



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA no.431/Nag./2014
(Assessment Year : 2008-09)

Shri Nandkumar Ratanlal Kothari
S-12, C/o Plastomatic Industries
MIDC Industrial Area, Nagpur 440 013
PAN - ACSPK0308H

..... Appellant

v/s

Income Tax Officer
Ward-7(1), Nagpur

..... Respondent

Assessee by : Shri K.P. Dewani
Revenue by : Shri A.R. Ninawe

Date of Hearing - 27.06.2017

Date of Order - 30.06.2017

ORDER

PER AMARJIT SINGH, J.M.

The assessee has filed the present appeal against the impugned order dated 2nd July 2014, passed by the learned Commissioner (Appeals)-II, Nagpur, for the assessment year 2008-09. The grounds raised by the assessee are reproduced below:-

"1. The learned A.O. erred in assessing sum of ₹ 55,23,000 in respect to amount received from parties and interest from bank.

2. The addition made by A.O. at ₹ 55,23,000 is justified, unwarranted and excessive.

3. The learned CIT (Appeals) erred in confirming the addition of ₹ 55,23,000 made by the A.O. holding that appellant failed to explain the source of cash in the bank account."

2. Brief facts of the case are that The assessee filed its return of income declaring total income to the tune of ₹ 1,61,830. The assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*") determining total income to the tune of ₹ 74,54,270 by Assessing Officer, vide order dated 28th December 2010. The assessee, in the course of assessment proceedings, had produced cash book and ledger explaining various transactions as found in bank account of the assessee. The assessee in support of transactions in bank account has also submitted copies of agreements to sale and purchase along with cancellation of agreements with respective parties before the Assessing Officer. The Assessing Officer wanted to produce the parties with whom assessee has transactions for sale / purchase of immovable property. However, aforesaid parties were not available at the relevant time and assessee has submitted Affidavit of one of the parties in support of transaction in respect to agreement for sale of property. The assessee had received sum of ₹ 5,23,000 as interest and similar interest and other charges was paid to bank and, therefore, no interest income was shown in the return. The Assessing Officer has assessed the said sum of ₹ 5,23,000 as interest income along with sum of ₹ 50,00,000 shown to have been received for transactions of property. Hence, the Assessing Officer has made

aggregate addition of ₹ 55,23,000. Being aggrieved, the assessee filed appeal before the first appellate authority.

3. The learned Commissioner (Appeals) confirmed the order of the Assessing Officer by observing as under:—

"7. I have carefully considered the facts of the case, submissions of the appellant and remand report and counter reply of the appellant. It is evident that the appellant has not been able to properly explain the source of cash credit appearing in his books of account. Sufficient evidence has been brought on record by the AO during the course of assessment proceedings to comprehensively establish that the cash credits appearing in the books of account of the appellant to the extent of Rs. 50 lacs are not properly explained.

7.1 In respect of the industrial plot, various issues have been raised by the AO which could not be validly explained by the appellant either during the course of assessment proceedings or during appellate proceedings. It is seen that the allotment letter in respect of the said plot was issued by MIDC on 5th March 2007 and there were certain conditions was only after the completion of the above condition that the appellant would becoming the legal owner of the said property. The appellant could not bring on record any evidence to establish that it had indeed satisfied the stipulated condition and had becoming the owner of the said property and could enter into further agreement to sell off the said property to the said purchasers. In a way therefore, the appellant was incompetent to enter into the said agreement for transfer of his Interest in the said plot even before he had executed the lease agreement with MIDC.

7.2 It is very clearly mentioned in the allotment letter of MIDC to the appellant that the appellant shall not directly or indirectly transfer the said property without the previous consent of the MIDC. No evidence has been brought on record to establish that the said consent was taken. As a matter of fact one of the stated reasons for the cancellation of the agreement is that the appellant could not take consent from the Corporation and therefore the agreement had to be cancelled. This explanation does not hold ground as any prudent businessman would have perused the allotment letter of MIDC before entering into the agreement with

the appellant wherein it was clearly mentioned that the appellant should obtain prior consent of the Corporation.

7.3 There is also the merit in the contention of Ld. AO that the plot which was allotted to him for an amount of Rs. 4 lac against the application dated 29-09-2006 could eventually be sold at Rs. 40 lacs within a period of six months. During the course of appellate proceedings the appellant has not been able to validly explain any of the above issues, which clearly indicate that the transaction entered into by the appellant was of a questionable nature.

7.4 The main contention of the appellant is that the said amount of Rs. 30 lacs has been paid back by the appellant by way of cheque subsequent to the cancellation of the agreement. However not much can be read into the said contention of the appellant as it is possible that the said amount of Rs. 30 lacs paid by the appellant may be for some other reason. It is precisely for this reason that the Ld. AO had required the appellant to produce the said party viz. Shri Pravata Kumar Niranjana Bhoi for examination during the course of assessment proceedings so as to come to a conclusion regarding the genuineness of any cash received from the said party and the amount claimed to have been paid to the said party by cheque. The examination of the said individual was vital so as to come to a considered conclusion regarding the genuineness of the cash credits and the reasons for which the said amount of Rs. 30 lacs has been paid by the appellant.

7.5 However, the appellant could not produce Mr. Bhoi before the Ld. AO during the course of assessment proceedings. It was for this reason that the matter was remanded back to the Ld. AO during the appellate proceedings so as to allow the appellant to produce the said party before the Ld. AO in remand proceedings. Here again the appellant could not produce the said party before the Ld. AO. It is evident therefore that the appellant has been unable to discharge the most basic onus cast upon him in respect of cash credits viz. to establish the identity of the creditor, establish the genuineness of the transaction and creditworthiness of the creditor. It is important to note that the identity of Shri Bhoi has not been clearly established as he was never produced before the Ld. AO. Only his affidavit was filed wherein a certain address has been given. The creditworthiness is also questionable. The PAN of the said Shri Bhoi was never produced before the Ld. AO. If an amount of Rs. 30 lacs has been given in cash by the said party to the appellant, and if the PAN of the said party is also not provided to the Ld. AO, the creditworthiness of the said party does not stand established. The onus was on the appellant to submit his acknowledgement of return of Income,

PAN, balance sheet, bank statement etc. so as to establish his creditworthiness. The same was never done. The fact that Rs. 30,00,000/- was received back in cheques cannot absolve the appellant of requirements of section 68. Also, the said amount may have been received by cheque for entirely different set of reasons which the Id. AO could not verify as the said party was never produced. Since the Ld. AO could never examine the said Shri Bhoi, the genuineness of the transaction is under question. The onus cast upon the appellant as per the provisions of section 68 has not been duly discharged. The action of the Ld. AO in adding the amount of claimed to have been received in cash from the said party cannot be questioned and he has been correctly added the said amount of Rs. 30,00,000/- to the income of the appellant as unexplained cash credit.

7.6 The situation is not very different in respect of the said land transaction entered into by the appellant in respect of Bhilgaon plot. Here also serious defects in the agreement to sale have been pointed out by the Ld. AO wherein it is seen that the name of general power of attorney appears in the document as the owner of the said property. This would never happen in a genuine land transaction. No valid explanation for this lacuna has been given by the appellant. Also the appellant could never produce the said party before the Ld. AO so that he could examine the genuineness of the transaction or to establish the creditworthiness and the identity of the said parties.

8. Thus it is evident that the appellant has failed to explain the source of cash in the bank account and therefore the addition made by the Ld. AO amounting to Rs.5523000/-including the sum of Rs. 523000/- (claimed by him to be interest earned but not disclosed in his return of income), is hereby confirmed. These grounds are therefore dismissed."

The assessee being aggrieved by the aforesaid order of the learned Commissioner (Appeals), filed appeal before the Tribunal.

4. The learned Counsel for assessee submitted before us that

"The assessee in the course of assessment proceedings had furnished cash book and ledger accounts along with supporting documents where from the entire deposit in the bank account with ICICI bank stood explained and there was no case for

making any addition on account of unexplained deposit at the hands of assessee. In the case of assessee books of account have not been faulted or rejected. Business income is accepted and determined as per books of account. (P-1 - 115) [Vol-II]

The agreement of sale dated 12/4/2007 placed before A.O. has not been found to be incorrect or false. It is legal evidence as regard to receipt of Rs.30 lacs in cash on 12/4/2007 being available to explain the deposit in bank account. The rejection of legal evidence by A.O. is for no valid justification. (P- 21 - 31) [Vol. - I] (P- 23)

The amount received as advance for sale of property has been refunded by account payee cheque during the previous year under consideration as is evident as per the ledger account. The payment is money flown from the bank account of assessee. The aforesaid factual submission has also not been found to be incorrect or false. Repayment of money by cheque is not disputed by A.O. Books of account of assessee are accepted and not rejected. On the above undisputed factual position addition made by A.O. at the hands of assessee is unjustified and unsustainable. (Ledger A/c) (P- 90-91) (P-106) [Vol.- II]

The affidavit of Shri Pravatakumar Narayan Bhoi placed before A.O. has not been found to be incorrect or false. The contents of the affidavit have gone unrebutted and have to be taken as true and correct. Reliance for the same is placed on the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Co. Vs. CIT, 30 ITR 181 (SC). (P-32 - 35) [Vol. - I]

The assessee had submitted agreement for purchase of property on 25/9/2006 which has been cancelled during the previous year under consideration. In terms of cancellation deed assessee had received refund of advance given at Rs. 20 lacs along with interest of Rs. 5,23,000/-. The agreement of purchase has not been found to be incorrect or false. The addition of Rs. 20 lacs being refund of advance and interest of Rs. 5,23,000/- has been subjected to tax at the hands of assessee in terms of agreement of purchase itself. A.O. having determined income on the basis of agreement ought not to have disbelieved availability of cash in terms of agreement. On the above undisputed factual position addition made' by A.O. at the hands of assessee is unjustified. (P-36 - 42) [Vol. - I]

The balance sheet for the year ending 31/3/2007 submitted before A.O, is placed in the paper book. (P- 3) [Vol.-I]. The amount given as advance of Rs.20 lacs appearing in the balance sheet as on 31/3/3007. The aforesaid evidence has not been

found to be incorrect or false. The availability of the amount received on cancellation on the basis of legal evidence cannot be doubted/disputed.

In remand report also A.O. has not disputed the regular books of account. The addition made by A.O. is unjustified and unsustainable. The assessee could not produce the parties as they were not cooperating with assessee to appear before A.O. This was explained in the course of assessment proceedings. The above fact cannot be viewed adversely ignoring the legal evidence placed on record. Reliance on written submission before CIT(A) on reproduced at page 3 to 5 of appellate order.”

5. Learned Departmental Representative relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

6. We have heard the rival contentions and perused the material available on record. The assessee in the course of assessment proceedings had furnished cash book and ledger accounts along with supporting documents copy of which is placed before us. In assessee's case, the Assessing Officer has made addition of ₹ 30 lakh, as, according to the Assessing Officer, the amount of cash received shown by assessee from Shri P.N. Bhoi and Shri N.B. Harichandan, towards advance for sale of MIDC property has not been explained satisfactorily. The Assessing Officer has also made addition of ₹ 25.23 lakh by not accepting explanation of assessee that ₹ 20 lakh is the refund of money in respect to advance given for purchase of property along with receipt of interest of ₹ 5,23,000. It is seen that all the

transaction as discussed are recorded in books of account. The agreement for sale dated 12th April 2007 evidencing receipt of ₹ 30 lakh advance from Shri P.B. Bhoi and Shri N.B. Harichandan, was placed on record of the Assessing Officer. The aforesaid transaction was in respect to plot at MIDC which was allotted vide letter no.1452/2007 dated 5th March 2007 by MIDC. The aforesaid acts are not in dispute. The assessee had also submitted affidavit of Shri Pravata Kumar and Shri Niranjan Bhoi in support of submission made copy of which is placed in paper book at Page-32 to 34. The affidavit of Shri Pravata Kumar and Shri Narayan Bhoi, placed before the Assessing Officer, has not been found to be incorrect or false. The contents of the affidavit have gone unrebutted and have to be taken as true and correct. Reliance for the same is placed on the decision of Hon'ble Supreme Court in the case of Mehta Parikh & Co. v/s CIT, 30 ITR 181 (SC). The deed of cancellation for agreement to sale was also submitted before the Assessing Officer and copy of which is placed at paper book Page-30 to 31. The legal evidence on record has not been found to be incorrect or false. It is further seen that payment of advance received has been by various cheques on different date and some amount in cash. All the repayments are properly recorded in the books of accounts. A detailed statement indicating the repayment recorded in books was also submitted before us. The books of

accounts are accepted by the Assessing Officer and have not been rejected. As regards to repayment by cheques, the Assessing Officer has made no adverse observations considering the evidence on record and books of account. We are of the opinion that the Assessing Officer was not justified in not accepting the submission of assessee to make addition at the hands of assessee. As regard sum of ₹ 20 lakh being refund of advance given along with interest of ₹ 5.23 lakh it is seen that transaction is properly recorded in books of account. The Balance Sheet of assessee for the assessment year 2007-08 was submitted before the Assessing Officer and copy of which is placed in the paper book at Page-3. The amount given as advance of ₹ 20 lakh appearing in the Balance Sheet as on 31st March 3007. The aforesaid evidence has not been found to be incorrect or false. The availability of the amount received on cancellation on the basis of legal evidence cannot be doubted / disputed. The assessee had submitted agreement for purchase of property on 25th September 2006 which has been cancelled during the previous year under consideration. In terms of cancellation deed assessee had received refund of advance given at ₹ 20 lakh along with interest of ₹ 5,23,000. The agreement of purchase has not been found to be incorrect or false. The addition of ₹ 20 lakh being refund of advance and interest of ₹ 5,23,000 has been subjected to tax at the hands of assessee in terms of agreement of purchase

itself. The Assessing Officer having determined income on the basis of agreement ought not to have disbelieved availability of cash in terms of agreement. On the above undisputed factual position addition made by the Assessing Officer at the hands of assessee is unjustified. In remand report also, the Assessing Officer has not disputed the regular books of account. The assessee could not produce the parties as they were not cooperating with assessee to appear before the Assessing Officer. This was explained in the course of assessment proceedings. The above fact cannot be viewed adversely ignoring the legal evidence placed on record. Considering the totality of facts and circumstances in the case of assessee, we are of the considered opinion that addition made by the Assessing Officer is unjustified and same is directed to be deleted. The grounds raised by the assessee are allowed.

7. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 30.06.2017

**Sd/-
P.K. BANSAL
VICE PRESIDENT**

**Sd/-
AMARJIT SINGH
JUDICIAL MEMBER**

NAGPUR, DATED: 30.06.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Nagpur