



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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRIANIKESH BANERJEE, JM

ITA No. 2496/MUM/2024

A.Y.2009-10

Anilkumar A. Tiwari,  
16, Crown Vasant Marvel,  
Bhor Industrial Estate, W.E.  
Highway, Borivali (EAST) Vs.  
Mumbai  
(Appellant)

Income Tax Officer,  
Ward-25(1)(2),  
Mumbai.  
(Respondent)

PAN

ADRPK 3203B

Assessee by

Shri Prakash Jhunjunwala

Revenue by

Shri Manoj Kumar Sinha,Sr.(DR)

Date of hearing

11<sup>th</sup> July, 2024

Date of pronouncement

27<sup>th</sup> August 2024

O R D E R

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the appellate order passed by the National Faceless Appeal Centre (NFAC) [the learned CIT(A)] dated 09.04.2024 wherein the appeal filed by the assessee against reassessment order passed u/s. 143(3) read with section 147 of the Income Tax Act, 1961 (the Act) dated 22.03.2024 by the Income Tax Officer, Ward-25(1)(2), Mumbai (learned AO) was partly allowed.
02. The assessee is aggrieved with that appellate order and has preferred following grounds of appeal.



*"The appellant prefers an appeal against an appeal order dated 09/04/2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi on following amongst other grounds each of which are without prejudice to any other :-*

*1.0 On facts and circumstances of the case and in law. Ld. CIT(A) erred in confirming the validity of notice u/s 148 issued in absence of fresh tangible material, borrowed satisfaction and without having valid reasons to believe that income chargeable to tax has escaped assessment;*

*2.0 On facts and circumstances of the case and in law, Ld. CIT(A) erred in confirming the addition u/s.69 of Rs.84,69,010/- in respect of payments made for purchase of an immovable property (row-house), though the entire payments has been paid by Mr. V. Arumugum Pillai (1" co-owner) and ownership of such property vests with such person;*

*3.0 Without prejudice to Ground no.2.0, Ld. CIT(A) erred in confirming the addition u/s.69 of Rs.84,69,010/-, though the payments made during the year is only of Rs 33,00,000/- and balance amount has been paid in earlier and subsequent year.*

*4.0 The Ld. CIT(A), before confirming the addition u/s.69 of Rs.84,69,010, erred seriously in ignoring the understated vital facts, being:*

*a) The developer (M/s. Ravi Developments), in response to notice u/s.133(6), had confirmed the entire payments received from 1" co-owner (Mr. V. Arumugam Pillai);*



b) *The Ledger account and Receipts issued by the developer discloses the amounts received from the 1 Co-owner (Mr. V. Arumugam Pillai),*

c) *The appellant, in Affidavit sworn on oath along with bank statements, declared that the disputed payments has not been paid by him;*

d) *The Ld. AO erred in not conducting the independent enquiries/ investigations to verify the actual owner and payer of the investments,*

e) *The Ld. AO, in remand report, had not disputed the fact that the payments towards purchase of property made during the year is only of Rs 33,00,000/-*

*The appellant craves leave to add, amend, alter and/or withdraw any of the grounds of appeal at the time of hearing."*

03. The brief fact of the case shows that :-

- i. assessee is an individual carrying on business as proprietor of M/s Om Sai Corporation , filed his return of income on 30.09.2009 declaring total income at Rs.NIL wherein the brought forward losses of Rs.5,36,368/- were set off. Subsequently, the assessment u/s. 143(3) of the Act was passed on 29.12.2011 at the NIL income after setting off of brought forward losses of Rs.13,34,926/-.
- ii. Subsequently, the AIR information was received that assessee has purchased immovable property at a Row House Page-44, at Gaurav Green, Mira Bhayander Municipal Corporation, admeasuring 2017 sq.ft for Rs.80,51,250/- jointly with Mr.ArumugamPillai and assessee was a second holder at the time of assessment u/s. 143(3) of the Act of



- Mr.ArumugamPillai. This information was noticed and the Assessing Officer of that assessee informed the Assessing Officer of the assessee. The letter says that Row House was purchased by the assessee. He furnished the trading account, Profit and Loss account and balance sheet of the assessee where the above property was disclosed in the asset. Moreover, Mr. Pillai filed an affidavit that he has cancelled his booking and entire property was purchased by the assessee.
- iii. Therefore, the case of the assessee was reopened by issue of notice dated 18.06.2012 u/s 148 of the Act. The assessee did not file any return of income and, therefore, one notice u/s. 142(1) of the Act was issued on 17.01.2024.
  - iv. On 05.03.2024, the assessee requested to treat the return of income filed on 30.09.2009 as compliance to notice u/s. 148.
  - v. On 05.03.2014 the reasons recorded were provided to the assessee. On 21.03.2014, the assessee submitted that it has not invested any amount or contributed to the above property. The assessee submitted his affidavit also provided the bank statement. It also submitted the various receipts issued by the builder wherein the name of Mr. ArumugamPillai was mentioned. Regarding the balance sheet was submitted that it was a project and balance sheet which was given for the purpose of the loan which never materialized letter on. It was submitted that the proof of payment by the builder shows that the property was purchased by Mr. Pillai and not the assessee.
  - vi. Based on this, the Assessing Officer issued a notice u/s. 133(6) of the Act to M/s Ravi Development. The builder replied on 28.02.2014 stating that the Row House transaction was entered into on 09.07.2008 by Mr. Pillai and assessee. Five cheques that were issued to the builder were returned by



the Bank and thereafter all the payments were made by Mr.Arumugam Pillai. The Assessing Officer found that audited balance sheet as on 31.03.2009 of Om Sai Corporation, where the assessee is a Proprietor shows that in the fixed assets, assessee has shown Row House No. P.44 valued at Rs.84,69,010/-. However, the same is not reflected in the audited balance sheet as on 31.03.2009 submitted by the assessee. The Assessing Officer further noted that the balance sheet received from the Assessing Officer of Mr. Pillai is not tallying with the balance sheet of the assessee with the return of income. The assessee did not come forward to comment on two audited balance sheet and did not also raised any objection to the reopening of the assessment, therefore, it is clear that the assessee has purchased the Row House out of his undisclosed sources of the Income.

vii. Therefore, addition u/s. 69 of the Act was made of Rs.84,69,010/- and determine the total income of the assessee at Rs.98,03,940/- by the reassessment order dated 22.03.2014.

04. The assessee aggrieved with the reassessment order preferred appeal before the learned CIT(A) wherein the addition of Rs.84,69,010/- and non-granting of brought forward business losses of Rs.1,29,24,38/- was challenged over and above reopening of the assessment. Assessee also raised the additional grounds that even otherwise the addition could be made only of Rs.33,00,000/- payment during the year and further the deduction u/s.80C of the Act of Rs.1.00 lac and Section 80G of Rs.5,31,000/- should have been allowed.

05. The assessee made detailed submission on 08.02.2016 stating that reasons recorded by the learned Assessing Officer are erroneous. It was further stated that Mr. Pillai is the first holder of the property



who has made the entire investment which is confirmed by the builder and, therefore, merely on the basis of the affidavit of Mr. Pillai reopening has been made. On the merits of the addition, it was submitted that all the receipts were issued by Ravi Development to Mr. Pillai where the cheques are also issued by Mr. Pillai. The Bank statement submitted by the assessee also does not show any cheque payment and further all the receipts categorically show that payment has been made by Mr. Pillai. It was further stated that the balance sheet stated by Mr. Pillai to the Assessing Officer was projected balance sheet. This was balance sheet prepared and submitted by Mr.ArumugamPillai to get out of the rigors of addition. It was further stated that no notice u/s. 133(6) as well as u/s. 131 was issued to Mr.ArumugamPillai about the contention of the balance sheet acquired by him. No notice u/s. 133(6) were issued to the Central Bank of India, Bhayander from which the cheques were issued to the builder from the account of Mr.ArumugamPillai. The builder itself in reply to notice u/s. 133(6) of the Act has stated that cheques have been issued byArumugamPillai and also the cash was also paid by him and not by the assessee. Further written submission dated 27.01.2020 was made wherein the assessee submitted on the basis of the evidence from the builder even otherwise the addition could not have been made in the hands of the assessee.

06. The learned CIT(A) called for the remand report which was submitted by the Assessing Officer on 09.03.2016. The leaned CIT(A) raised specific four questions which are placed at pages 14 and 15 of the appellate order. The Assessing Officer submitted that no enquiry was made with respect to the ownership of the property in the hands of Mr.ArumugamPillai. The balance sheets were shown to the assessee during the course of assessment proceedings. It was further stated that the original assessment was completed in the hands of Mr.ArumugamPillai only on the basis of the affidavit.



The remand report was also provided to the assessee to submit rebuttal which was submitted on 17.08.2023 where the assessee challenged the reopening, and the addition on the merits. The assessee vehemently stated that remand report states that only on the basis of affidavit of Mr.ArumugamPillai the case of the assessee was reopened. Further, there is no evidence that how Mr.ArumugamPillai got hold of the balance sheet of the assessee, which is false balance sheet and further whether the unsigned balance sheet could have been used against the assessee. Thus, on the merit of the addition and on reopening the assessee made detailed submission.

07. The learned CIT(A) dismissed the objection to the reopening of the assessment holding that on the information available with the Assessing Officer and affidavit of Mr.ArumugamPillai along with the balance sheet of the assessee the case of the assessee was reopened, therefore, there is no inadvertence in the reopening of the case by the Assessing Officer. On the merits of the addition, he held that the claim of the assessee is not tenable for the reason that assessee could not rebut the findings of the Assessing Officer regarding two audited balance sheets and, therefore, the addition was confirmed. With respect to the other grounds of the appeal of the deduction u/s. 80C and 80G he directed the Assessing Officer to verify and give the benefit. Accordingly, the appeal of the assessee was partly allowed.
08. The assessee was aggrieved with the same and is in appeal before us.
09. The learned authorized representative did not press ground number one of the appeals, therefore, same is dismissed. Assessee submitted a paper book containing 67 pages which was extensively relied upon for the merits of the addition.



010. With respect to the merits of the addition as per ground number 2 – 4 of the appeal the learned authorized representative reiterated the facts, read the remand report furnished by the learned AO placed at page number 1 – 3 of the paper book dated 9/3/2016 wherein it is specifically submitted that that the original assessment in case of assessee and Mr.ArumugamPillai was completed under section 143 (3) of the act on the basis of affidavits submitted by them on the issue in hand of purchase of row house. Further the notice under section 148 of the act was issued to the assessee only on the basis of the affidavits submitted by Mr. Pillai and projected balance sheet submitted by him of the assessee. He submits that anyway that balance sheet was a provisional balance sheet prepared for obtaining the loan which never fructified. He further stated that the assessee also submitted an affidavit dated 16 December 2011 wherein it is categorically stated that the total investment made in the property is by Mr. Pillai whose first name was mentioned in the document and name of the assessee was a second name. He further submitted his bank statement wherein it was submitted that his only investment was on 28/1/2008 wherein he has made an investment of only Rs. 11,011/- during the year. He further referred to the reply given by the builder in response to the notice of the learned AO under section 133 (6) of the act dated 28/2/2014 wherein the Ledger account of the whole transaction was submitted which is placed at page number 8 of the paper book wherein all the payments have been made by Mr. Pillai. He also referred to page number 11 of the paper book where in the books of Ravi development the account of Mr.Pillai is maintained wherein the payments are received by the builder from him and not assessee. He specifically referred to page number 13 – 21 of the paper books which are the receipts issued by Ravi developments in the name of Mr. V Arumugam Pillai and Mrs. A Palani Pillai . He stated that in the receipt there is a specific reference of cheque number, date of the cheque and name of the bank as central bank of India ,



Bhayander (E), Mumbai. He referred to the Ledger account of Mr. Pillai with the builder wherein complete details of total payment made of Rs. 7,811,011 was shown in the name of the first holder. He further referred to the fact that the developer also issued share money, maintenance charges, society maintenance, betterment charges, amenities charges and other charges of that property paid by the first holder. He also referred to the source of payment as HDFC bank Ltd by cheque number 24272 mentioned by the builder. He submits that when in all the receipts various check number, amount of cheque, bank etc. is mentioned and if same does not belong to the assessee, the addition cannot be made in the hands of the assessee wherein all the evidence proves that the payment has been made by the first holder of that property. Accordingly, he submitted that the addition is wrongly made in the hands of the assessee. His main contention was that the addition has been made in the hands of the assessee based on affidavit of third-party, projected balance sheet of the assessee. However the overwhelming evidences in the form of receipts issued by the builder, wherein check number, date, payment amount is mentioned which is also reflected in the Ledger account of the builder in the name of Mr. Pillai, the various society charges, share capital et cetera cheques issued by that party, clearly shows that assessee is not the person who has made the payment but merely a second party where the first party is Mr. Pillai. The receipts issued by the builder also show the name of Mr. Pillai and his wife. Thus, the addition was incorrectly upheld.

011. The learned departmental representative vehemently supported the orders of the learned lower authorities and stated that when in the balance sheet of the assessee which was prepared by the assessee, impugned property appears, the addition has rightly been made in the hands of the assessee. He referred extensively to the order of the learned assessing officer and the appellate order.



012. We have carefully considered the rival contention and perused the orders of the learned lower authorities. The facts shows that there was an agreement for sale between Ravi development is on 9 October 2008 between (i) Mr. Arumugam Pillai and (2) Mr. Anil Tiwari for purchase of the house number P 44 in Gaurav Greens being a rowhouse and measuring 2017 ft<sup>2</sup> of carpet area. The issue is that when the issue arose in the case of Mr. Pillai about the acquisition of the above property, he gave an affidavit that he has not purchased any such property but also gave the balance sheet of the assessee wherein the above property was disclosed as an asset. Based on this the assessing officer of Mr. Pillai informed the assessing officer of the assessee that the above property was purchased by the assessee, which was disclosed in his balance sheet. Based on this the case of the assessee was reopened by issue of notice under section 148 of the act. The assessee denied having paid any sum except Rs. 11,011/- to the builder Ravi Development. The learned AO issued notice under section 133 (6) of the act to the builder who responded that property was purchased by Mr. Pillai, original cheques given by the assessee got returned, therefore, all the payments have been made by Mr. Pillai. For these payments the builder has given the receipts of such payment as well as the copy of account of Mr. Pillai wherein cheque number, amount, name of the bank and all the receipts were issued in the name of Mr. Arumugam Pillai / Mrs. A Palani Pillai. The receipts are also placed before us at page number 13 – 23 of the paper books. All these receipts are issued by the builder in the name of Mr. A Pillai and his wife where the cheque number, amounts are mentioned along with the name of the bank central bank of India. It is not the case of the assessing officer that the central bank of India bank account is owned by the assessee. The builder confirmed that payments have been received from that bank account and given by Mr. Pillai. The Ledger account of Mr. Pillai is also placed at page number 8 – 10 of the paper books wherein the total payment of



78,11,011/- was credited to his account. In that bank account the particular bank name was also mentioned as central bank of India Bhayander ( E ) , Mumbai. The various society charges are also paid by a bank cheque number 24272 of HDFC bank which is also credited in the name of Mr. Pillai. Despite this fact, the learned assessing officer made the addition in the hands of the assessee merely on the basis of the balance sheet sent by the assessing officer of Mr. Pillai. No doubt appellant's balance sheet has been forwarded by the assessing officer who is assessing Mr. Pillai, wherein the asset is shown, and balance sheet is of the assessee. The claim of the assessee is that it was a project and balance sheet for the purpose of obtaining loan, neither the learned fortified or taken by the assessee nor balance sheet shows any payment made by the assessee. May that be the case, but where overwhelming evidence of payment made by Mr. Pillai through central bank account wherein the cheque numbers, cheque amount and the name of the bank is mentioned which are definitely learned AO did not say that such bank account belongs to the assessee, the addition should not have been made under section 69 of the act. From the facts produced before us, the whole payment is made by cheque, it is not the case that there is any cash payment made to the builder.

013. Secondly, in the remand report furnished by the learned assessing officer the learned AO specifically denied whether he has made any enquiry with regard to the ownership of the above assets in the hence of Mr. Pillai. He further confirmed that the builder has given the account wherein the payments are shown by Mr. Pillai. It is also a fact that the learned assessing officer despite having the receipts from the builder in the name of Mr. Pillai wherein central bank of India account was mentioned, the bankers were not called to submit that to move that bank account belongs to. The receipt of the builder clearly shows that those were issued in the name of Mr. Pillai



and his wife. In the remand report it is also categorically mentioned that the total addition is made only on the basis of affidavit of Mr. Pillai and the balance sheet of the assessee submitted by him. The learned assessing officer in the remand report has categorically stated that there might be any other out of books financial transactions entered into between the assessee and the builder, but no evidence was traced despite issuing notice under section 133 (6) of the act to the builder. The builder has categorically confirmed otherwise that the payment is not made by the assessee but by Mr. Pillai. However, the learned AO as well as the learned CIT - A does not believe this only for the reason that there is a project balance sheet available wherein this asset is shown. However, the payment to builder is made by central bank account, Bhayander ( E ) , Mumbai which was not found to be belonging to the assessee.

014. in view of this, we reverse the orders of the learned lower authorities and direct to delete the addition of Rs. 8,469,010/- .accordingly ground number 2 of the appeal is allowed.
015. In view of our finding in ground number 2, the alternative grounds in ground number 3 and 4 are not required to be adjudicated.
016. In the result appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27/08/2024.

Sd/-

(ANIKESH BANERJEE)  
(JUDICIAL MEMBER)

Mumbai, Dated: 27.08.2024

Aks/-

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)



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**ITA No.2496/M/2024**

**A Y : 2009-10**

**Anilkumar A Tiwari**

**Versus**

**ITO, Mumbai**

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Copy of the Order forwarded to :

The Appellant, The Respondent, The CIT, The DR ITAT & Guard File

BY ORDER,

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai



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Sr. No.	Particulars	Date	Initials	Person concerned
1	Draft dictated	26.08.2024		Sr.PS
2	Draft placed before author	26.08.2024		Sr.PS
3	Draft proposed & placed before the second Member			AM
4	Draft discussed/approved by Second Member			AM
5	Approved Draft comes to the Sr.PS/PS			Sr.PS
6	Kept for pronouncement on			Sr.PS
7	File sent to the Bench Clerk			Sr.PS
8	Date on which file goes to the Head Clerk			
9	Date of dispatch of Order			
10	Dictation Sheet is attached herewith			