

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2660/Mum/2024
(Assessment Year :2017-18)**

ITO-28(1)(1) Room No.329 3 rd Floor, Tower No.6 Vashi Railway Station Complex, Vashi-400703	Vs.	Ashwini Mahesh Khairnar 3/14, C-5, Sector-4 CBD Belapur Navi Mumbai-400 614
PAN/GIR No.BBZPK9180L		
(Appellant)	..	(Respondent)

Assessee by	Shri Rakesh Joshi
Revenue by	Shri Manoj Kumar Sinha
Date of Hearing	02/09/2024
Date of Pronouncement	05/09/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the revenue against the order passed by National Faceless Appeal Centre (NFAC), Delhi /CIT(A) for the quantum of assessment passed u/s.147 r.w.s. 144 read with Section 144B for the A.Y.2017-18. The revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the cases and in law, the Hon'ble CIT(A) has failed to appreciate that addition of Rs. 1.39 Crore relating to issues of investments in the flat/immovable property is sustainable as per the remand report as against addition made u/s 69 of the Act as per order u/s 147 r.w.s 144B, being taxable under the relevant provision

of sec 56(2), when the assessee has failed to prove the genuineness of the transaction claimed to be receipt of interest free advances by not producing documentary evidences of sources of repayment if any and has also failed to prove the capacity to repay.

2. Whether on the facts and circumstances of the cases and in law, the Hon'ble. CIT(A) has failed to appreciate that addition of Rs. 40 Lacs relating to amount of investment in purchase of car is sustainable as per remand report as against addition made u/s 68 of the Act, as per order u/s 147 r.w.s 144B, being taxable under relevant provision of sec 56(2), when the assessee has failed to prove the genuineness of the transaction claimed to be receipt of interest free advances by not producing documentary evidences of sources of repayment if any and has also failed to prove the capacity to repay.

3. Whether on the facts and circumstances of the cases and in law, the Hon'ble CIT(A) has failed to appreciate that the true nature of transactions have to be ascertained in the light of surrounding circumstances as held by Hon'ble Supreme Court in the case of SumatiDayal V/s CIT (214 ITR 801) and Durga Prasad More (82 ITR 540)”

2. The brief facts of the case is that the assessee is an individual engaged in profession of TV Artist, doing TV Advertisement Serial, Web Series, Music Albums and event etc. The AO based on the information received from INSIGHT portal under NMS category observed that the assessee had made the high volume transaction. The Ld Assessing officer in his impugned best judgment order mentioned that the Assessee had purchased immovable property of Rs.5,58,00,000/- and made an addition u/s 69 of the Act. Thereafter, the Ld Assessing Officer in his impugned order treated the motor vehicle purchased amounting to Rs.48,75,292/- as unexplained expenditure and added the same u/s 69C of the Act. Lastly, Ld. Assessing officer taxed

the cash credits made in the bank account amounting to Rs.10,52,400/- u/s 68 of the Act in absence of any explanation from the assessee.

3. In response to the ex-parte order passed by AO, the assessee before the CIT (A) filed an application under 46A of the Income Tax Rules, 1962 submitting additional evidence which could not furnished at the time of assessment proceedings. The CIT(A) called for remand report and in the remand report AO admitted that the property was purchased for Rs. 2,59,00,000/- and not for 5,58,00,000/- and further stated that the share of assessee was 50%, so undisclosed investment in property in the hands of assessee is only to the extent of Rs. 1,39,50,000/-. AO further submitted that as per bank statement and confirmation submitted by the assessee the entire consideration was paid by Mr. Arun Patil, who was the co-owner of the property, but since the assessee did not have the capacity to repay her share to Arun Patil, therefore, he requested CIT(A) to restrict the addition of Rs. 1,39,50,000/-. With regard to investment in car, AO submitted that as per documents submitted in remand proceeding the cost of car is only Rs. 41,15,000/- and not Rs. 48,75,292/- as alleged in the assessment order, which was funded by; i) Mr Arun Patil for Rs. 20,00,000/-; ii) Yogesh Khairnar, brother of the assessee Rs. 10,00,000/-; and iii) Ranjana Khairnar, mother of the assessee Rs. 10,00,000/-. AO further submitted that entire funds ultimately came from Mr Arun Patil, hence addition should be confirmed in the hands of assessee.

4. The CIT(A) have after considering the remand report submitted by the AO and the submission of the assessee and documents filed by the assessee, he held that addition of Rs 10,52,400 u/s 68 of the Act on account of cash credits is to be restricted to Rs 4,20,960/-; and the addition of Rs 5,58,00,000 u/s 69 of the Act on account of unexplained investment made towards purchase of immovable property was directed to be deleted and the addition of Rs 48,75,292 u/s 69C of the Act on account of unexplained expenditure incurred towards purchase of motor vehicle was also directed to be deleted.

5. Before us through grounds of appeal, AO took altogether new plea that the addition in the hands of assessee is sustainable U/s 56(2) of the Act. Ld. Senior DR submitted that since the assessee do not have the capacity to repay her entire contribution to Arun Patil hence, both amount paid for purchase of house and car should be treated as gift to her and is thus taxable U/s 56(2) of the Act.

6. On the other hand, Ld. Counsel for the assessee submitted that during the remand proceeding assessee had submitted loan confirmation from Arun Patil along with his bank statement and ITR to substantiate the loan and part of the amount was also repaid by the assessee. So at no stretch of imagination it can be treated as Gift U/s 56(2) of the Act. He also submitted that revenue can not deviate from the stand taken in the assessment order before the ITAT and to take new ground to sustain the addition. Accordingly, he requested to uphold the order of CIT (A).

7. We have heard the rival submissions and also perused the material on record. Ground of appeal No.1 challenges the finding of the ld. CIT(A) wherein the addition of Rs 5,58,00,000/- has been deleted. From the finding of the CIT(A), we find that the flat was purchased for total consideration of Rs. 2,79,00,000/-(and not for Rs. 5,58,00,000, which was added by the AO in the assessment). Further the said flat was jointly purchased by the assessee and Shri Arun Patil (Prop. Nirman Constructions) which was confirmed by submitting confirmation that the assessee's share of the property was paid by him on behalf of the assessee and was also supported by the banks Payment schedule of Nirman Constructions (Prop. Arun Patil) depicting dates of disbursement of the amounts and the Bank Statements of Nirman Constructions (Prop. Arun Patil) showcasing that the payment for the Flat was made through his bank account. Therefore, it is an undisputed fact that the payment was made by Shri Arun Patil and not by the assessee. Thus, for applying the provisions of section 69 of the Act, the AO should first come to a finding that the assessee has made investments and the same are not recorded in the books of account and thereafter he can call the assessee for an explanation from about the nature and source of the investments and in case he finds that the assessee is unable to furnish the explanation or the explanation offered by him is not satisfactory, the assessing officer can treat the value of the investments to be the income of the assessee of the financial year in which she/he has made the investments.

8. In the case of the assessee, the nature and source of payment is satisfactorily explained by the assessee with necessary supporting evidences and the AO has also not questioned the genuineness of the loan given by Shri Arun Nair and whether the loan have been completely repaid or pending is of no relevance to invoking of provisions of 69 of the Act. Therefore, we do not find any fallacy in the findings of the ld. CIT(A) in deleting the addition made by the AO amounting to Rs 5,58,00,000/- u/s 69 of the Income Tax Act, 1961.

9. Further with regards to the DR contention that the said addition is taxable u/s 56(2) of the Income Tax Act, 1961 it is mentioned that applicability of section 56 was never discussed by the AO or the CIT (A) in their respective order. Thus, the department cannot make out a fresh case or improve the order of the AO. Even otherwise revenue cannot deny the documents submitted in the form of loan confirmation and part repayment of the loan. AO has not made any further enquiry to disprove bonafide of these documents. Once both the parties have confirmed the transaction as loan, then revenue cannot treat it as gift merely on the plea that assessee does not have repayment capacity. Ld Counsel of the assessee has rightly submitted that the loan is fully secured as he is joint owner of the property and assessee cannot run away with the loan amount. Hence there is no merit in the contention of the revenue.

10. The second ground of appeal deals with deletion of Rs 48,75,292/- made by the AO u/s 69C of the Act. The assessee in the remand proceedings submitted as under:

- Invoice issued for purchase of Mercedes including invoice for other charges such as Insurance etc.
- Ledger of Auto Hanger showing that Rs. 40,21,000 was paid by the assessee for purchase of the Mercedes.
- Bank Statements highlighting the payment of Rs. 20,00,000 paid by the assessee.
- Bank statements of Yogesh Khairnar (brother of the assessee) evidencing payment of Rs. 10,00,055 paid by him on behalf of the assessee for purchase of the Mercedes on 22.02.2017,
- Bank Statements of Ranjana Mahesh Khairnar (mother of the assessee) showing payments of Rs. 10,00,055 paid by her on behalf of the assessee for purchase of the Mercedes on 22.02.2017.

11. Further the AO has also in the remand report admitted that the ultimate source of car purchase of Rs. 40,00,000 is from the bank account of Shri Arun Patil (Prop: M/s Nirman Constructions) by giving Rs.20,00,000 to the assessee, Rs. 10,00,000 to Mr.Yogesh Khairnar and Rs. 10,00,000 to Ranjana Khairnar which were utilized for purchasing the car. Therefore, when it is admitted by the AO that the ultimate source of car purchase of Rs. 40,00,000 is from the bank account of Shri Arun Patil, then it could not have been the

undisclosed expenditure of the assessee u/s 69C of the Act. Therefore, we do not find any fallacy in the findings of the Id. CIT(A) in deleting the addition made by the AO amounting to Rs 48,75,292/- u/s 69C of the Income Tax Act, 1961. Even the plea before us that the amount should be taxed U/s 56(2) of the Act is also without merit.

12. The third ground raised by the revenue being technical in nature is treated as infructuous and deleted accordingly.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced on 5th September, 2024.

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

Mumbai; Dated 05/09/2024
KARUNA, *sr.ps*

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai