



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

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.162/CTK/2018**

Assessment Year : 2013-2014

ITO, Ward 1(2), Bhubaneswar.	Vs.	M/s. Suvaketan Builders Pvt Ltd., Plot No.124, VIP Colony, Nayapali, Bhubaneswar
PAN/GIR No.AAOCS 0533 K		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.C.Bhadra, AR  
Revenue by : Shri Subhendu Datta, DR

**Date of Hearing : 27/08/ 2018**  
**Date of Pronouncement : 29/08/ 2018**

**ORDER**

**Per N.S.Saini, AM**

This is an appeal filed by the revenue against the order of the CIT(A)-1, Bhubaneswar dated 27.2.2018 for the assessment year 2013-14.

2. The sole issue involved in this appeal is that the CIT(A) erred in deleting the addition of Rs.2,00,00,000/- made by the Assessing officer towards unexplained investment in purchase of land.

3. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. In the instant case, the undisputed facts of the case are that the assessee company purchased a piece of land at Botanda Mouza, Bhubaneswar on 12.2.2013 from Mr Mir Sarif and his brother Mr Samid of Jadupur. The total consideration for purchase of land as recorded in the registered sale deed was Rs.25,43,310/-. Mr Mir Sarif was found to have deposited Rs.2,00,00,000/- in his bank account immediately after the sale of land. Mr Mir Sarif submitted that the deposit of Rs.2 crores represented the actual sale proceeds of the land received from the assessee company. Mr Mir Sarif filed a return showing the full value of consideration of the land at Rs.2 crores disclosing no capital gain on the sale claiming that the land sold is agricultural land situated beyond the specified limits of Bhubaneswar Municipal Corporation and, hence, exempt from capital gains. On the basis of statement of Mr Mir Sarif, the Assessing Officer made an addition of Rs. 2 crores as unexplained investment in the hands of the assessee company rejecting the assessee's claim that it had not paid any amount in excess of Rs.25,43,310/- as stated in the registered conveyance deed.

4. On appeal before the CIT(A), it was submitted that the assessee company purchased a plot of land at Mouza-Botanda of

Bhubaneswar for a sum of Rs.25,43,310/- vide sale deed registered on 12.2.2013 and enclosed copy of the same. The said property was jointly and equally owned by Mr Mir Sarif and Mr Mir Shamid of Jadupur, who are biological brothers and consequently each brother was paid a sum of Rs.12,71,655/- and the amounts are duly reflected in the books of account. Mr Mir Sarif, one of the brothers and co-owners found to have deposited Rs. 2 crores on 13.2.2013, in his bank account No.018810011004945 maintained with Andhra Bank. Mr Mir Sarif submitted on enquiry by the Assessing Officer that he had received the entire sum of Rs.2 crores from the assessee company towards the cost of land and, therefore, the Assessing Officer added Rs. 2 crores to the income of the assessee under the head unexplained investment in the purchase of land.

5. After considering the submission of the assessee, the CIT(A) deleted the addition by observing as under:

"I have carefully considered the matter. The facts and materials on records have been perused. I find that in the case of Mr Mir Sarif, while disposing of the appeal against the assessment order for the assessment year 2013-14, the issue relating to the amount of consideration received by him for sale of land came up for consideration before me. Mr. Mir Sarif was required to explain as to why the cash deposit in excess of the amount of consideration recorded in the registered sale deed should not be taxed in his hand as income from other sources in the absence of any evidence to show that the actual receipt on the sale of land was Rs.2 crores and also keeping in view the fact that the buyer had

denied to have paid any amount in excess of the amount reflected in the sale deed. An enhancement notice u/s.251(2) was issued accordingly to Mr. Mir Sarif in the course of the appeal proceeding in his case. In the absence of any satisfactory explanation from Mr. Mir Sarif, the appeal in his case was disposed of vide order dt.24.8.2017 in ITA No.0500/15-16 treating an amount of Rs. 1,74,56,690/-, being the cash deposit in bank account in excess of the amount recorded in the sale deed, as income from other sources. The relevant portion of the appellate order is reproduced below to make the issue clear:

*"6. In this connection, another crucial point to be decided is what the sale value of the land is. The assessee has submitted that he has received a sum of Rs.2 crores from the purchaser M/s. Subhaketan Builders (P) Ltd. towards the sale consideration of the land. The AO has believed the assessee and considered an amount of Rs.2 crores as full value of consideration while calculating the capital gains. This is despite the fact that as per the sale deed registered by the Sub-Registrar, the sale consideration has been recorded as Rs.25,43,310/-, and the assessee has not submitted any evidence of receiving Rs.2 crores towards the sale consideration of the land. It is also found from the assessment records of M/s. Subhaketan Builders (P) Ltd. that the company has all along maintained that it had paid Rs.25,43,310/- only towards the sale consideration of the land. In this factual background, in the course of appeal hearing, a notice u/s.251(2) was issued to the assessee on 28.11.2016 proposing to tax the excess amount of cash - deposit-in the-bank-account as income from other sources. The assessee, in response to the above notice, has submitted a written reply on 1.2.2017 stating as under:*

XXX                      XXX                      XXX

*7. I have given careful consideration to the matter. The points raised by the assessee in his response to the enhancement notice are not going to improve the facts in his favour in any manner. The fact remains that in the conveyance deed, the sale consideration is recorded at Rs.25,43,310/- and this fact cannot be ignored. Only because on-money receipts are involved in land transactions, the claim of the assessee to have received Rs.2 crores as sale value of land cannot be accepted. The assessee does not have any evidence to show that he received more amount than what is recorded in the sale deed duly registered by the competent registering authority of the State Govt. The argument of the assessee that the*

*AO has accepted the sale value at Rs.2 crores after considering the market value of the land is totally misleading. The AO has nowhere mentioned that the actual sale consideration is Rs.2 crores as against the registered sale deed price of Rs,25,43,310/-. The AO appears to have blindly accepted the claim of the assessee without verifying the actual fact and without confronting the buyer about the amount paid for the land. On the facts of the case, it is held that the sale consideration of the land is to be taken at Rs.25,43,310/- for the purpose of computation of capital gains. The balance amount of Rs.1,74,56,690/- is to be taxed in the hands of the assessee as income from other sources.*

*7.1 Hence, the long term capital gains arising on sale of the land would be computed as under:*

Full value of consideration : Rs.25,43,310/-

Less: i) Indexed cost of acquisition: Rs.15000x852 =Rs.  
70,220/-as per assessment order, 182

ii) Indexed cost of improvement:  
Rs.13,06,450x852=Rs.20,20,136/- (-) Rs.20,90,356/-  
as per assessment order. 551

Long Term Capital Gains: Rs.4,52,954/-

*8. Keeping in view the above discussion, the total income of the assessee is to be re-computed as under:*

<i>Income as per return:</i>	<i>Rs. 3,22,137/-</i>
<i>Add: i) Long Term Capital Gains:</i>	<i>Rs. 4,52,954/-</i>
<i>ii) Income from other sources:</i>	<i><u>Rs.1,74,56,690/-</u></i>
<i>Total Income:</i>	<i>Rs.1,82,31,780/-"</i>

5.1 In the complete absence of any evidence produced by Mr. Mir Sarif to show that he had actually received Rs.2 crores on sale of land from the assessee company, the addition made by the AO in the hands of the -assessee—company of Rs.2 crores -as unexplained investment in purchase of land is clearly unjustified and unreasonable. Since the cash deposits were made in the bank account of Mr. Mir Sarif, the onus was fully on him to explain the sources thereof and he appears to have conveniently shifted the onus to the assessee company by stating that the deposits represented sale consideration of the land received from the assessee company. This statement of Mr. Mir Sarif is not supported by any corroborative evidence. It is also seen that while making the impugned addition in the hands of the assessee

company, the AO has completely lost sight of the fact that the assessee has explained the source to the extent of Rs.25,43,310/- being the sale value of the land reflected in the sale deed and hence no addition can be made in respect of this amount. In view of the above discussion, the addition made by the AO of Rs.2 crores as unexplained investment in purchase of land is deleted."

6. Ld D.R. relied on the order of the Assessing Officer whereas Id A.R. of the assessee relied on the order of the CIT(A).

7. We find that the CIT(A) after considering the entire facts of the case has deleted the addition of Rs.2 crores made in the hands of the assessee under the head unexplained investment in the purchase of land. The CIT(A) has given finding that in the assessment of Mr Mir Sarif, the sale consideration of land has been accepted at Rs.25,43,310/- and the balance amount of cash deposit claimed to be towards sale of land was not accepted and the addition was made in the hands of Mr Sarif of Rs.1,74,56,690/- as income under the head income from other sources. Further, we find that no material has been brought on record by the revenue to show that the assessee paid any amount over and above the amount of sales consideration of Rs.25,43,310/- reflected in the sale deed of land dated 12.2.2013. Further, it is also observed that the addition has been made relying on the statement of Mr Mir Sarif that he received Rs.2 crores as the sale consideration towards sale of land. No

cross examination of Mr Mir Sarif was allowed to the assessee. In our considered opinion, without allowing cross examination to the assessee of Mr Mir Sarif, no addition could be made in the hands of the assessee on the basis of statement made by Mr Mir Sarif. Our above view finds support from the decisions of Hon'ble Delhi High Court in the case of CIT vs. Sunrise Tooling System Pvt Ltd., 361 ITR 206 (Del), Hon'ble Gujarat High Court in the case of CIT v. M.K.Brothers, 163 ITR 249(Guj), Mumbai Benches of the Tribunal in the case of Balaji Textile Industries vs ITO, 49 ITD 177, Ahmedabad Bench of the Tribunal in the case of ITO vs Ghansyam Steel Traders , 107 Taxmann 126 (Ahd) , and ITAT Gauhati in the case of DCIT Vs. Brahmaputra Steels P. Ltd. 122 Taxmann 32. Recently, the Hon'ble Supreme Court in the case of CIT s. Sunita Dhadha in SLP(C) DIR No.9432/2018 order dated 28.3.2018 confirmed the order of Hon'ble Rajasthan High Court of Jaipur where, it was held that if the Assessing officer wants to rely upon documents found with third parties, the presumption u/s 292C against the assessee is not available. As per the principles of natural justice, the Assessing Officer has to provide the evidence to the assessee & grant opportunity of cross-examination. Secondary evidences cannot be relied on as if neither the person who prepared the documents nor the witnesses are produced. The



violation of natural justice renders the assessment void. The Department cannot be given a second chance.

8. In view of the foregoing reasons, we find no infirmity in the order of the CIT(A), which is hereby confirmed and ground of appeal of the revenue is dismissed.

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced on 29/08/2018.

Sd/-

d/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 29 /08/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : ITO, Ward 1(2), Bhubaneswar.
2. The Respondent. M/s. Suvaketan Builders Pvt Ltd., Plot No.124, VIP Colony, Nayapali, Bhubaneswar
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

By order

Sr. Pvt. Secretary,  
ITAT, Cuttack