

आयकर अपीलीय अधिकरण, मुंबई ए खंडपीठ

Income-tax Appellate Tribunal -“A”Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमित शुक्ल न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Amit Shukla,Judicial Member

आयकर अपील सं./I.T.A. No.1370/Mum/2014, **निर्धारण वर्ष** /Assessment Year: 2007-08

ACIT,CC-39 Ground Floor,Aaykar Bhavan, Mumbai-400 020	Vs.	M/s. Ambit Reality Pvt. Ltd. Dronagiri Housing Complex Building No.GH-10,Sector-30, Post Bokadvira Village, Uran Taluka,Raigad Dist. Navi Mumbai-400 702. PAN: AAGCA 0057 J
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Ms. Malathi Sridharan

Assessee by: Shri Ramesh Jain,

सुनवाई की तारीख / **Date of Hearing:** **08.03.2016**

घोषणा की तारीख / **Date of Pronouncement:** **08.03.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

PER RAJENDRA,AM

Challenging the order dtd.30.11.2013 of the CIT-(A)37,Mumbai the Assessing Officer (AO) has filed the above mentioned appeal.The effective ground of appeal is about deletion of penalty imposed by the AO,u/s.271(1)(c)of the Act.

Brief Facts:

2.The assessee belongs to Jai Corp Group of cases which was a partner in two major Special Economic Zones(SEZ),being developed in the vicinity of Mumbai-Navi Mumbai Special Economic Zone(NMSEZ)and Mumbai Special Economic Zone(MSEZ).The Group entities had purchased vast tracts of land in the vicinity of these SEZs with an objective to develop the lands into satellite townships in these areas with necessary amenities and infrastructure anticipating potential price rise and good return for their investment in future.These lands have been purchased in the names of about 100 companies including the appellant.The real estate operations of the Group were handled by Virendra Jain,Gaurav Jain and Dilip Dherai.

A search and seizure operation under Section 132 of the Act was carried out at the office premises of the Group and its close associates and residential premises of its key persons on 5.3.2009.In the course of search, incriminating evidence was found and seized proving the fact that the assessee had made cash payments over and above the cheque payments entered in the books of account for purchase of land. The factum of cash payments was confirmed by Dilip Dherai in the course of search.Later on after two-and-half months from the date of search,he filed an affidavit before the DDIT(Inv.),on 14. 05.2009,affirming that the statement recorded during the course of search on 05.03.2009 was taken forcibly and under pressure. However,the AO rejected the affidavit by holding it as a self-serving document.

Based on scrutiny of the seized documents,total unexplained expenditure incurred in cash on acquisition of lands was estimated by the AO at Rs.43.46 Crores.The amount of unexplained expenditure incurred in cash as apportioned among all land companies (including the appellant)in the ratio of cost of land purchased by said companies up to 28.11.2008. On the basis of said apportionment, an addition of Rs.46,49,000/- was made in case of the appellant u/s.69C the Act by the AO. In the appellate proceedings,the First Appellate Authority (FAA) confirmed the order of the AO.

3. In the meanwhile, the AO initiated penalty proceedings u/s. 271(1)(c) of the Act. After considering the explanation of the assessee, the AO held that cash payments had been made in land transactions which were not reflected in the books of account maintained by the assessee, that it had paid unexplained cash to the land owners as part of the purchase consideration of the land and that such cash payments were not recorded in the regular books of accounts of the appellant and thereby the action of the appellant attracted the provision of Section 69C of the Act. The AO levied a penalty of Rs. 38,99,580/-, being 100% of undisclosed income assessed in case of the assessee.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the FAA and argued that the AO had made additions based on the statement recorded and documents seized from the third parties, that it had made a true and full disclosure of the particulars of its income, that the difference in the assessed income and the returned income was on account of the addition which the AO had considered as undisclosed income of the assessee, that the addition u/s 69C has been made by the AO merely based on certain documents found at the premises of Dilip Dherai who was neither a director nor the employee of the assessee-company, that no reliance could be placed on the documents seized from him, that the additions had been made on ad hoc/estimated basis and no constructive evidence has been brought on record, that this difference of opinion does not at all warrant the initiation of penalty proceedings u/s 271(1)(c) of the Act. The appellant further submitted that the addition u/s. 69C made by the AO had been deleted by the ITAT, vide its order dated 22.03.2013. It is submitted that the ITAT had held that the seized documents relied upon by the AO did not establish any payment of cash by the assessee for acquiring land and thus the penalty u/s. 271(1)(c) levied by the AO based on these additions would not survive. Considering the fact that the Tribunal had deleted the additions made in quantum proceedings, the FAA deleted the penalty imposed by the AO.

5. Before us, representatives of both the sides agreed that the Tribunal had deleted the additions, that Tribunal had considered the issue on merits also. We would like to reproduce the relevant portion of the order of the Tribunal and same reads as under :

“..... In the present case, the impugned documents were not found from the possession of the assessee but was formed from the possession of a third-party i.e. Dilip Dherai. Mere mention of the names of the villages where the companies may have purchased lengths would not give any basis to assume/resume/surmise that the name of the companies are mentioned in the impugned documents. The very foundation of section 153C has been shaken by not fulfilling the condition precedent for the issue of notice...

19. Considering the entire facts and circumstances in the light of the impugned section documents, we have no hesitation to hold that Action taken under section 153C of the Act is bad in law...

22..... The entire dispute revolves around the alleged cash payment amounting to Rs. 43 crores approximately and which has been added under section 69C of the Act.....

23..... the assessee must have been found to have incurred any expenditure to invoke the provisions of section 69C of the Act. However the allegation made by the lower authorities are not supported by actual cash passing hands. The entire additions are based on the seized documents and no other material has been adverted to and which could conclusively show that the huge amount of the magnitude mentioned in the seized documents travelled from one side to other. The revenue authorities have not brought a single statement on record of the vendor of land in different villages. None of the seller has been examined to substantiate the claim of the revenue that extra cash actually changed hands.

24..... In the present case none of the sellers have been examined by the AO to strengthen his views that cash has been paid over and above the registered amount. There is not a single document/evidence of parties involved in the sale of land at different villages brought on

record to show that an amount other than the payment of consideration has changed hands. No confession from the sellers have been brought on record.....

25..... In our considerate view (sic) there being no evidence to support the revenue's case that I use figure, whatever be its quantum, over and above the figure in the records and accounts changed hands between the parties, no addition could therefore be made under section 69C of the Act to the income of the assessee considering the entire facts brought on record, we have no hesitation to hold that even on merits no addition could be sustained.

26. Since we have allowed the issue in case of the present assessee on both counts i.e.P.on legal issue and on merit and the issue involved in all other appeals of other assesseees are similar and identical,though quantum may differ, for similar reasons, we quash the assessment and delete the additions on merit as well as on point of law in all other cases also.”

As the Tribunal has deleted the additions on merits and on point of law too,therefore, in our opinion penalty levied by the AO under section 271(1)(c) was rightly deleted by the FAA. Confirming his order,we decide the effective ground of appeal against the AO.

As a result,appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 8th March, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 8 मार्च, 2016 को की गई।

Sd/-

Sd/-

(अमित शुक्ल/ Amit Shukla)

(राजेन्द्र / Rajendra)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांकDated : 08.03.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,4.The concerned CIT/संबद्ध आयकर आयुक्त

5.DR “A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.