

आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री जी. मंजुनाथ लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM

आयकर अपील सं./ ITA No. 855/Mum/2018

(निर्धारण वर्ष / Assessment Year 2007-08)

Shri Sanil S.Mane Legal Heir of Late Shri Sunil P Mane Flat No.5/6, Abhishek, Gen A.K. Vaidya Marg, Yashodhan, Goregaon, Mumbai-400 063	Vs.	<u>Erstwhile</u> The Dy. Commissioner of Income Tax Circle 7(3), Mumbai <u>Now</u> The Dep. CIT Range 8(3)(2) Room No. 615, 6 th Floor, Aayakar Bhavan, New Marine Lines, Mumbai-20
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. BGHPM3857P		

Assessee by : Shri Dr. P Daniel, AR

Revenue by : Shri V. Vidhyadhar, DR

Date of hearing: 29-05-2018 **Date of pronouncement :** 13-06-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-13, Mumbai [in short CIT(A)], in



appeal No. CIT(A)-13/Rg-7(3)/Apl.47/09-10 dated 26.03.2013. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-7(3), Mumbai (in short 'DCIT') for the A.Y. 2007-08 vide order dated 20.05.2009 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the addition made by AO of Rs. 7 crores being unexplained investment made on the basis of declaration made by third party at the time of survey under section 133A of the Act, which was subsequently retracted. For this assessee has raised the following grounds: -

"1. The Learned C.I.T. (A) erred in confirming the addition of Rs. 7 crores on the basis of declaration made by the third party at the time of the survey, which have been retracted subsequently.

2. The Learned C.I.T. (A) erred in law and in facts and on the circumstances only relying on the statement given at the time of survey which have been retracted subsequently.

3. The Learned C.I.T. (A) erred in not considering the evidences produced at the time of assessment and before the CIT (Appeals) by the assessee.

4. The Learned C.I.T. (A) erred in confirming the addition of Rs. 7 crores without appreciating that the addition cannot be made or confirmed on hearsay against valid evidences produced by the assessee."



3. Briefly stated facts are that the assessee is director in the company M/s Vighnaharta Builders Pvt. Ltd. (VBPL) and his source of income are salary, income from house property, business income i.e. salary and interest from partnership firm and interest income. The assessee filed his return of income for the relevant AY 2007-08 on 06-03-2009 and declare total income at Rs. 14,03,681/-. A survey was conducted on the business premises of Vighnaharta Builders Pvt. Ltd. on 05-02-2007, in which assessee is the managing director. During the survey, the department found that VBPL has maintained his books of account on computer in tally package from where trial balance as on date i.e. 01-04-2006 to 05-02-2007 was generated, which showed that the assessee Shri Sunil Mane has made various credit entries relating to purchase of flats amounting to Rs. 7 crores. According to Revenue, the ten allotment letters were found showing allotment of 17 flats in Vijaya Residency Project, Lalbaug in the name of the assessee. The other director Mr. Santosh Mane was examined and his statement recorded under section 133A of the Act on 06-02-2007. During the course of survey he admitted that this amount of Rs. 7 crore credited in the books of accounts for these flats were on account of sale of flats to shri Sunil Mane, the assessee. Shri Sntosh mane admitted that the assessee Mr. Sunil Mane has earned income amounting to Rs. 7 Crores in last 8 to 10 months and out of that income, this investment was made in purchase of these flats at Vijaya Residency Project at Lalbaug. The relevant statement of Shri Santosh Mane dated 06-02-2007, as reproduced in the order of the AO, is being reproduced for the sake of clarity:-

"Q.15 I am showing you a loose paper file 1 to 10 pages which seems to be allotment letters for flats in your Vijaya Residency Project to Mr. Sunil Mane. The mode of payment for the same has not been



mentioned. Kindly, elaborate on the same. Please go through this file and explain in detail the nature of the period to which it belongs, the purpose of such cash transactions etc.

Ans. Sir, I do admit that these are the flats sold to Mr. Sunil Mane, Managing Director of our company. These flats were sold to him on various dates in the past 8-10 months. He has paid for the same in cash.

Q-16 What was the source of the generation of such huge amount of cash by Shri Sunil Mane? Has the company accounted for the same or not kindly explain?

Ans. Mr. Sunil Mane is my elder brother. I am not be able to conclusively explain the source of the generation of such huge funds, but it is true he has substantial income in the past few months. As regards, the accounting of the cash by the company, the same has been done.

Q-17 You mean to say that Mr. Sunil mane has had income amounting to ₹ 7,00,00,000/- for making such investments during the past year? Please explain.

Ans. I hereby confirm that Mr. Sunil Mane has had income amounting to ₹ 7,00,00,000/- in the last 8-10 months. He has invested most of these funds in the purchase of the flats at the Vijaya Residency Project of the company.”



4. When this statement was confronted to assessee, he denied in making any payment for purchase of these flats or purchase of any flat, what to talk of 17 flats. Subsequently, Shri Santosh Mane retracted this statement and produced the confirmation from 9 different companies, all of which are outside parties, who deposited the cash of 7 crores towards booking of these 17 flats. In support of booking of these flats Shri Santosh Mane furnished the evidence in the shape of confirmations of the parties, acknowledgement of returns filed by these companies, PAN Nos. of these companies, copies of allotment letters of flats in the name of these companies, copies of resolution of each company, extracts from the books of accounts from VBPL showing the transaction of booking in the name of these parties and the booking consideration received in regard to each of these 17 flats under consideration. The AO has not believed this statement of the assessee and only on the premise that the assessee and his brother's explanation, which is made more than 2 years and had already explained the facts and hence, the same is not acceptable. According to him, it is cooked up story. Accordingly, the AO made addition of 7 crores as undisclosed income. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO by observing in Para 2.3 as under:-

2.3 I have considered the facts of the case. The appellant was Director in M/s. Vignaharta Builders Pvt. Ltd. His brother, Shri. Santosh Mane was other Director in the said company. The said company was in the business of builders and developers of the project. Since the company was a closely held company of the appellant and his brother, therefore, it is an presumption that both the appellant being



M.D and his brother being other Director were engaged in day to day activities of the company and were in the knowledge of all facts relating to the company. As explained above, there was a survey on the company M/s. VBPL. The survey action transpired that the appellant had booked the flats in the company's project by depositing cash of Rs.7 crores. It was a fact on record that the appellant deposited this cash amount in the company. It was also a fact oil that in the books of M/s. VBPL, amount was shown deposited in the name of appellant only. Considering these facts and the circumstantial evidence, the appellant's submissions and arguments cannot be accepted that the amount of Rs.7 cores was received by him from the 9 companies which were controlled by one Shri. Mukesh Choksi against the booking of 17 flats in the companies project.

It is very important to mention here that Shri. Mukesh Choksi and his various companies including the 9 companies, who have alleged to have the flat and paid 7 crores, have been found by the Department heavily engaged in the activity of bogus transactions of issuing bogus bills of purchases, commission and sale etc. There are various cases pending/ going on in the Department against all the companies controlled by Shri Mukesh Choksi. In these companies, controlled by Mukesh Choksi heavy cash has been generated against the bogus transactions. However, such generation of cash was



oil to be utilized whenever such entry is required by any party for giving bogus entry.

In view of the above facts, the appellant's claim cannot be accepted that his brother Shri. Santosh Mane, the other Director of the company was not aware of the actual facts. The appellant's argument appears to be Strange that due to bad health; the name and address of the purchasers could not be communicated to the company and were temporary booked in his name. The appellant has not furnished any evidence of his bad held. Even if, the appellant's claim of bad health is acceptable, this fact will not prevent the appellant from intimating the actual and correct facts to the accounting staff or to his brother.

In the facts and circumstances, the admission made by the appellants brother Shri. Santosh Mane in the statement recorded during the survey is of great importance. The payment of advance tax of Rs.50 lacs by the appellant also supports the fact that the investment of Rs.7 crores was belonging to the appellant himself. It also appears very strange that the 9 companies alleged to have booked the flats controlled by Mukesh Choksi in the company M/s.VBPL paid the entire cost or advance in cash only and not a single rupee was paid by them by cheque. Considering the entirety of facts and circumstances, there is a force in AO's conclusion that the evidence produced by the appellant in the form of return/PAN/cash book of the 9 companies controlled by Mukesh Chokshi were prepared after



thought to give the transaction colour of genuineness and that the investments of Rs.7 cores was not made by the appellant but was made by these 9 companies. The AO correctly held that it was cooked up story whereas investments of Rs.7 crores was actually made by the appellant out of his undisclosed sources. view of the above, addition made by the AO is upheld and this ground of appeal is dismissed.”

Aggrieved, now assessee is in second appeal before Tribunal.

5. We have heard the rival contentions and gone through the facts and circumstances of the case. The facts of the case are that the assessee was the Managing director of a company VBPL, while for his brother Shri. Santosh Mane was the other director of the company. Survey proceedings were conducted at the premises of the company on 05.02.2007. During the course of the survey proceedings the survey team came across credit entries aggregating to Rs. 7 crores in the name of the assessee in the trial balance of the company for the period 01.04.2006 to 05.02.2007. That as the assessee on the date of survey was not in the town, his brother Shri. Santosh Mane in his statement recorded during the course of the survey proceedings on 06.02.2007 admitted that the company had sold flats to the assessee, for which an amount of Rs. 7 crore was received in cash from the assessee. Sh. Santosh Mane though could not explain the source of generation of the aforesaid funds in the hands of the assessee, but however, admitted that the assessee had substantial income in the past few months which was invested by him for purchasing the flats from the company. That as is borne from the records, the assessee during the course of the assessment proceedings submitted before the A.O that the booking of the flats was by 9 different



companies all of which were outside parties. Still further, the brother of the assessee, viz. Sh. Santosh Mane also retracted from his statement recorded during the course of the survey proceedings.

6. These facts regarding the booking details of 17 flats, booked by different companies were produced before the AO during the course of assessment proceedings and the details of those 17 flats are as under: -

Sr. No	Date of Allotment	Flat Nos	Name of Allottee	Amount (Rs)	Total Amt
1	27.01.2007	1803 & 1804 / B	Buniyad Chemicals Ltd	7,200,000.00	.
2	27.01.2007	1001 / A	Buniyad Chemicals Ltd	4,500,000.00	11,700,000.00
3	27.01.2007	1801,1802 / A	M/s. Goldstar Finvest (P). Ltd	8,500,000.00	
4	27.01.2007	1501 / A	M/s. Goldstar Finvest (P). Ltd.	4,500,000.00	13,000,000.00
5	27.01.2007	1901 / B	M/s. Kaycee Share Broking Pvt Ltd	4,000,000.00	4,000,000.00
6	27.01.2007	1902 / A	M/s. Alliance Intermediateries & Networks Pvt. Ltd.	4,500,000.00	
7	27.01.2007	1904 / B	M/s. Alliance Intermediateries & Networks Pvt. Ltd.	3,200,000.00	7,700,000.00
8	27.01.2007	1301 & 1302 / B	M/s. Alfa Chemie Trade Agencies Pvt. Ltd.	8,500,000.00	8,500,000.00
9	27.01.2007	1303 / B	M/s. Alembic Securities	4,000,000.00	4,000,000.00
10	27.01.2007	1902 & 1903 / B	M/s. Mahasagar Securities Pvt. Ltd	8,000,000.00	8,000,000.00
11	27.01.2007	601 & 2001 / B	M/s. Mihir Agencies Pvt. Ltd	8,850,000.00	8,850,000.00
12	27.01.2007	602 / B	M/s. Talent Infoway Ltd.	4,250,000.00	4,250,000.00
					70,000,000.00

7. We find that the assessee before the AO as well as before CIT(A) filed copies of resolution of each company for purchase of the flat, extracts from the books of accounts from VBPL showing the transaction of bookings in the name these parties and consideration for bookings and the booking consideration received in regard to the flats under consideration. These facts are part of record of the assessment. When we called for these records from the AO, learned DR admitted that these



parties have confirmed for booking of these 17 flats in their respective names as mentioned above. We find that the AO has nowhere proved that assessee has earned this income of Rs. 7 crores during the relevant assessment year under consideration. As the Revenue has failed to establish the earning to the 7 crore by the assessee, we find that the lower authorities have clearly erred in making this addition of unexplained income of the assessee in the given facts and circumstances. Hence, we deleted the addition and the appeal of the assessee is allowed.

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

Order pronounced in the open court on 13-06-2018.

आदेश की घोषणा खुले में दिनांक 13-06-2018 को की गई ।

Sd/-

(जी. मंजुनाथ /G MANJUNATHA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 13-06-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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