

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1129/Mum/2024 (A.Y. 2012-13)

Siddharth Suryakant Deshmukh B 7-8, Shyam Kunj Manorama Nagarkar Marg, Mahim Mumbai-400 016. PAN : AEOPD1466K (Appellant)	Vs.	ITO Ward 4(2)(3) Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Anuj Kisnadwala
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	12.08 .2024

ORDER

1. This appeal is filed by the assessee/appellant for assessment year 2012 – 13 against the appellate order passed by the National faceless appeal Centre Delhi (the learned CIT – A) for assessment year 2012 – 13 dated 19/1/2024 wherein the appeal filed by the assessee against the assessment order passed under section 144 read with section 147 of The Income Tax Act, 1961 dated 21/12/2018 by The Income Tax Officer, Ward 4 (2) (3), Mumbai (the learned AO) , is dismissed.
2. Assessee aggrieved with the same has raised grounds as per para number 10 of form number 36.
3. Brief facts of the case show that assessee is an individual who did not file his return of income. Information was received that assessee has made cash deposit with the banking company above the specified limit. As per AIR information it was found that assessee has entered into a commodity transaction of Rs 266,000 income only and deposited cash of ₹ 8 lakhs in his bank account. As per form number 26AS the

assessee was found to have earned the interest income of ₹ 210,961/-. The assessee was issued a notice under section 148 of the act on 15/3/2018 after recording the reasons. The assessee did not file any return of income in response to reopening notice also. Therefore, a show because notice was also issued to the assessee which was not attended to. The learned assessing officer issued notice under section 133 (6) to the bank to furnish the copy of the bank account of the assessee and the details of fixed deposit and current account. It was found that there are certain bank interests also which are also to be taxed in the hands of the assessee. The learned assessing officer further found that the interest amount of Rs 210,961 is chargeable to tax in the hands of the assessee such interest is payable to the assessee at the rate of 7% per annum and therefore the total amount of the principal was determined at ₹ 3,013,729/- . Thus, along with the principal amount the interest amount was added and total amount of ₹ 3,224,690/- was also considered as undisclosed income of the assessee. Accordingly, the assessment order was framed, and total income of the assessee was determined at ₹ 47,09,240/-.

4. The learned assessing officer has made the addition of (1) Rs. 2,66,000 on account of unexplained investment income of commodity, (2) ₹ 6 lakhs deposited in the HDFC bank account (3) Rs 2 lakhs deposited in another bank account totaling to ₹ 8 lakhs, (4) addition on account of interest income and principal amount thereon of ₹ 3,224,690/-, (5) credit appearing in bank account with the corporation bank of ₹ 406,735/- (6) interest credited of ₹ 11,816 in Kotak Mahindra bank account of the assessee.
5. Assessee aggrieved with the same preferred an appeal before the learned CIT – A. The appeal was filed beyond 108 days after the prescribed limit. The assessee mentioned the reason in form number 35 stating that in August 2018 his mother passed away and after that because of family circumstances he shifted to Pune. Later on his bank

accounts were attached and therefore he came to know that there are certain outstanding demand. Therefore, there is a delay in filing of the appeal which may be condoned. The learned CIT – A that assessee has failed to establish sufficient cause for delay in filing of this of however in the interest of justice and taking a lenient view the delay of 180 days in filing the appeal was condoned.

6. On the merits of the case, the assessee filed return submission wherein assessee enclosed the summary of all the bank accounts. Regarding addition of Rs. 266 lakhs, the assessee submitted that based on the statement of money be securities assessee has earned long-term capital loss of Rs. 469,882, short-term capital loss of Rs. 524,618 and only intraday profit of Rs. 119. With respect to the cash deposit of Rs. 6 lakhs in HDFC bank account and rupees to lakhs incorporation bank he submitted that the same is out of the professional fees received during the year and further the amount of money received from family members. Regarding bank interest, he submitted that he has received bank interest of Rs. 217,844 from various banks on which tax deduction at source is of Rs. 22,875. These fixed deposits have existed since 2001 – 02. Therefore, the addition made by the learned AO is incorrect. To substantiate his claim, he submitted a chart which is reproduced at page number seven of the order of the learned CIT – A. He further submitted the details of cash deposited in the bank account and also the cash and credit entries in his Kotak Mahindra bank account. He also summarized his position of taxable income during the year and submitted that he has professional income of Rs. 794,788, interest on savings bank account of Rs. 39,204 and interest on bank fixed deposits of Rs. 221,618. Over and above he has incurred short-term capital loss on long-term capital loss. Therefore, the addition made by the learned assessing officer is incorrect.
7. The learned CIT – A held that as assessee is not filing his return of income in spite of having huge investment in fixed deposits and shares

and has also made deposits in cash in his bank account, thus the addition made by the learned assessing officer are not properly explained by the assessee with supporting evidence, he confirmed the action of the learned AO.

8. Assessee, aggrieved with the appellate order preferred appeal before us. The learned authorized representative Shri Anuj Krishnadwala submitted that assessee has given complete details before the learned CIT – A. He referred page number 4 to 10 of the appellate order. He submitted that when the assessee has given the complete details of his income, investment, sources of deposit in the bank account as well as statement of his income, the learned CIT – A decided the issue on the merits of the case and deleted the addition.
9. The learned departmental representative vehemently supported the orders of the learned lower authorities and submitted that assessee is not filing his return of income regularly despite having taxable income. The assessee has been granted enough opportunity before the learned AO but did not avail. Before the learned CIT – A, assessee has given scanty details which are not accepted by the learned CIT – A as those were not supported with the evidence. Therefore, the orders of the learned that lower authorities are faultless.
10. We have carefully considered the rival contention and perused the orders of the learned lower authorities. Undoubtedly the assessee is not filing his return of income and information was received from AIR about the investment, trading transactions and bank accounts of the assessee. During the course of assessment proceedings assessee did not reply to notice under section 148 of the act as well as several other notices issued and show cause notice issued. Therefore, the learned assessing officer passed an order under section 144 of the act determining total income of the assessee at Rs. 4,709,240. Before the learned CIT – A the details of his professional fees, summary of his

bank account, the sources of the fund and also explained the nature of his professional activities. It was submitted that assessee is an individual engaged in rendering professional consultancy students appearing for NCFM exam conducted by stock exchanges. He also provides consultancy services for investment in shares. He has also provided the details of his investment in fixed deposit receipts and claimed that most of the receipts are invested prior to 31st of March 2008. He has also provided the details of gross interest received from seven different banks. Assessee has also submitted his statement from money Bee securities for share trading. These details have been admitted by the learned CIT – A by reproducing the submission at page number 4 – 10 office appellate order but did not consider them while deciding the appeal on the merit. He brushed aside the explanation of the assessee stating that assessee could not clearly explained with supporting evidence and explanations are purely afterthought. The learned CIT – A is duty-bound if he admits those evidence to consider them on merit. As the evidence and not been considered by the learned CIT – A on merit, no evidence was furnished before the assessing officer, we do not find any reason to set aside back to the file of the learned CIT – A. Therefore, in the interest of justice, we restore the issue back to the file of the learned assessing officer with a direction to the assessee to furnish all the information in support of his income as well as the finding of the learned AO within 90 days from the date of this order. The learned that AO may consider the explanation furnished by the assessee and decide the issue afresh in accordance with the law.

11. In the result appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th August 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 12.08.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai