

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
श्रीमती दिवा सिंह, न्यायिकसदस्यतथाश्रीओ.पी.मीना, लेखासदस्यकेसमक्ष
BEFORE SMT.DIVA SINGH, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.2078/AHD/2016

निर्धारणवर्ष/Assessment Year : 2007-08

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| Alpesh Babubhai Panchal, Shop No.3, Hojiwala Shopping Center, Sachin Udhyognagar, Surat-394230 [PAN: AQTPP 1775 A] | Vs. | The Income Tax Officer, Ward 2 (3) (1), Majura Gate, Surat. |
| अपीलार्थी Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारितीकीओरसे /Assessee by | Shri Rashesh Shah - CA |
| राजस्वकीओरसे /Revenue by | Shri P.S.Choudhary - Sr.DR |

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| सुनवाईकीतारीख/ Date of hearing: | 07.01.2019 |
| उद्घोषणाकीतारीख/Pronouncement on | 10.01.2019 |

आदेश /O R D E R

PER O.P.MEENA, AM:

1. This appeal filed by the Assessee is directed against the order of the learned Commissioner of Income Tax (Appeals)-II, Surat dated 02.05.2016 for the assessment year 2007-08.

2. The ground raised by the assessee read as under :

1. "On the facts and circumstances of the case as well as law on the subject, the assessing officer has erred in assuming jurisdiction u/s 147 by issuing notice u/s 148 of the I.T Act, 1961.

2. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (appeals) has erred in confirming the action of the assessing officer in making addition of Rs.6,50,000/- on account of unaccounted investment."

3. Grounds No. 1 relating to assumption of jurisdiction u/s 147 by issuing notice u/s 148 of the Act has not been placed before us. Therefore, the same is treated as dismissed as not placed.

4. Ground No. 2 relates to confirming the action of A.O in making addition of Rs.6, 50,000/- on account of the unaccounted investment.

5. Succinct facts are that a CD was impounded from the office of Shri. Turmish B Kaniya & Smt. Meena T Kaniya, during the course of such action in their case. It was seen from the CD that the assessee had purchased an immovable property at Revenue Survey No.56, 57/1, Block No. 63, Plot no. 274, Village: Pardi Kande, Tal: Choryasi by executing a "Sathakhat" for a Rs.10.51 lakhs. The A.O has received this information from the investigation wing. The A.O noticed that as per as registered deed of purchase dated 13.02.2008, the assessee has executed the deed for a consideration of Rs. 4 Lakhs. Whereas, the "Sathakhat" copy found in the CD has reflected cash payment of Rs.6, 50,000/- and balance Rs. 4 lakh as payable. Accordingly, the A.O has made the addition of Rs.6, 50,000/- as unaccounted investment in the hand of the assessee.

6. The Assessee has carried the matter before the CIT (A) wherein it was submitted that the appellant is an electrician and working as electric repairing like Motor Rewinding and other misc. on very small scale basis. He has earned income from that activity which was duly offered by him in his return of income filed for the subject assessment year. The appellant had purchased the said property vide purchase

agreement dated 13.02.2008 for consideration of Rs.4 lakh. It was further claimed that this soft copy of “Satakhat” which is unsigned, undated and unstamped cannot be relied for making addition. Further, Shri. T. Kaniya in his statement recorded u/s 131 of the Act dated 29.01.2015 could not explain as how the “Satakhat” came to his computer and accordingly he is not aware of the said transaction. The purchase deed registered on 13.02.2008 was duly prepared by Shri. Chandrasinh I. Vanshia, an advocate of the appellant and said fact is reconciled with the name of the advocate stamped on a copy of stamp paper forming part of registered purchase agreement. Further, the CIT (A) confirmed the addition made by the A.O on the ground that the fact of the payments shown in the “Satakhat” matches the sale deed which was finally executed and registered. Therefore, relying on such decisions the CIT (A) upheld the addition made by the A.O.

7. Being aggrieved the assessee has filed this appeal before this Tribunal. The learned counsel for the assessee contended that no presumption could be drawn for the soft copy of “Satakhat” obtained from Shri.Turmish Kaniya to whom the assessee had not any dealings. Further, this “Satakhat” is unsigned, unstamped and undated whereas the assessee has registered the purchase agreement on 13.02.2008 which was duly prepared by Shri. Chandrasinh Vansia, an advocate of the appellant. Further, the assessee was not allowed to cross-examine Mr. Turmish Kaniya, nor there is any statement of Turmish Kaniya in which he had made any adverse remarks in respect of the purchase made by the assessee.

8. Contrary to above, the learned senior DR, submitted that the contents of the soft copy of “Satakhat” matches with the contents of the registered sale deed, therefore, CIT(A) was right in confirming the action of the A.O.

9. We have heard the rival submission and pursued material on record. We find that this soft copy found in the CD of Shri. Turmish Kaniya was neither signed, dated nor stamped; therefore, it has no evidentiary value. It is also seen that Shri. Turmish Kaniya is not the advocate of the assessee who was connected with the purchase transaction carried out by the assessee. It is seen from the registered purchase deed, registered on 13.02.2008 that the same was duly prepared by Shri. Chandrasinh I. Vansia, an advocate of the assessee. This fact is also reconciled with the name of advocate, on a stamp on the copy of a paper forming part of the registered purchase agreement. Therefore, no addition can be made on the basis of undated, unsigned, unstamped soft copy of “Satakhat” found on computer CD from a person to whom the assessee had no dealings ever. Therefore, the addition made on the basis of such “Satakhat” which is undated, not signed by the buyer, not by the seller nor by witnesses is required to be deleted. Further, the facts reveal that the registered deed executed by the assessee by Shri. Chandrasinh I. Vansia, an independent advocate of the appellant wherein the consideration paid is shown at Rs.4 lakh only. Therefore, in such circumstances the addition is made without any basis, and no corroborated evidences are placed on record. Further, A.O has not allowed due opportunity to the assessee to examine. The third party from whose possession the copy of “Satakhat” was obtained. In

view of both the facts and circumstances, the addition of Rs.6, 50,000/- sustained by the CIT (A) is deleted. Therefore, Order No.2 is allowed.

10. In the result, the appeal of the assessee is partly allowed.

11. The order pronounced in the open court on 10.01.2019.

Sd/-

(श्रीमती दिवा सिंह /DIVA SINGH)

(न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 10 January, 2019/ Subhankar Samanta, PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

Sd/-

(ओ.पी.मीना /O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER)

By order

/ / TRUE COPY / /

Assistant Registrar, Surat