

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 606/JP/2017  
निर्धारण वर्ष / Assessment Year : 2009-10

The ITO, Ward-2(2), Jaipur.	बनाम Vs.	M/s Om Metal Real Estate Pvt. Ltd., Road No. 7, F-99-A, VKI Area, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACO9306J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri B.V. Maheshwari (C.A.)  
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 25/10/2018  
उदघोषणा की तारीख / Date of Pronouncement : 17/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue against the order of Id. CIT(A), Jaipur dated 23.05.2017 for the Assessment Year 2009-10 wherein the Revenue has taken the following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in deleting the addition made u/s 69 on account of on-money payment of Rs. 9,25,00,000/-.

2. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in not appreciating the noting at page

*no. 4 of Annexure A-1 seized during search and seizure action carried out in Shiv Vani Group of cases at the Residence of Sh. Ramesh Kumar Somani at G-15/6, 2<sup>nd</sup> Floor, Malviya Nagar, New Delhi and office of Shiv Vani Group at F-315, Ground Floor, Lado Sarai, New Delhi.*

*3. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in not appreciating the statement recorded by Investigation Wing, Delhi of Shri Padam Singhee."*

2. Briefly the facts of the case are that the assessee company is one of the shareholders and holds 25% equity stake in another company by name of M/s Om Metal Developers (P) Ltd. M/s Om Metal Developers (P) Ltd. had purchased 10 acres of land at Hyderabad. A search and seizure operations was conducted in the case of Shiv-Vani Group at New Delhi U/s 132 of the Act including the residence of Shri Ramesh Kumar Somani who is one of the Directors in another shareholder company of M/s Om Metal Developers (P) Ltd. namely, M/s Metro Management Services (P) Ltd. During the course of said search, certain incriminating documents were found and seized relating to purchase of land at Hyderabad by M/s Om Metal Developers (P) Ltd. It is the case of the Revenue that as per seized documents, 10 acre of land was to be purchased by M/s Om Metal Developers (P) Ltd for a total consideration of Rs. 55 crore including expenses towards brokerage, registry and other expenses amounting to Rs. 5 crore. Since the sale consideration as recorded in the sale deed executed between the sellers and M/s Om Metal Developers (P) Ltd and registered with Stamp duty authorities on 23.04.2008 talks about sale consideration of Rs. 18 crore only, there is "on money" payment to the tune of Rs. 37 crore which is paid in cash

outside the books of accounts and the said "on money" payment has been funded by the shareholders of M/s Om Metal Developers (P) Ltd. The assessee company being one of the shareholder has thus funded the "on-money" amounting to Rs. 9.25 Crores to the extent of its shareholding (25%) in M/s Om Metal Developers (P) Ltd.

3. Basis such information gathered during the search and belief that income to that extent has escaped assessment, the AO initiated proceedings U/s 147 of the Act and issued notice dated 10.04.2014 U/s 148 of the Act. The Assessing Officer referred to the seized documents in particulars page 4 of Annexure A-1 and copy of the agreement dated 07.08.2006 and held that the assessee has made payment of Rs. 9.25 crore on account of "on money" of its 25% shares for purchase of land by M/s Om Metal Developers (P) Ltd. during the Financial year 2008-09 relevant to assessment year 2009-10 and addition towards undisclosed investment of Rs. 9.25 crore was made to the total income of the assessee U/s 69 of the Act.

4. The Assessing officer while making the said addition in the hands of the assessee company also took note of the fact that in respect of another shareholder company namely, M/s Maheshwari Mega Ventures Ltd. which was holding 35% shareholding in M/s Om Metal Developers (P) Ltd. the ITO, Ward-16(1), Hyderabad has made similar addition on account of "on money" payment in respect of same transaction towards purchase of the aforesaid land at Hyderabad by M/s Om Metal Developers (P) Ltd while passing the assessment order dated 30.12.2011 U/s 143(3) of the Act.

5. The Assessing Officer while passing the impugned assessment order also took note of the contention of the assessee company that no addition has been made by the concerned Assessing officer in the hands of the company which has actually purchased the land i.e. M/s Om Metal Developers (P) Ltd. in respect of said land transaction and alleged on-money payment. However, the said contention was rejected for the reason that the assessee company has not furnished copy of the assessment order for A.Y. 2009-10 in case of M/s Om Metal Developers (P) Ltd.

6. Before we proceed to the findings of the Id. CIT(A) in assessee's own case, it is relevant to note the facts in case of M/s Om Metal Developers (P) Ltd. which has actually purchased the land at Hyderabad and has executed the sale deed. In this case, a notice U/s 148 of the Act was issued by DCIT 7(3)(1), Mumbai on 31.3.2016 to M/s Om Metal Developers (P) Ltd. for A.Y. 2009-10 on the identical issue of "on money" payment towards purchase of land in Hyderabad. The reasons recorded for re-opening the assessment proceedings read as under:-

*"1) In this case, the assessee filed return of income for the A.Y. 2009-10 on 30.09.2009 declaring total income of Rs. 13,01,980/-. The same was processed under section 143(1) of the I.T. Act, 1961 on 23.10.2010. In this case, there is no scrutiny assessment for the year under consideration.*

*2) Information received from Income Tax officer, Ward-2(2), Jaipur, gathered/available in this office. As per information it is revealed that a search and seizure action in case of Shiv Vani Group of cases was*

*conducted on 06.01.2011 by the Investigation Wing, Delhi. During the course of search at the residence of Shri Ramesh Kumar Somani (Director of M/s. Metro Management Services Pvt. Ltd.) at G-15/6, 2<sup>nd</sup> Floor, Malviya Nagar, New Delhi, and office of Shiv Vani Group at F-315, Ground Floor, Lado Sarai, New Delhi, some incriminating documents were found and seized. Page no.135 to 146 of Annexure A-5 seized from the office of Shiv Vani Group are the agreement of sale made and executed on 07.08.2006 by and between M/s. Sunita Prasad and others (11 parties as vendors) and M/s. Om Metal Developers Pvt. Ltd.(Vendee) for purchase of 20 acres land at Hyderabad. Out of this 20 acres land M/s. Om Metal Developers Pvt. Ltd. has purchased 10 acres land for Rs.20.3 crores as recorded in the books of accounts and shown as fixed asset in the A.Y. 2009-10 i.e. on 31.03.2009.*

*As per noting written on page 4 of Annexure A-1 seized from the residence of Shri R K. Somani at G-15/6, 2<sup>nd</sup> Floor, Malviya Nagar, New Delhi, 10 acres of land at Hyderabad was purchased by M/s. Om Metal Pvt. Ltd. for Rs.55 crores (including expenses) whereas in balance sheet, the value of this 10 acres land has been shown at only Rs.20.30 crores (including other expenses). However, as per registered deed dated 12.02.2008 registered on 23.04.2008, the properties shown to be purchased for Rs.18 crores only and the amount was given by cheque. As per noting written on page it is clear that 10 acres of land was purchased for Rs.55 crores and amount of Rs.37 crores (55-18 crores) has been paid by the M/s. Om Metal Developers Pvt. Ltd. in cash.*

*3) In view of the above, I have reason to believe that the income to the extent of Rs. 37,00,00,000/- chargeable to tax for A.Y. 2009-10 has escaped assessment, as the assessee has failed to disclose fully and*

*truly all material facts necessary for its assessment in this case in terms of the provisions of Section 147 of the I.T. Act."*

7. Thereafter, the Assessing officer (DCIT-7(3)(1), Mumbai) who had issued notice U/s 148 of the Act to M/s Om Metal Developers (P) Ltd. has dropped the reassessment proceedings vide his order dated 24.12.2016 passed U/s 143(3) r.w.s. 147 of the Act which reads as under:-

*"The reopening proceedings initiated by issuance of notice u/s 148 of the I.T. Act, 1961 dated 31.03.2016 are hereby dropped."*

8. Having dropped the reassessment proceedings in case of M/s Om Metal Developers (P) Ltd which were initiated on the basis of said seized documents as in the case of the assessee company, the Revenue has thus accepted the fact that the company which has actually purchased the land at Hyderabad through a registered sale deed has not made any "on-money" payment of Rs 37 Crores towards the purchase of the said land. Where the said fact has been accepted by the Revenue, the question of funding the on-money by the assessee company, being one of the shareholders in M/s Om Metal Developers (P) Ltd. doesn't arise for consideration and on this ground itself, the impugned reassessment order deserve to be set-aside.

9. As we have noted above, in case of M/s Maheshwari Mega Ventures Ltd. which is one of the shareholders in M/s Om Metal Developers (P) Ltd., similar addition, as in the case of the assessee company, was made by the Assessing Officer vide his order dated

30.12.2011 U/s 143(3) of the Act wherein he has made the addition on account of "on money" towards purchase of land amounting to Rs. 12,14,50,000/-. In the said matter, the Id. CIT(A)-V, Hyderabad vide its order dated 24.12.2012 has since deleted the said addition and which has subsequently been confirmed by the Coordinate Bench in ITA No. 367/Hyd./2013 dated 03.02.2017 and the relevant findings of the Coordinate Bench are contained at para 10 of its order which is reproduced as under:-

*"10. Considered the rival submissions and perused the material facts on record. As understood from the facts, during the survey an agreement of sale was found in the business premises of the assessee, as per which, M/s OMDPL proposed to buy land from 11 vendors. In the above company, the assessee is holding 35% of shares. In a separate search proceedings in Delhi, similar agreement of sale was found in the premises of M/s Shiv-vani group, which is having interest in M/s Metro Management Services Pvt. Ltd. (MMSPL). M/s MMSPL is holding 65% shares in M/s OMDPL. The AO brought to tax the on money payment which was made by M/s OMDPL to the land owners based on the shareholders in M/s OMDPL. AO failed to appreciate that company is an independent entity and distinct person. The action of the company will not have any bearing on the shareholders. AO has no jurisdiction to charge anything in the case of assessee over the dealings of any other person. It is brought on record that on money was paid in the dealings by M/s OMDPL towards the purchase of land, if at all any addition can be made, it can be in the hands of M/s OMDPL and not in the hands of the assessee. It is misconceived idea to charge payment of 'on money'*

*to the shareholders of the company, in which company entered in the transaction. We cannot accept and appreciate the action of the AO. Accordingly, we uphold the findings of the CIT(A) in this regard and dismiss the ground raised by the revenue.”*

10. Therefore, even the Coordinate Bench has not found the addition of on-money acceptable in hands of M/s Maheshwari Mega Ventures Ltd. which is alleged to be paid in respect of the same transaction of purchase of land at Hyderabad. Following the decision of the Coordinate Bench, similar addition in the case of the assessee company deserve to be set-aside.

11. Now coming back to the findings of the Id. CIT(A) in assessee's own case, the Id. CIT(A) has taken note of the development in case of M/s Om Metal Developers (P) Ltd. and M/s Maheshwari Mega Ventures Ltd., as we have noted above, and held that even if it is presumed that the on money payment of Rs. 37 crore was paid for purchase of land at Hyderabad, then action is to be taken in the hands of M/s Om Metal Developers (P) Ltd. and not in the hands of the appellant as M/s Om Metal Developers (P) Ltd. is the registered and real owner of the land at Hyderabad and not the appellant company. It was further held by Id. CIT(A) that the company is a separate legal entity having independent existence from its members. Further, the Id. CIT(A) held that the AO has neither made any enquiries nor brought on record any material which may lead to the conclusion that the shareholder of M/s Om Metal Developers (P) Ltd. included the appellant has made on-money payment for purchase of the land under consideration. It was further

held by him that it is a trite law that suspicion, however strong, it cannot substitute the evidence required for making the addition. Thereafter, referring to the following findings of the Id. CIT(A) in case of M/s Maheshwari Mega Ventures Ltd. (which has subsequently been upheld by the Coordinate Bench as we have noted above), he has deleted the addition stating that the facts of the case under consideration are similar with the facts of the above referred case of M/s Maheshwari Mega Ventures Ltd:

*"6.5 I have gone through the assessment order and the detailed written submissions of the assessee. Ordinarily, any finding of the Assessing Officer shall be based on the material he possesses and conclusion could be drawn emanating from the material available. The available material should indicate the course of conclusion that can be drawn. However, I find from the assessment order that the Assessing Officer had come to a conclusion first and then brought in the available material of fit into the already drawn conclusion-conclusion preceding the available material.*

*6.6 I also found that whatever material was found in possession of the appellant about the land transaction was not considered as incriminating but the material found from the premises of M/s Shiv-vani Group at New Delhi was found to be incriminating and the appellant was confronted with such material found at New Delhi. As contended by the appellant, this material has to be first clarified from the parties directly involved in the transaction, i.e., M/s OMDPL and the vendors. However, no effort appears to have been made in this direction. Any adverse conclusion from a transaction against outside parties, in*

*whatever way these outside parties were connected with the main parties concerned to the transaction, should originate from an independent enquiry being carried out, which was missing in the case on hand. The Assessing Officer had simply concluded that the appellant had paid consideration outside books for purchase of land in the name of a company, in which they had 35% stake holding, on the basis of some scribbling made by other parties and linking their common interest/shareholding ratios in companies. No material evidence was brought out to hold that the appellant had actually invested money in the shareholding of M/s OMDPL outside books or actually paid consideration to the vendors of land on behalf of M/s OMDPL.”*

12. Therefore, the Id. CIT(A) has followed the findings in case of M/s Om Metal Developers (P) Ltd. wherein the proceedings were dropped as the assessment stage itself and in case of M/s Maheshwari Mega Ventures Ltd. wherein similar additions were made U/s 69 of the Act by the Assessing Officer and the Coordinate Bench has upheld the deletion. Therefore, we do not see any infirmity in the said order passed by the Id CIT(A).

13. Now, coming to the transaction document i.e, sale deed executed on 12.02.2008, M/s Om Metal Developers (P) Ltd. has purchased 10 acres of land situated at Hyderabad for a consideration of Rs. 18 crores. The said agreement has been duly registered with the Stamp duty Authority and Stamp duty has been duly paid thereof. The said sale deed has not been disputed by the Revenue either during the assessment proceedings or in the course of proceedings before us.

Under the said agreement, the land has been purchased by M/s Om Metal Developers (P) Ltd. and the consideration has been discharged by M/s Om Metal Developers (P) Ltd. The transaction is also reflected in the books of accounts of M/s Om Metal Developers (P) Ltd. Though the assessment proceedings in case of M/s Om Metal Developers (P) Ltd. were reopened alleging payment of on-money in relation to said land transaction, however, the said reassessment proceedings were dropped at the assessment stage itself by the Assessing Officer by passing the specific order dated 24.12.2016. The said fact, therefore, clearly demonstrate that the transaction for purchase of 10 acres of land was made for consideration of Rs. 18 crores and the said fact has been accepted by the Revenue in the assessment proceedings in the case of the company which has actually purchased the land. Therefore, this fact alone is sufficient to set aside the order of the Assessing officer.

14. Now, coming to the seized document (page 4, Annexure A-1) seized during search and seizure action carried out in Shiv Vani Group of cases at the Residence of Sh. Ramesh Kumar Somani at G-15/6, 2<sup>nd</sup> Floor, Malviya Nagar, New Delhi and office of Shiv Vani Group at F-315, Ground Floor, Lado Sarai, New Delhi, it reads as under:

" Note

<i>10 acre</i>	<i>=50 crore</i>
<i>Earlier paid</i>	<i>=30 crore</i>
<i>Now paid</i>	<i>=20 croe</i>
<i>Brokerage+ registry+misc.</i>	<i><u>=5 crore</u></i>
	<i>55 crore</i>

*Om Metals Developers (p) Ltd.-Registry for 10 acre your share is 5% for 13 acre. excess paid by you out of 2.60 crore shall be refunded to you by Maheshwari within 2 months till then 15% shares have been withhold by us.*

*(Signature)*

*23/04/2008"*

15. As per the Assessing Officer, from the above noting seized during the course of search, it is clear that the reconciliation of payment was made between the shareholders after the execution of registered deed. Further, the Assessing Officer noted that during the recording of statement of Mr. Padam Singhee of Shiv-Vani Group, he has accepted the fact that page 4 of Annexure A-1 was written by Mr. S.K. Jain, a representative of M/s Om Metal Developers (P) Ltd. during discussion with Mr. Ramesh Kumar Somani, Director of M/s Metro Management Services Pvt. Ltd. The Assessing Officer further, noted that on the basis of the said noting, the Investigation Wing, Delhi has concluded that the on-money for purchase of 10 acres of land was paid by the shareholders of M/s Om Metal Developers (P) Ltd. and the assessee company, being one of the shareholders in M/s Om Metal Developers (P) Ltd., it has paid the on-money to the extent of its shareholding.

16. We have given a careful consideration to the above facts and contentions so advanced by the Assessing officer. However, for varied reasons, as we have noted below, we are unable to accede to the said contentions of the Assessing officer. Firstly, we find that the person who has written the aforesaid noting i.e, Mr. S.K. Jain has not been

examined by the Revenue. Secondly, the statement of Mr. Padam Singhee who has vouched for the particulars of the said notings, his statement has also not been produced on record by the Revenue. Thirdly, Mr. Ramesh Kumar Somani at whose premises the particular piece of document was found, he has not been confronted by the Revenue and even his statement has not recorded. Further, the sellers from whom the land has been purchased by M/s Om Metals Developers Pvt Ltd and who would have been the recipient of said on-money, their statements have not been recorded and there is nothing on record which suggest that they have accepted the receipt of on-money by M/s Om Metals Developers Pvt Ltd or through its shareholders. As we have noted above, even in case of M/s Om Metals Developers, the Revenue itself, on appreciation of the said seized document and noting thereon, has accepted the fact that there is no on-money payment in respect of purchase of land. Even on perusal of the said noting of the seized document, we do not find any mention of the assessee company. Therefore, we find that the Assessing officer has solely relied on the findings of the Investigation Wing and has neither made any independent enquiries nor brought on record any material which may lead to the conclusion that assessee company has made on-money payment for purchase of the land under consideration.

17. Therefore, in light of the above discussions and in the entirety of facts and circumstances of the case, we are of the considered view that basis the said noting in the paper seized during the course of search, the addition cannot be made in the hands of the assessee company. In the result, grounds taken by the Revenue are dismissed.

In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 17/01/2019.

Sd/-

(विजय पाल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member  
जयपुर / Jaipur

दिनांक / Dated:- 17/01/2019.

\*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ITO, Ward-2(2), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Om Metal Real Estate Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 606/JP/2017 }

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar