

| आयकर अपीलिय अधिकरण न्यग्रपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 4461/Mum/2024
Assessment Year: 2012-13

Lalita Niranjn Mayadeo, Mumbai A 75, Kalpataru Sparkel Nana Dharmadhikari Marg Bandra East Mumbai - 400051 [PAN: AAEPM7337A]	Vs	Jurisdiction Ward 16(2)(1), Mumbai
अपीलर्गी/ (Appellant)		प्रत्यर्गी/ (Respondent)

Assessee by :	Shri Anil Sathe, A/R
Revenue by :	Shir Lieder Panicker (Sr. D/R)

सुनवाई की तारीख/**Date of Hearing** : 09/10/2024
घोषणा की तारीख /**Date of Pronouncement**: 11/10/2024

अदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order passed by NFAC, Delhi, [hereinafter 'the ld. CIT(A)'] dated 10/07/2024 pertaining to AY 2012-13.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in confirming the addition of Rs.38,46,509/- made by the AO on account of investment with M/s. Kalpataru Enterprises.

3. Briefly stated the facts of the case are that the assessee filed her return of income on 24/09/2012 declaring total income at Rs.11,62,650/- . The return was processed u/s 143(1) of the Act.

3.1. On the basis of information received from ACIT - 34(2), Mumbai, the AO came to know that during the course of scrutiny assessment, in

the case of the husband of assessee, Dr. Niranjn Mayadeo for AY 2010-11 and 2016-17, it was found that the assessee had paid certain payments on behalf of her husband to the builder M/s. Kalpataru Enterprises, for purchase of a flat in the name of Dr. Niranjn Mayadeo, in the project, Kalpataru Sparkle, Bandra East, Mumbai. In order to verify the details, the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act.

3.2. Subsequently, in response to notice u/s.148 of the Act, the assessee e-filed its return of income on 10/05/2019, declaring a total income of Rs. 11,62,650/-. A copy of reasons for re-opening was given to the assessee on 06/06/2019. Thereafter, notice u/s.143(2) of the Act and Notice u/s.142(1) of the Act dated 05/11/2019 along with a detailed questionnaire, was issued and served on the assessee. However, the assessee did not reply to the said notice on compliance date but instead filed an adjournment letter dated 20/11/2019. Penalty Notice u/s.271(1)(b) r.w.s. 274 of the Act dated 04/12/2019 was issued and served on the assessee for non-compliance of statutory notice. Another opportunity was given vide notice u/s.142(1) of the Act dated 06/12/2019 to file the remaining details w.r.t. initial notice u/s.142(1) of the Act dated 05/11/2019. However, the assessee did not reply to the said notice on compliance date. Another Penalty Notice u/s.271(1)(b) r.w.s. 274 of the Act dated 12/12/2019 was issued and served on the assessee for non-compliance of statutory notice. Third Notice u/s.142(1) of the Act was issued to the assessee to submit the remaining details

earlier notice u/s.142(1) of the Act dated 05/11/2019 and 06/12/2019. The assessee did not file any reply to this notice in the due-time. In view of the above, a show cause letter dated 18/12/2019 was issued to the assessee for completion of the assessment proceeding u/s 144 of the Act giving compliance dated as 21/12/2019. The assessee did not reply to the said notice until 21/12/2019 afternoon. On 21/12/2019, another notice u/s.142(1) was issued to the assessee to comply with the points of show cause notice before 23/12/2019. The assessed uploaded the response to the show cause notice on 21/12/2019, on receipt of reply to the show cause the response of the assessee was disabled for drafting the assessment order. On 23/12/2019, the A/R of the assessee appeared before the AO and requested to enable the response. The response was enabled and the assessee filed the final replies on 24/12/2019.

3.3. Following information was forwarded by the ACIT-34(2), Mumbai along with relevant financials and bank account details of Dr. Lalita Mayadeo for the A.Y.2012-13:-

"During the course of scrutiny assessment for the A. Y.2016-17 in the case of Dr. Niranjana Mukund Mayadeo while explaining the source for the payment of Rs.5,10,31,641/- invested in Flat, purchased from Kalpataru Builders, filled the schedule of payment to the builder. Out of which the following is the schedule of payment to the builder. Out of which the following is the schedule of payment stated to be made by Dr. Lalita Mayadeo, wife of Niranjana Mayadeo:

S. No.	Date of Transaction	Name of the Account Holder	Name of Bank	Account No.	Amount given	Relevant A. Y.
1.	17.11.2011	Lalita/Niranjana	NKGSB	5882	3848509	2012-13
2.	29.11.2011	Lalita/Niranjana	NKGSB	5882	2000000	2012-13
		TOTAL			5846509	2012-13

The above transactions were not found in the books of Dr. Lalita Mayadeo and on perusal of the capital account for the RY 2011-12 relevant to the A.Y.2012-13, it is noticed that the above amounts were not shown. The above SB a/c, 5882 is in the name of Dr. Lalita and Dr. Niranjana. On the investment made in the company Kalpataru Enterprises and Kiyana Ventures LIP, an amount of Rs. 431,353/- received and shown in her return of income. But the above payment of Rs.56,46,509/- made to the Builder has not been shown in the return of income. On 04.05.2011 Dr. Lalita Mayadeo gave an amount to Mrs. Jyotsna Moreswar Vaidya and credited in a/c no.20036221604 with bank of Maharashtra but not shown anywhere in the books of account. Hence this amount should also be treated as unexplained.

During the F.Y.2010-11 no investment was made by Dr. Lalita in the concerns of M/s. Kalpataru Enterprises and Ms. Nivana Ventures LIP but the investment of Rs.35,00,000/- invested in Kalpataru Enterprises as on 09.02.2011. The same was received from a/c No.5882 only. The above investment was not reflected in the books of Dr. Lalita for F. Y.2010-11. During the F.Y.2011-12 Dr Lalita has withdrawn an amount of Rs.38,46,509+30,676 towards TDS which includes interest of Rs.377,185. Out of this the above amount of Rs.38,46, 509 paid to the Builder and remaining amount of Rs.20,00,000/- wherefrom she got and what are the sources for that not explained. Because not reflected in the books of account. During the F.Y.2011-12 the assessee has also invested an amount of Rs.25,00,000 on 09.12.2011 in Kiyana LLP where from this amount received not explained.

Total amount of Rs.26,12,131 was in the Kiyana Ventures LLP as on 31.03.2012. But as per the Books of account of assessee it was Rs.29,08,076/- Hence there was a difference of Rs.2,95,945 which is an unaccounted investment in the hands of Dr. Lalita for the F.Y.2011-12 relevant to A. Y.2012-13."

3.4. The assessee was asked to explain the source of payment of Rs.38,46,509/- and Rs.20,00,000/-. In her reply, the assessee stated that the payments were made from the bank account which is jointly held by the assessee with her husband. It was explained that the fixed deposits given to M/s. Kalpataru Enterprises in earlier years matured during the year and the maturity amount received was Rs.38,46,509/-

and the same was paid for the impugned property. Rs.20,00,000/- was available balance in the bank account. The submissions of the assessee did not find any favour with the AO who completed the assessment by making addition of Rs. 58,46,509/-.

3.5. The assessee carried the matter before the Id. CIT(A) and reiterated her submissions. The Id. CIT(A) was convinced with the explanation to the extent of Rs.20,00,000/- and found that the source of Rs.20,00,000/- was accumulated savings belonging to both the assessee and her husband and after verification of the bank statement, Rs.20,00,000/- was deleted and the balance amount was confirmed.

4. Before us, the Id. Counsel for the assessee drew out attention to the statement of account given by M/s. Kalpataru Enterprises to show that Rs.35,70,422/- was paid by the said firm. The Id. Counsel for the assessee also stated that M/s. Kalpataru Enterprises, has credited interest of Rs.3,06,763/- and after deducting the tax at source has paid Rs.2,76,087/-. It is the say of the Id. Counsel that the assessee had made the payments out of the funds received from M/s. Kalpataru Enterprises.

The Id. D/R strongly supported the findings of the AO but could not point out any error or infirmity in the facts demonstrated by the Id. Counsel.

5. We have given a thoughtful consideration to the orders of the authorities below. The statement referred by the Id. Counsel is as under:-

In The Books of Kalpataru Enterprises
101, Kalpataru Synergy, Opp.Grand Hyatt, Santacruz (East), Mumbai-400055

Account of,
Lalita N. Mayadeo
Niranjan M. Mayadeo
A/75, Kalpataru Sparkle, MIG Colony, Gandhi Nagar,
Bandra (East),
Nana Dharmadhikari Marg,
Mumbai 400051

Dated : 31.03.2012

Dear Sir / Madam,


Sub: Confirmation of Account
01.04.2011 to 31.03.2012

Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

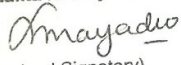
Date	Particular	Debit (₹)	Credit (₹)	Balance (₹)
	OPENING BALANCE			3570422.00CR
01.04.2011	INTEREST PAID	70422.00		3500000.00 CR
01.04.2011	RECEIVED ON ACCOUNT		70422.00	3570422.00 CR
14.10.2011	INTEREST @ 16.00 % FROM 01.04.2011 TO 13.10.2011		306763.00	3877185.00 CR
14.10.2011	TDS ON INTEREST	30676.00		3846509.00 CR
14.10.2011	INTEREST PAID	276087.00		3570422.00 CR
14.10.2011	PAID ON ACCOUNT	3570422.00		0.00 DR
	CLOSING BALANCE			0.00 DR

Kindly return 2 copies, duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown above.
Note : This account operates on 'Former or Survivor' basis.

Yours Faithfully,

For Kalpataru Enterprises

Authorised Signatory
PAN: AAKFK2472L

I/We Confirmed above Statement of Accounts

For Lalita N. Mayadeo

(Authorised Signatory)
PAN: AAPEM7337A

CERTIFIED TRUE
For GOKHALE & S
CHARTERED ACCOUNTANTS

5.1. It can be seen from the above that M/s. Kalpataru Enterprises had paid Rs.35,70,422/- along with interest of Rs.2,76,087/-. This covers the payment of Rs.38,46,509/-. Since the source of Rs.20,00,000/- has already been accepted by the Id. CIT(A) and the revenue is not in appeal, therefore, to that extent, the issue has attained finality. Considering the facts of the case in totality, we are of the considered

view that the assessee has successfully explained the payment of Rs. 38,46,509/-. Therefore, no addition needs to be made u/s 69 of the Act.
6. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 11th October, 2024 at Mumbai.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 11/10/2024

Sd/-

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai