

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM

आयकर अपील सं. / ITA No.1571/PUN/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Ajit Jayapala Hegde,
Flat No.304,
Deshpande Durg Apartment,
Bhosale Nagar,
Pune - 411047

.... अपीलार्थी/Appellant

PAN: AARPH2594P

Vs.

The Dy. Commissioner of Income Tax,
(Hq)(IV), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri C.V. Chitale
प्रत्यर्थी की ओर से / Respondent by : Shri Mukesh Jha

सुनवाई की तारीख / Date of Hearing : 15.02.2018	घोषणा की तारीख / Date of Pronouncement: 26.02.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by the assessee is against the order of CIT(A), Pune-5, Pune, dated 18.04.2016 relating to assessment year 2011-12 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned The Deputy Commissioner of Income Tax, (Hq) (IV), Pune (the Assessing Officer) has erred in assessing total income returned by the Assessee of Rs.8,75,855/- at a higher amount of Rs.25,25,860/-.*
2. *The Deputy Commissioner of Income Tax, (Hq) (IV), Pune, has erred in making aggregate additions of Rs.16,50,000/- under pretext of unexplained amount of investment under provisions of Section 69B of the Income Tax Act, 1961 and Commissioner of Income Tax has erred in confirming the same.*

3. The issue raised in the present appeal is against the addition made in the hands of assessee of ₹ 16,50,000/- on account of unexplained amount of investment under section 69B of the Act.

4. Briefly, in the facts of the case, the assessee had furnished return of income declaring total income of ₹ 8,75,855/-. The assessee derives salary from Royal Symphony Hotels Pvt. Ltd. as director. The assessee has also shown income from house property and interest from Saving Bank Account. During the year, action under section 132 of the Act was conducted in the case of Naiknavare Group, Pune. The assessee had purchased one flat i.e. Flat No.F-1102 in the project 'Aloma Country' constructed by the said group. During the course of search and seizure, certain loose papers were seized. In the noting of loose paper bundle at page Nos.41 and 42, Bundle No.3, it was found that the assessee had paid cash of ₹ 16,50,000/- over and above the agreement value to the builder. The assessee was show caused in this regard as to why sum of ₹ 16,50,000/- should not be added to the income of assessee. The assessee explained that the said flat was purchased along with his wife Mrs. Shammi Ajit Hegde for total consideration of ₹ 80 lakhs. The agreement for sale was entered into on 30.09.2011 and the same was registered on the same date. The assessee claimed that he had not made any payment over

and above the slated consideration of ₹ 80 lakhs and there is no reason for making any addition of ₹ 16,50,000/-. He further pointed out that the entire payment for purchase of flat was made at the time of booking the flat and there is no merit in proposing any other addition. The seized document is reproduced by the Assessing Officer in assessment order and statement of assessee was recorded under section 131 of the Act during the course of assessment proceedings. He confirmed that he had purchased the said flat for ₹ 80 lakhs after negotiations with builder, lump sum to be made. The Assessing Officer was of the view that where the assessee has admitted to have paid ₹ 80 lakhs, which is also noted in the said document, then the extra payment of ₹ 16,50,000/- was also paid by the assessee and hence, the same was added as unexplained investment under section 69B of the Act.

5. The CIT(A) confirmed the addition made by Assessing Officer. Reference was made to page 42, seized during the course of search, wherein the details were noted in respect of flat which was sold by the builder but did not relate to the assessee. The CIT(A) observed that the discount for transaction was nominal at ₹ 50,000/- and cash payment of ₹ 16,50,000/- was the condition to purchase the flat. This *simile* was adopted in respect of notings at page 41 and the CIT(A) did not find any favour with the claim of assessee that ₹ 16,32,400/- was in the nature of discount. Upholding the order of Assessing Officer, the addition was confirmed in the hands of assessee, against which the assessee is in appeal.

6. The case of assessee before the Tribunal is that addition is not warranted in the hands of assessee. Attention was drawn to the seized document at page 41 which though mentions the name of Mr.Hegde but talks of

Flat No.1553 in Irene Towers 'D.' He further pointed out that the assessee had purchased Flat No.F-1102 in Tower 'F', measuring 1590 sq.ft. and hence, there is no merit in making the addition on account of document which does not relate to the assessee. He then referred to the copy of agreement to purchase and pointed out that the amounts had to be paid in installments and in case of default of installments, interest was charged in the hands of assessee. However, the assessee paid lump sum amount on execution of agreement on 30.09.2011 which was registered on 30.09.2011 itself and consequently, discount allowed to the assessee was normal.

7. The learned Departmental Representative for the Revenue on the other hand, placed reliance on the order of CIT(A).

8. On perusal of record and after hearing both the learned Authorized Representatives, the issue which arises in the present appeal is in relation to the seized document found during the course of search on builder group. The assessee claims that on the date of agreement itself, the entire consideration was paid and discount allowed was normal to the trade. In respect of seized document, it was pointed out that the said document refers to a Flat which was different from the Flat purchased by the assessee. In the first instance, I perused the seized document and the copy of agreement to sell registered in the name of assessee. The two documents referred to different flats, even the area mentioned is different. Though the amount of ₹ 80 lakhs plus other charges which were mentioned, were the same, but the basis for making addition in the hands of assessee was the said seized document from the builders group. Once the basic facts of Tower and the area under consideration do not match, though name of Mr. Hegde is written on that sheet,

it does not imply that the said document is relatable to the assessee. The said document is not signed and hence, at best the said document to be a dumb document. In the absence of evidence found in respect of Flat in Tower 'F', which was purchased by the assessee, the addition made by the Assessing Officer and confirmed by CIT(A) is not warranted in the hands of assessee. Accordingly, the same is deleted. In view of deciding the issue on preliminary ground, the plea made by the assessee of discount being allowed or not is not addressed. The addition of ₹ 16,50,000/- is thus, deleted.

9. In the result, appeal of assessee is allowed.

Order pronounced on this 26th day of February, 2018.

Sd/-
(SUSHMA CHOWLA)

न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 26th February, 2018.

GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Pune-5, Pune;
4. The Pr.CIT, Pune-4, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune