

**IN THE INCOME TAX APPELLATE TRIBUNAL "K (SMC)" BENCH,  
MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI SUNIL KUMAR SINGH, JM

**ITA No. 2016/MUM/2024**

(Assessment Year: 2013-14)

Takira Real Estate P. Ltd.  
12/14, Gordhan Building No. II,  
Girgaon S.O. Mumbai-400 004

Vs.

Income Tax Officer,  
Ward 5(3)(1)  
553-Aayakar Bhavan,  
Mumbai

**(Appellant)**

**(Respondent)**

**PAN No. AACCT9595N**

**Assessee by** : Shri Siddharth Kothari, AR  
**Revenue by** : Shri Rajneesh Yadav, DR

**Date of hearing:** 22.07.2024  
**Date of pronouncement :** 24.07.2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. ITA No. 2016/Mum/2024, in case of Takira Real Estate Pvt. Ltd. (assessee / appellant) is filed for A.Y. 2013-14, against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] dated 8<sup>th</sup> December, 2023, wherein the appeal filed by the assessee against the assessment order passed by the Income Tax Officer, Ward 5(3)(3), Mumbai, (the learned Assessing Officer) under Section 144 read with section 147 of the Income-tax Act, 1961 (the Act) dated 12<sup>th</sup> December, 2019, was partly allowed. The assessee is

aggrieved with the same and is in appeal before us raising following grounds of appeal:-

*"1. On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in not quashing the assessment order passed by the Assessing Officer u/s 144 r.w.s 147 of the Income Tax Act, 1961 which is bad-in-law, illegal, unsustainable and void for the want of jurisdiction.*

*2 On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in ignoring that all notices were served by the Ld. Assessing Officer in 2019 i.e. when the Faceless Assessment Scheme was not in vogue and all the notices were still sent by the Ld. Assessing Officer by electronic mode and no notice was served through physical means like registered post or through notice server, which was the procedure and practice under the law particularly under section 282 read with Rule 127 of the Income Tax Rules as interpreted by Hon'ble Punjab and Haryana High Court in CWP No. 21028/2023 delivered on 04.03.2024 in the case of Munjal BCU Centre Of Innovation And Entrepreneurship and thereby Ld. Commissioner of Income Tax (Appeals) not appreciating that the non- response by the appellant was due to lack of proper service and lack of reasonable opportunity of being heard.*



3. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in ignoring that not every tax payer is expected to be Tech Savvy to periodical visit to e-filing portal to check for the notices received or to regularly check e-mail account, that led to effective non-service and hence non-compliance before the Ld. Assessing Officer as well as before the Ld. Commissioner of Income Tax (Appeals).*

4. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the additions made by the Ld. Assessing Officer amounting to Rs 14,69,566/-on account of time deposits held with Bank of Baroda as unexplained investments u/s 69 of the Income Tax Act, 1961 despite the fact that the appellant company had duly recorded the alleged time deposits in its books of accounts, which could not be produced due to non-receipt of notices.*

5. *On the facts and the circumstances of the appellant's case and in law, the Ld. Commissioner of Income Tax (Appeals) erred in confirming the additions made by the Ld. Assessing Officer of Rs 2,60,338/- (which is exactly double the actual amount) on account of alleged interest income earned during the captioned assessment year attributing the failure on the part of the appellant to provide form 26AS, whereas such data is already in the possession of the department and accordingly, the Ld.*

*Commissioner of Income Tax (Appeals) failed to restrict the interest income earned from the time deposits held with Bank of Baroda to the extent of Rs 1,30,170/- as reflected in Form 26AS for assessment year under consideration.*

*6. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal."*

02. Brief facts of the case shows that assessee is a company who did not file any return of income for A.Y. 2013-14. Subsequently, the assessment was reopened by issue of notice under Section 148 of the Act dated 27<sup>th</sup> March, 2019, wherein it was found that assessee has time deposit of ₹14,69,556/- and has also earned interest of ₹2,60,338/- . As assessee did not file any return of income, Notice under Section 142(1) of the Act was issued and further summons under Section 131(1) of the Income-tax Act, 1961 (the Act) was also issued to the director on 20<sup>th</sup> November, 2019. However none appeared. Show cause notice dated 10<sup>th</sup> December, 2019, was issued to the assessee that why interest amount of ₹2,60,338/- should not be treated as undisclosed income. Even this show cause notice was not responded. Therefore, the learned Assessing Officer passed an assessment order under Section 144 of the Income-tax Act, 1961 (the Act) on 12<sup>th</sup> December, 2019, wherein the interest income shown under form no.26AS of ₹2,60,338/- and fixed deposit was added under Section 69 as

unexplained investment of ₹14,69,566/- determining the total income of ₹17,29,900/-.

03. The assessee aggrieved with that preferred the appeal before the learned Assessing Officer. The learned CIT (A) issued three notices to the assessee, except asking for adjournment on one occasion assessee did not comply with the notices. The learned CIT (A) passed an order on the merits confirming the action under Section 147 of the Act. He also confirmed the addition under Section 69 of the Act of ₹14,69,566/-. With respect to the addition of the interest income, as the assessee submitted in statement of facts that interest received on the fixed deposits is only ₹1,30,169/- in form no.26AS addition to that extent only that can be made, in absence of form no.26AS, he confirmed the addition of ₹26,03,338/- and directed the learned Assessing Officer to grant credit of TDS of ₹13017/-. Accordingly, the appeal of the assessee was partly allowed.
04. Aggrieved with the appellate order, assessee is in appeal before us. The assessee submitted that the business of the assessee is closed and therefore, the assessee did not receive the last two notices issued by the learned CIT (A). It was stated that as the business of the assessee is closed it did not have any staff to respond to the first notices and therefore, adjournment was sought. On the merits it was submitted that fixed deposit of ₹14,69,566/- added under Section 69 of the Income-tax Act, 1961 (the Act) is time deposit placed with Bank of Baroda in earlier years and

same is disclosed in the balance sheet of the company. Therefore, addition is incorrect. With respect to the addition of interest income of ₹2,69,338/-, It was submitted that the actual interest received by the assessee is only ₹1,30,169/-, which is reflected in form no.26AS but the learned Assessing Officer has made an addition of ₹2,60,338/- incorrectly. The learned Authorised Representative submitted form no.26AS before us.

05. The learned Departmental Representative vehemently stated that the assessee did not respond to the notices before the learned Assessing Officer as well as before the learned CIT (A). Therefore, in absence of such information addition is correctly made.
06. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The assessee is a company who did not file return of income voluntarily. Even in response to section 148 of the Act, 142(1) and 131 of the Act, compliances were not made. However, in form no.26AS it clearly shows that assessee has received interest income only of ₹1,30,169/-. Therefore, the addition of the interest income of ₹2,60,338/- is correct. Even otherwise, the claim of the assessee is that fixed deposit is placed with the Bank of Baroda in earlier years which is reflected in his balance sheet despite this fact the addition is made under Section 69 of the Act.



07. As the assessee did not remain present before the learned Assessing Officer and did not submit the information before the learned CIT (A), we restore the matter back to the file of the learned Assessing Officer with a direction to the assessee to show that fixed deposit placed with Bank of Baroda, is disclosed in the balance sheet of the assessee company and further to show that assessee received interest income of ₹1,30,169/-only. The learned Assessing Officer may examine the same and decide the issue afresh in accordance with the law. Accordingly, ground no.4 and ground no.5 of the appeal are allowed with the above directions.
08. In the result, the appeal of the assessee is allowed for statistical purpose as directed above.

Order pronounced in the open court on 24.07.2024.

Sd/-  
(SUNIL KUMAR SINGH)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 24.07. 2024

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//



Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai