

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA No. 2369/Mum/2024
(Assessment Year: 2015-16)

Shashank Rathi C/o. Goel Anil & Co. Arihant Plaza 84, Walltax Road Park Tower, Chennai, Tamil Nadu-600 063	Vs.	ITO, International Taxation Ward 4(1)(1) Room No. 1729, 17 th Floor, Air India Building, Nariman Point, Mumbai-400 021
PAN/GIR No. AFHPR 6541 K		
(Assessee)	:	(Respondent)
Assessee by	:	Shri A. Suraj Nahar
Respondent by	:	Shri Anil Sant
Date of Hearing	:	10.07.2024
Date of Pronouncement	:	07.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the final assessment order passed in pursuance of direction of Hon’ble Dispute Resolution Panel (Hon’ble DRP for short), relevant to Assessment Year (‘A.Y.’ for short) 2015-16.

2. The assessee has raised the following grounds of appeal:

1. *For that the order of the Dispute Resolution Panel and consequently the order of the Assessing Officer is without jurisdiction, is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*

Addition of Rs.28,22,380/- u/s.69 as unexplained investment

2. *For that the Dispute Resolution Panel and consequently the Assessing Officer erred in adding a sum of Rs.28,22,380/- u/s.69 of the Income Tax Act as unexplained investment of the appellant.*

3. For that the Dispute Resolution Panel and consequently the Assessing Officer failed to appreciate that the provisions of section 69 are not invocable in the facts and circumstances of the case and thus no addition u/s.69 is warranted in the instant case.

4. For that the Dispute Resolution Panel failed to appreciate that the nature and source of the sum of Rs.28,22,380/- towards purchase of immovable property was explained to the satisfaction of the Assessing Officer along with relevant documentary evidence, which was duly accepted by the Assessing Officer while passing the Draft Assessment Order.

5. For that the Dispute Resolution Panel without providing sufficient opportunity to the appellant to substantiate the nature and source of the sum of Rs.28,22,380/- paid by the appellant towards the purchase of immovable property, erred in treating the same as unexplained investment.

6. For that the Dispute Resolution Panel failed to appreciate that the appellant has sufficient documentary evidence to substantiate the nature and source of the sum of Rs.28,22,380/- paid towards purchase of immovable property in question.

Levy of interest u/s.234A, 234B and 234C

7. The appellant objects to the levy of interest under sections 234A, 234B and 234C of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee is a non-resident individual and had not filed his return of income for the year under consideration. The assessee's case was reopened vide notice u/s. 148 of the Act dated 17.06.2021 on the basis of the information received from the 'non-filer under monitoring system' and AIR that the assessee had purchased an immovable property for a sale consideration of Rs.5,04,10,775/- and the same was found to be undisclosed, thereafter materials and documents as per the requirement of section 148A(b) of the Act were furnished to the assessee on 20.05.2022 as per the direction of the Hon'ble Apex Court in the case of *Ashish Agrawal vs. Union of India* (in Civil Appeal No. 3005/2022 vide order dated 04.05.2022). Pursuant to the notice u/s. 148 dated 31.07.2022, after due approval, the assessee filed his return of income in response to the same dated 19.08.2022, declaring total income at Rs.19,15,010/-.

4. The learned Assessing Officer (ld. A.O. for short) observed that the assessee has purchased an immovable property at Flat No. 2801, 28th Floor, Crescent Bay, Parel, Mumbai-400 012 vide an agreement dated 21.07.2014, for a sale consideration of Rs.5,04,10,775/-, for which the assessee was sought for explanation as to the source of the said investment. The ld. A.O. passed the draft assessment order dated 24.05.2023 u/s. 144C(1) of the Act, proposing an addition of Rs.3,98,62,195/- as 'unexplained investment' u/s. 69 of the Act on the ground that the assessee has failed to explain the nature of source of the impugned amount.

5. The assessee filed his objection before the Hon'ble DRP and vide direction dated 28.02.2024, the Hon'ble DRP proposed the ld. A.O. to make an addition of Rs.28,22,380/- as 'unexplained investment' u/s. 69 of the Act, thereby directing to delete the remaining addition of Rs.3,70,39,815/-. The ld. A.O. then passed the final assessment order dated 13.03.2024 u/s. 147 r.w.s. 144C(13) of the Act, determining the total income at Rs.47,37,390/-, after making an addition of Rs.28,22,380/- as 'unexplained investment' u/s. 69 of the Act.

6. Aggrieved by the said order, the assessee is in appeal before us, challenging the impugned addition.

7. The learned Authorised Representative (ld. AR for short) for the assessee made a submission that the assessee had made payment of Rs.5,04,10,775/- towards the purchase of the immovable property at various tranches since 2013 upto 2016 and during the year under consideration, only Rs.1,14,48,580/- was paid as part consideration. The ld. AR further contended that the ld. A.O. in the draft assessment order has erroneously made an

addition of Rs.3,98,62,195/- instead of Rs.3,89,62,195/-, which is an arithmetic error. The ld. AR further contended that the assessee had substantiated the source of Rs.1,14,48,580/- which was the part of the sale consideration that was paid during the year under consideration and the same was also acknowledged by the ld. A.O. during the assessment proceeding. The ld. AR further stated that the assessee has substantiated the entire sale consideration which was out of the salary earned by the assessee along with interest income and provident fund settlement from previous employment and transferred from his NRE and NRO account. The ld. AR prayed that the impugned addition be deleted.

8. The learned Departmental Representative (ld. DR for short), on the other hand, controverted the said facts and stated that not only the amount received during the year should be explained, but the assessee had the onus to explain the source of the entire sale consideration paid over the years. The ld. DR stated that the assessee has failed to explain the source for Rs.28,22,380/- before the Hon'ble DRP and that the ld. A.O. has rightly made an addition on the impugned order. The ld. DR relied on the order of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the main source of the income of the assessee was the salary income earned by the assessee who worked with Bank of America and later shifted his job to Capula Investment Management in Hongkong. The assessee vide agreement dated 21.07.2014 has purchased a property for a sale consideration of Rs.5,04,10,775/-, out of which Rs.1,14,48,580/- was paid as part sale consideration during the impugned year.

The assessee during the assessment proceeding has restricted to explaining the source of the said investment to the extent that was paid during the impugned year where Rs.28,22,380/- as one installment dated 23.07.2014 and three installments of Rs.28,75,400/- on 13.05.2014, 01.10.2014 and 16.12.2014 were made, which aggregated to Rs.1,14,48,580/-, transferred from his salary account to his NRE and NRO accounts maintained with ICICI Bank. The assessee also furnished the bank statements of these payments and the employer's return issued by Capula Investment Management Asia Ltd. for F.Y. 2014-15 where it was observed that the assessee has received a salary of HKD 10,40,909/- which equals to Rs.81,81,545/- (exchange rate of 1 HKD = INR 7.87 in 2014). The Id. A.O. made an addition on the balance amount of Rs.3,98,62,195/- as 'unexplained investment'. The assessee contends that even otherwise there was a arithmetical error in computing the balance payment, which would be Rs.3,89,62,195/- (difference of Rs.9 lacs). The assessee in his objection filed before the Hon'ble DRP had furnished the complete details of the total sale consideration, including those which were paid during A.Ys. 2013-14, 2016-17 to 2020-21, along with the bank account statement of its NRE and NRO account maintained with ICICI and HDFC Bank account. The Hon'ble DRP considered the submission of the assessee and directed that only the initial payment of Rs.28,22,380/- has not been explained by the assessee and proposed the same to be added to the total income of the assessee u/s. 69 of the Act as 'unexplained investment'.

10. Before us, the Id. AR for the assessee has filed a written submission, evidencing the payments, aggregating to Rs.5,50,68,738/- towards the sale consideration and other

charges towards water, electricity, drainage, sewerage connection, club house charges, stamp duty, registration charges and interest on delayed payment of consideration. The same is tabulated herein under for ease of reference:

<i>Payments to L & T from ICICI Bank NRE A/c No. 019701004837</i>		<i>Payments to L & T from ICICI Bank NRO A/c No. 019701075414</i>		<i>Payments to L & T from HDFC Bank Account</i>	
<i>Date of payment</i>	<i>Amount in INR</i>	<i>Date of payment</i>	<i>Amount in INR</i>	<i>Date of payment</i>	<i>Amount in INR</i>
14.10.2013	56,93,291	23.07.2014	28,22,380	22.10.2012	11,00,000
26.12.2013	26,14,001	10.04.2015	28,46,646	11.12.2012	87,74,009
22.02.2014	26,14,001	18.03.2019	10,00,000		
25.03.2014	5,04,108	19.03.2019	10,00,000		
13.05.2014	28,75,400	22.03.2019	10,00,000		
01.10.2014	28,75,400	25.03.2019	10,00,000		
26.12.2014	28,75,400	28.03.2019	3,06,782		
29.06.2015	29,04,154	03.05.2019	6,98,680		
22.08.2015	28,60,152				
06.04.2016	87,04,334				
Total	3,45,20,241	Total	1,06,74,488	Total	98,74,009
Grand Total – 5,50,68,738*					
* The above payment to the tune of Rs.5,50,68,738/- includes the actual purchase consideration of Rs.5,04,10,775/- and also payments towards other charges such as charges towards water, electricity, drainage, sewerage connection, etc. club house charges etc. stamp duty and registration charges and interest on delayed payment of consideration.					

In the above tabular column, it is observed that all these details were furnished before the Hon'ble DRP, which was tabulated at pg. no. 7 of the Hon'ble DRP's direction, except the four payments which has been highlighted above. It is pertinent to point out that the impugned payments highlighted has been verified and accepted by the Id. A.O. at pg. no. 2, para 6 of the draft assessment order.

11. From the above factual matrix of the case, it is observed that the assessee has substantiated the nature of source of the investment over and above the sale consideration paid by him for the purchase of property along with the other incidental charges incurred by him at the time of the said purchase. We are of the considered view that the assessee has discharged the onus of proof casted upon him to explain the source of the investment

made by him, as per the provisions of the I.T. Act. We, therefore, deem it fit to allow the grounds of appeal raised by the assessee and hereby direct the Id. A.O. to delete the addition made in the hands of the assessee.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07.10.2024.

Sd/-

(Renu Jauhri)
Accountant Member

Mumbai; Dated : 07.10.2024
Roshani, Sr. PS

Sd-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai