

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1519/PUN/2014  
निर्धारण वर्ष / Assessment Year : 2009-10

Assistant Commissioner of Income Tax,  
Central Circle, Kolhapur

.....अपीलार्थी / Appellant

**बनाम / V/s.**

Sou. Sushila Danchand Ghodawat Charitable Trust,  
2549, Yashwant Co-op. Hsg. Society,  
Jaysingpur, Kolhapur – 416103

PAN : AAATS5501N

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.G. Nahar  
Revenue by : Shri Aseem Sharma

सुनवाई की तारीख / Date of Hearing : 30-05-2018

घोषणा की तारीख / Date of Pronouncement : 24-08-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), Kolhapur dated 22-05-2014 for the assessment year 2009-10.

The Revenue in appeal has assailed the findings of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.34.25 lakhs made on account of on money to the sellers of land by the assessee.

2. The brief facts of the case as emanating from records are : The assessee is a charitable trust engaged in providing medical relief and running medical college and other educational institutions. The assessee trust is a part of Ghodawat group. A search operation u/s. 132/133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the case of Ghodawat group on 04-02-2009. During the course of search it was found that the assessee had purchased land for construction of medical and engineering colleges. The land was purchased by the assessee from various farmers of Village Attigre, Taluka-Hatkanangale. The Assessing Officer summoned the farmers from whom the assessee had purchased land and their statements were recorded u/s. 132(1) of the Act. The Assessing Officer after considering the return of income filed by the assessee and the statements of farmers recorded in proceedings u/s. 131 of the Act, came to the conclusion that the assessee in its books has accounted only the amounts that were paid by cheque and shown in the purchase deed. The assessee has made cash payments over and above payments by cheques to the farmers for purchase of land. The payment of on money has not been accounted. The Assessing Officer concluded that the assessee has paid 'on money' from unaccounted funds and thus made addition of Rs.34,65,499/- as unexplained investment.

Aggrieved by the assessment order dated 28-12-2010, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) deleted the addition by holding that payment of cash component by the assessee to the sellers has not been conclusively established. Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before the Tribunal. The Revenue has assailed the findings of Commissioner of Income Tax (Appeals) by the raising following grounds :

- “1) *On the facts and in the circumstances of the case and in law, Ld. CIT(A) was not justified in holding that no co-relation has been established between cash deposited by land sellers in their bank accounts and on-money paid by the assessee trust particularly in view of the fact that land sellers accepted having received on-money from the assessee on sale of land to it.*
- 2) *On the facts and in the circumstances of the case and in law, Ld. CIT(A) was not justified in deleting addition of Rs.34.25 lakhs made on account of on money paid to the land sellers by holding that cash payment by the assessee has not been established whereas the land sellers had confirmed that the amounts were paid to them over and above the agreement amounts.*
- 3) *On the facts and in the circumstances of the case and in law, Ld. CIT(A) was not justified in holding that the Trust cannot be denied benefit of exemption vij«. 11 of the Act by holding that the Hon'ble ITAT has held that activities of the Trust were genuine, whereas Hon'ble ITAT did not give any findings on the issue relating to the payment of on-money by the assessee to land sellers.*
- 4) *The order of CIT(A) may be vacated and that of the Assessing Officer be restored.*
- 5) *The appellant craves leave to add, alter, and modify any of the above grounds of appeal.”*

3. Shri Aseem Sharma representing the Department submitted that the Assessing Officer during the assessment proceedings had recorded statements of all the land owners from whom the assessee had purchased land. All the land owners in their respective statement recorded u/s. 131 of the Act admitted that the assessee has made cash payments to them for purchase of land over and above the payments made by cheque and reflected in the purchase deed. The ld. DR pointed to the table at pages 10 and 11 of the assessment order giving the details of payments allegedly received by the land owners in cash. The ld. DR submitted that the assessee had made cash payments of Rs.34,65,499/- collectively to all the land vendors. The ld. DR submitted that once having established that the assessee has indulged in cash payments outside the books for purchase of

land, the Commissioner of Income Tax (Appeals) has erred in deleting the additions.

4. On the other hand Shri R.G. Nahar appearing on behalf of the assessee vehemently supporting the findings of Commissioner of Income Tax (Appeals) submitted that the assessee has not made any cash payments for the purchase of land. The ld. AR contended that not admitting but assuming that cash payments were made, the application of funds has to be seen. In the present case, it is an undisputed fact that the assessee had purchased land for construction of college buildings to be used for medical and engineering purpose. The funds of the trust have been utilized in accordance with the objects of the trust.

4.1 The ld. AR further referred to the decision of Tribunal in assessee's own case in ITA No. 982/PN/2011 decided on 31-12-2012. The ld. AR submitted that the registration granted to the assessee u/s. 12A was withdrawn for same reason. The assessee carried the matter in appeal before the Tribunal. The Tribunal directed the Revenue to restore the registration as the activities carried out by the assessee are in consonance with the objects of the trust.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The only issue raised in this appeal by the Revenue is with respect to addition of Rs.34.25 lakhs made on account of alleged payment of on money by the assessee to the sellers of land. From the perusal of documents on record we find that the registration granted to the assessee u/s. 12A was cancelled by the Revenue on the pretext that the assessee has indulged in payment of cash

on money generated outside the books. The Commissioner of Income Tax (Appeals) held the assessee is not engaged in genuine activities commensurate to its object. The Tribunal in ITA No. 982/PN/2011 (supra) reversed the findings of Commissioner of Income Tax and restored the registration granted to the assessee u/s. 12A of the Act.

6. In assessment proceedings the Assessing Officer has recorded statements of farmers from whom the assessee has purchased land for construction of medical/engineering colleges. It is an undisputed fact that the purpose for which land has been purchased is in line with the objects of the trust. The statements recorded by the Assessing Officer u/s. 131 of the Act indicate some element of on money transactions. However, we find that apart from the statements there is no evidence to show that the assessee has indulged in payment of on money in cash to the farmers. The statements recorded u/s. 131 have not been conclusively proved as there is no cross-examination of the farmers by the assessee at any stage. It is a well settled principle of natural justice that any evidence recorded at the back of the assessee and is used to make addition, an opportunity of cross-examination should be afforded to the assessee to refute the same. Thus, we concur with the findings of Commissioner of Income Tax (Appeals) that it is not conclusively proved that the sellers of the land have received cash as on money from the assessee. Thus, we do not find any infirmity in the order of Commissioner of Income Tax (Appeals).

7. We further observe that the tax effect in appeal by the Revenue is less than Rs.20 lakhs. The recent CBDT Circular No. 3/2018, dated 11-07-2018 has raised the monetary limit of tax effect for filing of appeals by the Department before the Tribunal to Rs.20 lakhs. The circular applies

to the appeals to be filed by the Department in future, as well as the appeals pending before the Tribunal. Thus, in view of the CBDT Circular the present appeal by the Revenue is liable to be dismissed on account of low tax effect, as well.

8. In the result, the appeal of the Revenue is dismissed being devoid of any merit.

Order pronounced on Friday, the 24<sup>th</sup> day of August, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24<sup>th</sup> August, 2018

RK

**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), Kolhapur
4. आयकर आयुक्त / The CIT-I/II, Kolhapur/CIT(Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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