

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.9223/Del/2019
Assessment Year: 2016-17

Nitin Gupta,
C-1/23, Ashok Vihar Phase-II,
New Delhi.

Vs. ITO,
Ward-34(4),
New Delhi.

PAN: AEAPG4313C

(Appellant)

(Respondent)

Assessee by	:	Shri Rohit Tiwari, Advocate
Revenue by	:	Shri R.K. Gupta, Sr. DR

Date of Hearing	:	26.08.2021
Date of Pronouncement	:	04.09.2021

ORDER

This appeal filed by the assessee is directed against the order dated 18th October, 2019 of the CIT(A)-12, New Delhi, relating to Assessment Year 2016-17.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of consultancy. He filed his return of income on 29th March, 2017 declaring total income at Rs.4,89,280/-. The case was selected for limited scrutiny through CASS for examination whether investment and income relating to foreign immovable property are duly disclosed. During the course of

assessment proceedings, the AO noted that the assessee has earned rental income of USD 16800 from the property situated in USA. The said amount has been reflected in ITR filed in USA. Since the status of the assessee is 'resident' and provisions of section 5 of the Act provides the scope of total income, the assessee was required to show the global income in his return filed for A.Y. 2016-17 under the provisions of section 95 of the IT Act. During the course of assessment proceedings, the AO asked the assessee to explain as to why the rental income earned from the property situated in USA should not be taxed in India under the provisions of sections 23 to 27 under the head 'Income from house property.' Since the assessee, according to the AO, did not furnish any explanation on this issue, the AO determined the income from the house property situated in USA at Rs.4,80,678/- by computing as under:-

Rental received (USA \$)		16,800	
Less : Property Tax	(no evidence)	-	
Remaining rental income		16800	
Less 30% repair & collection	5040		
Less : Interest paid 4546*9/12= 3409 4397*3/12 = 1100	<u>4509</u> <u>9549</u>	<u>9549</u>	1 \$ = Rs. 66.20
Income from house Property		7261	Equivalent to INR Rs. 4,80,678/-

3. Similarly, the AO observed from the narration of the credit side entries of Chase bank (foreign) account statement that the assessee has reflected the friendly loan of 15000 Dollars received from Mr. Naresh Aggarwal, NRI during the period 01.04.2015 to 31.03.2016. He asked the assessee to furnish the confirmation of loan received from Mr. Naresh Aggarwal, NRI, the lender. The assessee uploaded the replies on ITBA portal on 17.12.2018 without any confirmation of the lender. The AO, therefore, held that the assessee failed to furnish the confirmation in respect of USD 15000 loan equivalent Indian rupee 9,93,000/- for which he added the same to the total income of the assessee.

4. In appeal, the Id.CIT(A), after calling for a remand report from the AO and after considering the rejoinder of the assessee to such remand report, upheld both the additions. So far as the addition of Rs.4,80,678/- on account of house property is concerned, he upheld the addition made by the AO by observing as under:-

68. Decision

8.1 Briefly, the facts of the case are that the Appellant is engaged in consultancy services and filed his return of income for the year under consideration showing total income at Rs.4,89,280/-. The Appellant has reported that he was residing in USA where he purchased an immovable property in 2006-07 out of his earnings and loan taken from foreign Banks. The property was given on rent. The Assessee earned the rental income of US \$ 16,800. The Assessee claimed expenses amounting to US \$ 19,060 on account of property tax, interest on housing loan, insurance, etc. It was claimed that the Assessee filed Income Tax Return In USA showing loss of Rs.1,49,612/- from the house property. When the ITR was Filed in India, the house property income was shown at Nil.

8.2 There is no dispute as to the fact that Assessee was resident during previous year 2015-16 relevant for AY 2016-17 and thus liable to file ITR

in India for the income earned by him. In response to the show cause notice issued by the Assessing Officer to explain as to why rental income earned in USA should not be taxed in India, the Assessee did not furnish any reply / explanation. Therefore, the Assessing Officer after giving the deduction @ 30% and the interest paid computed the house property income at Rs.4,80,678/-.

8.3 The Appellant has not pointed out any infirmity in the computation of house property income in accordance with the provisions of the IT Act, 1961. The Appellant has only contended that the expenses towards which the deduction has been claimed were paid online. But the Appellant has ignored the provisions of the Income Tax Act, 1961 which provides standard deduction in connection with the numerous expenses @ 30% of the rental income. Therefore, the Appellant's contention is liable to be dismissed and the addition made by the Assessing, Officer is confirmed.ô

4.1 Similarly, while sustaining the addition of USD 15000, equivalent to Indian rupee 9,93,000/-, the CIT(A) confirmed the addition by observing as under:-

ô14. Decision

14.1 Brielly, the facts are that the Assessing Officer noticed credit side entries of Chase Bank (Foreign Bank) and from US \$ 15,000 claimed as friendly loan received from Mr. Naresh Aggarwal NRI during the year under consideration. The Assessee submitted his explanation before the Assessing Officer online and no confirmation from the lender was submitted. In view of this the Assessing Officer has added US \$ 15,000 loan equivalent to Rs.9,93,000/- to the total Income.

14.2 The Appellant has submitted that he has furnished the copy of the confirmation of the loan from Sh. Navin K. Aggarwal, copy of passport as additional evidence. The application filed by the Appellant was sent to the Assessing Officer (vide letter dated 27.06.2019), The Assessing. Officer has submitted his report dated 03.07.2019. In this report, the Assessing Officer has stated that the case for submission of reply was fixed for 17.12.2018. The Assessee uploaded the set of replies / evidences which were considered while completing the assessment. Remaining replies uploaded by the Assessee on 18.12.2018 were not reflected on ITBA Portal. I have considered the report front the Assessing Officer and the application of the Appellant. The technical glitches cannot be taken as ground for the admission of necessary or relevant documents. Therefore, the additional evidences filed by the Appellant are admitted for adjudication.

14.3 The Appellant has stated that the confirmation from the lender is duly signed and supported with the copy of the passport. The loan US \$ 15,000 was directly credited in the Chase Bank account held by the Appellant. During the appellate proceedings, it has been submitted that US \$ 10,000 was taken from Navin K. Aggarwal and US\$ 15,000 taken from Sh.Gaurav Aggarwal. Both the persons are residing in USA. The following documents for explaining the loans have been submitted:

- a. Confirmation of Account from Navin K. Aggarwal confirming the loan given to Nitin Gupta for 10,000 USD.
- b. Copy of passport of Navin K. Aggarwal
- c. Copy of bank Statement of Navin K. Aggarwal with Chase Bank
- d. Affidavit of Navin K. Aggarwal duly notarized
- e. Confirmation of Account from Gaurav Aggarwal confirming the loan given to Nitin Gupta for 5,000 USD. ,
- f. Copy of Passport of Gaurav Aggarwal
- g. Copy of Cheque and Bank deposit slip
- h. Affidavit of Gaurav Aggarwal duly notarized

14.4 It is pertinent to mention here that in the written submission dated 25.06.2019 and before the Assessing Officer, the Assessee had submitted that loan of US \$ 15,000 was taken, from Sh. Navin Kumar Aggarwal. Thus in the written submission dated 04.10.2019, the Appellant has added the name of Sh. Gaurav Aggarwal. In the remand report the Assessing Officer has stated that the confirmation from Mr. Naresh Aggarwal was on a plain paper and not notarized.

14.5 On careful consideration of the facts of the case, I find that the Appellant has changed his stand that entire loan was taken from Sh. Navin Kumar Aggarwal. In the written submission dated 04.10.2019, he added one more name of Sh. Gaurav Aggarwal claiming the loan of US \$ 5,000 from him. Thus the change of the stand raises the question on the genuineness of transaction. Moreover, the Appellant has not furnished any evidence to prove the creditworthiness of these lenders. As per the provisions of section 68 of the IT Act, the Assessee was under legal obligation to prove that the lender / lenders had the capacity to advance the money to him. Accordingly, the addition made by the Assessing Officer is confirmed.ô

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

1. That on the facts & in the circumstances of the case and in law, the order passed by the Ld. Commissioner of Income Tax (Appeals) [CIT(A)] is wrong and bad in law.

2. That the Ld. CIT (A) and Ld. AO erred both on facts and circumstances of the case and in law in making addition of Rs. 4,80,678 under the head Income from House Property by rejecting the submissions and documentary evidence filed before Ld. A.O. The addition made is arbitrary and bad in law, therefore, Liable to be quashed.

3. That the Ld. CIT (A) erred on facts and circumstances of the case in confirming the addition made by Ld. AO of Rs. 9,93,000 by treating the loan taken from the relatives as unexplained cash credits. The addition has been made on surmises and conjectures by rejection documentary evidences and explanations filed before them. Thus, the addition made under section 68 is erroneous, bad in law and liable to be quashed.

4. That the Ld. CIT (A) erred in confirming the penalty proceedings under sec-27i(i)(c) on account of above disallowance treating the same as concealment of income is unwarranted and liable to be quashed.

That the above grounds of appeal are without prejudice to each other.

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal.

6. The ld. Counsel for the assessee strongly challenged the order of the CIT(A) in confirming both the additions. So far as the addition of Rs.4,80,678/- on account of "income from house property" is concerned, the ld. Counsel submitted that for the year under consideration, the assessee had rented out this property and earned total income of Rs.11,12,160/-. After claiming deduction u/s 24 of the Act towards property tax of Rs.1,78,277/- and interest on loan and other expenses of Rs.10,83,495/-, the assessee declared net loss of Rs.1,49,612/- under the head "Income from house property." He submitted that the assessee had filed the return of income in a foreign country which was submitted during the assessment proceedings. He submitted that since the assessee was resident in

India as per the provisions of section 9 of the Income-tax Act, therefore, he was liable to show other income in his income-tax return filed in India. He submitted that although the assessee has incurred loss from house property, however, such loss was not claimed in his return of income and income from house property was shown at nil. He submitted that the expenses claimed towards property tax, interest on loan, insurance, etc. are allowable expenditure u/s 24 of the IT Act. The entire expenditure were incurred from the foreign bank account of the assessee where the rental income had been credited. He submitted that the payment of property tax was made from the foreign bank account on 24.07.2015 and was clearly shown therein which can be verified from the bank account copy of which is placed at page 71 of the paper book. He submitted that the property was mortgaged with the bank on account of loan taken for this property. Hence, interest charges on mortgage loan which was debited in the expenses claimed exclusively belongs to this property and the details were also filed, copy of which is placed at pages 34-43 of the paper book. He accordingly submitted that when every detail was filed before the AO and the CIT(A), disallowance of the property tax and interest expenses as per provisions of section 24 of the IT Act by the AO and upheld by the CIT(A) is not correct.

6.1 So far as the addition of USD 15000, equivalent to Indian currency Rs.9,93,000/- is concerned, he submitted that during the course of assessment proceedings, the AO asked the assessee to file its confirmation. Since lender was

in USA and the assessee was in India, obtaining the confirmation took some time and it was uploaded on the ITBA portal on 18th December, 2018 along with passport of Shri Navin Kumar Aggarwal. However, the AO, without verifying the same, passed the assessment order on the very same day i.e., 18th December, 2018 and made the addition of Rs.9,93,000/-. Even in the remand report also, the AO had accepted that the assessee has uploaded the details on 18th December, 2018. He submitted that the ld.CIT(A) without appreciating the facts properly, sustained the addition made by the AO which is not justified. He submitted that the assessee has substantiated before the AO with evidence regarding the identity and credit worthiness of the loan creditor and genuineness of the transaction. Therefore, the addition made by the AO and sustained by the CIT(A) is not correct.

7. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

8. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I find, the AO, in the instant case, determined the income from house property at Rs.4,80,678/- as against nil income declared by the assessee by denying deduction on account of property tax, interest on loan, etc., as claimed by the assessee. I find, the ld.CIT(A) sustained the addition made by the AO, the reasons of which have already been reproduced in the preceding paragraphs. It is the submission of the ld. Counsel that the property tax paid by the assessee was

admitted by the AO in the remand report, but, there is no valid reasons for denying the same and the Id.CIT(A), without considering the fact properly has sustained the addition made by the AO.

9. I find some force in the above argument of the Id. Counsel for the assessee.

A perusal of the remand report shows that the AO at para 4.3 of the remand report has mentioned as under:-

4.3 on the another issue regarding non allowing of property tax, it is seen from the copy of Chase bank account statement submitted by the assessee during the appellate proceedings as evidence in respect of property tax paid but it is noticed that narration given in the said statement as online two payments to Barry L Moyer Tax Collector for \$ 2151.71, however, no evidence as proof from the concerned property tax authority for said property was furnished.

10. Once the assessee has paid the property tax of USD 2151.71 through banking channel which is reflected as property tax in the bank statement, therefore, merely because no evidence or proof from the concerned property tax authority for the said payment was obtained should not have been a ground for denying the same.

11. So far as the interest on loan is concerned, I find, it is the submission of the AO in the remand report that interest certificate for the period from 01.04.2015 to 31.03.2016 was required from the lender bank under the second proviso to section 24 of the IT Act, 1961, but, the assessee did not furnish the same. However, a perusal of the paper book shows that the assessee has filed the mortgage interest statement in the paper book which gives the details of mortgage

interest, mortgage principle, etc. Therefore, in my opinion, the Id.CIT(A) is not justified in denying the benefit of interest on bank loan to the assessee. I, therefore, set aside the order of the CIT(A) and direct the AO to allow the claim of property tax and bank interest from the rental income of USD 16800. The ground of appeal No.2 raised by the assessee is accordingly allowed.

12. So far as the addition of Rs.9,93,000/- made by the AO by treating the loan taken from relatives as unexplained cash credit is concerned, I find, the AO made the addition basically on the ground that the assessee could not furnish the confirmation of lender Mr. Naresh Aggarwal during the course of assessment proceedings. However, during the course of appellate proceedings, the assessee filed the copy of confirmation by Shri Naresh Aggarwal confirming the lending of USD 15000. I find from the details furnished by the assessee that the AO, vide order sheet entry dated 8th December, 2018, had asked the assessee to furnish the confirmation of loan received from Mr. Naresh Aggarwal, NRI (lender). It is seen from the copy of the remand report that the assessee has furnished a confirmation from the lender Mr. Naresh Aggarwal during the course of appeal proceedings. It is the case of the Revenue that the said confirmation was given on plain paper without notarizing the same. I find, the assessee is a resident and had stated to have received the loan from 2 persons namely Mr Naresh Aggarwal and Gaurav Aggarwal which are credited in the NRI account and there is no dispute to the above fact. The assessee had furnished the copy of the

confirmation of loan and also the passport of Shri Naresh Aggarwal as evidence. The assessee had also filed the copy of bank account of Naresh Aggarwal, affidavit of Shri Naresh Aggarwal, copy of bank account of Shri Gaurav Aggarwal giving loan of USD 5000 to Nitin Gupta, etc., the details of which are mentioned at para 14.3 of the order of the CIT(A). Since the assessee, in the instant case, has filed the bank statement of Shri Naresh Aggarwal along with his affidavit and confirmation along with his bank account substantiating the loan of 10000 USD, therefore, I hold that the Id.CIT(A) was not justified in sustaining the addition. Accordingly, the same is directed to be deleted.

13. So far as the amount of USD 5000 taken from one Shri Gaurav Aggarwal is concerned, I find, before the AO, the assessee had stated that he had taken loan of 15000 USD from Naresh Aggarwal and the name of Gaurav Aggarwal was stated before the CIT(A) for the first time. Although the assessee had filed the confirmation of Shri Gaurav Aggarwal along with his passport and affidavit, etc., however, no evidence to prove the credit worthiness of the said loan creditor was produced. The bank statement of Shri Gaurav Aggarwal was not produced. Therefore, considering the totality of the facts of the case and in the interest of justice, I deem it proper to restore the issue to the file of the AO with a direction to give one opportunity to the assessee to substantiate the loan of 5000 USD received from Shri Gaurav Aggarwal. The AO shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. I hold and

direct accordingly. The ground No.3 raised by the assessee is accordingly partly allowed for statistical purpose.

14. Ground of appeal No.1 being general in nature is dismissed.

15. Ground No.4 relating to levy of penalty u/s 271(1)(c) at this juncture is premature and, therefore, the same is dismissed.

16. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 04.10.2021.

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 04th October, 2021

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi