

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 355/MUM/2024  
Assessment Year: 2020-21**

Shri Mahadev Parbat Patel B-407, Dhanendra Padmavati Society, 4 <sup>th</sup> Floor, Sai Section, Ambernath (East), District Thane – 421501.  (PAN: AKGPP8326C)	Vs.	Assistant Commissioner of Income Tax, Circle 1, Kalyan
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

Assessee : Shri Devendra Jain, Advocate  
Revenue : Shri R. R. Makwana, Addl. CIT

Date of Hearing : 09.01.2025  
Date of Pronouncement : 07.04.2025

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the Assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058825086(1), dated 18.12.2023, passed against the assessment order by Assessing Officer, National Faceless Assessment Centre, u/s. 143(3) r.w.s 144B of the Income-tax Act (hereinafter referred to as the “Act”), dated 28.09.2022, for Assessment Year 2020-21.

2. Grounds taken by the Assessee are reproduced as under:

1. Addition u/s, 69A: Rs.1.98,66,000/- in respect property purchased in the year:

- (i) *On the facts and in the circumstances of the case, and also in law, the Ld. C.I.T.(A) erred in confirming the addition of Rs,1,98,66,000/- made by the Assessing Officer u/s 69A without appreciating the provisions contained therein and evidences submitted in the course assessment proceedings before the Assessing Officer.*
- (ii) *On the facts and in the circumstances of the case, and also in law, the Ld. C.I.T. (A) erred in confirming the addition of Rs,1,98,66,000/- made by the Assessing Officer u/s 69A in as much as the investment of the said property was recorded by the appellant and relevant details were furnished before Assessing Officer in the course assessment proceedings, which has been completely ignored.*
- (iii) *On the facts and in the circumstances of the case, and also in law, the Ld. C.L.T.(A) erred in confirming the addition of Rs,1,98,66,000/- made by the Assessing Officer u/s 69A in as much as additional evidence furnished before Ld. CIT(A) in the appellate proceedings is not considered while passing the order. Learned CIT (A) did not furnish copy of the remand report, if any, received from the Assessing Officer to the appellant for obtaining rejoinder from him. Passing of the appellate order, in absence of rejoinder from the appellant is invalid and against the natural justice.*
- (iv) *On the facts and in the circumstances of the case, and also in law, the Ld. C.I.T.(A) erred in confirming the addition of Rs,1,98,66,000/- made by the Assessing Officer u/s 69A in as much as the non-receipt of the part consideration of Rs.1,92,16,000/- as on the date of execution of agreement for said property, was confirmed by the seller of the property and evidence thereof was furnished before the learned CIT(A), which is completely ignored.*

*Based on the above, your appellant prays that the addition made/confirmed in the assessment/appellate proceedings be deleted in full.*

2. Addition of Rs.17,50,000/-, being the deduction claimed in respect of payment of interest from interest income, chargeable under the head Income from other Sources.

*On the facts and in the circumstances of the case, and also in law, the Ld. C.I.T.(A) erred in confirming the addition of Rs,17,50,000/- made by the Ld. AO out of the total deduction of Rs.55,85,039/- claimed u/s 57, without appreciating the alternative plea of allowing deduction of Rs.17,50,000/- under the head income from Profits and Gains of Business or Profession, by disregarding the relevant evidence furnished in the course appellate proceedings before the Ld. C.I.T. (A). Your appellant, therefore, prays that the addition made/confirmed be deleted in full.*

3. Levy of Interest u/s 234A and 234B on the additionally assessed income.

*On the facts and in the circumstances of the case, and also in law, the Ld. C.I.T. (A) erred in confirming the levy of interest u/s 234A and 234B by the Ld. AO on the additions made to the income, as such an additions were not envisaged by the appellant while filing return of income. Your appellant, therefore, prays that the interest levied as above on account of addition made/confirmed be deleted in full.”*

3. Brief facts of the case are that assessee is engaged in civil contract business with the name “Ravechi Traders”. Assessee filed his return of income on 22.02.2021 reporting total income at Rs.14,14,440/-.

4. On the first issue relating to addition of Rs, 1,98,66,000/- made by the Assessing Officer u/s 69A, factual position noted is that assessee along with two other persons namely Mr. Sarang Suresh Karla and Mr. Bhagwan Balkrishna Chanche purchased an agricultural land from Mrs. Shaila Rongya Salokhe alias Shaila Gajanan Thorve, bearing Survey No. 8/8, Survey No. 8/15 and Survey No, 8/17 situated at Savargaon, Taluka- Karjat, District-Raigad for an aggregate consideration of Rs.2,58,00,000/- vide agreement dated 30.03.2019. Said agreement was registered on 01.04.2019 with the Sub-registrar's office at Karjat under document entry no. 1102/2019. Share of assessee in the said land was 77 percent and balance 23 percent were held by the other two in ratio of 15% and 8%. Accordingly, assessee was required to pay Rs. 1,98,66,000/- for his share.

4.1. It is relevant to note that based on the above purchase agreement the names of the appellant along with two other purchasers were mutated in 7/12 extract of the agricultural land bearing Survey No. 8/8, Survey No. 8/15 and Survey No. 8/17 by fer far entry number 789 by the Talathi (competent authority) in the land records on 15.06.2019.

4.2. In the assessment proceedings, assessee submitted that he made a payment of Rs.6,50,000/- only before execution of the agreement which is acknowledged by the seller also. This amount of Rs. 6,50,000/- was paid out of total amount of Rs. 1,98,66,000/- payable by the assessee for his share leaving balance of Rs. 1,92,16,000/- payable on the date of execution of the agreement. Assessee paid further amount of Rs. 19,90,000/- up to 18.09.2022 i.e. till the date of last date of submission in the assessment proceedings. Details of payments as contained in the sale deed placed in the paper book on record is extracted below. It is noted that these include details of payment by post-dated cheques for which dates mentioned are subsequent to the date of sale deed that is 30.03.2019.

<b>Name of the Bank</b>	<b>Date</b>	<b>Cheque No.</b>	<b>Amount Rs.</b>
<b>Yes Bank, Vashi Branch</b>	27/11/2017	NEFT	1,00,000/-
	03/04/2018	RTGS	2,00,000/-
	11/04/2018	NEFT	2,50,000/-
	11/06/2018	NEFT	1,00,000/-
	15/04/2019	109611	2,16,000/-
	15/06/2019	109612	15,00,000/-
	15/08/2019	109613	15,00,000/-
	15/10/2019	109614	15,00,000/-
	15/12/2019	109615	15,00,000/-
	15/02/2020	109616	15,00,000/-
	15/04/2020	109617	15,00,000/-
	15/06/2020	109618	15,00,000/-
	15/08/2020	109619	15,00,000/-
	15/10/2020	109620	15,00,000/-
	15/12/2020	109621	15,00,000/-
	15/02/2021	109622	15,00,000/-
15/04/2021	109623	15,00,000/-	

	15/06/2021	109624	10,00,000/-
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A sum of Rs.38,70,000/- has been paid to the Vendor from the account of Purchaser No. 2, Shri. Sarang Suresh Karale as under:-

Name of the Bank	Date	Cheque No.	Amount Rs.
H.D.F.C., Neral Branch	01/04/2019	000006	2,70,000/-
	10/09/2019	000007	9,00,000/-
	10/12/2019	000008	9,00,000/-
	10/02/2020	000009	9,00,000/-
	10/04/2020	000010	9,00,000/-

A sum of Rs.20,64,000/- has been paid to the Vendor from the account of Purchaser No. 3, Shri. Bhagwan Balkrishna Chanche as under:-

Name of the Bank	Date	Cheque No.	Amount Rs.
Karnala Nagri Sahkari Bank Branch	01/04/2019	005466	2,64,000/-
	01/10/2019	005467	9,00,000/-
	01/12/2019	005468	9,00,000/-

4.3. Assessee claimed to have paid Rs. 6,50,000/- only towards the impugned purchase transaction. According to the Id. Assessing Officer, the remaining cheque paid details as mentioned in the sale deed issued by the assessee for the purchase of the property did not match with the bank statements of the assessee. Further, on 11.03.2020, assessee had sold its share in respect of survey no. 8/15(77%) to Sh. Dineshchandra Devilal Chhajed, Dilip Panchand Majithia and Dheer Nitin Thakkar, for a sale consideration of Rs.40,50,000/-. It was submitted by the assessee that efforts were made to prevent the litigants from creating any trouble in the aforesaid transactions. For the purpose of meeting

the cost of litigation, assessee under the compelling circumstances sold small portion i.e. only 20%. Owing to this fact, ld. Assessing Officer did not accept the reply filed by the assessee that it has only paid Rs.650000/- and balance amount is still pending since according to him, without possession of property, assessee cannot sell the property. Thus, ld. Assessing Officer formed an opinion that the remaining payment for the share of the assessee amounting to Rs 1,92,16,000/- (1,98,66,000/- - 6,50,000/-) has been paid from undisclosed sources, leading to addition of Rs 1,98,66,000/- u/s 69A of the Act.

4.4. Assessee contended that he has paid Rs. 6,50,000/- only and that there was a dispute raised by the relatives of the seller in the said property so purchased. In view of litigation which was raised immediately after the execution of the sale deed, the seller was informed not to present the post-dated cheques given at the time of execution of sale deed. Hence, it was submitted that there is no un-explained investment. It was further submitted that subsequently assessee paid further amount of Rs.19,90,000/- up to 18.09.2022 i.e. till the date of last date of submission in the assessment proceedings. Assessee furnished copy of bank statement to prove that these further payments were in fact made. Details of these are tabulated below:

Sr. No.	Bank name	Nature of payment	Date of payment	Amount paid
1.	Yes Bank Limited	RTGS	27.11.2020	200,000/-
2.	IDBI Bank Limited	NEFT	03.01.2021	5,00,000/-
3.	Yes Bank Limited	RTGS	04.01.2021	5,00,000/-
4.	Yes Bank Limited	NEFT	25.05.2021	50,000/-

5	Yes Bank Limited	NEFT	09.06.2021	1,00,000/-
6	IDBI Bank Limited	M-Banking	13.07.2021	50,000/-
7	IDBI Bank Limited	M-Banking	11.09.2021	50,000/-
8	IDBI Bank Limited	NEFT	02.12.2021	1,00,000/-
9	IDBI Bank limited	M-Banking	20.12.2021	50,000/-
10	IDBI Bank Limited	M-Banking	10.01.2022	50,000/-
11	IDBI Bank Limited	NEFT	10.01.2022	3,40,000/-
TOTAL				19,90,000/-

4.5. Assessee placed on record documents in respect of two complaints filed in the court of civil judge, junior division, Karjat vide suit file no. R.C.S. No. 13/2019 and R.C.S. No. 23/2019. Assessee also submitted notice sent through his advocate to the sellers of the impugned land showing his willingness to make the balance payment outstanding subject to settlement of dispute in the above stated two suits. Para 4 from the notice dated 24.09.2024 sent by the advocate Shri Jayesh Jitendra Salunkhe is extracted below:

*“4. The contentions and averments of the para no. 4 are partially correct. As per the sale deed the outstanding amount to the tune of Rs 1,72,26,000/- (one Crore Seventy Two Lacs Twenty Six Thousand only), I am ready to pay the outstanding amount to the client of your office. However, the client of your office have failed to comply with the promise of finishing the litigations before the Karjat court bearing civil suit no. 23/2019, Sushila daji salunkhe vs. Shailya Gajanan Thorve and civil suit no. 13/2019 Nandkumar Pandurang raut vs. Shailya Gajanan throve.”*

4.6. Assessee also furnished details of further payments made after the disposal of first appeal by Id. CIT(A) along with bank statements. Details of payment made during various stages of the impugned

proceedings before Id. Assessing Officer and Id. CIT(A) are tabulated below:

Sr. No.	Bank name	Nature of payment	Date of payment	Amount paid
Payments made before Assessment Proceedings :-				
1.	Yes Bank Limited	RTGS	27.11.2020	200,000/-
2.	IDBI Bank Limited	NEFT	03.01.2021	5,00,000/-
3.	Yes Bank Limited	RTGS	04.01.2021	5,00,000/-
4.	Yes Bank Limited	NEFT	25.05.2021	50,000/-
5	Yes Bank Limited	NEFT	09.06.2021	1,00,000/-
TOTAL				13,50,000/-
Payments made after assessment proceedings but before CIT (A)				
6	IDBI Bank Limited	RTGS	13.07.2021	50,000/-
7	IDBI Bank Limited	RTGS	11.09.2021	50,000/-
8	IDBI Bank Limited	NEFT	02.12.2021	1,00,000/-
9	IDBI Bank limited	RTGS	20.12.2021	50,000/-
10	IDBI Bank Limited	RTGS	10.01.2022	50,000/-
11	IDBI Bank Limited	NEFT	10.01.2022	3,40,000/-
TOTAL				6,40,000/-
Payments made after CIT(A) :-				
12	Yes Bank	NEFT	29.08.2024	25,000/-
13	Yes Bank	NEFT	02.09.2024	50,000/-
14	Yes Bank	NEFT	03.09.2024	15,00,000/-

15	Yes Bank	NEFT	05.09.2024	15,00,000/-
16	Yes Bank	NEFT	06.09.2024	10,00,000/-
17	Yes Bank	NEFT	06.09.2024	15,00,000/-
18	Yes Bank	NEFT	07.09.2024	4,00,000/-
19	Yes Bank	NEFT	07.09.2024	1,00,000/-
20	Yes Bank	NEFT	07.09.2024	15,00,000/-
21	Yes Bank	NEFT	07.09.2024	15,00,000/-
TOTAL				90,75,000/-
Total Payment made to Shaila Thorve till date				1,10,65,000/-

5. We have heard both the parties and perused the material placed on record forming part of the paper book from which extractions have been reproduced in the above paragraphs. Admittedly, it is an accepted fact that the impugned transaction of purchase of land by the assessee went into dispute for which civil suits were filed before the appropriate authority. It is also fact on record that assessee kept making payments in piecemeal with the intent that seller would settle the dispute. Considering these facts on record and the circumstances of the case, in the interest of justice and fair play, we find it appropriate to remit this issue for limited purpose of verification to the file of Id. Jurisdictional Assessing Officer (JAO) about the subsequent developments in this regard and consider allowing the claim of the assessee in accordance with the provisions of law. Needless to say, that assessee be given reasonable opportunity of being heard and furnish any other evidence

if so required. Accordingly, grounds raised by the assessee in this respect are allowed for statistical purposes.

6. On the second issue relating addition towards disallowance u/s 57 of claim of deduction of Rs.17,50,000/- for interest expenses incurred by the assessee, it was submitted that deduction of interest paid was inadvertently claimed against the income under the head 'Income from Other Sources' which correctly is to be allowed as deduction u/s 36(1)(iii) against the income chargeable under the head 'Profits and gains of business or profession'. According to the assessee, since due date of filing revised return u/s 139(5) was over, hence claim could not be made by filing revised return. Ld. Assessing Officer did not consider the claim of the assessee owing to not claimed in revised return. Assessee prays for consideration of such an inadvertent error by placing reliance on the decision of Hon'ble Supreme Court of India in the case of Goetze (India) Ltd. vs. CIT [2006] 284 ITR 323 (SC), whereby it was held that *“nothing impinges on the power of the appellate authorities to entertain such a claim of the assessee”*.

7. We have heard both the parties and gone through the records. There is no dispute on the quantum of claim made by the assessee. Ld. Assessing Officer has disallowed the claim u/s 57 by treating it as excess. Assessee has made the claim for allowing it from the income under head 'profits and gains from business or profession' since funds have been utilized for the purpose of business. Since nothing contrary is brought on record to dispute the facts, considering the aforesaid decision in the case of Goetz India (supra), claim of the assessee is allowed for deduction of Rs. 17,50,000/- under the head 'profits and

gains from business or profession'. Accordingly, ground raised by the assessee in this respect is allowed.

8. In the result, appeal of the assessee is partly allowed.

Order is pronounced in the open court on 07 April, 2025

Sd/-  
(Saktijit Dey)  
Vice President

Sd/-  
(Girish Agrawal)  
Accountant Member

***Dated: 07 April, 2025***

*MP, Sr.P.S.*

**Copy to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai