

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 3650/MUM/2024  
Assessment Year: 2013-14**

Tabrej Arif Lakha, 402, 4 <sup>th</sup> Floor, B Wing, Reyhaan Terraces, Saharakar Bandivali Hill Road, Jogeshwari West, Mumbai – 400 102  (PAN : AGMPL6864B)	Vs.	Income Tax Officer 31(3)(2), Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Deepak Kanabar, CA  
Revenue : Shri P.D. Chougule, Sr. DR

Date of Hearing : 02.09.2024  
Date of Pronouncement : 14.11.2024

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide order no. ITBA/NFAC/S/250/2024-25/1064178584(1), dated 18.04.2024 passed against the assessment order by the Income Tax Officer, Ward – 31(3)(2), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 24.02.2016 for Assessment Year 2013-14.

2. Grounds raised by the assessee are in respect of addition made u/s. 69A of the Act towards investment in jointly owned house property of Rs.71,38,875/- and purchase of motor car of Rs.7,24,726/-.

3. There is a delay of 31 days in filing the present appeal for which a petition for condonation of delay is placed on record. According to the assessee, the delay is attributable to miscommunication between the assessee and the tax counsel. Assessee changed his tax consultant since the earlier one could not handle the matter which resulted into this brief delay of 31 days. Considering the submissions made by the assessee, we find it appropriate to condone the delay and take up the matter for adjudication.

3. Brief facts of the case are that assessee filed his return on 02.02.2015, reporting the total income at Rs.2,14,615/-. Assessee is engaged in running a novelty shop selling gift articles which are purchased on whole sale and sold on retail basis. On verification of AIR information, ld. Assessing Officer noticed that assessee had purchased immovable property being a flat at CTS No.101, Flat No.601, Garden View, Sahakar Road, Jogeswari, Mumbai, for a total consideration of Rs.27 lakhs. The stamp duty value for the same was noted at Rs.65,13,200/- on which stamp duty of Rs.3,25,675/- was paid. Ld. AO also noted that assessee had purchased a Maruti Swift VDI car for a total consideration of Rs.7,24,726/-. Explanation were called for along with documentary evidences in respect of the aforesaid investments made by the assessee.

3.1. In this respect, it was submitted that the said flat was purchased in the name of Mrs. Shamin Arif Lakha, mother of the assessee, Mr. Danesh Arif Lakha, brother of the assessee and the assessee himself. Share of ownership in the purchase agreement is not mentioned nor the payment made by each person is separately mentioned. According to the assessee, the entire purchase consideration of Rs.27 lakhs was borne by Mrs. Shamin Arif Lakh, i.e., mother of the assessee. Names of

the two sons, including the assessee were added as co-owners only for the convenience purpose, keeping succession in mind. The source of investment by the mother was claimed to be her past savings and borrowings. On this aspect, assessee had submitted that payments have been made by his mother in cash and not through banking channels, when ld. AO called for bank statements to demonstrate the claim so made.

3.2. According to the assessee, case of the other two co-owners i.e., mother and the brother has not been assessed in respect of the impugned property. It is only the case of assessee which has been taken up in scrutiny and ld. AO has attributed the entire value of purchase as undisclosed property in the hands of the assessee. While making the addition, ld. AO has made an addition of Rs.71,38,875/- by taking the stamp duty value and the amount of stamp duty paid thereon by applying section 69A of the Act. Assessee has pointed out a mistake in the amount taken by the ld. AO which should be Rs.68,38,875/-, being arithmetical error.

3.3. Assessee contended that ld. AO has considered the stamp duty value by applying provisions of Section 50C along with stamp duty paid thereon for the purpose of making the addition. According to the assessee, the transaction is that of a purchase and not of sale, therefore provisions of Section 50C are inapplicable. Further, provisions u/s. 43CA are also not applicable as they apply to builder/developer only, which is not a case for the assessee. Also, it is contended that provisions of Section 56(2)(vii) are applicable w.e.f. 01.04.2014, i.e. AY 2014-15 and the present case is for AY 2013-14. At best, ld. AO ought to have taken only the actual consideration of Rs.27 lakhs and the addition can be made only to the extent of share of assessee by taking 1/3 of the

total consideration, since nothing specific about share of each co-owner is mentioned in the purchase agreement. Accordingly, the addition at best could have been of Rs.9 lakh (27,00,000 ÷ 3) and not more than that.

3.4. Assessee also contended that since he has not paid any consideration and that his name was incorporated only for the purpose of succession, no addition is warranted in his hands. To support this contention, it was also submitted that the said impugned property was sold during the AY 2021-22. Capital gain arising on this sale has been reported in the returns filed by Mrs. Shamin Arif Lakh, i.e., mother of the assessee and Mr. Danesh Arif Lakha, i.e., brother of the assessee. Copies of return form are placed on record to demonstrate the said fact. According to the assessee, since there is no further enquiry or proceeding by Revenue in respect of these two returns, it is safely presumed that the returns have been accepted.

4. We have heard both the parties and perused the material on record. The impugned property is purchased jointly in the three names including that of assessee as stated above. Assessee claims that no part of consideration has been paid by him. According to him, entire consideration of Rs.27 lakhs has been paid by his mother that too in cash and not through proper banking channel. Furthermore, the source of the investment so claimed to have been made is stated to be past savings and borrowings of the mother. No return has been filed by the mother of the assessee to substantiate the claim made by the assessee. These facts are undisputed and uncontroverted.

4.1. Ld. AO has made the addition presumably by taking the stamp duty value applying provisions of section 50C and 56(2)(vii) along with

stamp duty paid in respect of the said transaction. In the given set of facts and circumstances and as alternatively submitted by the assessee that at best the addition of Rs.9 lakhs, i.e., considering 1/3 share of the assessee in the impugned property could have been made, we find it appropriate to restrict the addition to an amount of Rs.9 lakhs (27,00,000 ÷ 3) in the hands of the assessee, towards 1/3 share in the consideration paid for the said property. It is important to note that at one point, assessee contended that the entire consideration has been paid by his mother whereas at the time of sale of the same property, it is submitted that the capital gain arising on the sale of this impugned property has been offered to tax in the returns of his mother and brother, which going by the first contention ought to have been only in the hands of the mother. Accordingly, we restrict the addition to the amount of Rs.9 lakh and for the balance, assessee gets relief. Accordingly, ground no.1 is partly allowed.

5. On the second issue relating to addition of Rs.7,24,726/- for vehicle purchased in the name of the assessee, he submitted that a car was purchased from M/s. Spectra Motors and the entire amount was paid by the brother of the assessee, i.e., Mr. Danesh Arif Lakha for which payment was made in cash. Ld. AO called for explanation on the source of investment by issuing notices u/s. 133(6) on the brother of the assessee to confirm the transaction and explain the source of cash payment made for the purchase of the car in the name of the assessee. Ld. AO also issued a notice, u/s. 133(6) to M/s. Spectra Motors who confirmed the transaction of purchase of vehicle, Model Swift VDI IV and submitted duplicate copy of the receipt of the payment of the vehicle in cash wherein it is mentioned that "Received with thanks from Tabrej Arif Lakha". Since assessee failed to explain the source of income for purchase of the vehicle for which the payment was made in cash by the

brother of the assessee, ld. AO made the addition u/s. 69A of the Act, which was confirmed by ld. CIT(A).

6. Before us also, nothing has been placed on record to substantiate the source of investment made in the name of the assessee except by stating that the payment has been made in cash by the brother of the assessee. In the given set of facts and circumstances, we do not find any reason to interfere with the finding arrived at by the authorities below to uphold the addition so made. Accordingly, ground no.2 is dismissed.

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

Order is pronounced in the open court on 14 November, 2024

Sd/-  
(Anikesh Banerjee)  
Judicial Member

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 14 November, 2024***

*MP, Sr.P.S.*

**Copy to :**

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai