

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.2112/Ahd/2011
(निर्धारण वर्ष / Assessment Year : 2008-09)

The Dy. Commissioner of Income Tax, Circle-13, Ahmedabad.	बनाम/ Vs.	Shri T.V. Krishnamurthy Plot No.146, Sector – 8, Gandhinagar – 382008
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABTPT 7611 E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri P.S.Chaudhary, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri P. F. Jain, A.R.

सुनवाई की तारीख / Date of Hearing	09/03/2017
घोषणा की तारीख/Date of Pronouncement	31/05/2017

आदेश / ORDER

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the revenue directed against the order of the Commissioner of Income Tax(Appeals)-XXI, Ahmedabad, dated 08/06/2011 for the Assessment Year (AY) 2008-09.

2. Revenue has taken the following Grounds of appeals:

- i. *The learned CIT(A) has erred in law and on facts in deleting the addition of Rs.37,50,000/- made u/s.68 of the IT Act on account*

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of unexplained cash credit made in S.B. Account of the assessee with Corporation Bank, Ahmedabad.

- ii. The learned CIT(A) has failed to consider the reasons and legal position as discussed by the AO vide para-4, 4.1 to 4.5 of assessment order dated 30/12/2010 on the basis of which addition of Rs.37,50,000/- was made by the AO u/s.68 of the IT Act.*
- iii. The learned CIT(A) has passed the appellate order on the basis of submission of the assessee filed during the course of appellate proceedings. Before considering the submission, no opportunity has been given to the AO of being heard. Since the same is against principles of natural justice, the appellate order is not acceptable.*

3. The relevant facts as culled out from the materials on record are as under:-

The assessee has deposited cash in his Bank Account with Corporation Bank on following dates as mentioned in Para 4 of the Assessment Order:

Sr. No.	Date	Amount Rs.
1.	31.01.2008	5,00,000/-
2.	02.02.2008	5,00,000/-
3.	04.02.2008	4,50,000/-
4.	05.02.2008	5,00,000/-
5.	15.03.2008	9,00,000/-
6.	17.03.2008	9,00,000/-
Total Rs.		37,50,000/-

The assessee as mentioned in Para 4.1 of the assessment order has explained that the said amount has been received as advance money against the sale of Plot No. 120, 121 and 122 each admeasuring 2660 sq. feet, Plot No.50, 51 admeasuring 3525 Sq. feet in the name of his wife Kala Krishna Murthy and plot no. 52, 53, 54 and 55 admeasuring 9022 Sq. Feet, Plot No. 110, 111,123 admeasuring 7980 Sq. feet belonging to the assessee. The total amount as advance money against proposed sale of these properties is Rs.38,77,050/- as per individual details mentioned in Para 4.1 of the assessment order. In support of advance money received the assessee submitted the following evidence.

- i. Cash Book and Bank book along with bank statement.
- ii. Copy of conveyance deeds of above plots held by assessee and his wife.
- iii. The confirmation of the dealing party Shri T.V. Rajgopal through whom the advance money has been received.

It was also explained that on account of some dispute in the terms and conditions, the sale deal could not materialize and the money received was returned subsequently. All these facts are duly mentioned in Para 4.1 of the assessment order.

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A show cause notice dated 24/12/2010 was issued to the assessee asking him to explain why the amount of Rs.37,50,000/-should not be disallowed and added u/s. 68 of the I.T. Act. As mentioned in Para 4.2 of the assessment order the show-cause notice was issued because

- i. Letter dated 06/12/2010 was issued to Shri T.V. Rajgopal to confirm the contention of the assessee but no reply was received from him.
- ii. Letter dated 06/12/2010 was issued to I.T.O., salary ward 111(3), Chennai requesting her to verify the assessment record of shri T.V. Rajgopal and conduct necessary inquiry.
- iii. Letter dated 06/12/2010 was issued to Corporation Bank to provide information about cash deposits and vide letter dated 22/12/2010 the Bank was requested to provide copy of paying in slips which was provided by the Bank vide letter dated 18/12/2010 and 23/12/2010 showing that the said slips contained signature of the assessee.
- iv. Shri Rajgopal is assessed in Chennai and it has been informed by the I.T.O. that he is the employee of The Indian Overseas Bank and his return details show that he has no capacity to pay

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such a huge amount and therefore the fact that amount was received from T.V. Rajgopal towards advance of sale of Plot is incorrect.

The assessee was required to reply to show cause by 28/12/2010. As mentioned in Para 4.3 of the assessment order the assessee explained and replied to the show cause as under:

- a) The fact that Shri T. V. Rajgopal is assessed at Chennai, that he is employee of Indian Overseas Bank, that his returns show that he has no capacity to pay such huge amount of Rs.37.50 Lakhs, that the Bank slip has been made by the assessee are correct but the facts have not been properly appreciated because the assessee has never stated that the plots have been sold to Shri T.V. Rajgopal. What he stated is that Shri T.V. Rajgopal has agreed to sell the plots to local buyers at Chennai. The amount received on behalf of assessee by Shri T.V. Rajgopal was sent by him and the said amount was deposited in the Bank account. It was further explained that he acted as intermediary in this deal, he had no stake directly or indirectly in this deal, he is younger brother of the assessee and as he is residing at Chennai where these plot are situated he was requested to have a deal and sell out the plots as the assessee was in need of money for his son's study at abroad.

But unfortunately the deal could not be finalized and the money received was returned to the brother of the assessee by cheques and confirmation in this regard has been duly submitted. It was further clarified that as the deal failed there are no documents available at present and the assessee requested for acceptance of his explanation and not to make addition of Rs.37.50 Lakhs.

The assessing officer did not find the contention of the assessee as acceptable for the reasons mentioned in Para 4.4 of the assessment order which are summarized as under:

- i. No details like name address of the buyer has been given, no agreement for sale is provided. It is impossible that such huge amount of money in cash will be paid without entering into any agreement in writing and further that no single rupee has been received by cheque.
- ii. The plots under sale were purchased on 09/04/2008 and on 25/02/2008 whereas the dates of majority deposit of cash is on or before 05/02/2008 and therefore the question of receiving money towards sale of plot which he did not own on the date of receipt of money does not arise.

- iii. No subsequent confirmation was received from T.V. Rajgopal.
- iv. The A.O. of T.V. Rajgopal has recorded statement of him on oath on 24/12/2010 and in the said statement he has denied to have made any payment to the assessee and he has not confirmed that he was working as mediator for sale of assessee's plot.
- v. The cash deposit has been made by the assessee himself.
- vi. The assessee has not provided name and address of the buyers and Shri T.V. Rajgopal does not have any capacity to pay such big amount and he has in his statement categorically denied such payment having given to the assessee.

For above reasons it was concluded by the assessing officer that no satisfactory explanation and evidence with regard to source of cash deposit in Bank account No.5531 with Corporation Bank was given by the assessee, that the assessee has deposited his income from undisclosed sources in cash, and accordingly the total amount of cash deposit has

been treated as unexplained cash credit within the meaning of Section 68 and accordingly treated as income of the assessee.

Therefore, an addition of Rs.37,50,000/- as income from undisclosed sources was added to the income of the assessee.

4. Against the said order assessee preferred first statutory appeal before the learned CIT(A) who decided the matter in favour of the assessee and held as under:

“I have carefully considered the submission made by the assessee, material placed in Paper Book filed and have also gone through the findings given by the assessing officer in respect of addition of cash deposit of Rs.37.50 lakh made during the period from 31/01/2008 to 17/03/2008. The assessee has explained the source of cash deposit as advance received in respect of sale of plots at Chennai belonging to him and his wife. In support of it he furnished confirmation of T.V. Rajgopal who acted as intermediary. The explanation of the assessee has been rejected by the assessing officer as per his findings narrated in Para 4.4 of the assessment order pointing out that the names and address of the buyers was not given, two of the sale deeds has been executed on 09/04/2008 and 25/02/2008 subsequent to the receipt of advance money, that Shri T.V. Rajgopal did not respond to the letter of A.O., that as per his statement recorded he has denied to have made any payment. From the submission dated 28/12/2010 made to assessing officer placed at paper book page No.42 , the assessee replied that T.V. Rajgopal has acted as intermediary and he had no stake directly and indirectly in the sale of plot and that as the deal did not materialize the money was returned and therefore he is not in possession of any proof of sale agreement. It is also seen that the statement of T.V. Rajgopal has not been given to the assessee during course of assessment proceeding for rebuttal or comment. From the statement bearing date of dispatch 30/12/2010 placed in the Paper book at page no. 27 to 29 it is noticed

*that he was not asked with regard to his acting as a intermediary for sale of assessee's plots. But he was asked regarding plot advance account confirmed by him to which he replied that he signed the papers without knowing its implications and he also replied that he has not made any deposit in the account of the assessee and he has not purchased any plot for himself or for the assessee. It shows that he has not been asked with regard to his sending money from the prospective buyers and assessee has not contended that the cash in his account was deposited by him and therefore the deposition does not bring out the correct facts regarding sale of plots and he has also not denied the plot advance account confirmed by him and as the statement has not been cross verified the propositions laid down by the Supreme Court in the decisions mentioned above by the assessee in his submission will be applicable. There is also force in the contention of the assessee that simply because the intermediary has not responded to his letter and the assessee was not in possession of sale agreement on account of deal having not been finalized and the assessment has taken place after two years , these facts cannot be a ground for disbelieving the assessee . It creates doubt but the suspicion cannot take place of facts. The assessee has also alternatively argued that the Section 68 uses the word " **may** " and as per the decision of the Supreme Court in the case of **P.K. Noorjahan** the discretion whether the investment should be treated as income or not has to be exercised by the A.O., keeping in view the facts and circumstance of a particular case. The apex Court in the case of **P. MOHANKALA** mentioned in the submission has held that the opinion of the A.O. for not accepting the explanation offered by the assessee as not satisfactory is required to be based on proper appreciation of material and other attending circumstances available on record and the opinion of A.O. is required to be formed objectively with reference to the materials available in record. In the case of **ROSHAN D. HATTI**. The addition was deleted for the reason that the impossibility of earning such a large amount within a few months was a circumstance which should have been considered. In the case of **BHARAT ENGG. AND CONSTRUCTION** the explanation given by the assessee was found to false but the case credit was not held to be income because Tribunal was of e view that the assessee could not have earned such a huge amount as profit very soon after the start of business and the Supreme*

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Court inferred that it was reasonable to assume that those cash credit entries were capital receipts although for one reason or other the assessee had not come out with the true story as regards the persons from whom it got those amount. In the case of assessee also the amount has been deposited with in a span of one and half months and it has been rightly pointed out that keeping in view the sources of income of the assessee which are not disputed, it is impossible to believe that assessee would have earned such income during one and half month. Further the explanation of the assessee for receipt of plot advance has not been found false as he does possess plots at Chennai and further that in respect of plots for which sale deed was executed in the month of April 2008 but the payment was made on 23/11/2007 and similarly for the plots for which sale deed was executed on 25/02/2008 payment was made on 23/11/2007 as mentioned in the written submission made by the assessee and these facts have not been considered by the assessing officer. There by the findings of the A.O. get rebutted.

6. Keeping in view the totality of facts, circumstances, submission made, material placed in Paper Book and the principles laid down in the decisions of Hon'ble Supreme Court and Gujarat High Court, as discussed above I am inclined to agree with the written submission made by the assessee and therefore the addition of 37.50 lakh made u/s. 68 is deleted.”

5. We have gone through the relevant record and impugned order. We can see that in Page No.17 of the CIT(A)'s order each and every detail pertaining to 37.50 lakh have been given by the assessee and in Paper Book Page No.30 to 35 all details have been furnished. In the light of the above submission we do not find any infirmity in the order passed by the CIT(A), therefore, we dismissed the appeal of the revenue.

6. In the result, appeal filed by the revenue is dismissed.

This Order pronounced in Open Court on	31/05/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 31/05/2017

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XXI, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

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