

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.5145/M/2024
Assessment Year: 2016-17**

Mr. Neelesh Popley, T-1/2304, Oasis, Opp. Mahindra & Mahindra Yellow Gate, Off. Akurli Rd, Kandivali East, Mumbai Maharashtra – 400 101 PAN: AIFPP7341E	Vs.	Income Tax Officer- 22(2)(1), Piramal Chamber, Lal Baug, Parel, Mumbai Maharashtra – 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Poojan Mehta, Ld. C.A
Revenue by : Shri Srinivas P., Ld. S.R. A.R.

Date of Hearing : 25.11.2024
Date of Pronouncement : 19.12.2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 18.06.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2016-17.

2. At the outset, it is observed that there is a delay of 46 days in filing the instant appeal, on which the Assessee has stated that he was occupied in taking care of health of his maternal uncle Mr. Vidhyadhar Govind Khopade, who was diagnosed with cancer. Due to mental disturbance and inadvertent mistake, it was skipped from the mind of the Assessee to send the impugned order to his regular chartered accountant

for necessary action. However, after receiving a letter dated 10.09.2024 from the Department and on going through the ITBA portal found the impugned order and thereafter immediately the appeal was filed but with a delay of 46 days. The delay was neither intentional nor malafide but because of the aforesaid reasons and therefore lenient view may be taken and the delay may be condoned. On the contrary, the Ld. D.R. though refuted the claim of the Assessee but not the factual aspects as demonstrated above. Considering the delay of 46 days as bonafide, reasonable and unintentional, the same is condoned.

3. Coming to the merit of the case, the Assessee had declared his total income of Rs.2,61,490/- by filing his return of income which was processed u/s 143(1) of the Act. Subsequently, the information was received by the Department that during the course of scrutiny proceedings for the A.Y. 2018-19, the Assessee in response to the notice u/s 142(1) of the Act stated that he has purchased immovable property and paid the money in installments. On verification it was seen that the Assessee had paid installments of Rs.24,68,833/- in the F.Y. 2015-16 relevant to A.Y. 2016-17, whereas the Assessee had declared the total income of Rs.2,61,490/- only for the A.Y. 2016-17. Thus, the payment of installment of Rs.24,68,833/- was not commensurate with the income disclosed in the return of income. Consequently, the case of the Assessee was reopened by recording the reasons u/s 147 of the Act and issuing notice u/s 148 of the Act dated 21-06-2021.

4. The Assessee submitted the details called for including the copy of agreement to sell of the property purchased by filed his reply, the relevant portion of the same is reproduced herein below:

"3.4.2 The assessee submitted his reply on 31.01.2023, the relevant portion is reproduced as under. -

"I have booked following under construction property jointly with my Wife on 28.05.2011 (Allotment Letter Annexed for your Reference).

Purchase Consideration Paid- Rs. 79,72,250/-, Mode of payment- Cheque. Property was purchased under construction thus payment of the same was prorated over a Number of Years- From 2011 to 2019. The Source of Payment to Builder was from my regular income as well as the amount saved and kept as Fixed Deposits over a period of my life and even funds were introduced by my wife too".

5. The Assessing Officer (AO) by considering the reply/claim of the Assessee has observed as under:

"It is seen from the documents submitted by the assessee that the assessee had booked a 2BHK flat at 2601, Tower No.1, Project OASIS, Kandivli, Mumbai on 28.05.2011 by paying earnest money of Rs.15,96,600/-. The property was handed over to the assessee in the year 2017 vide Agreement for Sale made with M/s Glomore Constructions dated 06.11.2017. The assessee submitted that he was making installment payments every year to the builder from 2011 to 2019.

3.4.3 It is seen from the Bank statements submitted by the assessee that, the assessee made the following payments to M/s Glomore Constructions during F.Y 2015-16 relevant to A.Y 2016-17.

Date	Amount in Rs.	Bank
13.05.2015	1,58,063/-	Bharat Co-operative Bank
13.05.2015	4,933/-	--do--
18.06.2015	1,75,000/-	--do--
18.06.2015	2,25,000/-	Canara Bank
05.10.2015	75,000/-	--do--
01.12.2015	8,054/-	--do--
19.12.2015	2,30,495/-	--do--
19.02.2016	2,30,102/-	--do--
22.02.2016	8,342/-	--do--
18.06.2015	6,00,000/-	Cosmos Co-operative Bank
18.08.2015	3,22,601/-	--do--
05.10.2015	3,00,000/-	--do--
06.10.2015	8,054/-	--do--
21.08.2015	19,189/-	Syndicate Bank
01.12.2015	1,04,000/-	--do--
Total	24,68,833	

5.1 The AO, on the aforesaid factual aspects and the payments made by the Assessee, though accepted some of the payments made by the Assessee as genuine, however, observed that source of credit qua 4 payments made from Cosmos Co-operative Bank, were unclear and therefore vide notice dated 10.04.2023 u/s 142(1) of the Act, asked the

Assessee to provide source and nature of the following credit/deposit entries appearing in bank account held with Cosmos Co-operative Bank:

Date	Particulars	Amount (in Rs.)
14.05.2015	By Cash	1,30,000/-
08.06.2015	11865030116	4,00,000/-
27.07.2015	To For 118200105432	7,03,853/-
01.09.2015	To For 118200109683	3,01,768/-

6. The Assessee vide his reply dated 14.04.2023 has claimed that the Assessee had fixed deposit of Rs.10 lakhs in the Cosmos Co-operative Bank as on 25.05.2013 and had withdrawn Rs.4,00,000/- and thereafter on 27.07.2015 and 01.09.2015 respectively received the maturity amounts of Rs.7,03,853/- and Rs.3,01,768/-. The Assessee further submitted that the amount of Rs.1,30,000/- deposited on 14.05.2015 was from the amount kept at home for emergencies withdrawal from previous year, some gifts received from parents and relatives.

7. The AO though considered the aforesaid claim of the Assessee, however, not being satisfied, ultimately held that the Assessee has not given any proper explanation for the three credit entries. Regarding the source and cash deposit, the explanation of the Assessee is not found acceptable as the Assessee has not filed the return of income for the previous years to declare his source of income and in view of the above, source of payments of Rs.6,03,000/-, Rs.22,601/-, Rs.3,00,000/- and Rs.8,054/- aggregating to Rs.12,30,655/- made from Cosmos Co-operative Bank remains unexplained. The AO vide Assessment Order dated 23-05-2023 u/s 147 r.w.s 144B of the Act, ultimately made the addition of Rs.12,30,655/- u/s 68 of the Act and consequently added the same in the income of the Assessee.

8. The Assessee, being aggrieved, challenged the assessment order on the ground for reopening of the case u/s 147/148 of the Act and the addition on merits before the Ld. Commissioner, who not only affirmed

the action of the AO in reopening of the case u/s 147/148 of the Act but also the aforesaid addition of Rs.12,33,655/- by holding as under:

“6. Ground No. 01: In this ground of appeal, the appellant has contended that the AO erred in making an addition of Rs.12,33,655/- as unexplained investment under section 69 of the Act by not considering the explanation of the appellant. As seen from the assessment order, the AO had examined the bank statements and details furnished by the appellant and found that the source for the credits in the Cosmos cooperative Bank was not clear and had not been explained satisfactorily by the appellant. Hence, the four payments made from this bank for the said property could not be found to be explained. The appellant had not given any proper explanation for the source and nature of the credit/deposit entries appearing in the bank account held with this cooperative Bank. Regarding the cash deposit of Rs.1,30,000/- in the bank, the explanation of the appellant was not found acceptable by the AO. The appellant had not filed ROI for the previous years to declare his sources of income. During appellate proceedings also, the appellant reiterated the submission made by him during assessment proceedings and did not provide any self-contained evidence-backed explanation to satisfactorily controvert the finding of the AO in the assessment order. As regards the cash deposit of Rs. 1,30,000/-, he claimed that it had been deposited from the cash kept at home for emergencies and was out of the pin money saved by his wife and some cash received as gift from relatives on occasions of birthdays and anniversaries of family members.

6.1 In the absence of any corroborative evidence furnished by the appellant and the factual matrix of the case, I see no reason to interfere with the order of the AO on this issue. This ground of appeal is therefore dismissed.”

8.1 The Ld. Commissioner, however, allowed the ground No.3 raised by the Assessee pertaining to the wrongly computation of total income at Rs.24,61,310/- and directed the AO to examine such claim of the Assessee, while giving appeal effect to the impugned order.

9. The Assessee, being aggrieved, is in appeal before this Court. The Assessee supported his case, whereas the Ld. D.R. refuted the claim of the Assessee.

10. Having heard the parties and perused the material available on record. From the assessment order, it appears that the Assessee has

established its case by demonstrating before the AO that the amount of Rs.4,00,000/- as credited in Cosmos Co-operative Bank as on 08.06.2015 was received from overdraft facility obtained from the bank account bearing No.11865030116 against the fixed deposit receipt of Rs.11,07,134/- and the bank has charged interest of Rs.2900/- on said overdraft facilities. Further, the Assessee has also demonstrated that the amount of Rs.7,03,853/- as credited as on 27.07.2015 in the said bank has been received as balance on maturity of the fixed deposit bearing receipt No.118200105432 (Rs.1107134/- – Rs.4,00,000/-). Further, the credit entry of Rs.3,01,768/- dated 01.09.2015 was in respect of maturity of fixed deposit made on 28.07.2015, which was made out of the amount received on maturity of fixed deposit of Rs.7,03,853/- on 27.07.2015. With regard to the credit entry of Rs.1,30,000/- as on 14.05.2015, the Assessee has demonstrated and claimed that said cash deposit was out of his savings and through gifts received in cash in earlier years. The Assessee in support of his claim, also submitted the bank statements etc. Though the Assessee has been able to demonstrate the credit entries, however, the AO still doubted the same mainly on the reason that the Assessee has not given any proper explanation for the three credit entries of Rs.4,00,000/-, Rs.7,03,853/- and Rs.3,01,768/- and with regard to the source of cash deposit of Rs.1,30,000/- the explanation of the Assessee is not found acceptable, as the Assessee had not filed his return of income for the previous years to declare his source of income as observed by the AO. The Ld. Commissioner also disregarded the explanations of the Assessee by observing that the Assessee did not provide any self-content evidence-backed explanation to satisfactorily controvert the findings of the AO in the assessment order. This Court has given thoughtful consideration to the determinations by the Authorities below and observe that the determinations made by the authorities below are contrary to the plausible explanations offered by the Assessee as mentioned above, by explaining the credit entries, which at all cannot be considered as insufficient, un-explainable and un-satisfactorily. Consequently, the

addition in hand being un-sustainable is liable to be deleted, thus the same is deleted.

11. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 19.12.2024.

**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.