

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
चन्द्रमोहन गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL, INDORE BENCH,
INDORE
BEFORE SHRI CHANDRA MOHAN GARG, JM, AND SHRI
O.P.MEENA, AM
आ.अ.सं./ I.T.A. No.381 &408 /Ind/2013
निर्धारण वर्ष/ Assessment Year: 2009-10

1.Shri Ghanshyam Bafna 35-A,14/3, Vikas Nagar Neemuch 2. Income Tax Officer , Neemuch	Vs.	1. Income Tax Officer, Neemuch 2.Shri Ghanshyam Bafna 35-A,14/3, Vikas Nagar Neemuch
स्था.ले.सं./PAN:ADYPB 7650 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/Appellant by	Shri S.S. Deshpande, CA
प्रत्यर्थी की ओर से/Respondent by	Shri Mohd. Javed, Sr. D.R.
सुनवाई की तारीख/Date of hearing	15-05-2017
उद्घोषणा की तारीख/Date of pronouncement	.16.-05-2017

आदेश /ORDER

PER O.P. MEENA, ACCOUNTANT MEMBER.

- These are cross appeals filed by the assessee and Revenue against the order of Commissioner of Income-tax (Appeals)-Ujjain (in short CIT(A)) dated 28-03-2013 for the assessment year 2009-10.
- First we deal with Revenue`s appeal in I.T.A. No. 408/Ind/2013/AY09-10**
- We have heard both the sides. We find that the CBDT vide Circular No.21/2015 issued on 10.12.2015 [F. No. 279/Misc. 142/2007-ITJ (Pt)] has revised the monetary limit for filing of appeal before Tribunal fixing the tax effect limit at Rs.10 lacs. The said Circular supersedes the earlier instructions/Circular issued on the subject of tax effect and applies to all pending appeal retrospectively. The relevant

para 10 of Circular is as follows for ready reference: - *“10.This instruction will apply retrospectively to pending appeals and appeals to be filed henceforth in High Courts/ Tribunals. Pending appeals below the specified tax limits in para-3 above may be withdrawn/not pressed. Appeals before the Supreme Court will be governed by the instructions on this subject, operative at the time when such appeal was filed.”* The Board has provided exemptions at clause (8) of the Instructions wherein it has been provided that these instructions will not be applicable, if vires of any provisions has been quashed by impugned order or addition was made on some audit objections or the addition relates to undisclosed foreign assets/bank accounts, etc. We find that the present case does not fall within the exemption clause and the tax is less than Rs.10 lacs. Therefore, the present appeal is not maintainable and hence dismissed.

4. In the result, the appeal of the Revenue stands dismissed.

5. **Now we shall take up the Assessee`s appeal in I.T.A. No. 381/Ind/2013/A.Y. 09-10.**

6. **Ground no. 1 relates not considering the source of cash deposit of Rs. 18 lacs into bank account without appreciating facts that same was received by the assessee against agreement to sale of property.**

7. Facts apropos of this ground are that the assessee has shown cash deposit of Rs. 27,41,000/- in his bank account maintained with HDFC bank. However, no source of the same was explained hence, same were treated as unexplained by the AO.

8. In appeal before the Ld. CIT (A), it was claimed that the receipt of Rs. 18 lacs are in respect of land admeasuring 700 Sq. Ft. at situated at Mhow, Nasirabad Main Road, Neemuch against the agreement to sale dated 04-05-2008, entered in to with Shri Narendra Singh and Shri Vinod Kumar Gehlot. The land under consideration received by the assessee on rent of Rs. 7,000 per annum as per rent

agreement dated 25-07-1995 with Municipal Council Neemuch for a period from 11-07-1995 to 10-07-1996, which could be renewed for further period. However, the Ld. CIT (A) observed that as per the conditions laid down in the rent agreement dated 25-07-1995, the assessee can utilise said land for his business purpose but had no authority to transfer the land to any other person without the permission of the Municipal Corporation. The assessee has no ownership on the said land. Further no permission taken from Municipal Corporation for transfer. The appellant has failed to furnish any document to prove that the appellant has taken any permission from Municipal Corporation, Neemuch for renewal of Rent agreement as well as transfer of property to other persons. The appellant has no right on alleged property to sell off the same. The identity and source of alleged buyers also could not be established by the appellant. Moreover, the appellant has reflected this receipt as unsecured loan in his balance sheet. All these facts go against the appellant establishing that the alleged transaction in support of which he furnished the documents to explain the source of cash deposit in bank account are not genuine. Considering above the Ld. CIT (A) upheld the addition of Rs. Rs. 18 lacs on this account . The Ld. CIT (A) further confirmed the addition of Rs. 3,42,677/- claimed to be out of sundry advances as the assessee has failed to furnish copy of account , confirmation , postal address and assessment particulars of such creditors. The Ld. CIT (A) has also confirmed the addition of Rs. 1 claimed to have been received as loan from various family members to explain the cash deposit in bank account. However, the assessee has failed to furnish the complete address, identity of person and PAN etc. Thus, addition of Rs. of Rs. 22,42,677/-was came to be confirmed.

9. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned Counsel for the assessee, submitted that while framing the assessment the AO made addition of Rs. 27,41,000/- on

account of deposits in bank account and Rs. 19,76,531/- on account of unsecured loans. However, after considering the explanation, the CIT (A) has deleted the addition of Rs. of sundry advances. However, with regard to cash deposit of Rs. 27,41,000/- , in the HDFC bank account , the CIT (A) noted that deposits of Rs. 50,43,600/- are made in various bank accounts and not Rs. 27,41,000/- However, after considering the cash availability of Rs. 29,57,799/- and after deducting the house hold expenses deleted the addition of Rs. of Rs. 28,00,923/- and upheld the addition of Rs. 22,42,677/- being advance received. The learned counsel submitted that the assessee had taken land on lease from the Municipal Corporation in industrial estate. This land was sold to Shri Vinod Kumar and Shri Narendra Sisodiya for a consideration of Rs. 20 lacs and received advance of Rs. 18 lacs [PB-41]. The affidavits, and confirmation of parties are filed at Paper Book Page No 64 to 68 . The bank statement of Shri Vinod Kumar filed showing withdrawal of cash offer 18 lacs on 05-05-2008 (PB-61) . The said parties are in possession of land even today. Therefore, the transaction should have been accepted by the lower authorities.

10. Per contra, the learned Sr. D.R. contended that the assessee had no authority to sel the land in question. The assessee had shown the alleged amount of Rs. 18 lacs received as advances in his books of accounts and balance sheet as loan. No sale deeds has been executed till date . no permission of Municipal Corporation was ever taken for sale of land. The copy of affidavit filed as per Paper Book were not produced before CIT(A) as could be seen that the affidavit are dtd. 28-08-2013 whereas order of CIT(A) was passed on 28-03-2013. Hence, these could not be admitted as of now. Therefore, finding of Ld. CIT (A) may be upheld.

11. We have heard the rival submissions of both the parties and have perused the material available on record. We find that as per terms and conditions of lease rent agreement dated 25-07-1995, the

land under consideration was only given for the business use of the assessee only. For period from 11-07-1995 to 10-07-1996 @ rent of Rs. 7,000/- per annum. The assessee was not allowed to sell the said land without permission of Municipal Corporation Neemuch. The lease rent agreement was expired on 10-07-1996. The assessee has not filed any evidence to show that the said lease rent agreement was renewed thereafter. No evidence of any kind of permission taken for transfer of said land from Municipal Corporation is adduced. Therefore, we are of the view that the assessee was not a legal owner of said land to either to sale, transfer or in any way part with possession. The assessee has not filed any evidence to establish that he was legally entitled to effect such transfer without permission and valid renewal of lease. We also find that alleged amount of Rs. Rs. 18 lacs is claimed to have been received from Shri Vinod Kumar and Shri Narendra Sisodiya is shown by the assessee himself as loan in his books of accounts and balance sheet (PB-14). If there had been any truth in the concocted story of the assessee, the said amount could have been shown as advance against proposed sale of land. Moreover, we further find that the so called affidavits of Shri Vinod Kumar dtd. 28-08-2013(PB-64-65) and Shri Narendra Sisodiya dtd. 28-08-2013(PB68-69) were ever filed before the Assessing Officer or Commissioner of Income-tax (Appeals). We find that the appeal order was passed on 28-03-2013 whereas the affidavits are dated 28-08-2013. Meaning thereby the these evidences were no before the CIT(A).Therefore, the verification made by the assessee that these papers /documents were filed before the lower authorities is not correct and misleading. Further, there is no application for admitting these as additional evidence before us filed. Therefore, these evidence are without any basis and hence, rejected. We also perused the copy of bank statement of Shri Vinod Kumar and Shri Narendra Sisodiya and find that these person have sufficient bank balances in their bank

account. They were also effecting transaction by cheque, therefore, it is not under stood as to how the amount claimed to have given to the assessee in cash instead by cheque. The learned Counsel for the assessee, has claimed that Shri Vinod Kumar had withdrawn cash of Rs. 18 lacs on 05-05-2008, and out of said withdrawal the amount of Rs. 14,40,000/- was given to the assessee on various dates. We are not persuaded with this logic. We find that cash of Rs. 18 lacs was withdrawn on 05-05-2008 whereas the amount in cash is received by the assessee on 05-05-2008 Rs. 6,40,000/-, Rs. 4 lacs on 04-08-2008, Rs. 2.40 lacs on 27-08-2008 and Rs. 1.60 lacs on 10-10-2008. How the cash of Rs. 18 lacs withdrawn by self was kept for paying the assessee on various dates falling within the period of 6 months. Similar is the case in the case of Shri Narendra Sisodiya. That the corresponding dates of so called transaction is not matching or tallying with corresponding cash withdrawal. Therefore, we of the considered opinion that this explanation put forward by the assessee is cooked up story with a view to create to explain the source of unexplained cash deposit made out of undisclosed sources. Hence, this story has no legs to stand. Considering the aforementioned facts, circumstances, and factual position, we find the Ld. CIT (A) has committed no error in confirming the addition of Rs. 22,42,677/- as unexplained cash credit. Hence, same is sustained. The ground no. 1 of the appeal as taken by the assessee is therefore, dismissed.

12. Ground no. 2 relates to confirming the addition of Rs. of Rs. 39,53,600/- as cash deposit in HDFC bank account whereas the amount deposit in cash was at Rs. 39,33,600/

13. During the course of hearing before us , this ground was not pressed, hence, it is treated as dismissed as not pressed.

14. In the result, the appeal of the assessee is dismissed.

15. The order pronounced in the open Court on 16.5.2017

Sd/-
(C.M. GARG)
JUDICIAL MEMBER

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Dated: 16th May,2107
opm