

IN THE INCOME TAX APPELLATE TRIBUNAL ‘T’ BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA No. 1806/Mum/2024
(Assessment Year: 2017-18)

Raghav Sadanand Prabhu Flat No. 2, Pawan Building, Sitladevi Temple Road, Mahim, Mumbai-400 016	Vs.	Income Tax Ward 3(3)(1) Air India Building, Room No. 1631, 16 th Floor, Nariman Point, Mumbai-400 021
PAN/GIR No. AGVPP 7832 L		
(Assessee)	:	(Respondent)
Assessee by	:	Ms. Dinkle Hariya
Respondent by	:	Shri Anil Sant
Date of Hearing	:	04.07.2024
Date of Pronouncement	:	05.07.2024

ORDER

Per Kavitha Rajagopal, J M:

This is an appeal filed by the assessee, challenging the final assessment order passed u/s. 147 r.w.s. 144 r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), pursuant to the direction of the Hon'ble Dispute Resolution Panel ('Id. DRP' for short), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The assessee had challenged the appeal on the grounds of violation of principles of natural justice, on the reopening of the assessment and on the addition of Rs.2,96,35,202/- made u/s. 69 of the Act as 'unexplained investment' on purchase of property along with other additions.

3. Briefly stated the assessee is an individual and a non resident and had not filed his return of income for the year under consideration.

4. Based on the information received from the Insight portal under the head 'any information flagged in the case of the assessee for the relevant year in accordance with

the risk management strategy formulated by the board from time to time', the assessee's case was reopened vide notice dated 26.07.2022 passed u/s. 148 of the Act. Subsequently, notice u/s. 142(1) and 143(2) of the Act were duly issued and served upon the assessee dated 28.04.2023 and 05.05.2023.

5. During the assessment proceedings u/s. 148A(b) of the Act, the assessee was called for details before passing of the order u/s. 148A(d) of the Act, as per the Hon'ble Apex Court direction in the case of *Union of India vs. Ashish Agarwal* (in Civil Appeal No.3005/2022 vide order dated 04.05.2022). As the assessee had not complied with any of the notices, the Id. A.O. proceeded to pass the draft assessment order u/s. 144C(1) of the Act dated 13.05.2023 and for which the assessee had filed its objection before the Hon'ble DRP.

6. The Hon'ble DRP vide order dated 28.02.2024 disposed of the objections raised by the assessee and proposed the additions made by the Id. A.O. in the draft assessment order for the reason that the assessee has failed to comply with the DRP proceedings. The Id. A.O. then passed the final assessment order dated 05.03.2024 u/s. 147 r.w.s. 144 of the Act on the best judgment assessment determining the total income at Rs.3,22,09,130/- by making the following additions:

<i>Sr. No.</i>	<i>Particulars of income</i>	<i>Amount (in Rs.)</i>
<i>Add:</i>	<i>Unexplained investment u/s. 69 as discussed in para 12 above</i>	<i>2,96,35,202/-</i>
<i>Add:</i>	<i>Unexplained investment u/s. 69 as discussed in para 13 above</i>	<i>21,50,000/-</i>
<i>Add:</i>	<i>Unexplained investment u/s. 69A as discussed in para 14 above</i>	<i>4,23,925/-</i>
	<i>Total assessed income</i>	<i>3,22,09,127/-</i>
	<i>Total income rounded off to</i>	<i>3,22,09,130/-</i>

7. Aggrieved by the said order, the assessee is in appeal before us.

8. During the appellate proceeding, the learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee being a non resident was unable to comply with the notices and inspite of the detailed submission of the assessee before the Hon'ble DRP, the assessee's submissions were not considered by the lower authorities. Further, the Id. AR stated that the assessee has filed documents in addition to that which was filed before the Id. A.O. and the Hon'ble DRP, by way of additional evidence along with the application in Rule 29 of the ITAT Rules 1963 which documents are tabulated herein under for ease of reference:

PAPER BOOK FOR ADDITIONAL EVIDENCES
INDEX

Hearing on = 04-07-24

Sr. No.	Particulars	Page No.
1.	Chart summarizing the source of the remittances in ICICI NRE Account	1-2
2.	Chart summarizing the salary income earned by the Appellant at UAE	3-5
3.	Certificate of employment by UAE government	6
4.	Chart summarizing the source of the money paid to the builder	7-8
5.	Remittance certificates from UAE Exchange Centre LLC	9-23
6.	Relevant bank statements of Emirates NBD Bank	24-40
7.	Relevant bank statements of CBI Bank	41-44
8.	Relevant bank statements of ICICI Bank (NRE Account)	45-54
9.	Salary certificates from the employer	56-57
10.	Documents relating to payments made towards insurance policy and receipt of maturity amount	58-61
11.	Chart showing the source of the fixed deposits along with relevant bank statements	62-68
12.	Extract of Form 26AS for A.Y. 2017 - 2018 showing TDS on interest income	69

9. The ld. AR prayed that the additional evidence be admitted and the submission of the assessee be considered for the reason that the assessee was not given sufficient opportunity before the ld. A.O/DRP resulting in violation of principles of natural justice. The ld. AR further reiterated that the assessee's case on merits is in favour of the assessee.

10. The learned Departmental Representative ('ld.DR' for short), on the other hand, vehemently opposed to the admission of the additional evidence for the reason that the assessee was given sufficient opportunity before the Hon'ble DRP which was not availed by the assessee. The ld. DR without prejudice stated that the additional evidence if admitted shall be remanded back to the file of the ld. A.O. for verifying the veracity of the said documents.

11. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee a non resident is said to have purchased an immovable property for a consideration of Rs.2,45,93,500/- and had made payment of Rs.50,41,702/-. Further, the assessee is said to have made investment in time deposit amounting to Rs.21,50,000/- and had received payment in respect of life insurance payment of Rs.2,71,619/-, interest income Rs.1,52,306/-.

12. During the assessment proceeding, the assessee was sought for details to explain the source of these transactions. Since the assessee had not properly complied with the proceeding before the ld. A.O. and the Hon'ble DRP, the assessment was completed u/s. 144 of the Act on best judgment assessment, where the ld. A.O. made an addition of the impugned amount u/s. 69 of the Act and 69A of the Act.

13. On the above factual matrix, on considering the arguments of both the sides, we deem it fit to provide the assessee with one more opportunity to present his case before the ld. A.O. for which we are of the considered view that the documents in the nature of additional evidence be admitted as per Rule 29 of the ITAT Rules, 1963 and we remand all these issues back to the file of the ld. A.O. for passing the *de novo* assessment on the merits of the case, after duly considering the submissions and documents filed by the assessee. Needless to say that the assessee being a non resident, in order to avoid undue hardship, the ld. A.O. is directed to give sufficient notice to the assessee and to provide adequate opportunity for the assessee to substantiate his case. The ld. A.O. is also directed to complete the assessment at the earliest without causing undue delay and we also direct the assessee to co-operate with the proceedings before the ld. A.O. without any further delay on his side. We, therefore, remand all these issues to file of the ld. A.O.

14. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 05.07.2024

Sd/-

(Renu Jauhri)
Accountant Member

Mumbai; Dated : 05.07.2024

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

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai