

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3470/M/2024  
Assessment Year: 2018-19**

<b>Income Tax Officer,</b> Ward 41(1)(3), Room No.830B, 8 <sup>th</sup> Floor, Kautilya Bhavan, BKC, Mumbai Maharashtra - 400051	Vs.	<b>Shri Nabi Ahmed Shafi Ahmed Sayed,</b> 2 Bilqis Bano Chawl, Pathanwadi, Aarey Road, Filter Pada, Nitie, Powai, Maharashtra-400 087 <b>PAN: AYAPS9093R</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Praveen B. Shetty, ITP  
Revenue by : Shri Nayanjyoti Nath, Ld. Sr. A.R.

Date of Hearing : 04.11.2024  
Date of Pronouncement : 25.11.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Revenue against the order dated 09.05.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2018-19.

**2.** In the instant case, the Assessee by filing his return of income for the assessment year under consideration on 20.12.2018 declared his total income at Rs.4,44,320/-. Subsequently vide letter dated 08.03.2019 an information was received from the office of DIT(I & CI), Mumbai to the effect that the Assessee had purchased property for Rs.3,23,52,000/- wherefrom it is clear that the Assessee has failed to disclose fully and truly all material facts relating to the income of Rs.1,15,537/-. Consequently, the case of the Assessee was selected for scrutiny and various statutory notices were issued to the Assessee.

**2.1** The Assessee failed to comply with the notices and therefore the Assessing Officer (AO) on perusing the ITR filed by the Assessee observed that the Assessee has not disclosed the details of immovable properties acquired/sold during the year. However, from the ITS details, it is observed that the Assessee had purchased property for Rs.3,23,52,000/-. In this regard, the Assessee was asked to furnish the relevant documents/information in connection with the transactions made by the Assessee. But the Assessee has failed to furnish any details in this regard. Hence, in the absence of any documents, it is apparent that the Assessee has no material evidence to substantiate the investment made to the tune of Rs.3,23,52,000/-. On the aforesaid reason, the Assessee was again show caused vide show cause notice dated 01.04.2021 proposing the draft assessment order, wherein the proposed addition has been intimated to the Assessee and the Assessee was requested to file his submission on or before 07.04.2021.

**2.2** In response to the show cause notice, the Assessee filed his submissions dated 02.04.2021 which were not found as tenable by the AO, who accordingly made the addition of Rs.3,23,52,000/- the amount of investment made and added the same to the income of the Assessee as un-explained investment u/s 69 of the Act.

**2.3** The AO also made the addition of Rs.1,15,537/- being difference between the transaction amount and the stamp value to the tune of (Rs.3,24,67,537/- – Rs.3,23,52,000/-), as income from other sources by observing and holding as under:

*“That from the ITS details, it is observed that the Assessee had purchased the above-mentioned property for Rs.3,23,52,000/- but the stamp duly value of which was Rs.3,24,67,537/- and the Assessee has not furnished any relevant documents/information in this regard. Hence, it is apparent that the Assessee has not disclosed the difference between the transaction amount and the stamp value to the tune of Rs.1,15,537/- (Rs.3,24,67,537/- – Rs.3,23,52,000/-) as income from other sources. Therefore, vide show cause notice dated 01.04.2021 proposing the draft assessment order, the proposed addition of Rs.1,15,537/- was intimated to the Assessee with a request to file his submission on or before 07.04.2021. However, the Assessee has not filed any clarification in this regard and therefore the amount of Rs.1,15,537/- is accordingly added to the income of the Assessee as income from other sources”.*

**3.** The Assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner, who by impugned order deleted the same by observing and holding as under:

*“5.1. The delay in filing of appeal is condoned*

*5.2. The assessment was made u/s. 143(3) on 23/04/2021 in the case of the assessee, wherein, based on certain information received from the Olo DIT (I&CI) Mumbai, an addition of Rs. 3,23,52,00/- was made on account of undisclosed investment in a property In the assessment order,*

*the AO states that there was irrefutable evidence of such purchase from the ITS data available for the assessee for the FY 2017-18, which stated that the assessee had purchased a property which had been registered with the Registration Authority at Mumbai. The assessee was issued a show cause notice on 01/04/2021 and the assessee's reply, submitted on 02/04/2021, was found not tenable by the AO.*

*5.2.1. Aggrieved with the order, the assessee filed the present appeal*

*5.2.2. During the course of appeal, the assessee submitted details of the Registered Purchase Deed, the share certificate issued by the Co-operative Housing Society, in which such flat was purchased, copy of a housing loan, copy of bank statements, copy of Income Tax Return, computation of total income. P/L Account balance sheet for the year, etc.*

*5.2.3. I have gone through the submissions of the assessee The assessee stated that he had purchased the flat jointly with his father and brother wherein the agreed value of payment was Rs. 3,23,52,000/- and the value, as per the Stamp Duty Assessor was Rs. 3,24,67,537/- (difference of Rs. 1.15.537/-) He further stated that the total expenditure towards the purchase of the flat was Rs. 3.51.00 385/- including the Stamp Duty and Registration cost. Out of that sum, the contribution of the assessee was Rs. 48,71,085/- The details of such payment made from the bank accounts have been submitted with documentary evidence of entries in the bank statement. Moreover, in a copy of the balance sheet submitted, it is seen that the flat has been reflected in such balance sheet. The payments made by the assessee were spread over in two AYs, being AY 2017-18 and AY 2018-19*

5.2.4. *I have also seen the share certificate issued by Mimosa Mirabills Co op. Hsg. Society Ltd of Nahar Amrit Shakti, Oppo, Nahar International School Chandivali, Mumbai-400 072, India. In such share certificate it is seen that the assessee's name is included in such certificate, along with his father and brother The certificate was dated 07/12/2017*

5.2.5. *On going through the detailed submission, made by the assessee during the appeal proceedings, I do not find the action of the AD to put the burden of the entire purchase of the flat on the assessee himself. I find that the actual investment made by the assessee was much less, as mentioned above and the said property is fully declared in the balance sheet of the assessee. Therefore, the addition of Rs. 3,23,52,000/-, in the hands of the assessee is unjustified and needs to be deleted.*

5.3. *Another issue was raised in the appeal that while making the assessment, the AO has also considered the value adopted for Stamp Duty of the property, for making addition, wherein the difference between the value as per deed and the value adopted for Stamp Duty, being Rs. 1,15,537/- was also included it is accepted principle of the interpretation of Sec 56(2) that, in case of a purchase if the value adopted for Stamp Duty is not more than 10 per cent of the deed value such extra value can be ignored, for making addition. Considering such difference being much less than 10 per cent of the deed value, the additional addition of Rs 1,15,537/- is also found to be unreasonable and need to be deleted."*

**4.** We have considered the orders passed by the authorities below. The Assessee before us by filing ITR acknowledgment, statement of

income, copy of profit & loss account and balance sheet for the A.Y. 2018-19, copy of bank statement for the A.Y. 2018-19, copy of share certificate and purchase agreement, copy of acknowledgment (page No.67 of paper book) qua submission of the aforesaid documents such as capital account, covering letter, computation, balance sheet, profit & loss account and purchase agreement, has submitted that these documents were filed before the AO during the assessment proceedings but the same were not found tenable and the AO rejected the same simply by mentioning that the submission dated 02.04.2021 is not tenable, without going into the details and documents and/or considering the same in the context of the issues involved. And therefore, the same were rightly considered by the Ld. Commissioner while deleting the additions.

**5.** On the contrary the Ld D.R. has submitted that the Assessee has failed to file the relevant documents, which resulted into passing the assessment order with the aid of section 144B of the Act. Further, the Ld. Commissioner deleted the additions without giving an opportunity to the AO to contradict the additional evidence filed by the Assessee before him and in violation of the Rule 46A of the Income Tax Rules, 1962 (for short 'the Rules'). Further without remanding the matter to the AO and granting him the opportunity to cross examine the additional evidence and to submit the report, so in utter violation of rule 46A of the Rules. The Ld. Commissioner also failed to consider that the Assessee was not able to prove the source of investment in property. Further, the Ld. Commissioner failed to appreciate that safe harbor of 10% in difference between the purchase/agreement value and stamp duty value has been provided w.e.f. 01.04.2020 but the current year being 2018-19 and therefore the limit of 10% is not applicable in the case of the Assessee for the current assessment year.

**6.** We have heard the parties and perused the material available on record. As we observe above the Assessee has filed the relevant documents before the AO in order to establish his claim, the Ld. Commissioner has not only considered the peculiar facts and circumstances of the case but also documentary evidence which were made available before the AO. The Ld. Commissioner observed from the share certificates issued by Mimosa Mirabills Cooperative Housing Society Ltd. that the Assessee's name is included in such certificate dated 07.12.2017 along with his father and brother. The Ld. Commissioner further observed that the actual investment was much less, as mentioned by the AO and the said property is fully declared in the balance sheet of the Assessee. Therefore, the addition of Rs.3,23,52,000/- in the hands of the Assessee is un-justified and needs to be deleted. Further for making the addition the AO has adopted the stamp duty value of the property wherein the difference between the value as per the deed and the value adopted for stamp duty being Rs.1,15,537/- not more than 10% of the deed value. Though submission of the Ld. DR that safe harbor of 10% in difference between the purchase/agreement value and stamp duty value has been provided w.e.f. 01.04.2020 but the current year being 2018-19 and therefore the limit of 10% is not applicable in the case of the Assessee for the current assessment year, however the Ld. Commissioner applying the accepted principle of the interpretation of the provisions of section 56(2) of the Act, to the effect *"that if the value adopted for stamp duty is not more than 10% of the deed value then such extra value can be ignored for making the addition"* and found the said addition of Rs.1,15,537/- to be unreasonable consequently deleted the same. We have given thoughtful considerations to the peculiar facts and circumstances of the case and the conclusion drawn by the Ld. Commissioner and do not find any reason/material contrary to contradict the findings, hence are inclined not to interfere in the order of the Ld. Commissioner. Consequently, the appeal filed by the Revenue Department is liable to be dismissed.

**7.** In the result, the appeal filed by the Revenue Department stands dismissed.

**Order pronounced in the open court on 25.11.2024.**

**Sd/-  
(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.