

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.3743/MUM/2024

(Assessment Year :2018-19)

ACIT, 16(3)

Aayakar Bhawan, Room No.446,
4th Floor M.K. Road,
New Marine Lines,
Mumbai - 400020

..... Appellant

v/s

Sangeeta Ganpat Sawant,

1404 Tower No.9,Pine the Orchard,
Resi, B/H R City Mall,LBS Marg,
Ghatkopar,
West Mumbai- 400086
PAN: AAGPS7612E

..... Respondent

Assessee by : Shri Sanjay Parikh

Revenue by : Shri BhangapatilPushkaraj Ramesh, Sr.DR

Date of Hearing – 15/10/2024

Date of Order 17/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 13/06/2024 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ("learned CIT(A)"), for the assessment year 2018-19.

2. In this appeal, the Revenue has raised the following grounds: –

"1. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in allowing the addition u/s. 69 made by the AO in assessment order u/s 143(3) of the IT Act vide order dated 06.04.2021.

2. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the fact that the AO's decision was based on the evidence provided by the assessee at the time of assessment proceedings with proper application of mind.

3. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not appreciating the facts that documents and evidences submitted before the Id. CIT(A) by the assessee was not submitted before the AO.

4. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not accepting the fact that due to lack of evidence produced by the assessee, the AO had to make the addition of Rs.3,33,25,290/- u/s. 69 on account of investment in immovable property.

5. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not accepting the fact that, it was due to lack of details and evidences furnished by the assessee in support her claim of improvement cost, the claimed index value amounting to Rs. 9,54,008/- was added under head Capital Gain by the AO.

6. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not following the fact that the submission/evidences of the assessee submitted to the Id. CIT(A) can be admitted with the compliance of Rule 46A.

7. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not giving any instruction/direction to the AO to verify the evidences moved by the appellant with the Ld. CIT(A).

8. Whether on facts and circumstances of the case the Ld. CIT(A) has erred in not adhering to observing the Rule 46A."

3. The first issue that arises for consideration, in the present case, pertains to deletion of addition made under section 69 of the Act on account of investment and immovable property.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration filed the return of income on 25/10/2018 declaring a total income of Rs. 57,35,120. The return filed by the assessee was selected for complete scrutiny and statutory notices under section 143(2) and section

142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to provide the details of all immovable properties purchased and sold during the year under consideration. In response, the assessee stated that she had purchased the property on 03/02/2017 for a consideration of Rs. 3 crore for which stamp duty has been determined by the sub-registrar at Rs. 3,25,42,961 and for which stamp duty and VAT GST was paid amounting to Rs.16,60,000 and Rs. 16,85,590. Thus, the cost of the said immovable property purchased amounting to Rs.3,33,25,590 and the source thereof has stated that from SBI Loan Account. On perusal of details and documents furnished by the assessee, it was noticed that the assessee has taken SBI Home Loan of Rs. 1,13,00,000 on 11/01/2018 jointly with the husband. On perusal of details provided by the assessee, it was noticed that the assessee has invested in the purchase of the property of Rs.3,33,25,590 on 03/08/2017 in the joint names of the assessee herself and with Sh. Raunak Ganpat, whereas the SBI Home Loan was taken on 11/01/2018 by the assessee herself jointly with her husband. Accordingly, the Assessing Officer ("AO") vide order dated 06/04/2021 passed under section 143(3) read with section 143(3A) and section 143(3B) of the Act held that the loan was taken by the assessee for furniture/furnishing/alteration/modification in the property purchased and thus it was held that the assessee has not declared purchase of any property in the books of account because this investment is out of the books of account and from her undisclosed income earned during the year under consideration. Accordingly, the amount of Rs.3,33,25,590 was added to the

total income of the assessee as an unexplained investment under section 69 of the Act.

5. The learned CIT(A), vide impugned order, allowed the ground raised by the assessee on this issue and deleted the addition made by the AO under section 69 of the Act, by observing as follows: –

"4.1 The appellant given written submissions and grounds of appeal have been carefully perused.

4.2 The first ground of the appellant pertains to addition made of Rs.3,33,25,290/- u/s. 69 on account of immovable property. The AO had disallowed and made the addition of the same stating that the appellant had not shown the purchase of property in the books of account meaning that it was purchased from undisclosed income, thus the addition. In the appellate proceedings, the appellant has claimed that in her books of accounts and she have clearly included the purchased property of Rs.3,33,25,990/- under the Fixed assets head. The appellant has also submitted that the agreement was entered on 13.07.2015 and part payment of the same of Rs.59,40,000/- was paid through banking channels, the source of which was sale of flat. The appellant has also submitted that the balance payment for the purchase of property is made through proper banking channels and enclosed the relevant bank statements. On perusal of the documents submitted, it is found that the appellant had entered an agreements on 13.07.2015 to purchase the flat and paid part consideration of Rs. 59,40,000/- at the time of entering into agreement and the remaining amount is paid in the subsequent years from the bank accounts. The submission made by the appellant also provided the source for purchase of said flat is the sale consideration received on sale of flat in the AY 2016-17 and SBI top up loan. In support of this claim, enclosed copy of ITR, bank account statements and ledger account copy of the appellant from the books of account of the builder. In this regard, the above submissions of the appellant are found to be genuine and the source for payment of Rs. 3,33,25,590/- for purchase of flat is considered as explained by the appellant. Hence, this ground of the appellant in this regard is allowed."

Being aggrieved, the Revenue is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is an individual and a doctor by profession. During the year under consideration the assessee entered into an agreement with Swastik Realtors for the purchase of an under-construction property situated at Ghatkopar, Mumbai for a consideration of Rs. 3 crore and stamp duty value, registration

charges and other charges incurred by the assessee for purchase of the said property was Rs. 33,25,290. As per the AO, the aforementioned property was purchased by the assessee from her undisclosed income and the same has not been declared by the assessee in her books of accounts.

7. From the perusal of the balancesheet of the assessee, forming part of the paper book on page 21 read along with the detailed chart of depreciation on page 23 of the paper book, we find that the said property forms part of the fixed asset and has been duly disclosed in the books of accounts of the assessee. As per the assessee, till 31/03/2018 she had to pay the builder an amount of Rs. 1.99 crore and the property was allotted by the builder on 13/07/2015. Further, in 2015, the assessee claimed that she paid Rs. 69.40 lakh to the builder, therefore the sale agreement was prepared as per the allotment letter. It is further the claim of the assessee that to pay the initial amount to the builder, one residential flat was sold on 17/04/2015 for a consideration of Rs. 60 lakh, out of which an initial payment of Rs.59.40 lakh was paid to the builder on 13/07/2015. We find that the aforesaid submission was also made before the AO in response to the draft order. Further from the ledger account of the builder in the books of the assessee, forming part of the paper book on pages 43-44, we find that out of the total amount of Rs.3,33,25,590, an amount of Rs. 1,99,60,000 was yet to be paid as on 31/03/2018 and only an amount of Rs. 1,33,65,590 was paid by the assessee to the builder in the year under consideration. From the aforesaid ledger account, we find that the assessee has duly provided the source of payment of Rs. 1,33,65,590 paid in the year under consideration. Thus,

when the entire payment of Rs.3,33,25,590 was not made by the assessee during the year under consideration, we find no merit in treating the entire sum as an unexplained investment in the year under consideration. Since the assessee has duly explained the source of the payment made during the year under consideration, we find no infirmity in the impugned order in deleting the addition made under section 69 of the Act. As a result, the grounds pertaining to this issue are dismissed.

8. The next issue that arises for our consideration pertains to the computation of indexed cost.

9. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee declared income from long-term capital gains of Rs. 24,63,066 in the computation of total income from immovable property sold out after claiming cost of Rs. 4,49,892, improvement cost Rs. 5,57,577 written as CIDCO, Rs. 1,56,122 written as EXTENSION and Rs. 1,77,176 written as CISCO and has claimed indexing value of Rs. 20,36,934 for these items. In the absence of any documentary evidence, the AO disallowed claimed indexed value of Rs. 9,54,008 and added the same to the total income of the assessee under the head income from long-term capital gains. The learned CIT(A), vide impugned order, deleted the addition in respect of additions made in regard to CIDCO and EXTENSION as the assessee filed necessary details. However, the learned CIT(A) upheld the addition on account of the cost of improvement under the name CISCO, as the assessee could not submit any evidence. Being aggrieved by the deletion of addition by the learned CIT(A), the Revenue is in appeal before us.

However, the assessee has not filed any appeal against the addition upheld by the learned CIT(A).

10. In the present case, it is undisputed that the learned CIT(A) did not call for any remand report from the AO in respect of additional evidence furnished by the assessee. In respect of the payment of Rs. 5,57,577 made to CIDCO, the assessee has submitted the payment receipts which form part of the paper book from pages 70-71. Thus, we do not find any reason to doubt the same. As regards the payment of Rs. 1,56,122 written as EXTENSION, we deem it appropriate to restore the issue to the file of AO for necessary verification of evidence submitted by the assessee. Needless to mention, no order shall be passed without affording a due opportunity of hearing to the assessee. Accordingly, the impugned order on this issue is partly modified. As a result, the grounds pertaining to this issue are partly allowed for statistical purposes.

11. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 17/10/2024

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

MUMBAI, DATED: /10/2024
Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai