

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायापीठ "ए", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" A " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.1526/Ahd/2024
निर्धारण वर्ष /Assessment Year : 2017-18

Shreeji Developers Nishad Residency Flat -5, 3 rd Floor 19, Vinayak Society Near Natubhai Circle, Gotri Vadodara - 390 007	<u>बनाम/</u> <u>v/s.</u>	The Income Tax Officer Ward-3(1)(2) Vadodara
स्थायी लेखा सं./PAN: ADBFS 9273 P		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Karan Shah, CA	
Revenue by :	Shri B.P. Srivastava, Sr.DR	

सुनवाई की तारीख /Date of Hearing : 21/10/2024
घोषणा की तारीख /Date of Pronouncement: 29/10/2024

आदेश/O R D E R

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"], dated 26.06.2024, for the Assessment Year (AY) 2017-18. The appeal arises out of the assessment order dated 25.03.2022 passed by the Assessing Officer [hereinafter referred to as "AO"] under section 147 read with section 144B of the Income Tax Act, 1961 [hereinafter referred to as "the Act"].

Facts of the case:

2. The assessee is a partnership-firm engaged in the business of real estate development, did not file its return of income for AY 2017-18. The assessee was identified as a non-filer under the Multi Year Non-Filers Monitoring System (NMS). The AO reopened the case under section 147 of the Act after receiving information that the assessee had purchased immovable property during the Financial Year (FY) 2016-17 for Rs.6.25 crores and paid stamp duty amounting to Rs.30,62,500/-, thereby escaping assessment. In response to the notice issued under section 148 of the Act, the assessee filed a return of income on 21.02.2022 declaring "NIL" income. The AO issued notices under sections 143(2) and 142(1) of the Act, requesting explanations and documents from the assessee regarding the sources of funds used for the property purchase and stamp duty payment. The assessee submitted details of capital contributions from four partners amounting to Rs.2,84,85,000/- as the source of funds. However, the AO noted that there was a discrepancy of Rs.23,90,000/- for which no satisfactory explanation was provided. Similarly, the source of the stamp duty payment of Rs.30,62,000/- remained unexplained. Consequently, the AO made an addition of Rs.54,52,000/- (Rs.23,90,000 + Rs.30,62,000) under section 69C of the Act as unexplained expenditure. The AO also initiated penalty proceedings under sections 271AAC(1) and 271F of the Act for underreporting of income and failure to file the return within the prescribed time limits.

3. Aggrieved by the assessment order, the assessee filed an appeal before the CIT(A)-NFAC. The CIT(A) upheld the AO's findings, emphasizing that

the assessee had failed to furnish sufficient documentary evidence to substantiate the source of funds for both the property purchase and the stamp duty payment. The CIT(A) observed that while the assessee had claimed to have received booking advances from customers, no evidence was submitted during the appellate proceedings to support this claim. As a result, the CIT(A) concluded that the additions made by the AO were justified and dismissed the appeal.

4. The assessee has now filed an appeal before us. The primary grounds of appeal raised by the assessee are as follows:

- *Whether on the facts and circumstances and in law, the Ld. Commissioner of Income Tax (Appeals-NFAC) was justified in making total addition of Rs.54,52,000 (Rs.23,90,000 unexplained source for purchase of land and Rs.30,62,000 on account of unexplained of stamp duty) without appreciating the fact that during the year under consideration, it was quite apparent from the ITR filed u/s 148 and financials provided by the appellant at the assessment level that in addition to introduction of partner's capital as source of income, the appellant had also disclosed the total amount of advances received from the customers in form of booking money amounting to Rs.1,21,11,000 as one of the major source of funds for making payment for land purchase and stamp duty, which was booked in "Sundry creditors-other Payables" under the head of "Current liabilities and provisions" in ITR.*
- *Whether on the facts and circumstances and in law, the Ld. Commissioner of Income Tax (Appeals-NFAC) was justified in making total addition of Rs.54,52,000 without appreciating the fact that, bank statement from which payment for land purchase and stamp duty was made was already submitted during the assessment stage wherein clearly the credit entries reflected the source of payment.*
- *The appellant was prevented by sufficient cause to produce evidence before the Commissioner of Income Tax (Appeals) for source of advances/booking money received which was utilised for making payment of land and stamp duty. The authorised representative appointed by appellant during the course of first*

appeal stage was not able to comply to notice and submit the documents because of severe illness and health problems. Moreover the documents to be furnished for claim of source of addition were to be obtained from third parties / customers and pertained to old period i.e. FY 2016-17 due to which same were not furnished in timely manner.

- *Whether on the facts and circumstances and in law, the Ld. Commissioner of Income tax (Appeals- NFAC) was justified in confirming the addition of Rs.54,52,000 (Rs.23,90,000 unexplained source for purchase of land and Rs.30,62,000 on account of unexplained source of stamp duty) without appreciating the fact that, the appellant had explained the nature and source of expenditure made along with supporting documentary evidence during the course of assessment proceedings stage itself.*
- *The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.*
- *It is prayed that the order of Commissioner of Income Tax (Appeals-NFAC) is set-aside.*

5. During the course of the hearing before us the assessee has filed an application under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963, seeking the admission of additional evidence in the form of signed confirmations from customers, along with corresponding receipts, to substantiate the advances received towards booking amounts. These amounts were utilized for the property purchase and payment of stamp duty. The Departmental Representative did not object to admission of additional evidence.

6. After considering the submissions of both parties and the judicial precedents cited by the assessee (including *Sri Shankar Khandasari Sugar Mills vs. CIT (1992) 193 ITR 669 [Karnataka High Court]* and *Braganza*

Construction (P.) Ltd. vs. ACIT [2020] 116 taxmann.com 11 [Bombay High Court], we are of the view that the additional evidence submitted by the assessee is clarificatory in nature and goes to the root of the matter. The evidence has a direct bearing on the explanation of the source of funds, which forms the basis of the addition under section 69C of the Act. Further, the illness of the authorized representative, coupled with the difficulty in obtaining customer confirmations for a period dating back to FY 2016-17, constitutes sufficient cause for the delay in submitting this evidence. Accordingly, in the interest of justice, we admit the additional evidence.

6.1. Upon careful consideration of the facts, circumstances, and additional evidence presented, we find that the assessee has now provided satisfactory explanations for the funds used for the land purchase and stamp duty payments. The signed confirmations as supported by assessee's bank statement and receipts from customers substantiate the advances received towards booking amounts, which were utilized for these payments. The AO and CIT(A) had made the addition of Rs.54,52,000/- under section 69C of the Act due to the failure of the assessee to explain the sources of funds during the assessment and appellate stages. However, with the admission of the additional evidence, it is clear that the advances received from customers, amounting to Rs.1,21,11,000/-, were a legitimate source of funds, as reflected under "Current Liabilities - Member Contribution" in the financial statements of the assessee. The additional evidence presented by the assessee directly addresses the discrepancies highlighted by the AO in relation to the source of Rs.23,90,000/- for the land purchase and Rs.30,62,000/- for the stamp duty payment. In light of this evidence, we find that the additions made under section 69C of the Act are no longer sustainable.

6.2. In view of the foregoing, we set aside the order of the CIT(A) and direct the AO to delete the addition of Rs.54,52,000/- made under section 69C of the Act.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 29 October, 2024 at Ahmedabad.

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

**Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 29/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad