

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JUDICIALMEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 523/MUM/2024
Assessment Year: 2013-14**

Late Mr. Deven Jaysukhlal Shah (Thru Legal Heir. Atit Deven Shah) 3, Pipwala Chawl, Prabhat Colony, Santacruz East, Mumbai – 400 055 (PAN : AAKPS1115Q)	Vs.	Deputy Commissioner of Income Tax, Circle 22(1), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri S.M. Bandi, CA
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 19.06.2024
Date of Pronouncement : 26.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1053036534(1), dated 22.05.2023 passed against the assessment order by Assistant Commissioner of Income Tax, Circle-21(1), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 31.03.2016 for AY 2013-14.

2. Grounds taken by the assessee are reproduced as under:

“1. On the facts and Circumstances of the case and in law, the Id. CIT(A) at national Faceless Appeal Centre erred in dismissing the appeal in limine without taking the papers filed during the time when the appeal was conducted in Physical mode which is against the principles of the natural justice.

2. On the facts and circumstance of the case and in law, the Ld. CIT(A) erred in confirming the addition of Unexplained cash deposits in Proprietary concern u/s 69A, of Rs. 21,80,000/-, being the aggregate of Cash deposited in Cosmos Co-op Bank.

3. On the facts and circumstance of the case and in law, the Ld. CIT(A) erred in confirming the addition of deemed Dividend u/s 2(22)(e) Rs. 75,69,881/-, being a portion of the Advance by Ambika Realtors and Developers Pvt. Ltd. to the Appellant..

4. On the facts and Circumstances of the case and in Law, the Ld. CIT(A) erred in confirming the addition, of Sales Proceeds, of Rs.1,07,00,940/-, being 15.75% of total Advance received against Sale of Rs. 4,28,92,475/- plus Jalan Maple Shelter Deposit received of Rs. 2,50,50,000/-.”

3. Before us, the Ld. Counsel for the assessee laid emphasis on ground no.1 to submit that the documents filed before the Ld. CIT(A) in the course of physical hearings prior to the faceless regime of conducting the appellate proceedings have not been considered while disposing the appeal.

4. We note that there is delay of 200 days in filing the present appeal before the Tribunal for which petition for condonation of delay along with affidavit is placed on record. From the facts narrated in the affidavit, it is noted that assessee was shot dead on 13.01.2018 because of which entire family and office staff of the as were in shock. It took some time to re-organise and recover from the unfortunate event. Legal heir of the assessee was brought on record. Relevant documentary evidences and details were gathered and appropriate counsels were engaged. There were miscommunication and mistaken understanding in respect of proper action to be taken for filing of appeal which resulted into delay. We have considered the submissions made by the assessee in this respect. Consequences of dismissing the appeal on account of delay to be faced by the assessee are

disproportionate to the default committed of delay in filing the present appeal. Accordingly, in the interest of justice and fair play, we find it appropriate to condone the delay and admit the appeal for adjudication.

5. Brief facts of the case are that assessee filed his return of income on 27.03.2014 reporting total income at Rs.34,41,130/-. Assessment was completed u/s.143(3) by making additions/disallowances on three counts, namely-

- i. Un-explained cash deposits in Cosmos Co-operative Bank of Rs.21,80,000/-.
- ii. Advances received for construction of residential projects amounting to Rs.1,07,00,940/-
- iii. Deemed dividend u/s.2(22)(e) towards un-secured loans from Ambika Realtors and Developers Pvt. Ltd. of Rs.75,69,881/-.

5.1. On the three issues, Ld. Assessing Officer had called for the details and documents which assessee furnished in the course of assessment proceedings but did not find favour. Aggrieved, assessee went in appeal before the Ld. CIT(A).

6. In para 3 of the impugned order by the Ld. CIT(A), a long list of 11 hearing notices issued for fixing the hearing is stated. In this respect, Ld. CIT(A) observed that ample opportunities were conferred on the assessee but he chose not to pursue the matter. According to him, since no documentary evidences have been submitted to verify the claims made by the assessee, the order of Ld. Assessing Officer was upheld and appeal was dismissed.

7. Before us, Ld. Counsel for the assessee placed on record a paper book containing 468 pages to substantiate the claim of assessee on all the three additions/disallowances made by the Ld. Assessing Officer. The index of the paper book is reproduced below for ease of reference.

Sr. No.	PARTICULARS	PAGE NOS	
		FROM	TO
1	<i>Copy of Assessee's Letter dated 03/09/2015 filing the details with the ACIT-21(1) on 10/09/2015 alongwith</i>	1	
	<i>a. Copy of acknowledgement of return of income filed</i>	2	
	<i>b. Copy of computation of Income</i>	3	4
	<i>c. Copy of Balance sheet and Profit and Loss Account of Deven Shah for FY, 2012-13</i>	5	7
	<i>d. Copy of Balance sheet and Profit and Loss Account of Ambika Construction (Prop. Deven Shah) for F.Y. 2012-13</i>	8	11
2	<i>Copy of Assessee's Letter dated 12/02/2016 filing the details with the ACIT-21(1) on 12/02/2016</i>	12	
3	<i>Copy of Assessee's Letter dated 29/02/2016 filing the details with the ACIT-21(1) on 29/02/2016</i>	14	15
4	<i>Copy of Assessee's Letter dated 13/03/2016 filing the details with the ACIT-21(1) on 13/03/2016</i>	16	17

Details in Relation to G. No. 1

5	<i>Copy of MOU dated 7th April 2012 entered into between Assessee and Mahesh Raut and Family</i>	18	20
6	<i>Copy of letter for Cancellation dated 05th March 2013 in relation to MOU entered into between Assessee and Mahesh Raut and Family</i>	21	22
7	<i>Copy of letter for acceptance of cancellation dated 15th March 2013 in relation to MOU entered into between Assessee and Mahesh Raut and Family</i>	23	
8	<i>Copy of Balance sheet and Profit and Loss Account of Ambika Construction (Prop. Deven Shah) for F.Y. 2012-13</i>	24	27
9	<i>Copy of cash book of Ambika Construction (Prop. Deven Shah) for F.Y. 2012-13</i>	28	32
10	<i>Copy of cash book of Deven Shah for F.Y. 2012-13</i>	33	43
11	<i>Copy of Bank book (The Cosmos Bank Pvt. Ltd.) of Deven Shah for F.Y. 2012-13</i>	44	75
12	<i>Copy of Confirmation of Accounts of Mahesh Raut and family alongwith the acknowledgement of Return of Income filed in following cases</i>		
	<i>Amit Raut</i>	76	77
	<i>Anita Raut</i>	78	79
	<i>Laxman Raut</i>	80	81
	<i>Mahesh Raut</i>	82	83
	<i>Rahgunath Raut</i>	84	85
	<i>Shashikant Raut</i>	86	87
<i>Sumeet Raut</i>	88	89	

	<i>Jalinder Raut</i>	90	91
	<i>Suresh Raut</i>	92	93

Details in Relation to S. No. 2

13	<i>Copy of details submitted in relation wars and advance and treated as deemed dividend & submissions</i>	94	96
14	<i>Copy of Confirmation of Accounts of Ambika Realtors & Developers Pvt Ltd. for F.Y 2012-13</i>	97	99
15	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2007-08</i>	100	111
16	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2008-09</i>	112	125
17	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2009-10</i>	126	139
18	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2010-11</i>	140	154
19	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2011-12</i>	155	172
20	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2012-13</i>	173	198
21	<i>Copy of Audited Accounts of Ambika Realtors & Developers Pvt. Ltd for 2013-14</i>	199	225

Details in Relation to G. No. 3

22	<i>Copy of the JV agreement dated 20/06/2011 between the Assessee, Sai Associates and Jalan Maple Shelter for Gat no. 1300/1</i>	226	261
23	<i>Copy of the JV agreement dated 09/09/2011 between the Assessee, Sai Associates and Jalan Maple Shelter for Gat no. 1301/2</i>	262	299
24	<i>Details of Flat Wise Amount Recd by the JV Known as "Aura City" for various Buildings</i>	300	330
25	<i>Details of Cancellation of Flats effected upto F.Y. 12-13</i>	331	332
26	<i>Sample Copy of the agreement made at the time of Booking of Flat</i>	333	391
27	<i>Sample Copy of the Cancellation agreement of the Flats booked</i>	392	429
28	<i>Details of total Collection of the Aura City from F.Y. 2011-12 to F.Y. 2015- 16 and the share of the Appellant Assessee</i>	430	
29	<i>Copy of Return of Income, Computation of Income, Tax Audit Report with Audit Ablance Sheet, Profit and Loss Account for F.Y. 2015-16 relevant to A.Y. 2016-17</i>	431	458

7.1. Ld. Counsel for the assessee strongly contended that appeal was filed by the assessee before the Ld. CIT(A) on 26.04.2016 and assessee had physically attended the hearing prior to the introduction of faceless regime and furnished all the required documents and details. In this respect, he submitted that there is gross failure on the part of Ld. CIT(A) in not considering the submissions made and hearings attended during the physical mode of conduct of appellate proceedings. According to him, passing such an *ex parte* order by referring to the hearings of the faceless regime only, is not justified and is against the principles of natural justice. From the index of the paper book placed before us, Ld. Counsel pointed out that documents at Sr.No.5,6 and 7 in respect of unexplained cash deposit and at Sr. No.28 & 29 relating to addition made in respect of advances received against construction of residential projects were not before the Ld. Assessing Officer but were furnished before the Ld. CIT(A) during the physical proceedings. Ld. Counsel submitted that since matter has not been adjudicated upon meritoriously by the Ld. CIT(A) and that all the documents are already on record, it may be remitted back to the file of Ld. Assessing Officer which will enable him to deal with the above noted documents as they were furnished before the Ld. CIT(A) and were not before the Ld. Assessing Officer in the assessment proceedings.

8. Per contra, Ld. Sr. DR objected upon the request for restoring the matter back to the file of the ld. Assessing Officer.

9. We have heard the rival contentions and perused the material on record. Despite the objection raised by the Ld. Sr. DR, in the interest of justice and fair play, we find it appropriate to accept the submissions made by the Ld. Counsel for the assessee to restore the matter back to the file of Ld. Assessing Officer for *denovo* meritorious

adjudication by taking into consideration all the documentary evidences placed on record in the paper book before us. Assessee is at liberty to furnish any further details and documents, if he so requires, to substantiate his claim.

9.1. While remitting the matter back to the file of Ld. Assessing Officer, we are conscious of the lapse on the part of the Ld. CIT(A) of not taking into cognizance the hearings attended by the assessee in the physical mode of appellate adjudication. We do understand certain lapses during the transition phase from physical mode to the faceless regime of appellate adjudication but ignoring or not taking into cognizance, the submissions already on record and dismissing the appeal *ex parte* is not justified. We note that there are lapses on the part of assessee also, of harping only on submissions made in the physical mode and not attending any of the hearings in the faceless regime, for which ample opportunities were given. We thus, direct the assessee to be diligent in attending the hearings before the Ld. Assessing Officer for expeditious disposal of the matter and not to seek adjournments unless warranted by compelling reasons. Accordingly, ground no.1 taken by the assessee is allowed for statistical purposes.

10. Since the matter is restored to the file of Ld. Assessing Officer for meritorious adjudication by passing a speaking order in terms of our observations made hereinabove, we are not expressing any views on the merits of the case so as to limit the assessment procedure before the Ld. Assessing Officer. The observations herein made by us in remanding the matter back to the file of Ld. Assessing Officer will not impair or injure the case of the Revenue nor will it cause any prejudice to the defense/explanation of the assessee.

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

Order is pronounced in the open court on 26 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 26 June, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai