

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SHRI BEENA PILLAI, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.6913/MUM/2024
(A.Y.2011-12)**

Shreyas Anil Talpade 701, 7 th Floor, DLH Enclave, 90' Wide DP Road, Near Windmere Building, Oshiwara, Andheri (W), Mumbai-400053.	Vs.	ACIT 16(1) Aayakar Bhawan, M.K. Road, Churchgate, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:ABJPT6249E		
Appellant	..	Respondent

Appellant by :	Shri Bhupendra Shah & Shri Jitesh Agrawal
Respondent by :	Shri Annavarani Kosuri- Sr. AR

Date of Hearing	13.10.2025
Date of Pronouncement	31.10.2025

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 20.02.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2011-12.

2. The grounds of appeal are as follows:

“1) In the facts and the circumstances of the case and in law, the learned A.O. erred in passing the reassessment order u/s 143(3) r.w.s147 which is bad in law

a) merely on the basis of information received from the Addl DIT(Inv) Unit 1 of who has conducted search operation on Cosmos group and on the basis of borrowed satisfaction

b) merely on the basis of suspicion, surmises and conjectures and without any material on record

c) Relying on third party statements and without corroborating evidence

d) without providing the statements recorded on the basis of which the additions are made and without giving the appellant an opportunity of cross examination

e) merely on the basis of change of opinion since the assessment was duly completed u/s 143(3) of the Income Tax Act, 1961 vide order dated 17.01.2014

f) Without providing reasons recorded for reopening

g) Without granting an opportunity of being heard

2) In the facts and the circumstances of the case and in law, the learned A.O. erred in making addition of Rs. 71,00,000/- u/s 69B r.w.s 115BBE thereby wrongly holding that the Appellant has made cash payments towards the purchase of residential flat at Cosmos Regency, Flat No. 6D Astra Spring Bella, Cosmos Spring of Cosmos Group on the information received from Investigation unit Addl DIT(Inv) Unit-1. Mumbai.

a) Without appreciating the fact that the said property is registered under his spouse name, viz, Smt Deepti Talpade vide agreement dated 06-08-2009 having an agreement value of Rs. 29,50,000/- which is paid through cheque and is already disclosed in her books of accounts

b) Thereby disregarding the fact that the agreement value is Rs. 29,50,000/- and therefore the question of payment on money of Rs. 71,00,000/- does not arise

c) Even though the Appellant has denied any cash payments made towards the purchase of property vide his submission dated 24.11.2016 and also while recording the statement of appellant u/s 131 of Income tax Act, 1961.

d) Thereby disregarding the fact that the same addition is already made in his spouse case on protective basis and therefore leads to double addition

e) Without giving the appellant any opportunity for cross-examination with the persons on the basis of whose statement addition is made

f) In common law parlance, an admission made by one party is evidence against the maker of the statement but not against any other party implicated by it.

g) Addition made by the Ld AO is merely a borrowed satisfaction and not his own satisfaction.

h) Without considering the various submissions made by the Appellant

3) In the facts and circumstances of the case and in law, the Learned AO erred in disallowing expenses incurred in cash amounting to Rs. 16,88,584/- u/s 37(1) thereby treating the same as bogus for want of further documents and only on presumption basis.

4) In the facts and circumstances of the case and in law, the Assessing Officer erred in wrongly initiating penalty u/s 271(1)(c) and also wrongly charging interest u/s 234A, B & C.

5) In the facts and circumstances of the case and in law, the Commissioner of Income Tax[A] erred in dismissing all the grounds of appeal on merits by overlooking the fact and legal submissions made and also without granting an opportunity of personal hearing through video conferencing thereby violating principles of natural justice.”

3. The brief fact of the case are that the assessee had filed return for A.Y. 2011-12 on 30.09.2011 declaring total income of Rs. 1,04,69,840/- from salary, business income, short term capital gains and other sources. The case was selected for scrutiny and order u/s. 143(3) was passed on 17.01.2014 determining total income at Rs. 1,48,21,840/-.

- 3.2 Subsequently, a search was conducted on the Cosmos group on 24.09.2014 by the Income Tax Department. It was found that the Cosmos group, which is engaged in the business of construction, had received on-money on sale of flats and the assessee had also made cash payments amounting to Rs. 71,00,000/- on different dates. As per the information received from the Investigation Wing by the ld. AO, the assessee had made these cash payments for purchase of flat No. 6D Astra, Cosmos Spring at Cosmos Regency.

3.3 Accordingly, Ld. AO reopened the assessment based on this information and issue a notice u/s. 148 to the assessee. Vide letter dated 29.09.2016, the assessee submitted that original return filed on 30.09.2011 may be treated as return filed in response to notice u/s. 148. The assessee also denied having made any cash payments for purchase of the flat in question. However, ld. AO recorded a statement of the assessee during the course of assessment proceedings wherein he accepted that he had paid around Rs. 5.10 lakhs in cash to the Cosmos group company.

3.4 In view of assessee's admission, ld. AO treated the entire amount of Rs. 71,00,000/- paid to M/s. Cosmos Builders as unexplained u/s. 69B, and added the same to assessee's income. Further, disallowance of expenses to the tune of Rs. 16,88,584/- was also made u/s. 37(1) of the Act.

3.5 Aggrieved, the assessee preferred an appeal before ld. CIT(A) against the order of ld. AO. Vide order dated 28.10.2024, ld. CIT(A) confirmed both the additions. Further aggrieved, the assessee is now in appeal before the Tribunal.

4. First ground relates to the legality of re-assessment proceedings on various counts while second & third grounds relate to the merits of additions u/s. 69B r.w.s 115BBE and disallowance of expenses u/s. 37(1) respectively.

5. **Ground No. 2- Addition u/s. 69B r.w.s 115BBE at Rs. 71,00,000/-.**

Ld. AO made this addition on the basis of information received from the Investigation Wing that cash payment for purchase of flat no. 6D Astra, Cosmos Spring had been made by the assessee.

5.2 Before us, ld. AR submitted that the impugned property was purchased by assessee's wife for which agreement value was Rs. 29,00,000/- as against the market value of Rs. 15,38,100/- as per the copy of agreement filed.

Hence, it is not possible that Rs. 71,00,000/- would be paid in cash for the said purchase of said property when its market value is only Rs. 15,38,100/- and agreement value is nearly double the market value. It is not plausible that another 71,00,000/- would have been paid in cash for the purchase of flat measuring 710sq ft carpet area located in Thane. Ld. AR has further placed reliance on several decisions of the co-ordinate benches on the issue of on-money. Specifically, he has submitted that similar addition on account of alleged payment of on-money to Cosmos group has been deleted by the co-ordinate bench in case of *Paramjit Singh Seehra V. ACIT* in *ITA No. 1318/Mum/2019*.

5.3 On the other hand, ld. DR has vehemently argued that the assessee in his statement recorded by ld. AO had himself admitted to the fact that cash payment had been made by him to Cosmos group. Hence, the addition of Rs. 71,00,000/- basis on specific and credible information received from the Investigation Wing pertaining to undisclosed cash payment deserves to be upheld.

5.4 We have heard the rival submissions and perused the material on record. Admittedly, the flat in question has been purchased by assessee's wife Mrs. Deepti S. Talpade. As per documents filed in the paper book, the flat measuring 710 sq ft. Carpet area has been purchased by her for Rs. 29,50,000/- vide agreement dated 06/08/2009. It is located in the 'Cosmos Spring' project at Thane. Thus the case of the AO that Rs. 71,00,000/- in cash has been paid for the purchase of this flat appears illogical and based on incorrect facts. It is also noticed that the assessee, jointly with his wife, has purchased another property, comprising Ground floor and first floor of 'Venus' building for Rs. 175 cr in the same Cosmos Regency Complex as stated by him in response to the show-cause notice. However, the Id. AO has not looked into this transaction at all despite the details filed by the assessee before him during the course of reassessment proceedings and has rejected the assessee's submissions.

Ld. AO based on the information received from Investigation Wing has proceeded to hold that Rs. 71,00,000/- has been paid for purchase of flat no. 6D in Cosmos Spring Project by the assessee in case which is an undisclosed investment. We are of the considered view that this addition is not sustainable for the reasons discussed hereinbefore.

We, accordingly, delete the addition of Rs. 71,00,000/- u/s. 69B made on account of undisclosed cash payment towards purchase of flat no. 6D in Cosmos Spring Project.

6. Ground No. 3: Disallowance of expenses of Rs. 21,14,836/-

It was noticed that various expenses totaling Rs. 21,14,836 had been claimed in the P&L account which appeared to be not for the purpose of business/profession. The assessee was asked to substantiate the expenses by producing the supporting vouchers. Ld. AO noted that self-made vouchers amounting to Rs. 9,95,500 have been submitted regarding cash payments made for salary and bonus, trainer fees for fitness, personal security expenses, hair dressing and makeup artist expenses etc. Holding these bill/vouchers to be bogus, ld. AO disallowed Rs. 21,14,836/- u/s. 37(1) of the Act. The disallowance has been upheld by ld. CIT(A).

- 6.2 Before us, ld. AR has explained that the assessee is a professional artist and has shown professional fees receipts of Rs. 2,41,10,809/- during the year. There are bound to be such expenses on personal security, grooming etc. and such expenses are allowable considering the nature of profession of the assessee. It has further been pointed out that a disallowance out of cash expenses to the tune of Rs. 4,26,252/- has already been made at the time of original assessment vide order dated 17.01.2014. hence further disallowance of Rs. 21,14,836/- is not justified and deserves to be deleted.
- 6.3 Ld. DR, on the other hand, has strongly relied on the orders of lower authorities and argued that in the absence of proper documentary evidence, the disallowance deserves to be upheld.
- 6.4 We have heard the rival submissions and perused the material available on record. We are of the considered view that the expenses claimed are reasonable, considering the nature of profession of the assessee.

Moreover, a disallowance of Rs. 4,26,252/- has already been made out of these expenses at the time of original assessment which has not been contested by the assessee in appeal. In view of above, any further disallowance during reassessment proceedings is not warranted and the same is, hereby, deleted.

7. Since both the grounds on merits have been decided in favour of the assessee, other legal grounds are rendered academic and hence are not being adjudicated upon. Ground no. 4 relating to the changing of interest u/s. 234B & C are consequential and that relating to initiation of penalty is premature, hence no separate adjudication is required.
8. In the result, the assessee's appeal is allowed.

Order Pronounced in Open Court on 31.10.2025

Sd/-

(BEENA PILLAI)

(JUDICIAL MEMBER)

Sd/-

(RENU JAUHRI)

(ACCOUNTANT MEMBER)

Place: Mumbai

Date 31.10.2025

Anandi.Nambi/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.