

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

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

I.T.A 3241/Mum/2024
(Assessment Year 2017-18)

Raj Group 6, Guru Ashray, MIDC Road Katrap, Badlapur East-400614 PAN- AAAFR9689K	vs	Assistant Commissioner of Income-tax, Circle 2, Kalyan Rani Mansion, Murbad Road Kalyan West, Dist.Thane
APPELLANT		RESPONDENT

Assessee by : ShriShriram Bajaj
Respondent by : Shri Sunny Kachhwaha, Sr.DR

Date of hearing : 07/10/2024
Date of pronouncement : 23/10/2024

ORDER

PER ANIKESH BANERJEE, J.M:

The 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 2017-18, date of order 08.05.2024. The impugned order was emanated from the order of the Learned Assistant Commissioner of Income-tax, Central 2, Kalyan, order passed under section 143(3) of the Act, date of order 08/12/2019.

2. The assessee has taken the following grounds:-

"Being aggrieved by the order dated 08.05.2024 passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi. [Ld. C.I.T. (A)] u/s 250 of the Income-tax Act, 1961 ("Act"), your appellant prefers this appeal, among others, following grounds of appeal, each of which is without prejudice to, and independent other:

1. Addition of Rs.14,03,170/u/s. 43CA

On the facts and in the circumstances of the case, and also in law, the Ld. C.I. erred in confirming addition of Rs. 14,03,170/ out of total addition of Rs.21,90,870/- ignoring the clear provisions of section 43CA of the Act and without appreciating evidences submitted by your appellant. Your appellant, therefore, prays that addition of Rs. 14,03,170/- be deleted.

2. Disallowance of interest of Rs.64,000/-

On the facts and in the circumstances of the case, and also in law, the Ld. C. erred in confirming the disallowance of interest Rs,64,000/ made by the AO without appreciating the evidences substantiating that interest free advances during the year were out of the non-interest bearing funds. Your appellant, therefore, prays that the said addition be deleted.

Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary."

3. The brief facts of the case are that the assessment was framed under section 143(3) of the Act with an addition of interest under section 36(1)(iii) of the Act amount to Rs.64,000/- and the addition under section 43CA of the Act amount to Rs.21,90,870/- which comes to total amount of Rs.22,54,870/-. The aggrieved assessee filed an appeal before the Id. CIT(A). The assessee filed additional evidence before the Id. CIT(A) but without considering the same, the appeal was partly allowed. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. We heard the rival submissions and considered the documents available in the record. The Id.AR filed a written submission, which is kept in the record (in short APB). The Id.AR invited out attention in the impugned appeal order, paragraph VI on page 8 which is reproduced as below:-

“VI. Issue No 2-Before I go into the main issue, the admissibility of Additional Evidence under Rule 46A is discussed. The taxpayer has in an Application dt 28/4/2024 has requested for admitting Additional Evidence under Rule 46A. The taxpayer in the application pleaded that these evidences were not produced before the assessing authority and the same may be admitted to advance the cause of substantive justice. The additional evidences are for pleading Ground no 2/3. The reason for request for admitting additional evidence is that the AO did not bring to notice during scrutiny assessment proceedings the proposed addition. It is informed that additional evidences are admitted. It is also informed that all evidences produced during appeal proceedings are considered.”

The Id.AR argued that the assessee sold the residential property and the difference in between the value mentioned in the agreement of sales and the value adopted in the stamp duty value. During the impugned assessment year, the assessee made 27 transactions out of that the Id. AO made addition on the difference of value in 21 transactions. The assessee filed appeal by challenging the impugned assessment order before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal and addition was deleted amount to Rs.7,87,700/- out of the total addition amount to Rs.21,90,870/- considering the difference of value 5% or less. The rest of the amount of Rs.14,03,170/- is upheld which is the point of grievance for the assessee. The assessee placed before the Id.CIT(A) through additional evidence that for 21 customers, the difference was less than 10% but more than 5%. The amendment was made to section 43CA and enhanced the difference

@10% with effect from 01/04/2021 by Finance Act, 2020. So the assessee will get the opportunity for the enhanced differential rate from 5% to 10% during calculation of tax related to section 43CA of the Act. On that basis, the detailed list was submitted before the Id.CIT(A). But without considering the additional evidence the appeal order was passed. The Id.AR further placed that the amendment to Finance Act, 2020 related to section 43CA has a retrospective effect, cited the judgement of the Hon'ble Supreme Court in the case of **CIT vs Vatika Township (P) Ltd (2014) 367 ITR 466 (SC)** and the order of the co-ordinate Bench of ITAT, Pune Bench "B" in the case of **Sai Bhargavnath Infra vs ACIT 144 taxmann.com 168 (2022)**, date of pronouncement **17/08/2022**.

The Id.AR argued and also placed that the additional evidence should be considered after allowing the Id.AO reasonable opportunity of hearing and he prayed for remanding the matter to the file of the Ld.CIT(A).

In our considered view, we find that in the impugned appeal, the Ld.CIT(A) had not considered the additional evidence filed by the assessee under rule 46A of the Income-tax Rules, 1962. The Id.CIT(A) does not mention any reasons for not considering the said additional evidence while passing the impugned appeal order. The reasonable opportunity is denied for not considering the evidence filed by the assessee during appeal proceeding. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted to the file of the Id. CIT(A) for consideration the additional evidence of the assessee, filed during the appeal proceeding. The Id. CIT(A) is directed to accept the additional evidence as per law and to pass a speaking order by considering the merit of the case. We are not expressing any views on the

merits of the case to limit the appellate procedure before the Id. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing inset aside proceedings.

The Id.AR further argued related to addition of interest under section 36(1)(iii) of the Act, amount of Rs.64,000/-. In the assessee's paper book assessee explained that the assessee has sufficient interest free funds wherefrom the interest free finance was made to the party. The issue is factual in nature and deployment of fund required further verification by the Id. CIT(A). The issue is remanded to the file of the Id.CIT(A) for adjudication afresh.

5. In the result, the appeal of the assessee bearing **ITA No.3241/Mum/2024** is allowed for statistical purpose.

Order pronounced in the open court on 23rd day of October, 2024.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 23/10/2024
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