

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 789/MUM/2024
(Assessment Year : 2012-13)**

Income-tax Officer Ward-6(2)(1), Room No. 510, 5 th floor, Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	M/s. Colo Color Private Limited 1 st Floor, Dadar Departmental Stores, M C Jawle Marg, Dadar West, Mumbai-400028.
PAN/GIR No. AABCC3349L		
(Appellant)	..	(Respondent)

Assessee by	Shri. Vipul Joshi, Adv. & Ms. Dinkle Haria, Adv.
Revenue by	Shri. Krishnakumar, Sr. DR
Date of Hearing	19/09/2024
Date of Pronouncement	17/12/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 08.01.2024 passed in Appeal no. CIT (A), Mumbai-12/10402/2015-16 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-

Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2012-13, wherein learned CIT(A) has allowed assessee's appeal, deleting the addition made by learned assessing officer, vide assessment order dated 31.03.2015.

2.(i) The brief facts related to the appeal state that the respondent assessee is engaged in the business of photography, developing and printing of rolls and photographs, reselling of items concerning photographic materials and running a photographic studio. Assessee e-filed its return of income for AY 2012-13 on 26.09.2012, declaring total income of Rs. 73,79,530/-. The return was processed u/s. 143(1) of the Act. The case was selected for scrutiny and statutory notices u/s. 143(2) r.w.s 142(1) of the Act were issued and served upon the assessee. Assessee submitted required details before the assessing officer. The assessee's submissions disclosed that it purchased land and building at CTS No. 1441, Radha Niwas, Bhawani Shankar Road, Dadar (W), Mumbai-400028, admeasuring 1015.89 sq.mtrs. and CTS No. 1653, 2/1653, Satya Niwas, Bhawani Shankar Road, Dadar (W), Mumbai, admeasuring 649.67 sq. mts, from various parties at Rs. 9.70 Cores. The stamp duty valuation was shown at Rs. 14,36,73,000/-.

2 (ii) During the course of assessment proceedings, assessee was asked to explain as to why difference in agreement value of Rs. 2 crores should not be taxed as unexplained. Assessee submitted that the properties were belonging to Dardarkar Family. There was dispute regarding above property ownership share between Dadarkar family, hence assessee has registered conveyance deed with Snehlata Dardarkar and others on 06.05.2011 for consideration of Rs. 2 Crores and had paid full stamp duty of both the aforesaid properties. Assessee further explained that, as there was undivided share in aforesaid plots, assessee has to pay stamp duty for full plots for registration of conveyance deed. Further, the conveyance agreements with other owners were made from time to time and no additional stamp duty was required to be paid.

2.(iii) The learned assessing officer was not satisfied with the explanation submitted by the assessee and added an amount of Rs. 4,66,73,000/- (being the difference between stamp duty value of Rs. 14,36,73,000/- and actual consideration of Rs. 9,70,00,000/-) u/s. 69B of the Act.

3. Aggrieved, assessee filed an appeal before learned CIT(A), who allowed assessee's appeal and deleted the addition made by the

learned assessing officer vide assessment order dated 31.03.2015.

4. Aggrieved with the impugned order passed by learned CIT(A), appellant revenue has preferred this second appeal on the ground that learned CIT(A) has erred in deleting Rs. 4,66,73,000/- without considering the AO's remand report and ignoring the fact that assessee could neither furnish any valuation nor any evidence in respect of the additional stamp duty paid.
5. We have perused the records and heard learned representative for the assessee and learned DR for the revenue.
6. Learned representative for the assessee has argued that learned CIT(A) has rightly deleted the addition made by learned assessing officer as the same could not be added u/s. 69B of the Act. Prayed to dismiss the appellant revenue's appeal.
7. Learned DR has argued that learned CIT(A) has erred in deleting the said additions made by learned assessing officer in absence of any evidence adduced by the assessee.
8. The main point for determination under appeal is as to whether learned CIT(A) has erred in deleting the addition of Rs.

4,66,73,000/- made u/s 69B of the Act by the learned assessing officer?

9. At the very outset, it is pertinent to mention relevant section 69B of the Act which reads as under:

“69B. Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.”

10. It appears from the perusal of the assessment order that the learned assessing officer has made the above said addition of Rs. 4,66,73,000/- u/s. 69B of the Act, merely on the basis of difference in cost of property purchased and stamp duty valuation. As regards the submissions of the revenue that the impugned order has been passed without considering the remand report, the perusal of the impugned order shows that the learned assessing officer could not procure the remand report asked by the Ld. CIT(A) in response to the additional evidence adduced by the assessee. As regards revenue's argument for want of evidence and valuation report, it was the assessing officer who was to first arrive at the conclusion with cogent evidence that there is an understatement of the

consideration (Investment) in the assessee's books of accounts. Once he could establish the understatement of consideration, then, in absence of any satisfactory explanation on behalf of the assessee, he should have proceeded to adopt some dependable and reliable yardstick to measure the extent of said understatement of the investment. However, learned assessing officer seems to have jumped directly to the final step in the process of applying section 69B of the Act in the case in hand.

11. Learned CIT(A) has based his findings on the decision dated 20.08.2019 passed by Hon'ble Gujarat High Court in tax appeal No. 399/2019, Gayatri Enterprise Vs ITO, wherein the decision of Hon'ble Delhi High Court in CIT V. Dinesh Jain HUF [2012][2013] 352 ITR 629 has been relied. The relevant Para 26 of Gayatri Enterprises (supra) has been reproduced as under:

"26. Section 69B of the Act does not permit an inference to be drawn from the circumstances surrounding the transaction that the purchaser of the property must have paid more than what was actually recorded in his books of account for the simple reason that such an inference could be very subjective and could involve the dangerous consequence of a notional or fictional income being brought to the tax contrary to the strict provisions of Article 265 of the Constitution of India which must be "taxes on income other than agricultural income."

12. In the instant case, respondent assessee has categorically denied to have paid the said excess amount (investment) to the tune of Rs. 4,66,73,000/-. Learned CIT(A) has rightly observed

that the learned assessing officer was not able to establish on records that the appellant has made such an investment. Learned assessing officer has therefore failed to establish at the very first instance that there was an understatement of investment. We do not find any error of fact or law in the impugned order. The AO's finding seems to be based on mere assumption. In view of the law laid down by the Hon'ble Gujarat High Court in Gayatri Enterprise (Supra), Ld. CIT(A) has rightly deleted the aforesaid addition made u/s. 69B of the Act by the learned assessing officer. The aforesaid point is accordingly determined in negative against the revenue and in favour of the assessee.

13. In the result, the revenue's appeal stands dismissed.

Order pronounced on 17.12.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 17/12/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai