Rs.405,28,034/- as contract receipt. However, the AO did not agree with the submission of the assessee on the ground that as per Form No. 26 the assessee had received contract receipts amounting to Rs.405,28,034/-, therefore, the balance amount of Rs.382,42,631/- which was not shown by the assessee as his receipt was added to the total income of the assessee u/s 68 of the Act as unexplained cash credit. The assessing officer has also noticed that as per information available on AIMS Module of ITBA the assessee has purchased immovable property valued at Rs.4,13,9,850/-. The assessee submitted that the said property was joint property with his wife. The assessee explained that source of his share of investment made in the property

was at Rs.20,69,925/- out of his past savings. The AO has not agreed with the submission of the assessee stating that assessee has not established the source of investment made in the immovable property, therefore, the amount of Rs.20,69,925/- was added u/s 69 r.w.s 115BBE of the Act to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has sustained the addition made by the assessing officer holding that assessee has not made compliance during the course of appellate proceedings by not submitting the relevant information and documents pertaining to the amount received from M/s APM Terminals India Pvt. Ltd. Regarding the source of investment Rs.20,69,925/- in the immovable property the ld. CIT(A) has restricted the addition to the amount of Rs.14,00,100/- holding that assessee has failed to substantiate the same with supporting evidences i.e the copies of ledger of the builder and the other relevant documents etc.

4. During the course of appellate proceedings before us the ld. Counsel submitted that assessee could not make compliance before the ld. CIT(A) as the assessee could not keep track on the e-mail received during the course of appellate proceedings. The assessee has filed written submission comprising copies of income tax return, computation of income, copy of confirmation of account from APM Terminals India Pvt. Ltd., copies of bank A/c statement showing the amount received from the said party during the F.Y. relevant to assessment year, reconciliation of actual receipt with the amount appearing in Form no. 26AS and copy of 26AS form etc. The assessee has also filed copies of agreement of purchasing the immovable property and other relevant supporting document. The ld. Counsel submitted that all these information document were not examined by the lower authorities, and the additions were made merely on assumption basis.

5. The Id. D.R is fair enough in affirming that relevant supporting documents and materials filed by the assessee are required to be verified by the assessing officer.

6. Heard both the sides and perused the material on record. The assessing officer has finalised the assessment u/s 147 r.w.s 144 of the Act since the required informations details were not provided by the assessee at the time of assessment proceedings. The assessing officer has added to the total income of the assessee the amount of Rs.3,82,42,631/- being difference of contract receipt reflected in the Form 26AS of Rs.405,28,034/- and the actual receipt of Rs.22,85,403/- shown by the assessee. The AO has also made addition of Rs.20,69,925/- as unexplained investment in the immovable property u/s 69 of the Act. During the course of appellate proceedings before the Id. CIT(A) the assessee had not made compliance since he could not kept track of the e-mail received during the course of appellate proceedings before the Id. CIT(A). Under the above circumstances the Id. CIT(A) has sustained the additions of Rs.3,82,42,631/- relating to differences in contract receipt and restricted the other addition pertaining to investment in the immovable property to the extent of Rs.14,01,000/-. In view of the facts and circumstances as discussed supra in this order we consider it appropriate to restore this case to the file of the assessing officer for deciding a fresh on merit after examination and verification of the relevant documents and materials which could not be furnished before the lower authorities for the reasons as discussed. Needless to say adequate opportunity of hearing be provided to the assessee. Therefore, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 21.06.2024

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.06.2024

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.