



ITA No.1710/Mum/2013 & 7349/M/2014
Neha S.Saney
Assessment Year 2009-10

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 1710/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

Neha S.Saney A-1102, Plot No.5 Sai Pride, Palm Beach Road Sector 18, Sanpada Mumbai – 400 705	बनाम/ Vs.	Commissioner of Income Tax-22 3 rd Floor, Tower No.6 Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AEAPT-8150-L		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 7349/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income Tax Officer 28(2)(3) 3 rd Floor, Tower No.6 Vashi Railway Station Complex Vashi, Navi Mumbai – 400 703	बनाम/ Vs.	Neha S.Saney A-1102, Plot No.5 Sai Pride, Palm Beach Road Sector 18, Sanpada Mumbai – 400 705
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AEAPT-8150-L		
(आपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ritika Agarwal, Ld. AR
Revenue by	:	Suman Kumar, Ld.DR



सुनवाई की तारीख / Date of Hearing	:	03/11/2017
घोषणा की तारीख / Date of Pronouncement	:	08/12/2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by assessee as well as revenue arises out of invocation of revisional jurisdiction u/s 263 by *Ld. Commissioner of Income Tax*. ITA No. 1710/Mum/2013 by assessee contest validity of exercise of revisional jurisdiction u/s 263 by *Ld. Commissioner of Income Tax-22* whereas ITA No. 7349/Mum/2014 by revenue contest relief provided to the assessee by first appellate authority in the consequential order passed u/s 143 *read with Section 263*. Since, the assessee's appeal contest the very validity of the jurisdiction and goes to the root of the matter, we take up the same first.

2.1 Facts leading to the same are that the assessee being *resident individual* was assessed for impugned AY u/s 143(3) on 26/12/2011 at Rs.1,76,300/- as against returned income of Rs.1,72,950/- filed by the assessee on 31/07/2009. The assessment was framed by *Ld. Income Tax Officer 22(3)(3), Mumbai*. Subsequently, the *Ld. Commissioner of Income Tax-22, Mumbai [CIT]* invoking revisional jurisdiction u/s 263 vide order dated 04/02/2013 quashed the said assessment order and directed *Ld. AO* to make fresh assessment.



2.2 The revisional jurisdiction was triggered pursuant to receipt of a proposal dated 31/10/2012 from Ld. AO through *Joint Commissioner of Income Tax, Range 22(3)*. The proposal pointed out that upon receipt of certain information from *ADIT (investigation-1), Thane* vide letter no. *THN/ADIT(Inv-1)/Siddhi/09-10 dated 14/09/2009*, the assessee purchased a shop No. 108 admeasuring 900 Square Feet at *Little World Mall, Plot No. 21, Sector-2, Kharghar, Navi Mumbai* jointly with *Mrs. Rachna M. Saney*. The said shop was purchased for total consideration of Rs.86 Lacs from *Gayatri Homes*, an entity belonging to *Siddhi Group of Cases* who was subjected to search action u/s 132 on 19/02/2009. The perusal of seized papers revealed that the out of Rs.86 Lacs, the agreement was for Rs.36.40 Lacs and the balance amount was paid in cash. It was further stated that the information was received by Ld. AO on 10/04/2012 i.e. well after completion of assessment u/s 143(3) and therefore, Ld.AO contended that income to the tune of Rs.25 Lacs was not brought to tax in the assessment order.

2.3 Consequently, a *show-cause* notice u/s 263 dated 14/11/2012 was issued and the assessee was confronted with the seized material. The assessee denied having made any such cash payment and assailed the proceedings on the premises that the Ld. AO, during the course of assessment proceedings u/s 143(3) carried out detailed investigation regarding the purchase of the shop and therefore the action u/s 263 was not valid. The assessee further contended that no evidentiary value could be attached to loose sheets found from the possession of third party. However, Ld. CIT opined that the information from investigation



wing was received by Ld. AO on 10/04/2012 i.e. well after completion of assessment and therefore, the same could not be utilized / appreciated by Ld. AO during assessment proceedings and therefore, action u/s 263 was valid since the order was erroneous as well as prejudicial to the interest of the revenue. Aggrieved, the assessee is in further appeal before us and contests the very invocation of jurisdiction u/s 263.

3. The Ld. Counsel for Assessee [AR] submitted that the Ld. AO, during original assessment proceedings, carried out detailed investigation regarding purchase of the shop and was fully satisfied with assessee's explanation regarding the same and hence, the order was in no way erroneous or prejudicial to the interest of the revenue. Hence, the revisional jurisdiction being invoked by Ld. CIT u/s 263 were invalid since Ld. AO already applied his mind on the issue and took a conscious decision towards the claim of the assessee. Our attention is drawn to various documents placed in the *paper book* submitted by assessee. Per *Contra*, Ld. Departmental Representative [DR] contended that the provisions u/s 263 were meant to make up for the *errors / omissions* which took place while framing the assessment and therefore, the jurisdiction was rightly invoked by Ld. CIT since it was noticed on the basis of seized material that the assessee made cash payment towards purchase of the shop which was not taken into account while framing the original assessment order.

4. We have heard the rival contentions and perused the relevant material on record. At this juncture, we are required to examine whether the twin conditions viz. *erroneous and prejudicial to the interest of*



revenue as envisaged by Section 263 were fulfilled or not so as to acquire a valid jurisdiction u/s 263. Upon perusal of relevant documents, we find that Ld. AO, during the course of original assessment proceedings, vide notice u/s 142(1) dated 01/07/2011, requisitioned details of purchase / sale of immovable properties acquired by the assessee during the impugned year and preceding three years with supporting documents and source thereof. The assessee, vide reply dated 14/07/2011, submitted details of the shop acquired by the assessee along with payment details and source of funds. However, there is no discussion / arguments anywhere either in the assessment order or in the submissions made by the assessee about the seized material and cash payment as noted from the loose sheets founds during search operations. *Prima facie*, this information was either not in the possession of Ld. AO or altogether skipped the notice of Ld. AO. Therefore, the contention that Ld. AO applied his mind on the issue *qua* seized material is not tenable. Hence, Ld. CIT, upon noticing the error, rightly invoked jurisdiction u/s 263. Resultantly, we do not concur with the submissions made by Ld. AR and hence, dismiss assessee's appeal on this count.

5. Now, we take up revenue's appeal ITA No. 7349/Mum/2014 which is against relief provided to the assessee in the consequential order. Pursuant to directions u/s 263, the quantum assessment was reframed by Ld. AO on 31/12/2013 where the assessee was saddled with additions of Rs.12.50 Lacs u/s 69 towards her share of unexplained



investment and another addition of Rs.37.50 Lacs on protective basis to account for unexplained investment of the co-owner.

6. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide order dated 12/09/2014 where Ld. CIT(A), after considering assessee's submissions, allowed the appeal by making following observations:-

2.26. I have gone through the order of the Assessing Officer and submission made for the appellant as well. On appreciation of the facts of the case, it is seen that the AO had provided an opportunity to the assessee to cross examine the said Shri Kantilal Patel, a partner in M/s Gayatri Homes. Subsequently in the course of cross examination, he retracted his earlier statement wherein he stated that he had received cash as well as cheque against the sale of flat and the seized material reflected both cash as well as cheque component. Apart from this, it was brought to the notice of the AO that said Shri Kantilal Patel had written a letter way back on 5th May, 2009 to the DDIT (INV) clarifying therein that he had not received cash from all flat buyers. He further confirmed the said statement made in the aforesaid letter addressed to the Investigation Wing of the Income tax Department and affirmed the same during his cross examination that he indeed received no cash from the appellant. The AO made an addition without making further investigation or bringing on record any other material which would rebut the stand taken by the appellant and later on confirmed by Kantilal Patel on whose statement such addition was envisaged. It may be pertinent to note that presumption under section 132 (4A) of the act applied to third party. Therefore, in the instant case when Shri Kantilal Patel has denied having received any cash from the appellant, addition can not be made in the hands of appellant without bringing documentary evidence or otherwise to justify such addition. In the present case, the AO has merely relied upon the order of the CIT under section 263 of the Act without bringing on record any material in support of such addition made.

2.27 The appellant has also submitted before me that in the case the stamp office valuation of the said shop is Rs.30,11,000/- as evidenced by purchase deed. The said valuation is far less than the total consideration of Rs.36,40,000/- as paid by cheque and mentioned in sale deed. Therefore, the alleged cash payment of Rs.50 lakhs would make the consideration of the property as Rs.86.40 lakhs which is more than double of the stamp office valuation. Such a conclusion is farfetched considering the stamp duty valuation. Hence, even on valuation front there is no occasion with the AO to further assume a payment of Rs.50 lacs in cash as that would make valuation of property abnormally high and irrational.

2.28 Thus, there remains absolutely no basis for making any addition in the case of the appellant for the alleged cash payment of Rs.50 lacs. The AO is directed to delete the addition accordingly. This ground of the appellant is allowed.



7. Aggrieved the revenue is in further appeal before us. The Ld. DR has contended that the seized material clearly revealed unexplained investment being made by the assessee and hence, the additions were justified whereas Ld. AR contended that additions could not be made solely on the basis of entries found in loose papers which were in possession of third party.

8. We have perused the rival contentions and perused the relevant material on record. Upon perusal of the same, we find that the additions have been made solely on the basis of entries found in loose papers seized from a third party. No cogent material has been placed on record by Ld. AO to corroborate the same. The statement / material procured from third party was being used against the assessee and hence the onus was on revenue to corroborate the same particularly when the assessee vehemently denied having made any cash payment to the concerned party, Further, considering cash payment, the value of the property far exceeded the stamp duty valuation. Therefore, finding the conclusions of Ld. CIT(A) quite logical, we dismiss revenue's appeal.

9. Resultantly, both the appeal stands dismissed.

Order pronounced in the open court on 08th December, 2017.

Sd/-
(Mahavir Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08.12 .2017
Sr.PS:- Thirumalesh

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai