

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

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)
AND
MISS. PADMAVATHY S. (ACCOUNTANT MEMBER)**

I.T.A. No.2500 /Mum/2023
(Assessment year : 2010-11)

Devang Jitendra Mashru 42-B, Forjet Street, Sai Kripa Bldg 1 st Floor, Gowalia Tank, Mumbai PAN : AACPM4148H	vs	Income Tax Officer-19(1)(4) Mumbai Room No.222, Matru Mandir,Tardeo Mumbai-400 007
APPELLANT		RESPONDENT

Present for the Assessee	Shri Satyaprakash Singh
Present for the Department	Shri Rajesh Meshram

Date of hearing	25/10/2023
Date of pronouncement	27/10/2023

ORDER

Per Padmavathy S (AM):

This appeal is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [in short CIT(A)] dated 26.05.2023 for assessment year 2010-11.

2. The assessee raised the following grounds of appeal-

"i. The order dated 26.05.2023 bearing no. ITBA/NFAC/S/250/2023-24/1053207367(1) by the CIT(A), National Faceless Appeal Centre, Delhi is arbitrary, against natural justice, unlawful, against the provision of Income Tax Act, 1961 and therefore liable to be quashed.

ii. In the circumstances and in law, CIT(A) has facts and of the case the Learned erred in confirming the addition of Rs. 37,93,000/-confirming the addition of Rs. 37,93,000/- on account of unexplained income on account of sale of immovable property.

iii. In the facts and circumstances of the case and in law, the Learned CIT(A) has erred in confirming the addition of Rs. 6,36,961/- on account of purchase of share as unexplained investment u/s 69 of the Act."

3. The assessee is an individual. For AY 2010-11, the assessee did not file the return of income. The assessing officer, based on information from NMS module noticed that the assessee has sold immovable property during the year under consideration. The assessing officer therefore reopened the assessment under section 147 of the Income Tax Act (the Act) and accordingly issued a notice under section 148 of the Act to the assessee. The assessee did not respond to the said notice and the subsequent notices issued under section 142(1) of the Act. Therefore the assessing officer completed the assessment under section 144 r.w.s.147 of the Act in which the assessing officer made an addition of Rs.37,93,000/- as undisclosed income pertaining to sale of property and also an addition under section 69 of the Act towards purchase and sale of shares amounting to Rs.6,36,961.

4. Aggrieved the assessee filed an appeal before the CIT(A). In the statement of facts and grounds of appeal before the CIT(A), the assessee has stated that the property that is sold does not belong to the assessee and that the 'net income from the share transaction is below the taxable limit and hence no return was filed.

The assessee did not make any representation before the CIT(A) also and no written submissions filed. Therefore the CIT(A) dismissed the appeal ex parte confirming the additions made by the assessing officer.

5. The Id AR before us submitted that the assessee is not aware of the proceedings of income tax and hence did not represent the case. The Id AR prayed for one more chance to represent the case before the lower authorities.

6. The Id DR on the other hand argued that the assessee is a habitual defaulter in not representing the case and that he has not appeared before the assessing officer as well as the CIT(A). The Id DR therefore submitted that the additions made should be confirmed.

7. We heard the parties and perused the material on record. We notice from the records that the assessee neither appeared before the assessing officer nor before the CIT(A). We also notice that the additions made by the assessing officer are based on information from the ITS data and due to lack of details the assessing officer has treated the entire income from sale of property as unexplained. The addition towards share transaction is also made for the same reason that no information is available with regard to the transaction and hence added as income under section 69 of the Act. Since the assessee remained non-compliant even in the appellate stage, the CIT(A) has dismissed the appeal ex parte. During the course of hearing, the Id AR prayed for one final opportunity and undertook to make a proper representation if the case is remitted back. Considering the facts of the case and in the interest of justice and fair play we are giving one final opportunity to the assessee by remitting the issue back to the CIT(A) to examine the case afresh on merits by calling for details as may be required. The assessee is directed to file

details as may be called for and to represent the case without seeking any adjournments. It is ordered accordingly.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 27/10/2023

Sd/-

sd/-

(ABT T VARKEY)	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt :27th October, 2023

Pavanan

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai