

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 1841/MUM/2024 : A.Y : 2012-13

Abhishek Gordhanlal Trivedi 501, Suprabhat Society, Ashok Nagar, Road No.1, Kandivali East, Mumbai PAN : ACDPT4638A (Appellant)	Vs.	The Income Tax Officer, Ward-42(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra East, Mumbai (Respondent)
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Assessee by : Shri R.I. Choksey
Revenue by : Shri Manoj Kumar Sinha, Sr.DR

Date of Hearing : 21/08/2024
Date of Pronouncement : 26/08/2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 19-02-2024 passed by the Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi and it relates to the Assessment Year (AY.) 2012-13. In this appeal, the assessee is challenging the order of Ld CIT(A) in confirming the validity of reopening of the assessment and also in partially confirming the addition made by the AO u/s. 69A of the Income Tax Act, 1961 ('the Act').

2. The assessee is an individual and he filed his return of income for the year under consideration, declaring a total income of Rs.3,23,400/-.

The AO subsequently, received information that the Investigation wing that the assessee has made investments in shares of M/s. Riddhi Siddhi Recyclers Pvt. Ltd and the said concern was found involved in providing accommodation entries. The AO noticed that the assessee has been allotted shares for an amount of Rs.21,20,000/-, which was very much higher than the income declared by the assessee. Hence, the AO entertained the belief that there was escapement of income. Accordingly, he reopened the assessment by issuing of notice u/s.148 of the Act.

3. The AO noticed that the assessee has initially made investment of Rs. 36.00 lakhs in acquiring shares of M/s. Riddhi Siddhi Recyclers Pvt. Ltd. Hence, the AO asked the assessee to explain the sources of the above said investment amount. The assessee submitted that he has taken a loan of Rs. 36,47,377/- from various parties for making the above said investment. According to the AO, the assessee did not furnish the details of the loan and also did not discharge his responsibility to prove the loans. Accordingly, the AO treated the loan amount of Rs. 36,47,377/- as un-explained money and added the same to the income of the assessee u/s. 69A of the Act.

4. In the appellate proceedings, the Ld.CIT(A) confirmed the validity of reopening of assessment. With regard to addition relating to loan amount of Rs. 36,47,377/- received by the assessee, the Ld.CIT(A) granted relief of Rs. 9.50 lakhs and confirmed the balance addition of Rs.26,97,377/-. With regard to the addition of Rs. 36.00 lakhs relating to investment made in acquiring shares of M/s. Riddhi Siddhi Recyclers Pvt. Ltd., the Ld.CIT(A) granted telescoping benefit against the loan amount of Rs. 36.47 lakhs and accordingly deleted the addition of Rs.36.00 lakhs. Still aggrieved, the assessee has filed this appeal.

5. We heard the rival contentions and perused the record. With regard to the validity of reopening of assessment, we noticed that the

assessee was a salaried employee and was declaring total income of Rs.3.23 lakhs only. However, the assessee has made an investment of Rs. 36 lakhs in acquiring shares of M/s. Riddhi Siddhi Recyclers Pvt. Ltd and he was allotted shares for a sum of Rs.21.20 lakhs. Since the above said investment was disproportionate to the known sources of income, we are of the view that the AO was justified in entertaining the belief that there was escapement of income. During the course of hearing, the Ld A.R pointed out certain discrepancies in the reasons recorded by the AO. However, on reading of the reasons recorded by the AO in totality, the above discussed facts would emerge. Accordingly, we are of the view that the AO was justified in reopening the assessment of the assessee. Accordingly, we reject this ground of the assessee.

6. With regard to the addition relating to loan creditors made by the AO, we noticed that the Ld.CIT(A) has already granted relief of Rs. 9.50 lakhs and hence, the remaining addition of Rs. 26,97,377/- is being contested before us. We noticed from the assessment order that the AO has issued notice u/s. 143(2) of the Act only on 23-12-2019 and completed the assessment on 25-12-2019. We further observed that the AO had issued notices u/s. 142(1) of the Act on 14-10-2019, 15-11-2019, 15-12-2019 and 20-12-2019, i.e., prior to issuance of notice u/s. 143(2) of the Act. There should not be any dispute that the AO would get the authority to scrutinize the return of income of the assessee only after issuing notice u/s. 143(2) of the Act. Hence the above said notices issued u/s 142(1) cannot be recognized in law. Further, as noticed earlier, the AO has completed the assessment within two days of issuance of notice u/s. 143(2) of the Act.

7. Be that as it may, it is the submission of the Ld.AR that the assessee has furnished various details relating to loan creditors in response to the above cited notices issued u/s 142(1) of the Act, but they were not considered by the AO. From the examination of paper

book, we notice that the assessee has furnished evidences for uploading details of few creditors. The Ld A.R fairly admitted that the details relating to remaining creditors were furnished before Ld CIT(A), meaning thereby, the assessee has also not furnished all the details before the assessing officer. When questioned about the same, the Ld A.R submitted that the assessee had specifically requested the AO to give adequate time for furnishing the details, but it was not afforded to the assessee.

8. Thus, we notice that there were lapses in both sides. Under these set of facts, we are of the view that the issue relating to addition of Rs. 26,97,377/- requires examination at the end of the AO. Accordingly, we modify the order passed by the Ld.CIT(A) on this issue and restore the above said issue to the file of the AO for examining the same afresh. After affording adequate opportunity of being heard to the assessee, the AO may take appropriate decision in accordance with law.

9. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on 26th August, 2024

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Mumbai,

Date : 26-08-2024

TNMM

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai