

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Dr. BRR Kumar, Vice President
And Shri TR Senthil Kumar, Judicial Member**

**ITA No. 469/Ahd/2024
Assessment Year 2017-18**

Arpitkumar Dipakkumar, Gabhawala, Umreth PAN: ACKPG9676Q (Appellant)	Vs	The DCIT, Anand Circle, Anand (Respondent)
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**Assessee by: Shri A.K. Khandelwal, A.R.
Revenue by: Shri Rohit Aasudani, Sr. D.R.**

Date of hearing : 06-11-2024
Date of pronouncement : 06-11-2024

आदेश/ORDER

PER : DR. BRR KUMAR, VICE PRESIDENT:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A), National Faceless Appeal Centre, Delhi, in proceeding u/s. 250 vide order dated 16/01/2024 passed for the assessment year 2017-18.

2. The grounds of appeal taken by the assessee are as under:-

“1. That on the facts and in law, the Hon'able CIT(A) failed to decide the issue of validity of reopening of the assessment u/s 147 of the Act and issue of natural justice.

2. That Hon'able CIT(A) failed to consider the evidences and submission furnished before Id. AO and before him and erred in upholding the assessment order without application of mind.

3. That on facts of the case and in law Hon'able CIT(A) has erred in confirming the addition of Rs. 82,86,300/- as unexplained investment in purchase of property u/s 69 of the Act and 90,31,500/- as short-term capital gain made vide assessment order dated 30.03.2022 passed by the Id AO without appreciating the facts of the case.

4. That on the facts of the case and in law the Hon'able CIT(A) has erred in not considering the facts of the case in correct perspective as there was no transfer of assets as per Transfer of Property Act as well as Income Tax Act, therefore, he failed to consider that the amount received against mortgage of property was not sale consideration and amount paid against mortgage was not purchase cost, so impugned additions made by AO deserved to be deleted.

5. The appellant craves a leave to add, alter, amend or withdraw any ground/s of appeal on or before hearing of the appeal.”

3. The assessee is an individual engaged in the business of jewelery and into money lending. During the year, the assessee received loan of Rs. 90,31,500/- from Umrth Urban Co-operative Bank against mortgage of the property. The Assessing Officer treated the mortgage of the property as sale. Further, the assessee has also lent an amount of Rs. 1,72,77,800/- against the mortgage of the properties to various persons. The Assessing Officer treated the mortgage entered with the bank as sale of the property and mortgage

entered with the individual against lending of the money as purchase of the property and treated balance of the amount of mortgage taken and mortgage given as purchase of property and treated the same as unexplained investment u/s. 69 of the Act.

4. Aggrieved assessee filed an appeal before the Id. CIT(A) who has examined the mortgage deeds and held that the appellant submitted that the properties were neither purchased nor sold but received and given under deed of mortgage. The Id. CIT(A) held that the documents filed by the appellant are factually correct and also held that the transactions were not recorded in the balance sheet of the assessee and the details of collateral security given to the bank was not available and also that the details of the properties were not reflected in the balance sheet and hence the transactions were suspicious in nature and dismissed the appeal of the assessee, confirming the addition made by the Assessing Officer u/s. 69 of the Act.

5. Aggrieved assessee filed appeal before the ITAT. During the hearing before us, the Id. counsel has explained in detail the fact of mortgage of the assessee's properties to the Umrth Urban Co-operative Bank wherein he received an amount of Rs. 90,31,500/- against the mortgage of the property. It was

argued that the mortgage is not an agreement to sale and there was no transfer of property. Similarly, the ld. counsel has also explained in detail that the assessee has given loans to various borrowers against the security of the property and hence the properties were mortgaged as a security, the deeds of mortgage have been duly registered. It was argued that the revenue authorities have fallen into error by considering the mortgage deeds as sale deeds. On the other hand, ld. D.R. submitted that the transactions have not been reflected in the balance sheet and there was no detail of collateral security given to the bank. The ld. D.R. relied upon the order of the order of ld. CIT(A).

6. We have heard arguments of both the parties and perused the materials on record. We find that the assessee has received an amount of Rs. 90,31,500/- against mortgage of the property from the bank and also advanced loan to various persons and taken the property as security for the loans extended. Mortgage deeds have been duly perused. The certificate of stamp duty clearly describes the documents as mortgage deed with possession under article 36A & 36B. We have also found that the assessee has purchased properties worth 1,05,00,000/- from Mohanlal Rana and properties worth Rs. 23,71,200/- from Amrutlal Chiyya which have been duly registered as purchase deeds. We find that there is

confusion in the minds of the revenue authorities between the purchase of commercial properties and mortgage of the properties. Hence, we hold the amount received out of the mortgage deeds amount as lent against mortgage deeds cannot be considered as sale and purchase transaction. Since the revenue has not questioned the source of the amount lent, we hold that no addition u/s. 69A on this issue is called for on account of mortgage of properties.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06-11-2024

Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER
Ahmedabad : Dated 06/11/2024

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद