

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

ITA No. 1104/Mum/2024 (A.Y.2015-16)

Smt. Chandra Devi Gautam Chand Jain,

Flat No. 1401, Bldg. 5, Raheja
Classique Co-Op. Hsg. Soc. Ltd.
Behind Infinity Mall, New Link
Road, Andheri West,
Mumbai-400 053
PAN: AEKPC6743G

..... Appellant

Vs.

ITO-30(1) (2)

Room No. 505, C-505,
Pratyaksh Kar Bhavan,
Bandra Kurla Complex,
Bandra East,
Mumbai- 400 051

..... Respondent

Appellant by : Shri Sanjay Parikh, Ld. AR
Respondent by : Shri H. M. Bhatt, Ld. DR
Date of hearing : 11/06/2024
Date of pronouncement : 19/08/2024

ORDER

PER GAGAN GOYAL, A.M:

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") dated 23.01.2024 passed u/s. 250 of the Income

Tax Act, 1961 (in short 'the Act') for A.Y. 2015-16. The assessee has raised the following grounds of appeal:-

A) Addition u/s. 68 - Rs. 59, 20,000/-

1) *The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [CIT(A)] has erred on facts and in law in confirming the addition made by the Income Tax Officer-30(1)(2), Mumbai (AO) u/s. 68 of Rs. 59,20,000/- towards loan received from M/s. Tanaya Vincom Pvt. Ltd. without appreciating that that the addition was made by the AO in a limited scrutiny initiated to determine the source of investment in properties, which was duly explained by the appellant.*

2) *The learned CIT(A) erred in not appreciating that the source of investment in properties was not from loans advanced by M/s. Tanaya Vincom Pvt. Ltd. and that the appellant had filed all necessary documents to prove the source of investment in properties and that no addition was called for on that account.*

3) *Without prejudice to the above, the learned AO and the learned CIT(A) erred in adding the loan from M/s. Tanaya Vincom Pvt. Ltd. to the extent of Rs. 59,20,000/- without appreciating that the appellant had proved the genuineness of the loan.*

4) *Appellant prays that your honour that the appellant has proved the source of investment in properties and direct the AO to delete the addition made of Rs. 59, 20,000/- on account of loan taken from M/s. Tanaya Vincom Pvt. Ltd.*

B) Principles of natural justice violated

5) *Learned CIT(A) erred on facts and in law in holding that there was no violation of tenets of natural justice even though the AO had not furnished the documents relied upon by him to the appellant and had also not given an opportunity to cross examine the parties whose statements the AO was relying upon.*

6) *As principles of natural justice have been violated, appellant prays that your honour hold that the order u/s. 143(3) is bad in law.*

C) General

7) *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.*

2. The brief facts of the case are that the assessee individual filed her return of income on 20.08.2015 declaring total income at Rs. 6,71,000/-. The case of the assessee was selected for "Limited Scrutiny" to examine the purchase of property. During the year under consideration the assessee invested in Flat in M/s. Runwal Projects Pvt. Ltd., Agricultural Land at Sayla, Rajasthan, Land at Vasai and Office at Remi. The assessee explained the source of these investments from sale of a flat and loans from various parties. The total loans outstanding towards the assessee were to the tune of Rs. 5, 63, 58,861/-. Out of this figure loans of Rs. 30 Lacs and Rs. 70 Lacs were taken from M/s. NCL Research Financial Services and M/s. Tanya Vincom Pvt. Ltd. respectively. These two companies were under investigation by the investigation wing, Kolkata for various financial irregularities carried out with an intention to convert unaccounted income into accounted one without paying legitimate taxes thereon by way of un-secured loans, share premium, LTCG etc.

3. Out of these two loans the assessee utilised Rs. 59.20 Lacs received from M/s. Tanya Vincom Pvt. Ltd. for acquiring property from M/s. Runwal Projects Pvt. Ltd. as flat. The amount invested by the assessee received from M/s. Tanya Vincom Pvt. Ltd. was treated as unexplained money u/s. 68 of the Act by the AO and same is added back to the income of the assessee. The assessee being aggrieved with this order preferred an appeal before the Ld. CIT(A), who in turn confirmed the order of the AO. The assessee being further aggrieved preferred this appeal before us.

4. We have gone through the order of the AO passed u/s. 143(3) of the Act, order of the Ld. CIT (A) passed u/s. 250 of the Act and submissions of the assessee alongwith grounds taken before us. It is observed that case of the assessee was

selected for “Limited Scrutiny” to verify the property transactions. Then obviously source of the investments has to be examined against the property under consideration. **So, the contention of the assessee that case was selected under the “Limited Scrutiny” for verification of property transaction and source of funds can’t be examined, is found to be baseless and not tenable. This technical ground of the assessee is found to be baseless, certainly merits of the matter we will examine in coming paras of our order.**

5. It is pertinent to mention here that case laws relied upon by the assessee has been examined by us in the light of facts of the matter and a summary of the same is as under:

- [1999] 103 Taxman 382 (SC) CIT v. Smt. P.K. Noorjahan

This decision pertains to the A.Y. 1968-69 and there is phenomenal change in law thereafter relating to section 68 of the Act and a major change took place w.e.f. A.Y. 2013-14, hence the same can’t be applied on the facts of the case as the same pertains to the A.Y. 2015-16;

- [2020] 121 taxmann.com 86 (Bom.)Gaurav Triyugi Singhvs. ITO 24(3)(1), Mumbai
- [2020] 424 ITR 219 (Bom.) PCIT vs. AMI Industries (Industries) Pvt. Ltd.

This decision pertains to the A.Y. 2010-11 and there is phenomenal change in law thereafter relating to section 68 of the Act and a major change took place w.e.f. A.Y. 2013-14, hence the same can’t be applied on the facts of the case as the same pertains to the A.Y. 2015-16;

6. Similarly, all the case laws relied upon by the assessee are either related prior to A.Y. 2013-14 or on a different subject not related to the facts of the case. Now the limited question before us to examine is whether, the money received from M/s. Tanya Vincom Pvt. Ltd. has been used or not to fulfil the commitment with M/s. Runwal Projects Pvt. Ltd. On this issue we restore the matter back to the file of the Jurisdictional AO for re-verification of the fact that the money used for payments to M/s. Runwal Projects Pvt. Ltd. substantially pertains to money received from M/s. Tanya Vincom Pvt. Ltd. On this issue the AO is directed to prepare a fund flow chart in the form of a table which either confirms his version or otherwise after giving the assessee a fresh opportunity of being heard. The assessee is entitled to counter the working of the AO and may prove otherwise. It is further hold that if the AO is not able to establish the substantial link of money received from M/s. Tanya Vincom Pvt. Ltd. vis-à-vis payments made to M/s. Runwal Projects Pvt. Ltd., no addition u/s. 68 of the Act can be made, as here the plea of the assessee works that it's a matter of "Limited Scrutiny". The assessee is directed to co-operate in the proceedings without any fail and seeking any adjournment. In these terms grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the open court on 19th day of August, 2024.

Sd/-

(ANIKESH BANERJEE)

JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 19/08/2024

Sd/-

(GAGAN GOYAL)

ACCOUNTANT MEMBER

Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai