

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

**BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No.4305/Mum/2024
(Assessment Year: 2013-14)**

Jagdish Babulal Thakkar, A-602, Karma Vihar Apartment, Station Road, Ghatkopar (East), Mumbai-400077. PAN : AAAPT4867A	Vs.	ITO-26(1)(1), Room No. 620, 6 th Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai-400051.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Jitendra Singh, AR

Revenue / Respondent by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 09.10.2024

Date of Pronouncement : 05.11.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 27.06.2024 for Assessment Year (AY) 2013-14. The assessee raised the following grounds of appeal:

"1. The Ld. National Faceless Appeal Centre (NFAC) Delhi (hereinafter referred to as the "NFAC") erred in passing the order dated 27.06.2024 upholding the action of the Ld. Income Tax Officer, Range 26(1)(1), Mumbai (hereinafter referred to as 'Ld. A.O.')] in determining the total income of the Appellant at Rs.1,31,63,000/- as against returned income of Rs.1,89,000/-

without appreciating the facts and circumstances of the case. The Appellant strongly objects to the impugned order passed by NFAC as the same is illegal, arbitrary and perverse on the following amongst other grounds which are urged without prejudice to one another: -

2. Order passed without considering the remand report of the Ld. A.O. is bad in law

The NFAC fell in error of law in passing the impugned order dated 27.06.2024, summarily rejecting the appeal, ignoring the remand report furnished by the Ld. A.O. vide letter dated 27.09.2021. Thus, the impugned order is passed in gross violation of provisions of Act and in undue haste. The Appellant, therefore, humbly prays that the impugned order passed by NFAC may be quashed and set aside.

3. Addition by treating the investment made in immovable property as income from undisclosed sources is unjustified - Rs.1,29,74,000/-

The NFAC fell in error of law in making an addition of Rs.1,29,74,000/- by treating the investment made in the immovable property as income from undisclosed sources without appreciating the facts and circumstances of the case in proper perspective. The Petitioner therefore prays that the addition of Rs.1,29,74,000/- is unjustified and the same may be deleted.

ii. The NFAC failed to appreciate the Appellant had purchased the immovable property jointly with his brother Shri Harshad B. Thakkar for total consideration of Rs.1,10,00,000/- and the Appellant has paid his share from his own sources as well as from the loan taken from ICICI Bank. The stamp value authorities had determined the value of the property at Rs.1,29,74,000/- for collection of stamp value only. Hence, making the entire addition of Rs.1,29,74,000/- under the head income from other sources in the hands of the Appellant is unjustified and the same may be deleted.

iii. The NFAC further failed to appreciate that during the course of remand report the Ld. A.O. had verified the sources of funds of the Appellant for making his contribution and he has not found any discrepancy in the same. Thus, the Ld. A.O. has accepted the genuineness and creditworthiness of the Appellant's share of contribution. The Appellant, therefore, humbly prays that the addition of Rs. 1,29,74,000/- is without any basis and the same may be deleted.

4. The Appellant denies any liability to pay interest under section 234B and 234C of the Act. Hence, the same are not leviable.”

2. The assessee is an individual and is a partner in M/s Shree Ganesh Medical Store receiving interest and remuneration there from. The assessee filed the return of income for AY 2013-14 on 31.03.2015 declaring a total income of Rs. 1,89,000/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) noticed from the AIR information that the assessee has purchased an immovable property jointly with Shri Harshad B. Thakkar for a consideration of Rs. 1,29,74,000/- on 23.08.2012. The AO called on the assessee to furnish details with regard to the same. Since the assessee did not file any details, the AO completed the assessment under section 144 r.w.s. 143(3) of the Income Tax Act, 1961 (the Act) in which he made addition of Rs. 1,29,74,000/-.

3. Aggrieved the assessee filed further appeal before the CIT(A). The assessee submitted before the CIT(A) that the place of business from where the partnership business was carried on has undergone redevelopment and that there was litigation against the developer. The assessee further submitted that the property given for redevelopment was the mailing address of the assessee and therefore the notices issued by the AO were not received and accordingly the assessee did not submit any details before the AO. The assessee also submitted a petition for admission of additional evidence as per Rule 46A of the Income Tax Rules, 1962 (the Rules) before the CIT(A) with various documentary evidences explaining the source for purchase of the property and also other details pertaining to the impugned transaction. The CIT(A) dismissed the appeal by holding that

“6.0. Findings and Decision:

6.1. The appeal is filed on 03/06/2016 and there is a delay of 30 days. The delay is condoned for the reason that the A.Y. involved is 2013-14 and revenue has to recover its rightful taxes. Hence the case is considered on merits

6.2. The taxpayer had purchased the immovable property jointly with Shri Harshad B. Takkar amounting to Rs.1,29,74,0000/- There was no details forthcoming during assessment/appeal proceedings. It is presumed that taxpayer has nothing to say on this matter, even after completing the assessment u/s 144..

6.3. Considering the facts and circumstances of the case the entire amount of purchase of property by the taxpayer brought to tax by the assessing officer@ Rs1,29,74,000/- is upheld.”

4. We heard the parties and perused the material on record. The main contention of the Id. AR is that the CIT(A) has admitted the additional evidence filed by the assessee and that the CIT(A) failed to consider the remand report from the AO in this regard (page 168 to 171 of PB). The Id. AR further submitted that the AO in the remand report has examined the various evidences filed by the assessee and has not recorded any adverse finding with regard to the same. From the perusal of the findings of the CIT(A) as extracted hereinabove, we notice that the CIT(A) has not taken into consideration the remand report of the AO and has dismissed the appeal stating that no details were forthcoming during assessment / appeal proceedings. We find the said observation of the CIT(A) to be contrary to the facts where in the remand report, the AO has given elaborate observations on the various detailed filed by the assessee. Since the CIT(A) has concluded the appellate proceeding without taking into consideration the remand report and the documentary evidence filed by the assessee, we deem it fit to remit the appeal back to the CIT(A). The CIT(A) directed to consider the observations given by the AO in the remand report on the various evidences submitted by the assessee and decide

the case on merits in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

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

Order pronounced in the open court on 05-11-2024.

Sd/-

(RAHUL CHAUDHARY)
Judicial Member

**SK, Sr. PS*

Copy of the Order forwarded to :

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

Sd/-

(PADMAVATHY S)
Accountant Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai