

**IN THE INCOME TAX APPELLATE TRIBUNAL “CUTTACK BENCH”,
CUTTACK**

(VIRTUAL HEARING AT KOLKATA)

**SHRI DUVVURU RL REDDY, VICE PRESIDENT
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 544/CTK/2024
(Assessment Year 2016-17)**

Manoranjan Dash,

Plot No. 29/196,
Aum Garden Maitree Vihar,
Chandrasekharapur, Odisha-751013
[PAN: AFYPD7268J]

..... **Appellant**

vs.

ITO Ward 3(1),

Aayakar Bhawan, Vani Vihar,
Odisha - 751007

..... **Respondent**

Appearances by:

Assessee represented by : B.D. Ojha, AR

Department represented by : S.C. Mohanty, Sr. DR

Date of concluding the hearing : 24.04.2025

Date of pronouncing the order : 02.05.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter “the Ld. CIT(A)”] vide order dated 29.10.2024 for AY 2016-17.

1.1 In this case, the Ld. AO made an addition of Rs. 84,70,055/- as undisclosed income u/s 69 of the Act on account of the assessee not furnishing any source of corroborative evidence to substantiate his claim against the impugned addition. Thus, the Ld. AO treated the entire impugned amount as undisclosed. Before the Ld. CIT(A) also, the assessee

could not fully succeed and the Ld. CIT(A)'s relevant findings deserve to be extracted:

6.2.1) The addition made by the Assessing Officer and the submissions made on the addition of Rs.84,70,055/- have been perused. It is seen that the appellant has entered into an agreement with Mrs. Jhunu Mohapatra vide Agreement dated 21.12.2012 for construction of flats with 6630 Sq.ft. built up area. The share of ratio has been mentioned in the agreement @ 33.37% land owner and @ 66.67% as developer share. The entire construction expenditure has to be borne by the appellant, for which the appellant gets 66.67% of the built-up area. It is seen from the record that the appellant has not furnished the details of construction expenditure, building sanction plan from the competent authority, bank account statement reflecting withdrawals for incurring expenditure for construction. The appellant failed to explain the sources for the construction before the AO and also in appeal proceedings. It is seen that the appellant filed copies of income tax returns in his individual capacity and his spouse, as under :

AY	Myself (Rs.)	My Spouse (Rs.)	Total (Rs.)
2013-14	600000	480000	1080000
2014-15	720000	600000	1320000
2015-16	724350	604692	1329042
2016-17	689741	529162	1218903

Though the entire income as shown in the ITRs cannot be taken as a source for construction. However, a benefit of 25% of Rs.49,47,945/- can be accepted as source for construction cost and the balance amount needs to be added in the hands of the appellant since the appellant failed to explain the sources for the construction undertaken by the appellant as a developer satisfactorily with corroborative evidences. The appellant has stated that his mother too received pension totalling to Rs.4,57,380/- and tried to use this source for cost of construction, which cannot be accepted.

6.2.2) With regard to referring the matter to Valuation Cell, the AO has not disputed the cost of construction as mentioned in the Sale Deed. In fact, the AO asked to explain the sources for the construction undertaken by the appellant as a developer. It is seen from the Sale Deed dated 24.11.2015 that the cost of land for Acres 066.67 decs was shown at Rs.15,33,410/- and cost of construction for 4422 sft was shown at Rs.55,49,316/- (Rs.13,43,301 + 28,05,660 + 14,00,355) which is the share of the appellant as a Developer. Thus, the cost of construction to the appellant works out to 1254.93 per sft, which is reasonable. The entire cost of construction shown in the sale deed relates to the appellant to the extent of his share of 66.67% and landlord share is not included in the sale deed. The appellant's request for referring the matter to Valuation Cell is not warranted as the cost of construction per sft @ 1254.93 is as per Registration Authorities which is very reasonable, on which the appellant has paid stamp duty. Thus, this ground is partly allowed.

6.3) Ground no.4 is raised for not allowing the claim of housing loan. With regard to housing loan, the appellant filed a copy of housing loan of Rs.30 lakhs sanctioned

by the Union Bank of India, vide Sanction Letter Reference No.5725860000207 dated 22.03.2017. It is seen from the sanction letter that the housing loan was sanctioned to the appellant for existing house situated at plot No. 29/196 AUM Garden, Maitree Vihar, Chandrasekharapur, Bhubaneswar, whereas the construction of flats is situated at District Khurda, Tahasil, Bhubaneswar, PS, Khandagiri, under the jurisdiction of the Sub-Registrar Office, Khandagiri, Bhubaneswar, Mouza, Bharatpur, Khata No. 9/3B Sthitiban, Plot No. 9/16, Kisam, Gharabari. The appellant has not furnished any documentary evidence that the housing loan of Rs. 30 lakhs was utilized for the construction of flats. Hence, the housing loan of Rs. 30 lakhs cannot be considered as utilized for the construction of flats. Therefore, the housing loan of Rs.30 lakhs cannot be regarded as being used for the construction of flats/building because the sanction letter made it clear that it was intended for existing house. Hence this ground is dismissed.”

2. Aggrieved with this action of the Ld. CIT(A), the assessee has approached the ITAT with the following grounds:

“Because that The Commissioner of Income Tax (Appeals), NFAC, New Delhi erred in law as well as in fact by holding that Notice U/s 148 dated 31.03.2021 is not without jurisdiction and is in accordance with the law.

2. Because that The Commissioner of Income Tax (Appeals), NFAC, New Delhi erred in law as well as in fact by confirming the addition of Rs. 84,70,055/- as undisclosed investment u/s 69 without referring the issue to the valuation cell though requested by the appellant at assessment stage which is not in accordance with the law.

3 Because that The Commissioner of Income Tax (Appeals), NFAC, New Delhi erred in law as well as in fact by allowing 25% of income of the appellant and his spouse available for investment for construction of property instead of Rs 18,75,000/- claimed by the appellant which is based on surmises and contrary to the evidence on record.

4 Because that The Commissioner of Income Tax (Appeals), NFAC, New Delhi erred in law as well as in fact by not allowing the claim of housing loan of Rs.3000000/- used for payment of creditors towards construction of the property observing that the housing loan was availed for some other property which contrary to the evidence on record and based on surmises as the loan was sanctioned for the same property in respect of which the additions has been made.

5. The appellant may add, alter, delete or amend any of the grounds at the time of hearing of the matter.”

2.1 Right at the outset, the Ld. AR pointed out that the assessee has moved a petition under Rule 29 of the Income Tax Appellate Tribunal Rules for admission of fresh evidence. For the sake of reference, the text of the same is extracted as under:

“The Appellant humbly submits this application seeking permission to place on record additional evidence under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963.

1. That the present appeal arises out of the order dated 29.10.2024 passed by the Commissioner of Income Tax (Appeals), in Appeal No. NFAC/2015-16/10113152, relating to the Assessment Year 2016-17.

2. That during the appellate proceedings before the learned CIT(A), the following material/evidence could not be submitted due to the fact that the same are new material/evidences collected by the appellant after disposal of appeal by learned CIT(A).

a. Registered Valuer's Report dated 17.11.2024

b. Bank Certificate dated 15.01.2025 regarding Location of Property.

3. That the additional evidence now sought to be submitted is crucial and necessary for the proper adjudication of the matter and goes to the root of the issue under consideration

4. That the non-submission of such documents before the lower authority was neither willful nor deliberate.

5. That the interest of justice would be served if the Hon'ble Tribunal kindly considers the additional evidence at the time of hearing and adjudication of the appeal.

PRAYER

In view of the foregoing, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to:

(i) Admit the additional evidence now filed; and

(ii) Pass such other order(s) as may be deemed just and proper in the facts and circumstances of the case.”

2.2 The Ld. AR averred that adequate opportunity was denied to the assessee for presenting the facts before the authorities below and since the matter was not referred to the DVO hence, the assessee has been burdened with a heavy tax liability. He pleaded that the assessee deserves a chance for presenting the facts of his case with the help of a Registered Valuer's report dated 17.11.2024 (filed as fresh evidence under Rule 29 of the ITAT Rules). The Ld. AR also averred that the evidences pertaining to the source of funds deserves to be considered.

2.3 The Ld. DR relied on the orders of authorities below.

3. We have carefully considered the rival submissions and gone through the orders of authorities below. We have also perused the additional evidence sought to be filed under Rule 29. It is felt that in the interest of

substantive justice this matter deserves to be remanded to the file of Ld. AO, who must consider the Registered Valuer's report and refer the same to the DVO for his comments. The assessee may present any other facts before the Ld. AO in support of his claims. Thus we set aside the impugned order and remand this matter to the file of Ld. AO for fresh assessment.

4. In result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 02.05.2025

Sd/-
(Duvvuru RL Reddy)
Vice President

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 02.05.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Manoranjan Dash
2. ITO Ward 3(1)
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches