

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

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

ITA No. 369/Mum/2024

(Assessment Year: 2011-12)

Dinesh Bhoja Shetty
A 102, Pinewood CHS Ltd.
Vasant Garden,
Near Swapna Nagri,
Mulund 400080

Vs.

DCIT, Circle 41(2)(1)
Kautilya Bhavan,
Bandra Kurla Complex,
Bandra East,
Mumbai-400 051

(Appellant)

(Respondent)

PAN No. AAKPS8328K

Assessee by : Shri Bhavya Sandesha, AR
Revenue by : Smt. Mahita Nair, DR

Date of hearing: 30.05.2024
Date of pronouncement : 25.07.2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. ITA No.369/Mum/2024, is filed by Mr. Dinesh Bhoja Shetty (assessee / appellant) for the Assessment Year 2011-12, against the order of the learned CIT (A) dated 6th December, 2023, wherein the appeal filed by the assessee against the reassessment order passed under Section 143(3) read with section 147 of the Income-tax Act, 1961 (the Act) dated 27th December, 2018, passed by the ACIT 29(1), Mumbai (the learned Assessing Officer), was dismissed.



02. The assessee is aggrieved and is in appeal before us raising following grounds:-

"The Appellant appeals against the impugned order dated 6 December, 2023 passed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) under section 250 of the Income-tax Act (the Act) received by the Appellant on 6th December, 2023 on the following amongst other grounds each of which is in the alternative and without prejudice to any others:

1) The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 35,00,000/- being cost of new house purchased as undisclosed income.

2) The learned Commissioner of Income Tax (Appeals) erred in improving on assessment order by changing the section of addition from Section 68 to Section 69.

3) The learned Commissioner of Income Tax (Appeals) erred in not admitting the additional evidence during the course of appellate proceedings.

4) The learned Commissioner of Income Tax (Appeals) ought to have considered that the Appellant has taken loan of Rs. 18 lakhs from Karnataka Bank Ltd. for purchase of this house property.

5) *The learned Commissioner of Income Tax (Appeals) ought to have considered the level of income of the Appellant.*

6) *The Appellant submits that the above addition is excessive and unreasonable.*

7) *The learned Commissioner of Income Tax (Appeals) erred in confirming addition of Rs. 3,00,000/- being credit card payment as unexplained expenditure.*

8) *The learned Commissioner of Income Tax (Appeals) ought to have considered that the part of credit card payment was considered as business expenditure.”*

03. The brief facts of the case show that assessee is an individual who is a director in one of the companies filed his return of income on 27th December, 2011, at a total income of ₹25,52,400/-. As per its information it was found that assessee has paid ₹2 lacs or more against credit card bills, purchased immovable property of ₹30 lacs and also has made payment of ₹1 lacs. Thus, the information was with respect to 33 lacs. Letter dated 11th November, 2013, generated from the system was issued to the assessee but no reply was furnished. Subsequently, a notice under Section 148 of the Act was issued on 31st March, 2018, which was duly served on the assessee. In response thereto, the assessee failed return of income on 9th September, 2018, declaring total income of ₹25,52,400/-. The assessee filed return of income beyond



30 days from the time provided under Section 148 of the Act. The assessee was informed that interest under Section 234A is chargeable. Reasons for reopening were provided on 28th September, 2018, which were not objected by the assessee. Therefore, notice under Section 143 (2) of the Act and 142(1) of the Act was issued on 24th October, 2018.

04. The learned Assessing Officer found that assessee has purchased an immovable property at ₹35 lacs whereas the market value of the same is ₹39,51,000/-. The assessee was asked to explain the source of funds for purchase of the above property. The assessee did not comply and did not submit any information. Therefore, the learned Assessing Officer made an addition of ₹35 lacs. Similarly, it was found that assessee has paid payment for credit card of ₹3 lacs. The assessee was asked to furnish the details, the assessee was asked to submit the copy of the bank statement and the details of the credit card and the same were not submitted. Therefore, the addition of ₹3 lacs was made.
05. Accordingly, assessment order under Section 143(3) read with section 147 of the Act was passed on 27th December, 2018, determining the total income of the assessee at ₹63,52,400/-.
06. Aggrieved, assessee preferred the appeal before the learned CIT (A). Before the learned CIT (A) assessee made a written submission which was reproduced on paragraph no.5.2 of the appellate order. The assessee submitted that



property of ₹35 lacs was purchased after taking loan from Karnataka Bank Limited. Assessee could not submit the details before the learned Assessing Officer because of time. Before the learned CIT (A) assessee submitted the bank statement. The assessee also explained that assessee is earning income of ₹25 lacs and credit card payment of ₹3 lacs is out of his accounted income. The learned CIT (A) considered the box no.12 of Form no.35 and stated that assessee has mentioned that assessee does not want to produce any new evidence in support of this appeal. Therefore, in absence of any fresh application of made u/r 46A of The IT Rules by the assessee, he did not consider the same and confirmed the addition of ₹38 lacs made by the learned Assessing Officer.

07. The assessee aggrieved with the same is in appeal before us. The learned Authorized Representative submitted that assessee is a salaried person and is also having business of software and hardware supplier. The credit card payments of ₹3 lacs is out of his return income of ₹25,52,400/- and further, property purchased of ₹35 lacs is out of loan taken from Karnataka Bank Ltd. The learned CIT (A) has rejected this evidence merely because in Form no. 35 at column no.12 the assessee mentioned "no". He submitted that if these additional evidences are considered, additions deserves to be deleted.
08. The learned Departmental Representative submitted that assessee did not make any application for admission of



additional evidence and therefore, the learned CIT (A) is correct in not admitting the same.

09. We have carefully considered the rival contentions and perused the orders of the learned lower authorities. The addition of ₹35 lacs made for purchase of the property was made by the learned Assessing Officer for the reason that assessee could not submit relevant details before him. The assessee also could not submit the evidences of payment of ₹3 lacs for the credit card. The reason given by the assessee is that as the reassessment proceedings were carried out in 2018 assessee was not in possession of those details because of passage of time. We find that it is correct that at Serial no.12 in Form no.35, the assessee has mentioned that he does not want to file any additional evidences. It is also true that assessee has not made any application for additional evidences under Rule 46A of the Income-tax Rules. Despite that, we find that before the learned CIT (A), the assessee submitted a loan statement of Karnataka bank to explain the source of purchase of property of ₹35 lacs. Further, for the credit card payment of ₹3 lacs, the assessee has adequate declared income of ₹25,52,400/-. If the assessee has not filed any application for additional evidences, the learned CIT (A) should have asked the assessee that in absence of application for additional evidence it would not be possible for him to admit these evidences and assessee should have been asked to file necessary application in accordance with law. If in spite of that assessee does not file the same , perhaps no fault can be found with his



order. But it is not done. In these facts , It would have been proper to restore the appeal to the file of the learned CIT (A) with a direction to the assessee to file an application for admission of additional evidences in terms of Rule 46A of the Rules, and then to direct Id CIT (A) to decide it on merits. But as the assessee says that the acquisition of property is made of ₹35 lacs by obtaining loan from Karnataka Bank Ltd. of ₹36 lacs and further, credit card payment are also out of his accounted income, we find it proper and in the interest of justice to restore the matter back to the file of the learned Assessing Officer with a direction to the assessee to produce these evidences before him, explain the source of such investment, thereafter, the learned Assessing Officer may decide the issue afresh. In view of this, all the ground of appeal are restored back to the file of the learned Assessing Officer to decide the issue of addition of ₹35 lacs and ₹3 lacs which were added to the total income of the assessee.

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

Order pronounced in the open court on 25.07.2024.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated:25.07.2024

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