

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE MS. KAVITHA RAJAGOPAL, JM AND
SHRI GIRISH AGRAWAL, AM**

ITA No. 3348/Mum/2024
(Assessment Year: 2011-12)

Subhash Chandra Keshan C-803, Akshardham CHS Ltd. R. G. Road, Rajan Pada, Malad (W), Mumbai-400 064	Vs.	Income Tax Officer – 42(3)(4) Room No. 735, Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400 061
PAN/GIR No. AACPK 7652 C		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Shailesh Bandi
Respondent by	:	Shri Shambhu Yadav
Date of Hearing	:	21.08.2024
Date of Pronouncement	:	14.11.2024

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2011-12.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT(A) erred in confirming the notice issued u/s 148 after period prescribed by law, which is barred by limitation. The Appellant therefore prays that the notice issued under section 148 is void and the assessment thereof is to be quashed as bad-in-law.*
2. *The learned CIT(A) has erred in upholding the re-opening of assessment without there being 'reason to believe' is bad-in-law as the source information on which he relied is incorrect. The Appellant prays that the notice u/s 148 and assessment thereof is to be quashed as bad in law. The powers of the learned CIT(A) are co-terminus with that of the Assessing Officer (AO), however the evidence submitted by the Appellant have been rejected by the learned CIT(A) officer on technical grounds.*
3. *The learned CIT(A) has failed to appreciate that the appellant was out of station for the medical treatment of his wife in Indore, and so could not attend to the notices served at his home in Mumbai in time. The appellant prays that since he was out of town on a medical exigency of*

his wife, consider this as a "sufficient cause" preventing the appellant from producing the evidence as per Rule 46A(1) of IT Rules, 1962 and thereby allow an opportunity to make representation of the facts and evidence in this respect.

4. The appellant was unaware of the Rule 46A wherein the additional evidence must be submitted before the CIT(A) in a prescribed way. The CIT(A) should have guided and provided an opportunity to appellant to resubmit the data details in the prescribed format and Rule mentioned in the Income tax Act. The Appellant therefore prays that the CIT(A) be instructed to provide us an opportunity to submit data in prescribed format.

5. Without prejudice to above the learned CIT(A) has erred in upholding the addition made by the AO of Rs.43,48,896 on account of salary income. The AO has made this addition incorrectly accumulating all the entries (positive/Negative/Reversal) reflecting on 26AS. The Appellant submit that he

6. has received salary only of Rs.4,34,665 copy of proof has been submitted with CIT(A) which has not been considered.

7. The learned CIT(A) has erred in upholding the decision of Assessing Officer wherein he has not allowed the credit of prepaid tax (TDS deducted by his employer) as appearing in Form 26AS. The Appellant prays that the learned Assessing officer be directed to consider correct TDS as per form 16 and form 26AS.

8. The learned CIT(A) has erred in upholding the addition made by the Assessing Officer on account of sale of property of Rs.26,00,000, without checking the facts and documents. The Property mentioned in the notice was purchased by the son of the appellant wherein his name was mentioned just a sake purpose. The Appellant prays that the learned AO be directed to reduce the amount of Rs. 26 Lakhs from his total income of the appellant has not sold any property.

3. The brief facts of the case are that the assessee is an individual and is employed with M/s. Alok Industries Ltd. during the assessment year and had left service w.e.f. 08.06.2011 and thereafter was not engaged in any other employment. The assessee states that he had moved to Indore for the treatment of his wife in the month of August, 2017. The assessee has earned salary income of Rs.4,34,665/- as per Form 16 for which TDS of Rs.28,291/- was deducted and deposited by his employer M/s. Alok Industries Ltd. during the impugned year. Subsequently, M/s. Alok Industries Ltd. had rectified the return of income as in Form 26AS. The assessee's case was reopened vide notice u/s. 148 of the Act dated 31.03.2018 for the reason that as per MNS data, the assessee has carried out immovable property transaction as per ITS information and had not filed his return of income declaring the same. The assessee has also not filed his return of income in

response to notice u/s. 148 of the Act and has also not complied with notice u/s. 142(1) of the Act dated 03.12.2018.

4. The ld. learned Assessing Officer ('ld. A.O.' for short) passed the assessment order dated 21.12.2018 u/s. 144 of the Act r.w.s. 147 of the Act being the best judgment assessment, thereby determining the total income at Rs.69,54,010/- after making an addition on undisclosed salary income amounting to Rs.43,48,896/-, undisclosed STCG of Rs.26 lacs alleged to be out of sale of immovable property and undisclosed interest income of Rs.52,141/-, received from IDBI Bank Ltd.

5. Aggrieved the assessee was in appeal before the first appellate authority who vide order dated 29.05.2024 dismissed the appeal filed by the assessee for the reason that the assessee has failed to furnish any details/explanation during the assessment proceeding and before the first appellate authority had filed documentary evidence which are in the nature of additional evidences but without petition under Rule 46A of the IT Rules, 1962. The ld. CIT(A) rejected the documentary evidences on the ground that it was not in compliance with Rule 46A(1) of the I. T. Rules, 1962.

6. Aggrieved the assessee is in appeal before us, challenging the order of the ld. CIT(A).

7. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that as the assessee had moved to Indore for treatment of his wife, he was unable to attend the proceeding before the lower authorities. The ld. AR also stated that the assessee has got a good case on the merit and prayed that he may be given with one

more opportunity to present all the relevant documentary evidences in support of his claim.

8. The learned Departmental Representative ('ld. DR' for short) vehemently opposed to the admission of the additional evidence for the reason that the assessee was given sufficient opportunity before the lower authorities. The ld. DR relied on the orders of the lower authorities.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has not filed any documentary evidence during the assessment proceeding and had proposed to file the same before the first appellate authority who had rejected the same for the reason that the evidences were filed without accompanying petition under Rule 46A of the I. T. Rules, 1962.

10. Upon considering the same, we deem it fit to provide the assessee with one more opportunity to present his case before the lower authorities in the interest of justice and as per the principles of natural justice. As the assessee has not complied with the assessment proceeding, we remand these issues back to the file of the ld. A.O. for *de novo* assessment and direct the assessee to furnish all the relevant evidences in support of his claim before the ld. A.O. and to co-operate in the assessment proceedings without any undue delay on his side. The ld. A.O. is also directed to consider the same and to decide the issue on the merits in accordance with the law.

11. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 14.11.2024

Sd/-

(Girish Agrawal)
Accountant Member

Mumbai; Dated : 14.11.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai