

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"F" BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 4193/MUM/2024**

(Assessment Year : 2017-18)

**Joywin Fernandes**

304, Sunjoy View Old Kevni Road,  
Amboli, Andheri West,  
Maharashtra - 400058  
PAN: AANPF2016J

..... Appellant

v/s

**ACIT, Circle – 42(2)(1)**

Mumbai- 400020

..... Respondent

Assessee by : Shri Viraj Mehta

Revenue by : Shri Prashant Barate, Sr.DR

Date of Hearing – 12/11/2024

Date of Order - 22/11/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 19/06/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the Assessment Year 2017-18.

2. In the interest of justice, the slight delay of 1 day in filing the present appeal is condoned.

3. In this appeal, the assessee has raised the following grounds: –

*"1. Ground No.1 : Violation of Natural Justice*

*On facts and circumstances, Ld. CIT(A) has erred in passing the order without providing proper opportunity of hearing to the appellant. Said addition confirmed is bad in law and liable to be deleted as order is passed without opportunity of being heard and violating the principles of natural justice.*

*2) Ground No. 2: Addition u/s 69 of Rs. 3,95,00,000/-*

*On facts and circumstances, Ld. CIT(A) has erred in giving direction to AO to verify documents and quantify the unexplained income, if any before giving effect to the CIT(A)'s Order, Such direction by Ld. CIT(A) is bad in law and erroneous in facts and thereby Ld. CIT(A) be directed to delete the addition of Rs. 3,95,00,000/-.*

*3) Ground No. 3: Addition u/s 69A of Rs. 11,94,733/-*

*On facts and circumstances, Id. CIT(A) has erred in confirming the addition of salary income of Rs. 11,94,733/- on which tax is duly deducted. Such addition by Ld. CIT(A) is bad in law and erroneous in facts and thereby liable to be deleted."*

4. During the hearing, the learned Authorized Representative ("learned AR") wishes not to press Ground No.2 raised in assessee's appeal on the basis that relief has been granted to the assessee pursuant to the directions of the learned CIT(A). Accordingly, Ground No.2 raised in assessee's appeal is dismissed as not pressed.

5. The issue arising in Ground No.3 raised in assessee's appeal pertains to the addition of Rs.11,94,733/- under section 69A of the Act.

6. The brief facts of the case are pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration did not file his return of income. On the basis of information received on INSIGHT Portal that the assessee has entered into a transfer of

immovable property for a consideration of Rs.55 Lakh wherein TDS was deducted under section 194IA of the Act and also purchased another property for a consideration of Rs.3.40 crore. Further, the assessee has received a salary of Rs.11,94,733/- on which TDS was deducted under section 192 of the Act, during the year under consideration notice under section 148 of the Act was issued on 19.07.2022. In response to the notice issued under section 148 of the Act, the assessee did not file his return of income. The assessee also did not respond to various notices issued under section 142(1) and under section 144 of the Act. Therefore, the Assessing Officer ("AO") vide order dated 11.05.2023 passed under section 147 r.w. section 144 r.w. section 144B of the Act concluded the assessment on the basis of the information available on record. In the absence of any documentary evidence to explain the nature and source of receipt of salary income of Rs.11,94,733/-, the AO treated the same as an undisclosed income and added the same under section 69A of the Act.

7. In its appeal before the learned CIT(A), the assessee submitted that the AO issued the notices to an unknown email address instead of registered email address and therefore, the assessee was never served with the notices/letters/show cause notices issued by the AO during the assessment proceedings. The assessee further submitted that had he been given an appropriate opportunity, he would have furnished a copy of Form 16 and Form 26AS to justify the receipt of salary income on which TDS was also deducted under section 192 of the Act. Vide its submission dated 10.05.2024, the assessee also furnished a copy of Form 16 and Form 26AS

before the learned CIT(A). However, the learned CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that the assessee has failed to disclose the true particulars and correctness of his taxable income. Accordingly, the learned CIT(A) upheld the addition made by the AO under section 69A of the Act. Being aggrieved, the assessee is in appeal before us.

8. We have considered the submission of both sides and perused the material available on record. The solitary grievance pressed by the assessee in the present appeal is against the addition of Rs.11,94,733/- under section 69A of the Act. It is undisputed that the assessee neither filed his return of income under section 139 of the Act nor filed the same in response to the notice issued under section 148 of the Act. From the perusal of the record, it is further evident that the assessee also did not respond to various statutory notices issued during the assessment proceedings. It is the plea of the assessee that he was under the impression that since TDS was deducted from the salary and apart from it, he has earned minor interest from his bank deposits, therefore, no further tax is required to be paid and thus did not file his original return of income. As regards the non-compliance of notices issued during the re-assessment proceedings, the assessee submitted that all the notices were issued to an unknown email address instead of a registered email address and thus the assessee was never served with any notices. In support of the plea that the receipt of Rs.11,94,733/- is assessee's salary income, the learned AR, during the hearing furnished a copy of Form 16 issued by the employer, Hardcastle

Restaurants Pvt. Ltd., of the assessee. The learned AR also furnished a copy of Form 26AS in support of the plea that the salary income was received by the assessee after deduction of tax under section 192 of the Act. We find that even as per the information on Insight Portal relied upon by the AO for issuance of the notice under section 148 of the Act, the assessee received Rs.11,94,733/- as salary on which TDS was deducted under section 192 of the Act. Such being the facts, we are of the considered view that the assessee has duly explained the nature and source and therefore, the receipt of Rs.11,94,733/- cannot be treated as unexplained money under section 69A of the Act. However, as is evident from the record, since the assessee could not file his income tax return and notices issued during the assessment proceedings were also not received by the assessee, the Form 26AS and Form 16 now filed before us were not examined by the AO. Even the learned CIT(A) did not call for any remand report from the AO despite the fact that the assessee filed the aforesaid documents before the learned CIT(A) vide its submission dated 10.05.2024. Accordingly, we deem it appropriate to restore this issue to the file of the Jurisdictional AO with a direction to examine and verify Form 26AS and Form 16 as filed by the assessee and assess the income under the head 'salary' as per law. With the above directions, the impugned order on this issue is set aside and Ground No.3 raised in assessee's appeal is allowed for statistical purposes.

9. In view of the aforesaid findings, Ground No.1 needs no separate adjudication.

10. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 22/11/2024

**Sd/-**

**OM PRAKASH KANT  
ACCOUNTANT MEMBER**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 22/11/2024**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai