

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.182/SRT/2024

Assessment Year: (2014-15)

(Physical hearing)

Bijesh Kabra, B-903, Surya Lifestyle, Opp. Nandanvan, Canal Road, Vesu, Surat-395007	Vs.	The ITO, Ward-1(3)(1), Surat
स्थायी लेखासं./जीआइआरसं./PAN/GIR No: BGNPK 2479 R		
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Appellant by	Shri Ramesh Malpani, CA
राजस्व की ओर से /Respondent by	Shri J. K. Chandnani, Sr. DR
सुनवाई की तारीख/Date of Hearing	30/05/2024
उद्घोषणा की तारीख/Date of Pronouncement	25/06/2024

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the orders passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') by the Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [in short, 'Ld. CIT(A)'], dated 29.12.2023 for assessment year (AY) 2014-15.

2. Grounds of appeal raised by the assessee are as under:

"1. That on the facts and in the circumstances of the case as well as in law, the appeal order passed by Ld.CIT(A) (NFAC) dismissing the appeal of the appellant is wrong and erroneous because order has been passed in the case of the appellant on facts and grounds of some other case and not on facts and grounds of the appellant's case.

2. That on the facts and in the circumstances of case as well as in law, Ld.CIT(A)(NFAC) has erred in dismissing the appeal of the appellant and thereby sustaining the validity of the proceedings u/s 147/148 of the I.T. Act, 1961 (the Act) and consequent assessment order passed u/s 143(3) r.w.s.147

of the Act in the case of the appellant without considering the pleadings and submission made by appellant. Appellant prays for quashing the assessment order so passed as the whole of the proceeding u/s 147/148 of the Act is invalid and bad in law ab initio.

3. That on the facts and in the circumstances of case as well as in law Ld.CIT(A)(NFAC) has erred in dismissing the appeal of the appellant and thereby sustaining the addition of deemed income of Rs.40,55,236/- u/s56(2)(vii)(b) of the Act, without considering the pleadings and submission of appellant. The addition made by Id. AO is grossly wrong and unjustified on facts as well as in law and is contrary to the provisions of law. The Id.CIT(A) has also erred in not considering Valuation Report issued by DVO as per direction of Id.AO.

4. Without prejudice to above ground of appeal no.'3', the appellant prays that if any portion of the above addition u/s 56(2)(vii)(b) is sustained, then same be directed to be allowed as cost of these shops as per provision of Section 49(4) of the Act in A.Y 2016-17 in which these shops have been sold and consequently Short Term Capital Gain from sale of these shops as computed by the appellant in A.Y 2016-17 be reduced by the addition so sustained.

5. That on the facts and in the circumstances of case as well as in law, the Ld.CIT(A) has erred in dismissing the appeal of the appellant and thereby sustaining the addition of Rs.13,49,073/- made by the AO by treating the deposits in South Indian Bank account of the appellant as unexplained, though the appellant has explained all the deposits/credits with documentary evidences and Id.AO has not mentioned any basis for making this addition and for arriving at the amount of addition.

6. That the Id. AO has erred in charging interest u/s 234B of the Act in respect of above wrong and unjustified additions and Id. CIT(A) has erred in dismissing the appeal of appellant.

7. Appellant craves leave to add, alter, delete or modify any ground of appeal."

3. At the outset, Learned Authorized Representative (Ld. AR) of the assessee informs the Bench that assessee does not wish to press ground no.2; therefore, we dismiss the ground no.2 as not pressed.

4. The facts of the case in brief are that the assessee filed his return of income on 30.07.2014 declaring total income of Rs.8,61,350/-. The Assessing

Officer initiated assessment proceedings u/s 147 by issuing notice u/s 148 of the Act on 23.08.2017 asking appellant to file return of income within thirty days. In response thereto, assessee filed return declaring the same income and raised objection against initiation of proceedings u/s 147 of the Act. The objection was disposed of by the Assessing Officer vide order dated 04.04.2018. Subsequently, Assessing Officer issued show-cause notice to the assessee requiring him to furnish various details. The Assessing Officer found that assessee have purchased two immovable properties, being Shop No.B-36 and B-37, Landmark Empire, situated at R.S. No.2, Block No.29, Magob, Surat during the financial year 2013-14 of a price at Rs.15,50,000/- each. Valuation of the said properties as determined by the stamp duty valuation authority was Rs.35,77,618/- each. The assessee paid stamp duty on the value of Rs.35,77,618. Thereafter, the Assessing Officer invoked provisions of sub-clause (b)(ii) of Clause (vii) of Section 56(2) of the Act. As per the above section, if any individual or HUF receives any immovable property or a consideration less than the stamp duty value of the property by an amount exceeding Rs.50,000/-, then the difference between the stamp duty value and the consideration shown by the individual shall be chargeable to tax under the head "income from other sources". Therefore, the difference between Rs.35,77,618/- and Rs.15,50,000/- i.e. Rs.20,27,618/- was treated as income from other sources. Since two shops were there, the impugned addition was proposed at Rs.40,55,236/-. In response to the show-cause notice on the

impugned issue, the assessee filed reply on 26.10.2018. The assessee stated that the properties were purchased by paying booking money in February, 2011 and therefore valuation of the property in February, 2011 has been adopted. The assessee further stated that stamp duty value adopted is very high and requested for reference of the said property to DVO to determine fair market value. The Assessing Officer acceded to the request of the assessee and referred the matter to the Valuation Officer. Since the report of the Valuation Officer was not received before the time barring date, the Assessing Officer adopted the value of the stamp valuation authority and added Rs.40,55,236/- u/s 56(2)(vii)(b)(ii) of the Act.

5. The Assessing Officer also found that there are credit and deposit of Rs.56,20,544/- in the bank account of the assessee. The Assessing Officer issued show-cause notice to the assessee to explain the source of the deposit along with supporting evidences. The assessee replied that the receipts in bank accounts are realization from investments / assets, squared of loan given by him in earlier years, current year income and unsecured loan taken during the year. After examining the details, the Assessing Officer partly accepted the explanation and held that assessee has not been able to furnish sufficient evidences regarding Rs.13,49,073/- out of Rs.56,20,544/-. Therefore, the Assessing Officer added the above sum as income from other sources. The Assessing Officer also initiated penalty proceedings u/s 271(1)(c) of the Act.

The total income was determined at Rs.62,65,660/- as against returned income of Rs.8,61,350/-.

6. Aggrieved by the order, the assessee is in appeal before the Ld. CIT(A).

7. After hearing the assessee, the Ld. CIT(A) has passed the order u/s 250 of the Act on 29.12.2023. It is seen from the order that the appeal decided by the Ld. CIT(A) does not pertain to the case of the assessee. It is clear from the facts mentioned in the appellate order that the appeal decided by the Ld. CIT(A) pertains to the assessment order of ITO, Ward-2, Vapi for AY.2016-17; however, the impugned assessment order was passed u/s 143(3) r.w.s. 147 of the Act by the ITO, Ward-1(3)(1), Surat for AY.2014-15. Moreover, the Ld. CIT(A) has decided the appeal against a partnership firm who had filed return of income for the AY.2016-17 on 23.07.2016, declaring total income of Rs.4,57,260/-. However, in case of the appellant, the original return for AY.2014-15 was filed on 30.07.2014, declaring total income of Rs.8,61,350/-. Further, the total assessed income in case of assessee is Rs.62,65,659/- whereas in case of the appeal decided by the assessee, assessed income was Rs.58,96,140/-. We also found that the grounds of appeal raised by the assessee as evident from Form 35 is totally different from the grounds of appeal adjudicated by the Ld. CIT(A) which is mentioned at para 3 of the appellate order. Hence, the Ld. CIT(A) has dismissed the appeal of the appellant on the facts and grounds of appeal of some other case and not on the facts and grounds of appellant's case. Therefore, the order of Ld. CIT(A) is

liable to be set aside at the threshold because it has not been passed as per the mandate of section 250(6) of the Act. As per Section 250(6) of the Act *“order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decisions”*. Thus, Section 250(6) ordains the appellate order passed by the Commissioner (Appeals) must be in writing and state the points for determination, the decision thereon and the reasons for the decision. It is seen from the order of the Ld. CIT(A) that the points for determination considered by him are totally different from the points for determination and the grounds of appeal taken up by the assessee. Since the appeal has been decided not on the facts and ground of the appellant but on some other case, we set-aside the order of the Ld. CIT(A) and remit the matter back to the file of the Ld. CIT(A) for passing fresh order in accordance with law after giving reasonable opportunity of hearing to the assessee. The Ld. CIT(A) should consider all the materials which have been furnished before him and he may also call for additional information and explanation from the assessee as deemed fit. The assessee is also directed furnish all the details submitted before the Tribunal and as may be called for by the Ld. CIT(A).

8. The Ld. AR has relied upon the decision of Hon’ble Supreme Court in the case of Indian Bank vs. K. S. Govindan Nari and others, in Civil Appeal No. 7555 of 2004, dated 19.11.2004 / (2004) 13 SCC 697 (SC), wherein the Hon’ble Supreme Court has held that *“the division bench should have decided the*

matter on the basis of material available on record, therefore there was no question of remand when the evidence was already on record.” The fact of the present case is not similar to the fact of the above case. The list of the appealable orders is provided in section 253 of the Act and an order u/s 250 passed by the Ld. CIT(A) is an appealable order. In the present case, the order passed by the Ld. CIT(A) does not deal with the facts and grounds of appeal raised by the assessee in his appeal. In substance, it is not an appellate order in case of the assessee. As stated earlier, it is also not as per the mandate provided u/s 250(6) of the Act. Therefore, all the facts are not available before the Bench including the points for determination, decision thereon and the reasons for the decision. Moreover, the valuation report subsequently received by the Assessing Officer was also not considered either by the Assessing Officer or by the Ld. CIT(A). Similarly, the addition of credit entries to the extent of Rs.13,49,073/- has also not been considered by the Ld. CIT(A). In view of these peculiar facts, the ratio of the decision relied upon by the Ld. AR cannot be applied to the facts of the assessee. We have already set aside the order of Ld. CIT(A) and remitted the matter back to him. We make it clear that we are not making any view on the merits of claim made by the assessee including adoption of valuation report and direction for consequential relief under section 49(4) of the Act as it is for the appellate authority to consider and decide. For statistical purposes, the appeal of the assessee is allowed.

9. Since the ground no.1 has been allowed and the matter has been set-aside and remitted back to the file of Ld. CIT(A) for fresh adjudication on merits, the other ground nos.3, 4, 5 and 6 becomes academic in nature.

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

Order is pronounced on 25/06/2024 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

सुरत /Surat

दिनांक/ Date: 25/06/2024

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat