

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.738/M/2024
Assessment Year: 2015-16
&
ITA No.793/M/2024
Assessment Year: 2015-16**

Shri Shailesh K. Wadnere, Flat No.102, Raj Laxmi Apt, Near Spandan Hospital, Katrap, Kulgaon, Badlapur East, Maharashtra – 421 503 PAN: AAJPW5375P	Vs.	Income Tax Officer, Wd-2(2), Khadakpada, Kalyan, Maharashtra-421306
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Prakash Jhunjhunwala, A.R.
Revenue by : Dr. Kishor Dhule, CIT D.R.

Date of Hearing : 16 . 07 . 2024
Date of Pronouncement : 24 . 07 . 2024

O R D E R

Per : Satbeer Singh Godara, Judicial Member:

These assessee's twin appeals ITA No.738 & 793/M/2024 for assessment year 2015-16 arise against the National Faceless Appeal Centre(NFAC) Delhi's as many DIN & order No.ITBA/ NFAC/S/250/2023-24/ 1059652741(1) & No.ITBA/NFAC/S/250/2023-24/ 1061590959(1) both dated

12.01.2024, in proceedings under section 147 r.w.s 144 of the Income Tax Act, 1961 (in short 'the Act').

2. Heard both the parties at length. Case file perused.
3. The assessee pleads the following identical substantial grounds in the instant appeal:

“1.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in passing the appeal order ex-parte without allowing adequate opportunity of being heard and ought to have considered the bonafide reasons that had precluded the appellant to participate in the appeal proceeding;

2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the additions, without adjudicating the grounds of appeal on merits and on grossly ignoring the exhaustive documentary evidences filed on record;

3.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the validity of notice u/s 148, in absence of tangible material and without having reason to believe of escapement of income;

4.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Short term capital

gain on alleged sale of immovable properties of Rs. 19,19,22,500/-;

5.0 The Ld. CIT(A), before confirming the addition of alleged sale of immovable properties of Rs.19,19,22,500/-, ought to have considered the understated vital facts, being;

a) The appellant had not sold any immovable properties during the year;

b) The disputed transactions reported in AIR information pertain to purchase of immovable properties made by M/s. Abhishek Shelters Ltd and the appellant, in capacity as a director of such company, was a mere signatory to the purchase agreements;

c) The parent company M/s. Abhishek Shelters Ltd had made the entire payments for purchase of immovable properties and such transactions had been properly recorded in company's books of accounts and audited balance sheet filed on record;

d) The addition of disputed sale of immovable properties had already been made as unexplained investments of Rs. 12.82,92,500/- and thus, such addition has led to a case of double taxation,

6.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s 69 of alleged

unexplained investment in immovable properties of Rs.12,82,92,500/-

7.0 The Ld. CIT(A), before confirming the addition of alleged unexplained investment of Rs. 12,82,92,500/-, ought to have considered the understated vital facts, being:

a) The appellant had not purchased any immovable properties during the year;

b) The disputed transactions reported in AIR information pertain to purchase of immovable properties made by M/s. Abhishek Shelters Ltd and the appellant, in capacity as a director of such company was a mere signatory to the purchase agreements;

c) The parent company M/s. Abhishek Shelters Ltd had made the entire payments for purchase of immovable properties and such transactions had been properly recorded in company's books of accounts and audited balance sheet filed on record;

d) The addition of disputed purchase of immovable properties of Rs. 12,82,92,500/- had already been made under "Short Term Capital Gain' and thus such addition has led to a case of double taxation;

8.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of Salary income of Rs. 11,00,000/-;

9.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition of rent income of Rs.3,00,000/-.”

4. We advert to the assessee's quantum appeal ITA No.738/M/2024 first of all. It emerges from the learned CIT(A)/NFAC's ex-parte lower appellate discussion at page 10 that the first hearing notice dated 29.12.2023 stood issued for hearing on 04.01.2024 followed by the latter notice dated 05.01.2024 regarding the second opportunity of hearing on 11.01.2024; respectively. Meaning thereby that the assessee could not even get two weeks time to plead and prove all the relevant facts in the lower appellate proceedings. Faced with this situation, we deem it appropriate in larger interest of justice to reject the Revenue's technical objections and restore the assessee's instant quantum appeal ITA No.738/M/2024 back to the learned CIT(A)/NFAC for its afresh adjudication as per law within three effective opportunities of hearing subject to a rider that it shall be assessee's risk and responsibility only

to plead and prove all the relevant facts in consequential proceedings. Ordered accordingly.

5. The assessee's latter penalty appeal ITA No.793/M/2024 also follows the suit being consequential in nature. These assessee's twin appeals are allowed for statistical purposes in above terms. A cop of this common order be placed in the respective case files.

Order pronounced in the open court on 24.07.2024.

**Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER**

**Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.