IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA NO. 2120/MUM/2023	:	**A.Y : 2018-19**
Assistant Commissioner of Income Tax, Circle-3, Thane. (Appellant)	Vs.	Rajmohan Appalacharya N. Chakravarty 5/52, Garden Estate, Opp. Pokhran Road No. 1, Thane 400 601. (Respondent) **PAN : ABZPN2092B**
CO NO. 118/MUM/2023 (in ITA NO. 2120/MUM/2023)	:	**A.Y : 2018-19**
Rajmohan Appalacharya N. Chakravarty 5/52, Garden Estate, Opp. Pokhran Road No. 1, Thane 400 601. (Cross Objector) **PAN : ABZPN2092B**	Vs.	Assistant Commissioner of Income Tax, Circle-3, Thane. (Respondent)

Assessee by : Shri S.V. Apte
Revenue by : Smt. Mahita Nair

Date of Hearing : 12/12/2023
Date of Pronouncement : 17/01/2024

O R D E R

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This is an appeal by the Revenue challenging the order dated 31.03.2023 passed by Commissioner of Income Tax (Appeals) ('CIT(A)' in short), which in turn arose out of order dated 25.08.2021 passed by the DCIT,

NFAC, Delhi (hereinafter referred to as 'AO') for the assessment year 2018-19.

2. The brief facts are that the respondent-assessee is the Director of M/s. Span Tech Engineers Pvt. Ltd. (M/s. SEPL). One Mr. Suresh Amarnath Pal, proprietor of M/s. Suresh Fabricators, was allotted leasehold rights of Plot No. B-48, TTC Industrial Area, Rabale, Navi Mumbai by the Maharashtra Industrial Development Corporation ('MIDC' for short).

3. It appears that under an unregistered agreement dated 29.05.2014 the leasehold rights in favour of Mr. Suresh Amarnath Pal, were acquired purportedly by M/s. SEPL for a consideration of Rs.1,09,19,100/-.

4. The respondent-assessee had filed Income Tax Return ('ITR' for short) for assessment year 2018-19 on 31.10.2018 thereby declaring a total income of Rs.39,66,290/-. It appears that the case was selected for limited scrutiny to examine the investment in property in the previous year, relevant to assessment year 2018-19. Accordingly, a notice under Section 143(2) was issued to the assessee, calling for details of the properties purchased as set out in para 3 of assessment order dated 25.08.2021.

5. The respondent accordingly produced the unregistered agreement (Exhibit-6) alongwith bank statement of M/s. SEPL with Bank of Maharashtra in order to show that the amount of consideration of Rs.1,09,19,100/- was paid by M/s. SEPL and not by respondent-assessee in his personal capacity.

6. Before the AO, the respondent contended that the said property was purchased in the year 2014 in the name of M/s. SEPL through the respondent-assessee in his capacity as Director of M/s. SEPL. The consideration was paid by M/s. SEPL and the amount has been shown in the books of account of M/s. SEPL and also the property has been capitalised in the books of account of M/s. SEPL.

7. It was also contended that the addition cannot be made under Section 69 of the Income Tax Act, 1961 ('Act' for short) as the transaction is already declared and accounted for in the books of account of M/s. SEPL.

8. It appears that subsequently a Deed of Assignment dated 29.06.2017 came to be executed between the parties, which is in the nature of assignment of leasehold rights from the respondent-assessee to M/s. SEPL.

9. The learned AO refused to accept the explanation furnished by respondent and made an addition of Rs.1,63,97,000/- purportedly under Section 69 of the Act in the hands of respondent-assessee.

10. Feeling aggrieved, appellant challenged the same before the learned CIT(A).

11. It was, *inter alia*, contended before the learned CIT(A) that after noticing the facts, the learned AO has proceeded to make the addition on an altogether new ground. It was contended that there is sufficient documentary evidence on record to indicate that the leasehold rights were purchased by M/s. SEPL and not individually by respondent-assessee.

12. The learned CIT(A) by order dated 31.03.2023 has allowed the appeal and has deleted the impugned addition of Rs.1,63,97,000/-, which is the subject matter of challenge before us.

13. We have heard the learned CIT-DR for appellant and the learned counsel for the respondent. With the assistance of the parties, we have gone through the record.

14. It is submitted by learned CIT-DR that mentioning of the name of assessee as proprietor in the Deed of Assignment dated 29.06.2017 instead as the Director of M/s. SEPL could not be said to be a *bona fide* mistake as held by the learned CIT(A). It is submitted that it is only after the issuance of show cause notice that the assessee has executed the Deed of Assignment dated 08.06.2021 assigning the leasehold rights in favour of M/s. SEPL. It is submitted that the said Deed cannot be said to be a Deed of Rectification and/or to correct any *bona fide* mistake as claimed. It is submitted that had there been no scrutiny assessment, the respondent would not have executed any Deed assigning/transferring the leasehold rights in favour of M/s. SEPL. It is, therefore, submitted that the finding recorded by learned CIT(A) is not borne out of record and, therefore, cannot be sustained.

15. The learned counsel for respondent has submitted that the leasehold rights in favour of Mr. Suresh Amarnath Pal were acquired by M/s. SEPL from MIDC and the assessee only acted in his capacity as the Director, which would be evident from the fact that consideration for such acquisition has passed from M/s. SEPL, which is duly accounted for in the books of account

of M/s. SEPL and the same property has also been capitalised in the books of M/s. SEPL. It is submitted that the apparent inadvertent mistake came to be corrected by execution of Deed dated 08.06.2021. It is submitted that only because the said document was executed subsequent to receipt of show cause notice would not be sufficient to hold that mentioning of name of assessee was not on account of any *bona fide* mistake as urged on behalf of the appellant.

16. We have carefully considered the rival circumstances and the submissions made and we do not find that any case for interference is made out.

17. Notwithstanding the extensive narration of facts and submissions, the issue lies in a narrow compass. It is whether the AO was justified in making an addition of Rs.1,63,97,000/- under Section 69 of the Act on the ground that there was an investment, which was not satisfactorily explained by the respondent-assessee ?

18. We find that MIDC is a Government entity formed with the object of development of industrial area from out of which the leasehold rights of the individual plot/s can be assigned in favour of industrial undertakings for carrying on industrial activity. The allotment of such leasehold right is made by public auction. It is a matter of record that the subject plot was put for public auction in which the bid of Mr. Suresh Amarnath Pal, proprietor of M/s. Suresh Fabricators, was accepted for a consideration of Rs.1,09,19,100/-. It appears that Mr. Suresh Amarnath Pal could not garner enough resources to pay the amount. As per the conditions of allotment,

there was a lock-in period of 3 years before the leasehold rights could be assigned in favour of any other entity. It appears from the record that Mr. Suresh Amarnath Pal approached M/s. SEPL and an unregistered document dated 29.05.2014 came to be executed. It is clearly borne out of record that the amount of consideration of Rs.1,09,19,100/- was paid from the account of M/s. SEPL to MIDC on 17.05.2014. It is further a matter of record that the said property has been capitalised in the books of account of M/s. SEPL.

19. It is after the expiry of the lock-in period, the registered Deed dated 29.06.2017 came to be executed, in which instead of M/s. SEPL, the name of its Director, namely the assessee, figured in his individual capacity. This appears to be the sole basis of the impugned action. The fact remains that subsequently there is yet another Deed executed on 08.06.2021, which according to the assessee was executed in order to correct the *bona fide* mistake/error which had crept in the agreement dated 29.06.2017. It is further a matter of record that the respondent had applied for rectification/change of name before the MIDC (albeit after issuance of show cause notice dated 10.04.2021) and the MIDC has approved the assignment from the respondent, in his personal capacity as 'Assignor' to M/s. SEPL as 'Assignee'.

20. The learned AO has refused to accept the explanation furnished by assessee mainly on the ground that there is no evidence of any payment from assessee to M/s. SEPL, without which, according to the AO, the property could not have been recorded in the name of assessee vide registered agreement dated 29.06.2017. Secondly, the learned AO has doubted the claim of assessee that mentioning of the assessee's name in his

individual capacity in the registered agreement dated 29.06.2017 was by way of a *bona fide* mistake. The learned AO has held that subsequent attempt at rectification by Deed dated 08.06.2021 was by way of an afterthought as it was executed only after the impugned action was taken and addition was made.

21. We have carefully gone through the order passed by learned CIT(A) and we find that the learned CIT(A) has articulated cogent reasons in his order to find that mentioning of name of assessee in the Deed dated 29.06.2017 was by way of a *bona fide* mistake. Such a finding, in our view, is based on appreciation of material on record, particularly, as to the passing of consideration from M/s. SEPL to MIDC and the property being capitalised in the books of account of M/s. SEPL and being declared in the ITR of M/s. SEPL. The entire impugned action is based on the fact that agreement dated 29.06.2017 showed the individual name of assessee. We find that the learned CIT(A) is right in finding that it was by way of a *bona fide* mistake, which has also been corrected subsequently.

22. The learned CIT(A) has then adverted to the additions which could be made under Section 69 of the Act. The said section envisages a situation where the assessee has (i) made an investment (ii) which is not recorded in the books of account or (iii) the assessee offers no explanation about the nature/source of the investment or (iv) the explanation offered is not found to be satisfactory. In our view, none of these requirements can be said to be satisfied in this case as the explanation offered is plausible and is clearly borne out of material on record. We, therefore, find that no case for interference is made out. The appeal accordingly stands dismissed.

23. In this case, the respondent has filed a cross objection. We inquired with the learned counsel for respondent as to which part of the order passed by learned CIT(A), the assessee is aggrieved with. The learned counsel submitted that assessee is not aggrieved by any part of the order passed by learned CIT(A) and the cross objection is filed only to support the said order. It is necessary to note that filing of cross objection in order to support an order is neither contemplated nor can be countenanced. Cross objection pre-supposes that the respondent in appeal is also aggrieved by a certain part of the order which is subject matter of challenge in the appeal, which is not the situation in this case. We have adverted to this aspect only to set the record straight. The cross objection is simply required to be disposed off as not maintainable.

24. In the result, the appeal stands dismissed and the cross objection is disposed off as not maintainable.

Order pronounced in the open court on 17/01/2024.

Sd/-	Sd/-
(B.R. BASKARAN)	(JUSTICE (RETD.) C.V. BHADANG)
ACCOUNTANT MEMBER	PRESIDENT

Mumbai; Dated : 17/01/2024

SSL

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai