

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRIGIRISH AGRAWAL, ACCOUNTANT MEMBER

I.T.A No.2428/Mum/2024
(Assessment Year: 2018-19)

Kulsum Mohamed Farooq Mojawala, 803, Crescent House 159/161, Samuel Street, Mumbai-400 009 PAN : AGHPM6880F	vs	ITO, Ward 25(1)(1), Mumbai Room No.115, Kautilya Bhavan BKC Bandra East, Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Amit Jhaveri, CA
Respondent by : Shri P.D.Chougule, (Addl. CIT)SR DR
Date of hearing : 29/08/2024
Date of pronouncement : 29/08/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 06.03.2024. The impugned order emanated from the order of the Learned National e-Assessment Centre, order passed under section 143(3A) & 143(3B) of the Act, date of order 06/04/2021.

2. The assessee has taken the following grounds:-

“Ground No. 1 :- Wrong Order passed by the Ld CIT(A), NFAC.

The entire order passed by the CIT(A), NFAC is wrong in toto as the facts and figures are totally wrong and does not belong the assessee and for which the said appeal is filed.

Ground No. 2: *-The Learned ITO WD 17(2)(2) not justified in levy interest u/s 234A, u/s234B & u/s234C.*

Ground No. 3:-*The Learned ITO WD 17(2)(2) not justified in initiating penalty u/s 271 (1) (C) or any other section.*

Ground No. 4: *-We reserve our rights to add, amend & alter anything as stated here in above or may be stated here in after.”*

3. The brief fact of the case is that the assessee has entered into an agreement for permanent alternate accommodation with builders, viz. Nina Realtors dated 25/01/2018 for a flat bearing No.1701, 17th Floor, Fortune Edge, V.V. Chandan Street, Mumbai. The assessee paid the amount of Rs.5,35,000/- only for the stamp duty and registration charges. The market value of the flat mentioned in the registered deed amountsto Rs.1,00,97,000/-. During the assessment proceedings, the Ld.AO has added back entire amount for contravening section 56(2)(x)(b) of the Act amount to Rs.1,00,97,000/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The Id.CIT(A) passed the order entirely on a different issue of different assessee and confirmed the assessment order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Id.AR filed a written submission which is kept in the record. On perusal of the appeal order we find that the Id.CIT(A) has adjudicated entirely a new issue related to unexplained investment amount to Rs.2,25,53,000/- which was added back under section 69A of the Act related to the other assessee. Finally, the

exparte order was passed. The Ld.AR invited our attention in para 5 of the appeal order which is reproduced as below:-

"5. During the appellate proceedings, the appellant has filed 'Statement of facts' in Form No.35, which is reproduced as under: -

Kumam Romesh Singh, herein after referred to as the "Assessee" or the "Appellant" is engaged in the business of Trading of Poultry Feed in the State of Manipur. During the Assessment of AY 2015-16, the Assessee has been issued with Notice U/s 148 of the Income Tax Act 1961 requesting the Assessee to file the Return vide Notice dated 31.03.2021 without specifying any reasons for opening of Assessment Proceedings U/s 148 of the Act. The Assessee has failed to respond to the notice Issued dated 31.03.2022. Later the AO has issued notices U/s 142(1) dated 30.06.2021, 11.11.2021, 02.12.2021, 02.02.2022 and 11.02.2022 to furnish the information as requested in the Annexure. The Assessee has failed to respond to the Notice issued dated 30.06.2021. As a Final opportunity of being heard the AO has issued a Draft Assessment Order U/s 144 of the Act dated 24.03.2022. The Assessee has failed to respond to the Notice issued dated 24.03.2022. As the Assessee has failed to respond to the notices issued, the AO has passed the Assessment Order u/s 147 read with 144 of the Income Tax Act 1961. Aggrieved by the order passed, the Assessee opted to file an appeal to CIT Appeals u/s 246A of the Income Tax Act 1961."

5. Ld.DR not only relied on the assessment order but also accepted the fact as agitated by the Ld.AR related wrong description of fact.

6. We heard the rival submission and considered the documents available in the record. The addition was made related to contravening section 56(2)(x)(b) amount to Rs.1,00,97,000/-. Considering the appeal order we find that an entirely different issue related to a different assessee for the State of Manipur named Mr. Kumam Romesh Singh was narrated by the Id. CIT(A) in impugned

appeal order and the addition made under section 69A amount to Rs.2,25,53,000/- was confirmed. Here is a gross negligence on the part of Ld.CIT(A) for adjudicating the appeal order. The impugned appeal order is erroneous and liable to be set aside. We remit the matter to the file of the Ld.CIT(A) for further adjudication, considering the grounds and the impugned assessment order of the assessee. The Id. CIT(A) is directed to be careful while passing the appeal order. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings.

7. In the result, the appeal of the assessee bearing **ITA No.2428/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 29th day of August, 2024.

Sd/-

(GIRISH AGRAWAL)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 29/08/2024
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

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. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), ITAT, Mumbai