

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.157/Vizag/2015**
(निर्धारण वर्ष / Assessment Year: 2009-10)

Smt. Bhavanasi Annapurna
Piduguralla
[PAN No.ACHPB2153N]
(अपीलार्थी / Appellant)

DCIT, Central Circle
Vijayawada

(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by
प्रत्यार्थी की ओर से / Respondent by

: Shri G.V.N. Hari, AR
: Shri Debakumar Sonowal,
DR

सुनवाई की तारीख / Date of hearing

: 09.01.2018

घोषणा की तारीख / Date of Pronouncement

:

आदेश / ORDER

Per Bench:

This appeal filed by the assessee is directed against order of the Commissioner of Income Tax (Appeals)-3(I/c), Visakhapatnam Camp: At Hyderabad vide ITA No.022/CIT(A)-3/Vizag/2013-14 dated 27.2.2015 for the assessment year 2009-10.

2. All the grounds of appeal are related to the addition made by the Assessing Officer (AO) amounting to ₹ 25 lakhs stated to be advanced by the assessee to M/s. Vijetha Foundation and Constructions Pvt. Ltd (M/s Vijetha Constructions, in short). The assessee is an individual, a search and seizure operation was conducted u/s 132 of the Income Tax Act, 1961 (hereinafter called as 'the Act') in the group cases (Bhavanasi Anjaneyulu, Pidiguralla) on 21.01.2011. During the course of search, loose sheets page Nos.20 & 21 of Annexure A/BA/Res./PO-1/1 dated 14.2.2011 were found and seized relating to the assessee. The seized document is a promissory note dated 23.7.2008 drawn by Ch. Madan Mohan representing M/s. Vijetha Constructions in favour of the assessee and page No.20 is an undated cheque for an amount of ₹ 25 lakhs issued by M/s. Vijetha Constructions in favour of the assessee. The A.O. has requested the assessee to explain the source of the amounts advanced to M/s. Vijetha Constructions and the assessee explained that the promissory note in favour of the assessee was given against the security for the amounts advanced by M/s. First Tek Pvt. Ltd., towards purchase of property. On verification of the books of accounts of M/s. First Tek Pvt. Ltd., it was observed by the AO that the said sum was not

found recorded. The AO not being convinced with the explanations of the assessee treated the sum of ₹ 25 lakhs as unexplained income and accordingly, assessed the sum in the hands of the assessee.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and submitted that the assessee has not advanced any sums to M/s. Vijetha Constructions (vendor company) and M/s. First Tek Pvt Ltd., a company promoted by the family members of the assessee has advanced the sums to the vendor company for the acquisition of property and M/s Vijetha Construction has given the promissory notes and cheques as security for the amounts advanced to the M/s First Tek Pvt. Ltd and its promoters. The property was also not registered in the name of the assessee but registered in the name of M/s. First Tek Pvt Ltd hence requested to delete the addition. The Ld. CIT(A) not being convinced with the explanation of the assessee upheld the addition holding that as per the promissory note, the payment was made by cash as mentioned in the promissory note and the same should be treated as unaccounted income in the hands of the assessee. During the appeal hearing before the first appellate authority, the Ld.AR relied

on the case of Sriram Satyavathi and the Ld.CIT(A) distinguished the facts of the assessee's case with that of Sriram Satyavathi. In smt. Satyavathi's case in promissory note the cheque No. and date was mentioned which was matched with the sale deeds and in the case of the assessee, no such details were furnished and the amount was given in cash and the assessee also received undated cheque from M/s. Vijetha Constructions. The CIT(A) further observed that the pro note was dated 23.7.2008 while payment for flats was made on 22.7.2009, hence the CIT(A) held that the advance given by the assessee by promissory note to M/s. Vijetha Constructions cannot be linked to the payments made to M/s. Vijetha Constructions. Since the date of payment of M/s. First Tek Pvt. Ltd. was 22.7.2008, and the pro note was dated 22.7.2008, there was a mismatch in the date of payment, hence held that the assessee has given an unaccounted advance to M/s Vijetha Constructions and confirmed the addition made by the A.O.

4. Aggrieved by the order of the A.O., the assessee is in appeal before this Tribunal. During the appeal hearing, the Ld. A.R. submitted

that during the search u/s 132 of the Act in the residential premises of the assessee Shri Bhavanasai Anjaneyulu, a promissory note was found and seized executed by M/s. Vijetha Constructions represented by Ch. Madan Mohan dated 23.7.2008 for a sum of ₹ 25 lakhs and also undated cheque for an equal amount and there was no dispute. The assessee has neither given a loan nor the promissory note was towards the amounts advanced by the assessee and it was taken as a security for the amounts advanced by M/s. First Tek Pvt. Ltd. The company M/s. First Tek Pvt. Ltd. has given an advance of ₹ 3 crores; ₹ 1.10 crores on 28.11.2007, ₹ 90 lakhs on 24.3.2008 and ₹ 1 crore on 22.7.2008 and the said advances were acknowledged by Mr. Ch. Madan Mohan, the Managing Director of M/s. Vijetha Constructions. The amounts were advanced by cheque drawn on ING Vysya Bank, Madhapur, Hyderabad for purchase of flats from Vijetha Constructions in their ventures i.e. Midas Touch Apartments, Vijetha M M Space and Vijetha Pinnacle. However due to delay and change in the circumstances the company M/s First Tek Pvt. Ltd purchased 3 flats and the amounts were adjusted as consideration in the sale deeds mentioned as per the details given below.

"a) Agreement of Sale dated 16.5.2009 by Cheedella Lingaiah, father of Sri Ch. Madan Mohan in favour of First Tek Pvt. Ltd., for a sale consideration of ₹ 37,00,000/-

b) Sale deed 23.7.2009 executed by Vijetha Foundations and Constructions Pvt. Lted. And others in favour of First Tek Pvt. Ltd. for a consideration of ₹ 32,00,000/-

c) Sale deed dated 23.7.2009 executed by Vijetha Foundations and Construction Pvt. Ltd., and others in favour of First Tek Pvt. Ltd., for a consideration of ₹ 32,00,000/-.

d) Construction agreement dated 25.6.2011 between Saibarabad High Tech. Integrated Township and Development Corporation Pvt. Ltd., in favour of First Tek Pvt. Ltd., a for a consideration of ₹ 28,49,240/-.

e) Sale deed dated 25.6.2011 between Saibarabad High Tech. Integrated Township and Development Corporation Pvt. Ltd., in favour of First Tek Pvt. Ltd., for a consideration of ₹ 28,49,240/-."

5. Due to delay in construction of flats M/s Vijetha Constructions has given promissory notes and in some cases undated cheques as a security to the promoters and their family. The promissory note and cheque found during the course of search numbered as page Nos.20 & 21 are the documents received by the assessee from M/s. Vijetha Constructions as a security and they are related to the purchase transaction referred above. The assessee has neither given any loan to M/s. Vijetha Constructions nor received any financial benefit from M/s. Vijetha Constructions. This fact was supported by the confirmation letters furnished by M/s. Vijetha Constructions vide letter dated 25.11.2011 enclosed in the paper book as page Nos.4 to 6. Since the

assessee has not given any loan to M/s. Vijetha Constructions, there is no case for making addition and requested to set aside the order of the Ld. CIT(A) and delete the addition.

6. On the other hand, the Ld. D.R. vehemently argued that during the course of search u/s 132 of the Act, the documents were found evidencing the amounts advanced by the assessee to M/s. Vijetha Constructions. As per the presumption u/s 292C of the IT Act, the assets, books of accounts and the documents found during the course of search presumed to be belonging to the assessee. Hence, the sum should be treated as unaccounted income in the hands of the assessee. The DR argued that the AO has rightly assessed the said sum in the hands of the assessee and requested to uphold the same.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. During the course of search u/s 132 of the Act in the group cases of Sri Bhavanasai Anjaneyulu, loose sheets marked as Annexure A/BA/Res./Po-1/01 dated 14.2.2011 was found and seized. The loose sheets include

promissory notes drawn by Ch. Madan Mohan representing M/s. Vijetha Constructions for a sum of ₹ 25 lakhs and an undated cheque of ₹ 25 lakhs in favour of the assessee. The case of the revenue is that the said sum is the unaccounted advance given by the assessee and the assessee's case is that she has not given any loan and it was only a document obtained as security for the amounts advanced by M/s. First Tek Pvt Ltd., to M/s. Vijetha Constructions for purchase of property. The assessee has furnished confirmation from M/s. Vijetha Constructions, substantiating the fact that it has taken advances of ₹ 3 crores on various dates for purchase of the properties, and also entered into registered sale agreements dated 22.07.2008, 15.02.2008 and 28.11.2007. M/s. Vijetha Constructions has furnished the confirmation letters dated 25.01.2011 confirming the receipt of Rs.90.00 lacs vide cheque No.59601 dated 24.03.2008 for sale of flat in Vijetha MM Space situated at Hindi Nagar, Panjagutta vide registered document bearing No.63908 dated 15.2.2008, a sum of ₹ 1.10 crores was received vide cheque No.685243 dated 28.11.2007 for sale of flat Nos.103, 303 & 503 in Vijetha Midas Touch Apartments, vide registered document bearing No.13846/07 dated 28.11.2007 and sum of 1.00 crores vide

cheque No.810105, 810106 dated 22.07.2008 for purchase of flat Nos.404,501 and 505 in Vijetha Pinnacle, vide registered document bearing No.2798/08 dated 22.07.2008. In the said confirmations, the Managing Director M/s. Vijetha Constructions confirmed having given cheques and the promissory notes in the names of M/s. First Tek Pvt. Ltd., and the Directors and their family members towards security till the final sale concluded. It is an undisputed fact that Smt. Annapurna, the assessee is also belonging to the Directors and the family members of M/s. First Tek Pvt. Ltd. There was no dispute with regard to the fact that M/s. First Tek Pvt. Ltd. has given the advances to M/s. Vijetha Constructions and it has furnished a confirmation before the A.O. stating that there was no amount due to any of the family members of the Directors. There was no evidence to establish that the assessee had given any advance to M/s. Vijetha Constructions and to disprove the confirmation filed by M/s Vijetha Cosntructions. The assessee had explained the transaction and also furnished the evidence to establish that the advances were given for purchase of the flats from M/s. Vijetha Constructions Pvt. Ltd. by First Tek Pvt. Ltd and the promissory note as well as the cheque was given as security, but the department has not

discharged the burden and merely made the addition on the presumption. It appears that department has not made any enquiry with M/s Vijetha Constructions to elicit the truth hence the confirmation given by the company has become final. Therefore, we do not see any reason to disbelieve the explanation offered by the assessee stating that the promissory note was obtained as a security and thus we hold that there is no unaccounted advance given by the assessee representing the promissory note and it is a simple purchase and sale transaction. Accordingly, we set aside the order of the CIT(A) and delete the addition made by the A.O.

8. In the result, the appeal filed by the assessee is allowed.

The above order was pronounced in the open court on 19th Jan'18.

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S. SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**
विशाखापटणम /Visakhapatnam:
दिनांक /Dated : 19.01.2018
VG/SPS

Sd/-
(बी. दुर्गराव)
(V. DURGA RAO)
न्यायिक सदस्य/**JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant – Smt. Bhavanasai Annapurna, D.No.11-116, Prop. B.S. Lime Products, Janapadu Road, Piduguralla, Guntur Dist.
2. प्रत्यार्थी / The Respondent – The DCIT, Central Circle, Vijayawada.
3. आयकर आयुक्त / The CIT (Central), Hyderabad
4. आयकर आयुक्त (अपील) / The CIT (A)-3 (I/C), Visakhapatnam, Camp: At Hyderabad
5. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, VISAKHAPATNAM