

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.3623/Mum/2024
(Assessment Year :2018-19)**

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| Shyam Udaybhai Rughani 1503, Laxmi Terrace Popat Niwas, Mathuradas Road Kandivali West Maharashtra-400 067 | Vs. | ITO 42(1)(5), Mumbai |
| PAN/GIR No.AJUPR8175J | | |
| (Appellant) | .. | (Respondent) |

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|------------------------------|--------------------------------------|
| Assessee by | Shri Rushabh Mehta |
| Revenue by | Shri Bhangapatil Pushkaraj Ramesh |
| Date of Hearing | 04/11/2024 |
| Date of Pronouncement | 13/12/2024 |
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आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 27/05/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In various grounds of appeal assessee has challenged the addition of Rs.93,74,640/- by treating the value of property as 'business income'. The relevant grounds read as under:-

1.(a) *The assessment order passed u/s. 143(3) rw.s. 143(3A) & 143(38) of the Act by the Id. Assessing Officer is invalid, bad in law and against the principle of natural justice.*

(b) The id. CIT(A) erred in passing order u/s 250 of the Act in undue haste and without considering documents placed on records, request made for adjournment and without appreciating the factual matrix of the case.

2. (a) *The CIT(A) erred in facts and law in confirming the addition made by the A.O. of Rs.93,74,640/-by treating the value of property as business income without appreciating that the same was allotted to the assessee against his proportionale share of profit in consideration of his efforts in completing the project of the firm exempt u/s 10(2A) of the Act and therefore was not his business income.*

(b) The CIT(A) erred in facts and law in not appreciating that under the specific facts and circumstance of the case, the allotment of property ought to have been considered as a reward received in the form of share of profit from the firm which is exempt from tax u/s. 10(2A) of the Act and accordingly not to have taxed the same separately as business income of the assessee.

(c) The CIT(A) erred in facts and law in not appreciating the settled principle in law that tax can be recovered only from the right person who ought to be taxed and none other as in the present factual matrix of the case, the receipt of the immovable property by the assessee was in fact in proportionate to his share of profit from the business Income eamed by the firm which needs to be taxed in hands of the firm only

(d) Without prejudice to 2(a) & (b), the CIT(A) erred in facts and law in not appreciating that assessee did not acquire any clear rights over the title of the property in view of the dispute amongst the partners and consequently, no income had accrued to the assessee which can be offered to tax in the year under consideration as well as held by the Hon'ble Supreme Court in the case of E.D. Sassoon and Co Ltd v. CIT [1954] 26 ITR 27 (SC)

3. The brief facts are that assessee is an individual and for the year under consideration, has filed his return of income on 25/07/2018 declaring total income of Rs.5,64,720/-. The assessee had entered into a transaction of immovable property on 23/03/2018 for consideration of Rs.93,74,640/-. During the course of assessment proceedings in response to the show-cause notice assessee submitted that he had acquired Flat No.1503 having market value of Rs.93,74,640/- from M/s Aum Shyam Construction, wherein he was a partner and furnished the copy of the agreement and Index II dated 20.03.2018. Further, it was also informed vide aforesaid letter that as per clause (xxi) of the agreement, the assessee being the purchaser, had been allotted the flat against his proportionate share of profit in lieu of the consideration of his efforts put for completing the "Laxmi Terraces Project and accordingly, there was no payment made for the said flat.

4. Ld. AO issued another show-cause notice stating that why the property received which was valued at Rs.93,74,640/- should not be treated as 'business income' on account of his efforts in M/s.Aum Shyam Constructions and why the same is not taxed. In response assessee has filed very detailed submissions which are summarized hereunder:-

i. Redevelopment of the society The Kandivali Laxmi CHS Ltd. was carried out by the partnership firm-M/s. Aum Shyam Construction; wherein the proportionate share of profit of each partner was 25%. It was agreed that the assessee shall handle the society and its members for any disputes/ desires etc. and

the same was completed in October 2016 with grant of Occupation Certificate

ii. As per clause 21 of the partnership deed, in case of any subsequent dispute/ difference amongst the partners, it was provided that the same shall be referred to Arbitration subject to the provisions of the Arbitration & Conciliation Act, 1996,

iii. In view of consideration of the efforts made for completing the redevelopment of the society, Flat No.1503 was allotted by the firm against his share of profits from the firm and accordingly no payment was made for the flat.

Thereafter, there were disputes amongst the partners and the matter was referred to Arbitration which is still pending before the Arbitrator Sr Adv Shiraz Rustomjee and also furnished the copy of Arbitration Petition filed dated 26.03.2018.

V The same was not disclosed in the return of income u/s. 139(1) for the year under consideration since the firm had not finalized to distribute the said share of profit to the assessee in its books due to the ongoing dispute.

VL No income had accrued to the assessee during the year under consideration since he was only in possession of the flat with no clear title as the dispute was still pending for arbitration. Further, in case the arbitration order is not in favour of the assessee, he shall then not have any title to the property and therefore, there was no certainty as to the title of ownership of the flat and therefore no income is accrued to the assessee in the year under consideration. On other hand, if the order comes in favour of the assessee, the same shall be accepted as to be received in lieu of proportionate share of his profit which is also exempt u/s 10(2A) of the Act.

5. However, the ld. AO treated the property received by the assessee as business income of the assessee.

6. The ld. CIT(A) noted that various notices of hearing were sent but assessee kept on seeking adjournment as per the details noted by him in para 5.1 of the order. Thereafter, in his *ex parte* order he has confirmed the additions made by the ld. AO.

7. Now, before us at the time of hearing, it has been stated that the flat in question which has been taxed as business income of the assessee, now in light of the judgment of the Hon'ble Bombay High court, the flat has been taken away from the assessee, that is assessee no longer has any claim or title on the said flat. He submitted that there was a legal dispute over the title of the Flat No.1503 and assessee after the court order no longer in possession or the owner of the said flat. To substantiate, the chronology of events alongwith various documents given before are as under:-

| Sr. No. | Date | Particulars | Description |
|---------|-----------|-----------------------|--|
| 1 | 29.5.2009 | Partnership Deed | Uday Rughani, Shyam Rughani, Rashmin Rughani and Aum Rughani were partners of the Partnership Firm "Aum Shyam Constructions" |
| 2 | 23,3.2010 | Development Agreement | The firm Signed and Registered the Development Agreement with the society The Kandivali Laxmi Apartment CHSL |

| | | | |
|----|------------|--|---|
| 3 | 23.3.2018 | Agreement for Flat no. 1503 | Agreement was signed and registered between Shyam as partner and the firm. |
| 4 | 26.3.2018 | Arbitration Petition | Arbitration Petition was filed in the high court for appointment of Arbitrator and adjudication of Dispute between the partners regarding the Flat No. 1401, 1501, 1503 and 1603. |
| 5 | 19.4.2018 | High Court Order | High Court appointed an arbitrator Shiraz Rustomjee for adjudicating the disputes between the partners, |
| 6 | 28.6.2024 | Arbitration Award | An Award was passed by the Arbitrator. |
| 7 | 23.9.2024 | Application u/s 34 | An Application was filed in the Bombay High Court for Setting aside the arbitration Award. |
| 8 | 23.9.2024 | Deed of Dissolution | Dissolution deed of Firm - "Aum Shyam Constructions" was executed between the partners Uday Rughani, Shyam Rughani, Rashmin Rughani and Aum Rughani |
| 9. | 24.09.2024 | High Court order referring Consent Terms | Consent Terms were filed before the Hon'ble high Court. Hon'ble Court set aside the arbitration award and cancelled the Agreement for Flat No.1503 |

8. Thus, he submitted that the agreement for Flat No.1503 entitling the assessee has been held to be *void ab initio* and cancelled by the Hon'ble High Court, therefore addition now cannot be made in the hands of the assessee.

9. On the other hand, ld. DR submitted that now in light of these evidences and facts brought on record, the matter should be restored back to the file of the ld. AO to examine these documents.

10. After considering the aforesaid facts and material brought on record, it is seen that now in terms order passed by the Hon'ble Bombay High Court on 24/09/2024 in Commercial Arbitration Petition (L) No.29197 of 2024, it is evident that agreement for Flat No.1503 has been cancelled by the Hon'ble High Court vide para 4 & 5 of the said order. Thus, assessee is no longer in the possession of the flat. Since this is a subsequent event, therefore, for the limited purposes, matter is restored back to the file of the ld. AO to examine, if by virtue of the judgment of the Hon'ble High Court, the flat in question which has been taxed as business income received by the assessee itself has been cancelled and assessee's entitlement has been held to be *void ab initio* then, no addition can be made. Ld. AO after verification of the said material and facts brought on record and the judgment of the Hon'ble High Court should decide the issue accordingly and give consequential relief to the assessee.

11. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 13th December, 2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER
Mumbai; Dated 13/12/2024

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

KARUNA, *sr.ps*

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