

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील सं. / ITA Nos. 88 & 89/RPR/2016
निर्धारण वर्ष / Assessment Years: 2006-07 & 2007-08**

M/s. Gaurav Promoters & Builders,
A-5/10, Sector-1, Rounak House,
Udaya Society, Tatibandh,
Raipur(CG)
PAN : AAEEFG5313N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle, Civil Lines, Raipur (CG).

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praful Pandse
Revenue by : Shri P.K. Mishra

सुनवाई की तारीख / Date of Hearing : 14.01.2019
घोषणा की तारीख / Date of Pronouncement : 15.01.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the common assessee emanates from
the order of the Ld. CIT(Appeals)-1, Civil Lines, Raipur dated 01.02.2016

for the assessment years 2006-07 & 2007-08 as per the grounds of appeal on record.

ITA No.88/RPR/2016 pertains to assessment year 2006-07 and ITA No.89/RPR/2016 pertains to assessment year 2007-08.

2. The Ld. AR of the assessee at the time of hearing apprised the Bench that the facts and issues in both the cases are similar and basic premise of the contention of the Ld. AR was that the incriminating documents on the basis of which addition was made, was not found in the assessee's premises and also that addition was made without corroborative evidences. These cases were heard together. Since the facts common, issues similar, they are disposed of vide this consolidated order.

We would take ITA No.88/RPR/2016 as lead case.

3. In the assessment order in Para 7 at page 3, it is stated that during the course of search and seizure operation at Talmale Complex, a blue coloured ledger marked as B-3 containing part wise ledger details of cash transactions made for the investment in land by the assessee was seized. Vide question number 6 and 7 of the questionnaire u/s.142(1) of the Act, the assessee was asked to explain as to why the payment related to purchase of land should not be considered as undisclosed investment and suitable addition be made to his total income. In response to this query,

the assessee replied that these papers were found from Talmale Complex which was managed by Late Rajendra Chandrakar who expired 10.12.2006. These papers were not found from the possession and control of the assessee. The assessee also stated that these transactions may have been related to Late Rajendra Chandrakar or their associates. However, the assessee has neither any idea nor any connection with them. The explanation filed by the assessee did not found favour with the Assessing Officer and addition was made.

4. Similarly when the matter travelled upto the First Appellate Authority, the Ld. CIT(Appeals) confirmed the said addition as per the reasons appearing in Para 2.4 page 4 of the order of Ld. CIT(Appeals). That for assessment year 2006-07, the addition of Rs.10,75,000/- was sustained on account of unexplained investment. In the same order, towards later portion of the Para 2.4 of the Ld. CIT(Appeals)'s order, for assessment year 2007-08, similar additions of Rs.12,64,970/- was upheld by the Ld. CIT(Appeals).

5. The Ld. AR of the assessee vehemently argued that seized documents were found from the Talmale Complex which is not the address of the assessee. The address of the assessee is Katora Talab as is evident in the returns filed before the Department copies of which are filed in the

paper book at pages 46 to 52. The Ld. AR submitted that documents found, was from other premises (Talmale Complex) with which the assessee does not have any connection, therefore the addition cannot be sustained on the basis of such documents. The Ld. AR further relied on the order of Raipur Bench of the Tribunal in ITA No.126 to 132/BLPR/2011 in the case of ACIT-1(1), Central Revenue Building, Civil Lines, Chhattisgarh Vs. Shri Javed Ali Pradhan for assessment year 2001-02 to 2007-08. Placing reliance on the said decision, the Ld. AR submitted that without any corroborative evidences, on the basis of loose sheets/documents found in the premises of the assessee (in this case it is also not the assessee's premises), addition cannot be made. In this decision the Tribunal had relied on the Hon'ble Apex Court decision in the case of Central Bureau Of Investigation Vs. V.C. Shukla & Ors, 1998 (3) SCC 410.

6. On the other hand, Ld. DR has placed strong reliance on the orders of the sub-ordinate Authorities.

7. We have perused the case records, heard the rival contentions and considered the judicial pronouncements placed before us. We have also perused the copies of return filed before us in the paper book. We find that the address given to the Revenue with regard to the assessee is Katora Talab that is not disputed by the Department. The incriminating

documents were found in Talmale Complex which is managed by Late Rajendra Chandrakar who in no way has any connection with the assessee. The Ld. DR did not bring any material on record to demonstrate that there is business nexus of Talmale Complex where the documents were found and that of the assessee. Rather, it is absolutely clear that the business place of the assessee is Katora Talab whereas the seized ledger account based on which the Assessing Officer made the addition was found in Talmale Complex premises. Further, regarding the corroborating evidences, we take guidance from the decision of the Hon' Apex Court in the case of Central Bureau of Investigation Vs. V.C. Shukla & Ors (supra.) which has been also referred to by our Co-ordinate Bench of the Tribunal in ACIT-1, Central Revenue Building, Civil Lines, Chhattisgarh Vs. Shri Javed Ali Pradhan (supra.). The relevant observation of the Tribunal is as under:

“The Hon’ble Supreme Court in the case of Central Bureau of Investigation Vs. V. C Shukla & Ors, 1998 (3) SSC 410 held that loose sheets are not admissible in evidence and entries in such loose sheets are not even a prima facie evidence. Still further, the Hon’ble Supreme Court in the case of Common Cause (A Registered Society) Vs. Union of India [2017] 77 taxmann.com 245 (SC) has held that :

i) Entries in loose papers/sheets are irrelevant and not admissible under section 34 of the Evidence Act. It is only where the entries are in the books of accounts regularly kept depending on the nature of occupation, that those are admissible.

ii) As to the value of entries in the books of account, such statement shall not alone be sufficient evidence to charge any person with liability , even if they are relevant and admissible and that they are only corroborative evidence. Even then independent evidence is

necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

iii) The meaning of account book would be spiral note book/pad but not loose papers.

iv) Entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another.

v) Even if books of account are regularly kept in the ordinary course of business the entries therein shall not alone be sufficient evidence to charge any person with liability. It is not enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts.”

In absence of any material brought before us to show either than the assessee has made actually any investment or the assessee had actually sold any asset/investment, We do not find any good reason to interfere with the order of the Ld. CIT(A) which is confirmed and the appeals of the Revenue are dismissed.”

8. In the present case, it is undisputed that the additions are made merely on the basis of ledger account found in the Talmale Complex which does not pertain to the assessee. The assessee has no business connection with Talmale Complex nor in any way connected. There is neither any corroborative evidence found during the course of search nor any evidence brought on record before us at the time of hearing by the Ld. DR to show that the transactions noted in those papers were actually done by the assessee. The Revenue also could not place any evidence regarding purchasing of land and to whom the payment has been made for the

purchase of land, if at all, the land is purchased then what are the details of such land. No factual evidence to corroborate the ledger account, has been placed before us by the Revenue.

9. Respectfully, following the decision of the Hon Apex Court and on examination of facts on record, we set aside the order of the Ld. CIT(A) and allow the appeal of the assessee.

10. In the result, the appeal of the assessee in ITA No.88/RPR/2016 is allowed.

11. That with similar facts and common issues in assessment year 2007-08 and in respect of similar additions made in ITA No.89/RPR/2016, our decision in ITA No.88/RPR/2016 shall apply herein also and accordingly, we set aside the order of the Ld. CIT(A) and allow the appeal of the assessee for assessment year 2007-08.

12. In the combined result, both the appeals of the assessee for assessment years 2006-07 and 2007-08 are allowed.

Order pronounced on 15th day of January, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 15th January, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Raipur (CG).
4. The Pr. CIT-1, Raipur (CG)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / The DR, ITAT, Raipur Bench, Raipur.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	14.01.2019	Sr.PS/PS
2	Draft placed before author	15.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		