

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

**BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A No.2545/Mum/2024  
(Assessment year : 2011-12)**

<b>Vikas Parasmal Nahar</b> Shop No.8, ADK Compound Opp. Police Station, Surya Nagar, LBS Marg, Vikhroli (West), Mumbai-400 083 <b>PAN : ABQPN6847H</b>	<b>vs</b>	<b>Income Tax Officer, Ward-29(3)(5), Mumbai,</b> Pratyakshakar Bhavan C-10, Bandra Kurla Complex, Bandra (East), Mumbai-400 051
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Fenil Bhatt  
Respondent by : Shri Pravin M ChavanSR.DR  
  
Date of hearing : 29/07/2024  
Date of pronouncement : 01/ 08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned Commissioner of Income-tax (Appeal) Addl /JCIT(A), Thiruvananthapuram [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2011-12, date of order 16.04.2024. The impugned order was emanated from the order of the Ld. Income-tax Officer -

29(3)(5), Mumbai (in short, 'the A.O.')

passed under section 143(3) read with section 147 of the Act, date of order 12/12/2018.

2. The assessee has taken the following grounds of appeal:-

*"1.1. On the facts and in circumstances of the case and in law, the Learned Additional / Joint Commissioner of Income Tax (Appeals), National Faceless Appeals Centre ("Ld. NFAC<sup>1</sup>) vide order dated April 16, 2024 under section 250 of the Income tax Act, 1961 ("the Act") erred in dismissing the appeal of the Appellant on the ground of non-prosecution without appreciating that the Appellant had filed written submission before the Ld. NFAC on 04.05.2023.*

*1.2. The Appellant prays that order dated April 16, 2024 passed by the Ld. NFAC under section 250 of the Act be quashed and set aside.*

*2.1. On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in not appreciating that reassessment under section 147 of the Act is without jurisdiction, as condition precedents for invoking provisions of section 147 of the Act are not satisfied in the Appellant's case.*

*2.2. The Appellant prays that reopening under section 147 of the Act be treated as without jurisdiction and the reassessment order dated December 12, 2018 be quashed and set aside.*

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*3.1. On the facts and in the circumstances of the case and in law, the Ld. NFAC erred in confirming the addition made by the Ld. Assessing officer erred ("AO") under section 69 of the Act amounting to Rs. 8,55,000/- with relation to alleged money paid by the Appellant to Rajesh Life Science Group for purchase of residential flat.*

*3.2. The Appellant prays that the Ld. AO be directed to delete the addition of Rs. 8,55,000/- under section 69 of the Act.*

*4.1. On the facts and in the circumstances of the case and in law, the Ld. AO erred in charging interest under section 234B amounting to Rs. 2,55,879/- and under section 234C amounting to Rs. 2,0027/- of the Act.*

4.2. *The Appellant prays that the Ld. AO be directed to delete interest charged under section 234B and 234C of the Act or be appropriately reduced, in accordance with law.*

*The Appellant craves leave to amend, alter, modify, and add any further grounds of appeal, if required."*

3. The brief facts of the case are that the search was conducted under section 132 of the Act in the premises of M/s Rajesh Life Space group on dated 12/03/2016. As per the report of the investigation wing of department of Mumbai, the assessee has paid Rs.8,55,000/- in cash to the Rajesh LIFE Space group for purchase of flat No.1136, 11<sup>th</sup> Floor, I-Wing, Bldg. No.9, Raj LegacyII, LBS Marg, Vikhroli while the agreement value of the property is Rs.72,20,000/- joint ownership with wife Mrs. Anamika V. Nahar. The notice under section 148 was issued. The assessee submitted the return under section 148 of the Act. Finally, the on-money payment of Rws.8,55,000/- was added back with total income due to unexplained investment. The aggrieved assessee filed an appeal before the CIT(A). But the Id. CIT(A) without considering the submission of the assessee rejected the appeal and upheld the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR submitted a written submission which is kept in record (in short, 'APB'). The assessee first placed that during the financial year 2010-11 related to A.Y. 2011-12, the assessee entered into an agreement for purchase of a flat for Rs.72,20,000/- and all the payments are made through banking channel. No cash amount was paid to the promoter. The assessee fully denied the cash transaction amount to Rws.8,55,000/- with the developer.

The Ld.AR in argument placed that the assessee invested in the said flat in his own name and his wife, Mrs. Anamika Vikas Nahar and the total on-money of Rs.8,50,000/- was added back with the assessee. The 50% of Rs.8,55,000/- comes to Rs.4,27,500/- related to ½ share was added back in the case of assessee's wife. But the appeal of wife was adjudicated by the Coordinate bench of ITAT, Jodhpur and adjudicated the issue in favour of the petitioner. So, the same rule of precedent should be applied to the assessee.

The Ld.AR respectfully relied on the order of the co-ordinate bench of **ITAT, Jodhpur** in the case of **Smt. Anamika Vikas Nahar vs Income-tax Officer, Ward-1, Bilwara in ITA No.286/Jodh/2019, date of order 231/12/2020**. The relevant part of the order is reproduced as below:-

*"4. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, it is noticeable that the whole basis of making the additions in the hands of assessee is search findings. There is no corroborative material on record to substantiate the fact that the assessee, in fact, paid any on-money against the purchase of flat. The assessee all along maintained that the agreement value was paid through account payee cheques and no money was paid over and above the same. However, no evidence has been brought on record by Ld. AO to disprove the same and establish that the assessee actually made any cash payment. In our opinion, the primary onus was on revenue to contradict the stand of assessee by bringing on record adverse material. The failure to do so would make the additions unsustainable in the eyes of law. Therefore, we do not find sufficient material on record to sustain the impugned additions. The same stand deleted and the grounds thus raised stand allowed."*

5. The Id. DR argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission and considered the documents available in the record. The said property was duly purchased by the assessee and his wife in joint ownership. The on-money transaction was reported amount to Rs.8,50,000/- and full amount was added back in the assessee's hands and 50% was added back in the hands of the assessee's wife. The issue was agitated before the ITAT, Jodhpur Bench and in that case, the addition was deleted by the co-ordinate bench. We fully relied on the order of **Smt. Anamika Vikas Nahar** (supra) and the rule of precedent should be followed. In our considered view, the impugned appeal order is set aside. The addition made by the Ld.AO amount of Rs.8,55,000/- under section 69 of the Act is deleted. In the result, appeal of the assessee succeeds.

7. Though we adjudicate the issue on merit of the case, the legal ground of the assessee remains for the academic purpose only.

8. In the result, appeal of the assessee ITA **No.2545/Mum/2024** is allowed.

Order pronounced in the open court on 01<sup>st</sup> day of August, 2024.

Sd/-

(BR BASKARAN)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 01/08/2024

Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**