

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3378/MUM/2024  
Assessment Year: 2018-19**

ACIT,  
506, 5<sup>th</sup> floor, Piramal  
Chamber, Lalbaug, Parel,  
Mumbai-400012.

**Appellant**

**Vs.** Anil Kumar Jagdishraj Seth,  
Flat No. 1201, Jeevan Satya Co-op.  
Housing Society, 15<sup>th</sup> Road, Plot No.  
411, Bandra (W),  
Mumbai-400050.  
**PAN NO. AOBPS 8150 E**  
**Respondent**

**CO No. 137/MUM/2024  
(Arising out of ITA No. 3378/MUM/2024)  
Assessment Year: 2018-19**

Anil Kumar Jagdishraj Seth,  
Flat No. 1201, Jeevan Satya Co-  
op. Housing Society, 15<sup>th</sup> Road,  
Plot No. 411, Bandra (W),  
Mumbai-400050.  
**PAN NO. AOBPS 8150 E**  
**Appellant**

**Vs.** ACIT,  
506, 5<sup>th</sup> floor, Piramal Chamber,  
Lalbaug, Parel,  
Mumbai-400012.  
**Respondent**

Assessee by : Mr. Madhur Agrawal  
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 23/10/2024  
Date of pronouncement : 28/10/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

This appeal by the Revenue and cross-objection by the assessee are directed against order dated 30.04.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2018-19.

2. The grounds raised by the Revenue are reproduced as under:

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in restriction the addition of Rs. 1,62,00,000/- to Rs.61,13,808/- on account of unexplained investment, without appreciating the fact that unsecured loan advanced by the assessee amounting to Rs. 1,62,00,000/- to M/s. RCL was not recorded by the assessee in his book of account."*
2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in restriction the addition of Rs. 1,62,00,000/- to Rs.61,13,808/- on account of unexplained investment, without appreciating the fact that unsecured loan advanced by the assessee amounting to Rs 1,62,00,000/- to M/s RCL was not recorded by the assessee in his book of account and only when the SCN was issued to the assessee identifying the discrepancies, the assesses tried to correlate the same in guise of investment."*
3. *"Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in restriction the addition of Rs. 1,62,00,000/- to Rs.61,13,808/- on account of unexplained investment, without appreciating the fact that closing balance in the head of loans and advances appeared in the assessee's balance sheet at Rs. 5,62,36,555/-whereas the unsecured loans against the assessee in the balance sheet of M/s RCL is shown at Rs. 6,23,50,363/- as on 31.03.2018, which clearly proves that assessee has given unsecured loan to the company during the year under consideration was not recorded in his books of account ?"\**



4. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) is right in allowing the safe harbor limit of 5 percent to the assessee without appreciating the facts that it is introduced by Finance Act, 2018, and applicable with effect from 1-4-2019."
5. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) is right in allowing the brokerage in transfer of property without appreciating the facts that assessee has failed to furnish any corroborative evidence to prove that an amount of Rs. 7,20,000/- claimed to be paid to Mr. Lal Hathiramani pertains to brokerage fees only towards sale of the property in question?"
6. "Whether on the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in allowing the brokerage in transfer of property without appreciating the facts that as per clause No "27 of the registered agreement of sale dated 04.01.2018, all expenses in connection with sale/incidental expenses and expenses in connection with the stamp duty, registration. charges, out of pocket expenses, legal charges etc. were to be borne and paid by the purchaser only?"

2.1 The cross-objections raised by the assessee are reproduced as under:

1. (a) The CIT(A) erred in confirming the action of AO in making an addition to the extent of Rs.61,13,808/- being expenses incurred by the Company M/s Radium Creation Limited(RCL) on behalf of Appellant and recoverable from the Appellant as unexplained expenditure.

The Appellant submits that M/s Radium Creation Limited has incurred expenses aggregating to Rs.61,13,808/- on behalf of the Appellant and same is payable by Appellant to RCL, expenses are duly been recorded in the books of Appellant as well as RCL and hence on the facts and circumstances of the case same cannot be treated as unexplained expenditure.

(b) The CIT(A) erred in confirming the addition to the extent of Rs.61,13,808/- made by the AO as unexplained investment by holding it as unexplained expenditure.

(c) The CIT(A) erred in confirming the action of AO in making addition u/s 115BBE of the Act without appreciating that the reimbursement of expenses are duly been recorded in the books of M/s Radium Creation Limited as well as Appellant and provisions of section 115BBE r. w.r. 69 of the Act has no application in its case.



3. Briefly stated facts of the case are that the assessee is a director in M/s Radium Creation Ltd. For the year under consideration, the assessee filed return of income, which was revised on 28.03.2019 declaring total income at Rs.69,49,440/- including capital loss amounting to Rs.51,52,000/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. During the assessment proceedings, the Assessing Officer noticed a loan of Rs.1,62,00,000/- given to the company M/s Radium Creation Ltd., which according to him was not appearing in books of account of assessee and therefore, same was held as unexplained investment u/s 69 of the Act. Further, the Assessing Officer observed that a property was sold by the assessee but the sale consideration recorded in the books of accounts was less than the stamp duty value of the property as on the date of the sale and therefore, the Assessing Officer invoked section 50C of the Act for substituting sale consideration shown by the assessee by the value as per stamp duty while computing income under the head capital gain. The Assessing Officer also disallowed the brokerage of Rs.7,20,000/- claimed while computing income under the head capital gain.

3. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the addition in respect of section 50C of the Act and brokerage expenditure but restricted the addition of the



unexplained expenditure to the extent of Rs.61,13,808/- i.e. the amount of the expenditure incurred on behalf of the assessee by the Company.

4. Aggrieved, both the assessee and the Revenue are before us by way of raising respective grounds.

5. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 131.

6. The ground Nos. 1 to 3 of the appeal of the Revenue and grounds raised by the assessee in cross-objection for sustaining addition to the extent of Rs.61,13,808/- are inter connected and therefore, same are adjudicated together.

6.1 Briefly stated, facts of the case are that the Assessing Officer observed a loan of Rs.2,62,00,000/- given by the assessee to the company M/s Radium Creation Ltd. Out of said loan, the company returned an amount of Rs.1,00,00,000/- and thus leaving outstanding balance of Rs.1,62,00,000/-. The main reason for which the Assessing Officer made the addition is that loan of Rs.1,62,00,000/- was not appearing in the financial statements of the assessee. The details of ledger accounts of the assessee appearing in the books of accounts by the company were filed before the Assessing Officer. But same were not considered by the Assessing Officer.



6.2 On further appeal, the Ld. CIT(A) verified the ledger accounts of the assessee in the books of accounts of the M/s Radium Creation Ltd. After considering submission of the assessee, the Ld. CIT(A) sustained the addition to the extent of Rs.61,13,808/- observing as under:

*“7.3 During the course of appeal proceedings, appellant is contending that appellant has granted loan of Rs. 2,62,00,000/- to RCL out of which Rs. 1,00,00,000/- was returned back. During the year RCL has incurred various expenses aggregating to Rs.61,13,808/- on behalf of Appellant which are to be reimbursed by the appellant to RCL. RCL books the reimbursement of expenses in separate ledger A/c. Appellant has submitted the copy of appellant loan account and reimbursement A/c in the books of RCL for AY 2017-18. Appellant contends that ledger A/c of RCL in books of assessee included all the entries of loan given to RCL and repayment received from RCL.*

*7.4 On perusal of the books of account of the appellant it is seen that appellant has shown Rs.5,62,36,555/- as invest in Radium Creation Limited. Further on perusal of books of account of Radium Creations Ltd it is seen that the opening balance of unsecured loan from Shri Anil Sheth as on 01.04.2017 is at Rs.4,61,50,363/-, loan accepted during the year is Rs.2,62,00,000/-, loan repaid during the year is Rs.1,00,00,000/- and closing Balance as on 31.03.2018 is Rs.6,23,50,363/-. Appellant is contending that the difference of Rs.61,13,808/- is on account of reimbursement to be paid by the appellant to Radium creation Ltd. However, from the books of the Radium Creations it is clear that during the year appellant has invested Rs.2,62,00,000/- only, for which appellant has provided confirmation in it paper book at page no 107. It is to be noted that as per appellant contention the company has incurred expenses of Rs.61,13,808/- during the year, however, during the year company has shown loan received from appellant of Rs.2,62,00,000/- (which does not include the expenses incurred by the company). Appellant has himself admitted that company on his behalf incurred expense of Rs.61,13,808/-. Appellant has submitted confirmation from the Company RCL. Further, the amount of Rs.61,13,808/- is not included in the outstanding loan balance of Rs.6,23,50,363/-, hence appellant has failed to reflect the treatment of same on the books of account of the Company. Appellant has not recorded the said expenses on its books of account. Accordingly the same is unexplained expenditure of the appellant. In view of the above AO is directed to restrict the addition to Rs.61,13,808. Hence ground no 3 of appeal is hereby partly allowed.”*



6.3 We have heard rival submission of the parties and perused the relevant material on record. The Ld. counsel referred to Paper Book pages 10 to 12, which is balance sheet of the assessee. In the said balance sheet, under schedule of Investment, the balances were appearing against the Radium Creation as investment amounting to Rs.5,62,36,555/-. In the confirmation filed by the M/s Radium Creation Ltd. available on Paper Book page 103 and 104 also the closing balance is appearing at Rs.5,62,36,554/-. The Ld. counsel further referred to Paper Book Page 107 and 108 which is a ledger account in relation to loan transactions. Thus in nutshell it was submitted that two separate accounts one for loan and one for investment were maintained by the assessee. The loan of Rs.1,62,00,000/- has been paid by the assessee out of bank accounts. The assessee explained the source of said money was out of sale of the shares. A detail of source of loan has been filed on Paper Book page 102. Thus, it is not the case that source of the Rs.1,62,00,000/- is not explained but it is merely the Assessing Officer could not trace recoding of the transaction in the financial statement filed by the assessee. Further before the Ld. CIT(A), the assessee reconciled the amount of loan appearing the books of the assessee as well as in the company and noticed that company has adjusted the amount of Rs.61,13,808/- which was incurred by the company on behalf of the assessee. The Ld. CIT(A) has restricted the addition to the extent of the said expenses incurred by the assessee



company on behalf of the assessee holding the same as unexplained expenditure. But we note that those expenses have been reimbursed by the assessee out of loan amount and have not been claimed as deduction under any of the head of the income. Those expenses are in the nature of the personal expenses and not claimed against any of the head of the income, then same cannot be held as unexplained expenditure when the source of the claim has been duly explained out of loan from the assessee. Accordingly, finding of the Assessing Officer and the Ld. CIT(A) on the issue in dispute is set aside. The addition of Rs.1,62,00,000/- made by the Assessing Officer as well as the addition of Rs.61,13,808/- sustained by the Ld. CIT(A) are deleted. The ground Nos. 1 to 3 of the appeal of the Revenue are dismissed, whereas the ground No. 1(a) and 1(b) of cross objections are allowed.

6.4 Since, we have already allowed the ground No. 1(a) and 1(b) of the appeal of the cross-objection of the assessee raised in the ground No. 1(c) is rendered infructuous.

7. The ground No. 4 of the appeal of the Revenue relates to invoking of section 50C of the Act and sustaining the addition for the difference in the sale consideration recorded in sale agreement and the stamp value of the property. Briefly stated, facts of the case are that the assessee sold a flat for a sale consideration of Rs.7,20,00,000/- which was valued by the stamp duty authorities



at Rs.9,32,82,000/- . Further the DVO valued the property at Rs.7,52,36,000/- . Since, the difference between the value of the property estimated by the DVO and the sale consideration reported by the assessee amounting to Rs.32,36,000/- was approximately 4.5% of the sale consideration, the assessee contended that the difference being less than 5%, variation might be ignored in view of amendment brought to section 50C of the Act by way of Finance Act, 2018 w.e.f. 01.04.2019. Accordingly, the Assessing Officer computed the long term capital loss of Rs.11,96,000/- against long term capital loss of Rs.51,52,000/- claimed by the assessee in the return of income. On further appeal, the Ld. CIT(A) deleted the addition observing as under:

*“6. The appellant is director of M/s Radium Creation Ltd. Appellant has filed his return of income for AY 2018-19 on 28.03.2019 declaring total income at Rs.69,39,440/-. Case was selected for scrutiny. During assessment proceedings, AO noticed that appellant has sold the property at Rs.7,20,00,000/- whereas the value of the property as per the provision of section 50C was found to be Rs.9,32,82,000/-. However, during the course of assessment proceedings, appellant submitted copy of valuation report by DVO wherein the value of the property was estimated at Rs.7,52,36,000/- . Appellant contended that since the difference in the value adopted by the appellant i.e Rs.7,20,00,000/- and as per the DVO i.e Rs.7,52,36,000/- which comes to Rs.32,36,000/- ( about 4.5% ) and therefore the provision of section 50C is not applicable in his case. However, AO concluded that the applicability of 3rd proviso of sub-section (1) of section 50C of the Income Tax Act, 1961, it is noticed that the said proviso has been inserted by the Finance Act, 2018, w.e.f. 01.04.2019. Hence, the said proviso is not applicable in the assessee's case for the assessment year under consideration. During the course of appeal proceedings appellant is contending that the said proviso is inserted to mitigate the hardship faced by the assessee's in case of genuine transactions wherein the variation between the stamp duty value and actual sale consideration received have occurred due to various factors associated with the individual property as compared to other properties in the same area. Appellant has relied on various judgments wherein it has been*



*held that the third proviso to section 50C(1) is retrospectively applicable.*

*6.1 The sole issue involved here is where the amendment to the provision of section 50C(1) introduced from 01.04.2019 are applicable in the case of the appellant for AY 2018-19 or not. Reliance is placed on the decision of the jurisdictional ITAT Mumbai in the case of Rajpal Mehra (HUF) 159 taxman.com 1587, wherein it has been held that "third proviso to section 50C(1) providing benefit of safe harbour limit of 5 percent as introduced by Finance Act, 2018, with effect from 1-4-2019 would be applicable retrospectively". Thus following the decision of the Hon'ble ITAT Mumbai, since the difference in the value of DVO and value adopted by appellant is less the 5%, provisions of section 50C are not applicable in the present case. Accordingly, AO is directed to recompute the capital gain considering sale consideration at Rs. 7,20,00,000/-."*

7.1 We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute involved in the ground is whether assessee is entitled for 5% variation in transaction value of sale consideration of property recorded and stamp duty value, while invoking section 50C, which was introduced by way of Finance Act, 2018 and whether same would be applicable retrospectively. In the case the stamp duty value has been substituted by the value estimated by the department valuer. The Ld. CIT(A) has followed binding precedent of the Co-ordinate Bench of the Tribunal in the case of Rajpal Mehra (HUF) (supra) and allowed the claim of assessee, therefore, we do not finding any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 4 of the appeal of the Revenue is therefore dismissed.

8. The ground Nos. 5 & 6 of the appeal of the Revenue relate to brokerage expenses/fees of Rs.7,20,000/- disallowed by the



Assessing Officer. The Ld. CIT(A) has deleted the addition observing as under:

*“6.2 During the course of assessment proceedings AO noticed that appellant had claimed Rs.7,20,000/- towards brokerage/transfer fees. However, as per the sale deed clause no "27" of the registered agreement of sale dated 04.01.2018, all expenses in connection with sale/incidental expenses and expenses in connection with the stamp duty, registration charges, out of pocket expenses legal charges etc. were to be borne and paid by the purchaser only. AO issued notice to the appeal to produce documentary evidence. Appellant submitted that payment of Rs.7,20,000/- was paid to Mr Lal Hathiramani. Appellant submitted the copy of Bank statement reflecting the payment made to Mr Lal Hathiramani. However, appellant could not produce copy of agreement with broker or receipt voucher signed by the recipient towards confirmation of brokerage fees. Hence AO disallowed the said expenses. During the course of appeal proceedings, appellant has submitted the copy of ITR along with computation of income filed by Mr Lal hathiramani for AY 2018-19. On perusal of the same it is found that, Mr Lal Hathiramnai has declared income from brokerage of Rs.7,20,000/-. Hence it is clear that the appellant has made payment of Rs.7,20,000/- to Mr Lal Hathiramani which has been included by him in his return of income. In view of the above factual position, AO is directed to allowed the expense claimed by the appellant while computing the capital gain. Hence ground no 2 of appeal is hereby allowed.”*

8.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the assessee has duly shown the payment of Rs.7,20,000/- in its bank account and the said broker has also declared the said amount in the return of income filed. The Assessing Officer has disallowed the brokerage while appearing the capital gain only for the reason that said broker has only shown the brokerage in question as his income and no other brokerage income has been shown by him in the return of income . In our opinion, the assessee has discharged his onus regarding the brokerage payment and if the broker is not showing



any other brokerage income, then the assessee cannot be held responsible for the same. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and therefore, we do not find any infirmity in the same and accordingly, we uphold the same. The ground Nos. 5 and 6 of the appeal of the Revenue are accordingly dismissed.

9. In the result, the appeal of the Revenue is dismissed whereas cross-objection of the assessee is allowed.

**Order pronounced in the open Court on 28/10/2024.**

**Sd/-  
(RAHUL CHAUDHARY)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 28/10/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**