

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री भागचंद, लेखा सदस्य, के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 229/JP/2017
निर्धारण वर्ष / Assessment Year : 2010-11

Sanjay Vaidh, B-3, Neelgiri Apartment, D- 34, Saraswati Margh, Bani Park, Jaipur.	बनाम Vs.	Income Tax Officer Ward- Dausa.
PAN No.: AAWPV 7730 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri G.G. Gupta (CA)
राजस्व की ओर से / Revenue by : Smt. Poonam Roy (DCIT)

सुनवाई की तारीख / Date of Hearing : 03/10/2017
उदघोषणा की तारीख / Date of Pronouncement : 04/10/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of Id. CIT(A), Alwar dated 18/01/2017 for the A.Y. 2010-11, wherein the assessee has raised following grounds of appeal:-

- "1. The learned Commissioner of Income-tax (Appeals) has erred on facts and in law in confirming the action of the AO in adopting the sale consideration as Rs. 1,26,71,000/- as against the actual consideration of Rs. 95,00,000/- received by the assessee.
2. The learned Commissioner of Income-tax (Appeals) has erred on facts and in law in holding that the sale consideration as

Rs. 1,26,71,000/- on the basis of admission made by a third party without providing an opportunity to the assessee to cross examine the person on the basis of whose admission, the impugned value was adopted as sale consideration.

- 3. The learned Commissioner of Income-tax (Appeals) has erred in facts and in law in confirming the action of the AO in disallowing 10% of the cost of improvement for want of vouchers/ bills relating to the labour payment, particular when the payment of labour and the construction made was not disputed; and ignoring the plea of the assessee that the bills had been handed over to the purchaser and the fact that the payment were duly recorded in the books of the assessee.*
- 4. The learned Commissioner of Income-tax (Appeals) has erred in facts and in law in confirming the action of the AO in disallowing 10% of the total cost of improvement, ignoring that the disallowance, if at all warranted, was to be made for labour payments which aggregated Rs. 9,78,478/- restricting the disallowance to Rs. 97,848/- rather than Rs. 4,64,060/- as the AO himself in his order stated that all bills of material purchased had been submitted and only labour bills were not produced.*
- 5. The Id. AO has grossly erred in law as well as on the facts of the case in charging interest u/s 234A.234B&234C. The appellant totally denies it liability of charging of any such interest. The interest, so charged, being contrary to the provisions of law and facts, may kindly be deleted in full."*

2. The brief facts of the case are that there was a search and seizure action in the case of Dr. Ratan Kumar Sharma, Jaipur on 17/02/2011 and a paper was seized from his residence where the sale consideration was mentioned at Rs. 1,26,71,000/- and the details of payment made by the buyer through cheques/cash were also mentioned therein. In some of the places, there were signatures of the

assessee also. Dr. Sharma has categorically admitted this fact in his statement recorded U/s 132(4) of the Income Tax Act, 1961 (in short the Act) and he had disclosed the amount as amount received in cash as unaccounted investment.

3. In the ground No. 1 and 2 of the appeal, the issue raised is regarding sale consideration adopted at Rs. 1,26,71,000/- as against Rs. 95,00,000/- claimed by the assessee.

4. The Id. CIT(A) had executed the issue by holding as under:

"5.5 I have perused the assessment order as well as remand report of the AO, submissions and cross reply of the appellant. The following facts have emerged.

1. That there was a search operation under section 132 of the Act in the case of Dr. Ratan Kumar Sharma Group on 17/02/2011.

2. That during the course of search operation documents have been found with regard to purchase of property at Flat No. B-3, Plot No. D-34, Neelgiri Apartments, Bani Park, Jaipur from Sh. Sanjay Vaidh for a consideration of Rs. 1,26,71,000/- (Page No.77, Annexure BS, Exhibit-6).

3. That details of the payments have also been found in Page no. 62, 64, 67 & 77 of Annexure BS, Exhibit-6).

4. That as per the registered sale documents, the sale consideration is shown at Rs. 50 Lakhs as per following details;

i. Rs. 31,00,000/- Ch.No. 198909 dated: 06/09/2009

ii. Rs. 3,00,000/- Ch.No. 198928 dated:
04/02/2010

iii. Rs. 16,00,000/- Ch.No. 198932 dated:05/03/2010

5. That during the course of search operation Dr. Ratan Kumar Sharma has accepted that the sale consideration paid to Sh. Sanjay Vaidh on account of purchase of this property is Rs. 1,26,71,000/- as is mentioned in page No.62,64,67 & 77 of Annexure-BS, Exhibit-6 seized under section 132 of the Act.

6. That in the return of income submitted by Sh. Sanjay Vaidh the capital gain is calculated at the sale consideration of Rs. 95 lakh instead of Rs. 1,26,71,000/-

7. That the A.O issued notice under section 148 of the Act and reassessed the income which had escaped assessment.

8. That in the reassessment proceedings the A.O has enhanced the sale consideration by Rs. 31,71,000/- taking the sale consideration at Rs. 1,26,71,000/- as per the seized documents.

5.5.2 I have considered the above mentioned facts. There is no doubt that the property in question belonged to Sh. Sanjay Vaidh and has been sold to Dr. Ratan Kumar Sharma during the year under consideration. That it is also a fact that the registered sale deed has shown the sale consideration at „ Rs. 50 lakhs only. However, Sh. Sanjay Vaidh has declared the sale consideration at Rs. 95 Lakhs while calculating capital gain. I have also taken into account the statement recorded during the course of search operation where Dr. Ratan kumar Sharma, the buyer of the property, who had accepted that the total consideration paid to Sh. Sanjay Vaidh is Rs. 1,26,71,000/-. Dr. Sharma

has also surrendered the additional investment as per the seized documents.

- 5.5.3 The relevant seized documents and the statement of Dr. Ratan Kumar Sharma was given to the appellant during reassessment proceedings. During appellate proceedings the appellant has submitted that as per the seized documents an amount of Rs. 22,37,300/- was shown to have been received by Sh. Pawan Agarwal S/o Sh. M L Agarwal on behalf of Sh Sanjay Vaidh. The appellant has claimed that he does not know Sh. Pawan Agarwal and that he does not know anything about the amount of Rs. 22,27,300/- shown to have been received by Sh. Pawan Agaiwal on his behalf as the final part of sale consideration of the property in question. The submission filed by the appellant was provided to the A.O for examination and his comments and also to record statement of Sh. Pawan Agarwal S/o Sh. M L Agarwal. The remand report was submitted by the A.O vide letter dated 18/10/2016. The copy of the remand report was provided to the appellant for cross reply. The reply from the A.R was submitted on 04/01/2017. In the remand report the A.O has stated that the appellant did not provide the address of Sh. Pawan Agarwal and hence could not be contacted for recording of the statement.
- 5.5.4 In the cross reply the appellant has taken the plea that in absence of statement of Sh. Pawan Agarwal, there is no justification for addition of Rs. 22,27,300/- which was supposed to have been paid to Pawan Agarwal on behalf of the appellant as part of sale consideration. The appellant has further reiterated that he does not know Sh. Pawan Agarwal and that Sh. Agarwal is the witness of the department and no cross examination was provided to the appellant.
- 5.5.5 Thus, the appellant's sole defense in his favour is the non availability of address of Sh. Pawan Agarwal and lack of cross examination. In this

regard it is imperative to examine the veracity of the seized document which shows that the payment was handed over to Sh. Pawan Agarwal on behalf of the appellant as final part of the sale consideration. The appellant has claimed that he does not know Sh. Pawan Agarwal. In order to verify this claim of the appellant I have perused the content of the document seized during the course of search operation where the details of the sale consideration and the payments thereof have been given. It is * important to note that the Page No. 77 of Annexure-BS has given a complete detail of sale consideration. It is documented that the sale consideration is Rs. 1,26,71,000/-. Out of this an amount of Rs. 50 lakhs by way of 3 cheques amounting to Rs. 31 Lakhs, Rs. 3 Lakhs and Rs.16 Lakhs were paid. A total of Rs. 35 lakhs were shown to have been paid in cash. Thus, balance amount of Rs.41,70,000/- was to be given.

Now, page no. 67 of Annexure-BS gives payment of following details;

Ch.No. 198909 dated: 06/09/2009 amounting to Rs. 31 lakhs
Cash amount of Rs. 5 lakhs date of receipt 15/10/2009
Cash amount of Rs. 15 Lakhs date of receipt 21/10/2009
Cash amount of Rs. 10 lakhs date of receipt 03/12/2009
Cash amount of Rs. 3 lakhs date of receipt 04/01/2010
Cash amount of Rs. 2 lakhs

Page no.62 of Annexure BS

Ch.No.198298 of Rs. 3 lakhs on behalf of Sanjay Vaid 04/02/2010
Ch.no. 198932 of Rs. 16 lakhs date: 05/03/2010
Cash amount of Rs. 5 Lakhs date of receipt 05/03/2010 Amount Rs. 13,50,000/-

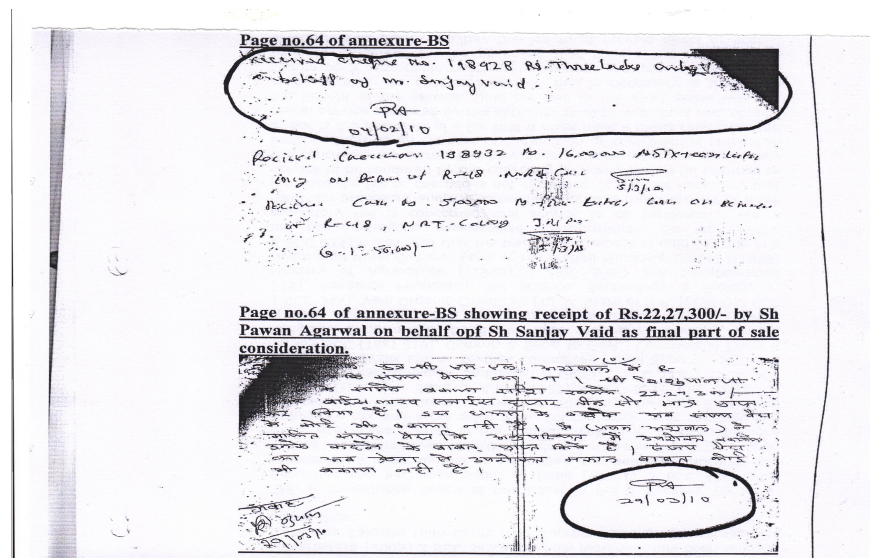
Page no.64 of Annexure BS

Receipt of Rs. 22,27,300/- dated 29/03/2010 by Sh. Pawan Agarwal S/o Sh. M L Agarwal on behalf of Sh. Sanjay Vaidh as final payment of the sale consideration of the house.

The total amount as mentioned in above mentioned 3 pages comes to Rs. 1,25,77300/- which almost tallies with the sale consideration as

accepted by the buyer in his statement on oath during the course of search operation.

Now I have tried to verify the claim of the appellant that he does not know Sh. Paw'an Agarwal. In this regard, I have perused the details of the receipts of the amount on behalf of Sh. Sanjay Vaidh as per the seized papers page No 62, 64 & 67 of Annexure-BS. It is pertinent to note that Page no. 62 and 67 of annexure-BS gives the details of receipts both by cheques and the cash which has been received either by Sh. Sanjay Vaidh himself or on his behalf. Sh. Sanjay Vaidh has himself counter-signed on the side of the payments shown which have been received on his behalf by Rakhi. It is important to note that the cheque No. 198928 for an amount of Rs. 3 lakhs was received on 04/02/2010 on his behalf and the recipient has put his signature also. There is no dispute about the cheque no 198928 for an amount of Rs.3 lakhs is the part of sale consideration and belonged to Sanjay Vaidh but received on his behalf by a person who has put his signature there. The authenticity of this paper is also not in doubt as Sh. Sanjay Vaidh has also put his signature at 2 places on this particular page. The relevant seized documents showing the payments are scanned as under:



The amount is received by Sh. Pawan Agarwal S/o- Sh. M.L. Agarwal on 29/03/2010 on behalf of Sh. Sanjay Vaidh. Sh. Pawan Agarwal has put his signature on this receipt. The signature of Sh. Pawan Agarwal matches with the signature on page No. 64 of Annexure-BS when he had received cheque No. 198928 for an amount of Rs. 3 lakhs on behalf of Sh. Sanjay Vaidh (the relevant part of the seized document scanned above is encircled for ready reference). This clearly established the fact Sh. Pawan Agarwal is known to the appellant. It is not acceptable to infer that when Sh. Pawan Agarwal is receiving the cheque on behalf of the appellant then he is known to him but when he is receiving cash on his behalf then he is not known to the appellant. Merely because a person is not traceable, or his address is not known, the evidentiary value of a paper seized during the course of search operation that has been accepted as genuine and authentic by the buyer cannot be thrown to dustbin. Therefore, appellant's plea that Sh. Pawan Agarwal is not known to him is not tenable in view of the irrefutable facts as mentioned above.

I have also considered the preponderance of probability in this case. The concept of "preponderance of the evidence" can be visualized as a scale representing the burden of proof, with the totality of evidence presented by each side resting on the respective trays on either side of the scale. If the scale tips ever so slightly to the side or the other, the weightier side will prevail. If the scale does not tip toward the side of the party bearing the burden of proof, that party cannot prevail. Trial lawyers will often instruct juries that their clients must prevail at trial if they have proved their positions by as little as 51 percent likelihood of probability (anything from 51 to 100 percent constitutes a preponderance of evidence). In other words, if a jury believes there is a 51-49 percent likelihood that a defendant (in a civil case) was

negligent or liable, the plaintiff/ complainant has met its burden of a preponderance of evidence, and will prevail. This is particularly helpful when juries are torn between the testimony of two expert witnesses presenting opposite opinions or views. Whether it is an issue of credibility or of expertise, the jury will decide which is the more likely version, that warrants more evidentiary weight.

In view of the irrefutable evidences that Sh. Pawan Agarwal is known to the appellant and has accepted cheque part of the sale consideration on his behalf in the past. Therefore, it cannot be said that the cash received on behalf of the appellant is not genuine. Here in this case, the buyer has accepted that an amount of Rs. 1,26,71,000/- was paid to Sh. Sanjay Vaidh as the sale consideration of the relevant property. The complete details of payments have also been written in the seized documents which bore signatures of the appellant also. Therefore, the authenticity and veracity of evidences seized during the course of search operation and made available to the appellant during assessment proceedings cannot be doubted. ***Therefore, in my considered view, the A.O has rightly taken the sale consideration at Rs. 1,26,71,000/- as against Rs. 95 lakhs shown by the appellant. Accordingly the addition of Rs. 31,71,000- is sustained. Appellant's ground of appeal on this issue is dismissed."***

I have heard both the sides. During the appellate proceedings, the Id AR has failed to controvert the findings recorded by the Id. CIT(A). The seized documents placed in the paper book clearly established that the transaction agreed upon was of Rs. 1,26,71,000/-. The assessee has not disclosed fully and truly sale consideration in his returned income. The registry document was only for Rs. 50.00 lacs. The assessee

disclosed Rs. 95.00 lacs. However, the seized document clearly establishes that actual sale consideration was of Rs. 1,26,71,000/-. The purchasers have surrendered the amount. The relevant documents and statements were given to assessee which he could not controvert. Thus the facts of the case establishes that the sale consideration was of Rs. 1,26,71,000/- as mentioned in the seized material which are placed at page No. 24 to 28 of the paper book. In view of this, I have no hesitation in confirming the finding of the Id. CIT(A) in this regard on this issue.

5. In the ground Nos. 3 and 4, the issue involved is regarding the disallowance of 10% of the cost improvement. The Id. CIT(A) has dealt this issue by holding as under:

6. *Ground of appeal no.2* is directed against the addition of Rs. 4,64,046/- on account of rejection of 10% expenses claimed on improvement of the property for want of proper vouchers pertaining to labour payment and other cost. I have considered the appellant submission in this regard. As the appellant is claiming cost of improvement to the extent of Rs. 46,40,460/- for calculation of capital gain but not all vouchers have been produced in support of its claims. Therefore, I do not intend to interfere in the A.O's disallowance of 10% of the cost of improvement claimed by the appellant for want of proper vouchers. **Accordingly, the disallowance of Rs. 4,64,046/- on account of cost of improvement made to the**

property is sustained and the appellant's ground of appeal on this issue is dismissed"

6. I have heard both the sides on this issue and I find that the Id. CIT(A) was not justified in sustaining 10% ad hoc disallowance out of the cost improvement claimed by the assessee, therefore, I allow these grounds of appeal.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 04/10/2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04th October, 2017

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Sanjay Vaidh, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-Dausa.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 229/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar