

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH, RAIPUR**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
& SHRI RAM LAL NEGI, JUDICIAL MEMBER)**

**ITA. No: 121/BPLR/2013
(Assessment Year: 2009-10)**

Sanjay Kumar Gupta,S/o. Shri Madhusudan Prasad Gupta, Getanjali Nagar, Kashyap Colony, Bilaspur (C.G.) (Appellant)	V/S	Income Tax Officer,Ward- 1(1), Bilaspur (C.G.) (Respondent)
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PAN: AHLPG4885D

**Appellant by : Shri G. S. Agrawal, AR
Respondent by : Shri Sanjay Kumar, D.R.**

(आदेश)/ORDER

Date of hearing : 09 -03-2018
Date of Pronouncement : 16 -04-2018

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A), Bilaspur pertaining to A.Y. 2009-10.

2. The ld. counsel for the assessee did not press ground no. 1 and the same is dismissed as not pressed.
3. Ground no. 2 relates to the disallowance of Rs. 3,37,500/- out of Rs. 4,87,500/- made by the A.O. being expenses towards construction of plinth.
4. The assessee is a Civil Contractor and Builder.
5. During the course of the scrutiny assessment proceedings, the A.O. noticed that the assessee has derived Rs 3,48,052/- as business income from the sale of land. On perusal of the details, the A.O. found that the total turnover is shown at Rs. 11.75 lacs out of which total expenditure is claimed at Rs. 8.62 lacs which included cost of land and Rs. 4.87 lacs being development charges. The A.O. further found that ownership of the land admeasuring 20,000 sq.ft. belongs to the assessee and his brother with share of 50% each. The A.O. found that during the year under consideration, 11 plots were sold for a consideration of Rs. 23.50 lacs and out of the total sale consideration assessee's share was 11.75 lacs. The expenditure part was also divided into two equal parts among two brothers.
6. On further perusal of the details, the A.O. noticed that the assessee has claimed expenditure in respect of construction of plinth on the plots so sold. The A.O. was of the opinion that the assessee cannot claim the entire expenditure as revenue expenditure during the year under consideration. The A.O. accordingly disallowed the entire expenditure of Rs. 4,87,500/-.

7. Assessee carried the matter before the ld. CIT(A) but got relief only of Rs. 1.50 lacs.
8. Before us, the ld. counsel for the assessee stated that certain plots were sold with the construction of the plinth and certain plots were sold as it is. The A.O. simply disregarded the claim of expenditure of construction of the plinth area on the pretext that since other plots were sold as it is, there is no reason why some plots were sold with constructed plinth. It is the say of the ld. counsel that the A.O. completely rubbished the documentary evidences field before him during the course of the assessment proceedings. The ld. counsel concluded by saying that the ld. CIT(A) also erred in not appreciating the facts in true perspective.
9. Per contra, the ld D.R. strongly supported the findings of the A.O.
10. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee along with his brother was the owner of a land admeasuring 20,000 sq.ft. It is also not in dispute that 50% of the total consideration was received by the assessee and 50% of the total expenditure was shared by the assessee. Surprisingly, In the case of the brother of the assessee, the claim of expenditure has been allowed by the A.O. We do not find any reason why the 50% of the expenditure claimed by the assessee was disallowed. Further plots which were sold with the construction of the plinth are also not in dispute. Considering the facts of the case in totality in the light of the decision taken in the hands of the co-owner, we do not find any merit in the impugned disallowance. We accordingly direct the A.O. to delete

the disallowance of Rs. 337500/- which was sustained by the Id. CIT(A).
Ground nos. 2& 3 are accordingly allowed.

11. Facts relating to ground no. 4 show that vide an application filed on 06.01.2012, the assessee pointed out that inadvertently income from other sources could not be included in the return of income filed on 08.02.2010. It was further brought to the notice of the A.O. that the assessee has suo moto paid the taxes on his income from other sources amounting to Rs. 52.80 lacs.

12. Drawing support from the declaration filed by the assessee, the A.O. issued notice u/s. 148 of the Act and the assessment was reopened. The assessment was completed and the total income of the assessee was computed as under:-

<i>Income as shown in the return of income</i>	: Rs. 2,53,360/-
<i>Addition/Disallowance</i>	
(i) <i>On account of explained expenditure as Discussed in para 5 above</i>	Rs. 52,80,000/-
(ii) <i>On account of expenditure disallowed as Discussed in para 7 above.</i>	Rs.4,87,500/-
<i>Total Addition/Disallowance</i>	: <u>Rs. 57,67,500/-</u>
	<i>Total Income</i> <u>Rs. 60,20,860/-</u>

13. While making the disallowance, the A.O. observed that though the assessee has disclosed Rs. 52.80 lacs as income from other sources but has failed to explain how the amount has been worked out. The A.O. was of the opinion that to earn Rs. 52.80 lacs, the assessee must have incurred some expenditure, the details of which were not made available. The assessee explained that two lands costing Rs. 26.40 each were purchased during the year under consideration and since the investment of Rs. . 52.80 lacs was not accounted in the books of

accounts. Therefore, the A.O. treated Rs. 52.80 lacs as unexplained expenditure u/s. 69C of the Act.

14. After giving a thoughtful consideration, we find that the assessee in its statement of income filed with the return of income has computed its total income as under:-

Statement of Income

Income from Business/Profession

Sanjay Kumar Gupta-Civil Construction (Contractor)- Petty Contract

Income from Civil Construction (Contractor) 5,150
(Covered u/s. 44AD being more than 8% of the gross receipts of Rs. 55,400)

Sanjay Kumar Gupta –Sale of land

Net profit as per Profit & Loss a/c

Income chargeable under the head ' Business/Profession' 3,48,052 3,53,202

Income from Other Sources

Income From Other Sources

Gross Total Income 5,280,000 5,633,202

Deductions under Chapter VIA

Investments and Deposits u/s. 80C

Life Insurance Premia 130,467

U/s 80CCE- Aggregate amount of deduction 100,000

Total Income (rounded off u/s.288A) 5,533,200

Enclosure and Tax Computation

Tax	1,564,960
Add: Surcharge 10%	1,56,496
	1,721,456
Add: Education Cess @ 3%	51,644
Tax payable (rounded off u/s. 288B)	1,773,100
S.A Tax Paid	1,773,100
04/01/2010	12,730
02/12/2011	100,000
01/12/2011	100,000
16/12/2011	205,000
16/12/2011	200,000
22/12/2011	100,000
22/12/2011	100,000
22/12/2011	200,000
22/12/2011	200,000
03/01/2012	5,860
31/12/2011	3,55,000
31/12/2011	194,510
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Balance Tax payable

15. A perusal of the above shows that the assessee has shown Rs. 52.80 lacs as his income for the year under consideration. It is also evident that on the basis of the declaration filed by the assessee, the assessment was reopened. Since, at the time of the original assessment proceedings, the A.O. was not even aware of the purchase of lands by the assessee.
16. The voluntary declaration by the assessee triggered the issue of notice u/s. 148 of the Act. Though while completing the assessment and computing the total income of the assessee for the year under consideration, the A.O. has disallowed Rs. 52.80 lacs but the starting point is the income as shown in the return of income at Rs. 253360/- whereas the revised total income of the assessee was Rs. 55,33,200/-. We fail to understand when the A.O. has accepted the revised return of income then why he adopted the returned income at Rs. 253360/-. If he had adopted the revised income as per the statement of income exhibited at page 14 of the paper book, the income would have been Rs. 55,33,200/- and there was no need for making addition of Rs. 52.80 lacs. Since the lands were purchased outside the books of accounts and since the assessee has suo moto included the cost of land as his income and has paid the taxes thereon and the return of income has been accepted by the A.O, we do not find any merit in treating the amount of Rs. 52.80 lacs as unexplained expenditure. The revised return of income of the assessee at Rs. 55,33,200/- should be accepted as such. Grievance vide ground no.4 is accordingly allowed.

17. In the result, the appeal filed by the Assessee is allowed.

Order pronounced in Open Court on	16 - 04- 2018
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Sd/-

(RAM LAL NEGI)
JUDICIAL MEMBER True Copy
RAIPUR: Dated 16 /04/2018

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Sr. P.S.
ITAT, Raipur