

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**“SMC” BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JM &**

**SHRI RENU JAUHRI, AM**

**I.T.A. No.1866/Mum/2024**

(Assessment Year: 2011-12)

<b>Atul Bhalchandraji Joshi</b> Flat No. 14, 41 Himangi Maheshwar, Four Bungalow, Andheri (West), Mumbai- 400058. <b>PAN: AEMPJ6751K</b>	Vs.	<b>Income Tax Officer- Ward 24(1)(2) (Present Jurisdictional) A.O.</b> Address of present jurisdictional A.O., Mumbai- 400012.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant / Assessee by** : Shri Ms. Dinkle Haria

**Revenue / Respondent by** : Shri Usha Gaikwad,  
Sr. DR

**Date of Hearing** : 17.10.2024

**Date of Pronouncement** : 30.10.2024

**ORDER**

**Per Beena Pillai, JM:**

Present appeal filed by the assessee arises out of order dated 14/02/2024 by NFAC-Delhi for assessment year 2011-12 on following grounds of appeal:

**1. THE ORDER BAD, ILLEGAL AND WITHOUT JURISDICTION**

1.1. *In the facts and the circumstances of the case, and in law, the appellate order framed by the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, [‘Ld. CIT (A)’] is bad, illegal and without jurisdiction, as the same is*

framed in breach of the statutory provisions and the scheme and as otherwise also is not in accordance with the law.

- 1.2. Otherwise also, in the facts and the circumstances of the case, and in law, the appellate order so framed by the Ld. CIT (A) is bad and illegal void as the same is arbitrary and perverse.

## **2. NATURAL JUSTICE**

- 2.1. The Ld. CIT (A) erred in passing the appellate order in breach of the principles of natural justice.
- 2.2. While doing so, the Ld. CIT (A) failed to appreciate that:
- (i) The Appellant was not given fair, reasonable and proper opportunity of being heard; and
  - (ii) In any case, the Appellant was prevented by reasonable causes beyond its controls to make effective and proper representation.

### **WITHOUT PREJUDICE TO THE ABOVE**

## **3. ADDITION OF RS.4 LAKHS WITH RESPECT TO DEPOSITS FOR LODGING AND BOARDING**

- 3.1. The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition of Rs.4 lacs, with respect to the deposits for lodging and boarding.
- 3.2. The Ld. CIT (A) failed to appreciate that these deposits were not received during the previous year, that is, A.Y. 2011-2012, but were received in earlier years.
- 3.3. It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.
- 3.4. Without prejudice, assuming but not admitting that some addition was called for, it is submitted that the addition made by the AO is arbitrary, excessive and not in accordance with law.

### **WITHOUT FURTHER PREJUDICE TO THE ABOVE**

## **4. ADDITION OF RS.15 LAKHS WITH RESPECT TO SUNDRY DEPOSITS**

- 4.1. The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition of Rs. 15 lacs with respect to sundry deposits.
- 4.2. The Ld. CIT (A) erred in basing his action of confirmation on the ground that the fund used for purchase of the properties were from undisclosed sources.
- 4.3. It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.

- 4.4. *Without prejudice, assuming - but not admitting - that some addition was called for, it is submitted that the addition made by the AO is arbitrary, excessive and not in accordance with law.*

**WITHOUT FURTHER PREJUDICE TO THE ABOVE**

**5. ADDITION OF RS.5,50,000/- WITH RESPECT TO SHOP DEPOSIT**

- 5.1. *The Ld. CIT (A) erred in confirming the action of the A.O. in making the addition of Rs.5,50,000/- with respect to the shop deposit.*
- 5.2. *It is submitted that in the facts and the circumstances of the case, and in law, no such addition was called for.*
- 5.3. *Without prejudice, assuming but not admitting that some addition was called for, it is submitted that the addition made by the AO is arbitrary, excessive and not in accordance with law.*

**6. LIBERTY**

*The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.”*

**Brief facts of the case are as under:**

2. The assessee is an individual and filed his return of income on 30/03/2013, for year under consideration declaring total income of Rs.1,57,720/-. The return was processed under section 143 (1) of the act, and the assessment was completed under section 143 (3) of the act, by order dated 26/03/2014 determining total income at Rs.30,07,720/-.

Aggrieved by the order of the Ld. AO, assessee preferred appeal before the Ld. CIT(A)-36, Mumbai.

The Ld. CIT(A) partly allowed the claim of assessee by the order dated 16/03/2016.

Aggrieved by the order of the Ld. CIT(A), the assessee preferred appeal before this *Tribunal* in ITA number 4289/M/2016.

3. Coordinate bench of this *Tribunal* restored the matter to the Ld.AO to consider the issues afresh, after giving the assessee an opportunity of being heard.

3.1. As per the directions of this *Tribunal*, the Ld. AO issued notice under section 142(1) on 30/03/2018 and 05/11/2018 calling upon the assessee regarding the issue that was remanded. The Ld. AO in the assessment order noted that assessee did not file any new evidence in pursuance to the notice issued. It is also noted that under section 131 of the act, summons was issued to the assessee, and his statement was recorded on 27/12/2018. The Ld. AO was of the opinion that there was no corroborative and acceptable evidence with the assessee. Thus, the Ld. AO finalized the assessment order by making following additions:

sundry deposits	- Rs.15,00,000/-
shop deposits	- Rs. 5,50,000/-
Alka Joshi	- Rs. 4,00,000/-.

Aggrieved by the order of the Ld. AO, assessee preferred appeal before the Ld.CIT(A)/NFAC.

3.2. Before the Ld. CIT(A) assessee contested that the additions made by the Ld. AO is without considering the expenses claimed in the P & L account. It was submitted that, the addition made in respect of Alka Joshi stood already deleted by the Ld. CIT(A) in the 1<sup>st</sup> round of proceedings. He relied on order dated 16/03/2016 passed by the Ld. CIT(A) in the first round.

The Ld.CIT(A) however confirmed the addition made by the Ld.AO by observing as under:

*6.4. I have gone into the facts of the case, contents of the statements recorded by the AO on. 27.12.2018 and also the findings of the AO, It is gathered from the facts of the case that even in statement, the appellant could not adduce any corroborative evidence, before the AO. The affidavits submitted by the appellant are self-serving documents and being unregistered carry no evidentiary value in the absence of any corroborative evidence. Accordingly, I am constrained to be in concurrence with the additions made by the AO under the heads namely sundry deposits, shop deposits, and Alka Joshi.”*

Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before this *Tribunal*.

4. The Ld.AR submitted that ground number 1 and 2 are general in nature and therefore do not require adjudication.

**4.1. Ground No.3** is in respect of disallowance of deposits received from Alka Joshi.

The Ld.AR submitted that the said amount was received from Ms Alka Joshi as loan. The assessee had submitted that the said amount was returned to Ms.Alka Joshi and the same reflected in the balance sheet. It is submitted by the Ld.AR that the said amount was deleted by the Ld.CIT(A) in the 1<sup>st</sup> round of proceedings. The Ld.AR drew our attention to page 40 of the paper book wherein the said addition stands deleted.

4.2. The Ld.AR submitted that, the said addition made by the Ld.AO does not arise out of the remand proceedings by this *Tribunal* as this issue was never contested by the assessee before the *Tribunal* in the 1<sup>st</sup> round of litigation.

4.3. On the contrary the Ld.AR could not controvert the submissions of the assessee.

We have perused the submissions advanced by both sides in light of records placed before us.

4.4. Admittedly the addition stands deleted by the Ld. CIT(A) wide order dated 16/03/2016 in the 1<sup>st</sup> round of litigation by observing as under:

*5.6 Addition on account of Sundry deposit from Alka Joshi for Rs. 4,00,000/-*

*“5.6.1 The AO has made this addition by not accepting the claim of the appellant that this is a loan taken from Ms.Alka Joshi. The appellant has contended that he has purchased car from Mr. Patidar for Rs.5,50,000/- and paid Rs.1,50,000/- immediately and the balance Rs.4,00,000/- was paid after taking loan from Ms. Alka Joshi.*

*5.6.2 I have considered the contention of the appellant and the comments of the AO in the assessment order and the material on record. I find that the appellant has purchased a car from ShriPatidar for Rs.5,50,000/- as is evident from the Katcha sale agreement. The appellant has submitted the loan confirmation from Ms. Alka Joshi along with her PAN and the loan is duly reflected in the balance sheet of the appellant. AO has not brought any contrary finding regarding credibility and genuineness of the lender. In view of this, I direct the AO to delete the addition made for Rs.4,00,000/- and allow the ground of appeal raised by the appellant.”*

We therefore are of the opinion that, the addition made by the Ld.AO does not arise out of the remand order by this *Tribunal* vide order dated 13/04/2017. Based on the above factual position, addition made towards sundry deposits received from Alka Joshi stands deleted.

**Accordingly ground number 3 raised by assessee stands allowed.**

**5. Ground No.4** raised by the assessee is in respect of addition of ₹15 lakhs as sundry deposits.

5.1. The Ld.AR submitted that, the assessee had shown ₹15 lakhs as deposits in the balance sheet. It was submitted that, the amount was as received on account of mortgage deed, entered with Sri. Rajesh Sharma on behalf of Shri Sanjay Mahindra Kokane, through an irrevocable general power of attorney against Flat No. 101, Building No. 20/A, MAHADA Colony, Dindoshi, Malad(E), Mumbai. The Ld.AR submitted that the said amount was received by him by cheque and that assessee will repay the same in the future.

The Ld.AR the submitted that all necessary documents in support of the claim were available during the assessment proceedings and same may be considered in accordance with law as it is not from undisclosed source.

5.2. The Ld.DR on the contrary placed reliance on the observations of the Ld. AO. It is submitted by the Ld. DR that, from the statements recorded the assessee still has not repaid the said amount to Shri. Sanjay Mahindra Kokane nor his family members. He placed reliance on the order passed by Ld. AO.

We have perused the submissions advanced by both sides in light of records placed before us.

5.3. Considering the argument of the Ld.AR this bench raised a query in respect of the mortgagor, Shri Sanjay Mahindra Kokane. The Ld.AR submitted that, the mortgagor expired a couple of years

back and the money has not been returned to the family members of the deceased.

Under such circumstances it is evident that the irrevocable power of attorney also does not hold any strength in the eyes of law. The assessee therefore cannot justify the money being held on behalf of deceased person. As the money has not been returned by the assessee, and that the assessee is not holding the money under any valid legal document or capacity, undue advantage has accrued to the assessee. The addition thus made by the Ld.AO deserves to be upheld. However, it may be noted that whenever the assessee return the money back to the family members of the deceased Sanjay Mahindra Kokane, the same may be considered upon filing confirmation from the party/family member to whom such amount is repaid.

**Accordingly ground number 4 raised by the assessee stands dismissed.**

**6. Ground No.5** raised by the assessee is with respect to the shop deposits amounting to Rs.550,000.

6.1. The Ld.AR submitted that the assessee claimed Rs.5 lakh as amount received against mortgage of 5 shops held by him at his native place as loan. It is submitted that the said amount was received in two parts from one Mr Dinesh Joshi, as per the mortgage agreement. The Ld.AR submitted that assessee had mortgaged half of the portion of the shops to the Dinesh Joshi and that the mortgage portion of the shops will be handed over to the assessee only upon receipt of full and final payment. The Ld.AR

submitted that the balance sheet at page 3 of paper book reflects the deposits are from previous year. It is the submitted that these deposits are carried forward from the previous year.

6.2. On the contrary the Ld.DR submitted that, the assessee has not established any evidence in respect of the claim. It is submitted that, these shops do not appear in the block of assets. He thus submitted that the addition made by the authorities below cannot be found fault with.

We have perused the submissions advanced by both sides in the light of records placed before us.

6.3. Admittedly no evidence is placed other than the mortgage agreement dated 15/03/2009 at page 12-15 of the paper book. Assessee has also not produced any confirmation from the mortgagee being Mr.Dinesh Joshi, in order to confirm the said transaction. Under such circumstances we do not find any infirmities in the additions made by the authorities will.

**Accordingly this ground raised by the assessee stands dismissed .**

**In the result the appeal filed by the assessee stands partly allowed.**

*Order pronounced in the open court on 30 -10-2024.*

**Sd/-  
(RENU JAUHRI)  
Accountant Member**

**Sd/-  
(BEENA PILLAI)  
Judicial Member**

Mumbai, Dated: 30.10.2024.  
*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**