

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.924/PUN/2015
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Nandgopal Nanak
Krishnani,
(Prop. N.N.K. Construction),
Office No.106,
Parmar Trade Centre,
Sadhuwaswani Chowk,
Camp, Pune – 411001
PAN : AJHPK5906D

Vs. DCIT,
Central Circle-2(1),
Pune

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Kishor Phadke
Shri Pankaj Garg &
Shri Sudhendu Das

Date of hearing 06-03-2019
Date of pronouncement 07-03-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal filed by the assessee is directed against the order passed by the CIT(A)-12, Pune on 13-03-2015 in relation to the assessment year 2010-11.

2. The first issue raised in this appeal is against the confirmation of addition of Rs.51 lakh.

3. Briefly stated, the facts of the case, as recorded in assessment order are that a search in the case of Shraddha Group, engaged in carrying out irrigation contracts, was conducted on 08-09-2010. Pursuant to it, a consequential search was carried out in the cases of the assessee, as a proprietor of NNK Constructions, Uniglory Infra Projects Pvt. Ltd., Shri Sopan D. Patil and Devgiri Engineering vide a single warrant on 17-09-2010 at the premises located at Room No.102 and 103, B-Wing, Parmar Trade Centre, Sadhu Vaswani Chowk, Pune – 01. The Assessing Officer (AO) has recorded that Uniglory Infra Projects Pvt. Ltd. is a sub-contractor of Shraddha Group and Shri Sushil Agarwal of Uniglory Infra Projects Pvt. Ltd. is associated with the assessee-NNK Constructions, Devgiri Engineering and Shri Sopan D. Patil in some way or the other. A bundle of loose papers containing 33 pages was seized from the searched premises, that is, 102-103, B-wing, Parmar Trade Centre, Pune, which is the office of the assessee. Sh. Sopan D. Patil got a contract in Sangamner from the Irrigation Department and such work of Sangamner Project was sub-contracted, *inter alia*, to the assessee. The AO issued notice u/s.153A of the Act, in response to which the assessee furnished a return declaring total income of Rs.3,15,50,670/-, which was subsequently revised to Rs.6,25,41,874/-. The additional income

of Rs.3,09,91,204/- was mainly on account of bogus purchases. The AO completed the assessment making addition, *inter alia*, of Rs.51 lakh on account of 'Labour expenses' mentioned on page 24 of the seized Bundle No.1. The assessee remained unsuccessful before the Id. CIT(A). Aggrieved by the same, the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. The addition of Rs.51 lakh has been made on the basis of seized document No.24 which, *inter alia*, recorded "Labour payment" of Rs.51 lakh. This page has total of six transactions totaling Rs.3,05,39,481/-. Apart from that, page 26 also contains a list of certain items totalling Rs.4.69 crore. Instantly, we are concerned with the amount shown as "Labour payment" worth Rs.51 lakh on page 24 of the seized document. The case of the Revenue is that the assessee made payments to Sh. Sushil Agarwal for securing contracts from the Maharashtra Government in an illegal way and recorded such amounts in the books of account through accommodation entries, *inter alia*, "Labour payment" of Rs.51 lakh. On the other hand, the case of the assessee is that the items mentioned on page 24 and 26 of the seized documents contain certain entries which are in the nature of

accommodation entries but this Rs.51 lakh was paid directly by Sh. Sushil Agarwal without involvement of the assessee. In nutshell, the position is that the assessee made payment to Sh. Sushil Agarwal for procuring contracts from Maharashtra Government in an illegal manner and in order to adjust such payments in the books of account, the assessee inflated expenses. The dispute is about the sum of Rs.51 lakh which has been shown as “Labour payment” on page 24 of the seized documents, which is admittedly a chart containing a list of payments made by the assessee. It is not understandable as to how the assessee can claim that this single sum of Rs.51 lakh was paid directly by Sh. Sushil Agarwal as bribe and not by him, when the same is actually recorded on the document seized from the assessee and the remaining transactions are admittedly of the assessee. The fact of this amount passing over as bribe to Maharashtra Government authorities is not disputed. Once it is found that this sum of Rs.51 lakh was admittedly paid, the same is liable to be charged to tax in the hands of the assessee as it was found recorded along with other entries, which admittedly pertain to the assessee and furthermore there is no evidence to show that this Rs.51 lakh was paid by Sh. Sushil Agarwal. We, therefore, uphold the addition of Rs.51 lakh sustained in the first appeal.

5. The only other ground is against the confirmation of addition of Rs.60,74,000/-.

6. Facts concerning this ground are that a list of suspected hawala dealers, Mumbai, who had given accommodation entries to several customers was sent by Sales Tax Department (VAT) of Maharashtra Government to the Income-tax Department. This list contained a concern named, Tube India, placed at Sl.No.1119. The assessee had also shown to have made purchases from this concern. As the assessee could not produce transport bills, delivery challans, weightment slips and entries in inward registers at site in respect of such purchases totaling Rs.60.74 lakh, the AO recorded in the assessment order that assessee made disclosure of Rs.60.74 lakh as additional income for the year. He, therefore, made addition of the said amount, which came to be sustained in the first appeal. Now, the assessee is aggrieved by such an addition.

7. We have heard both the sides and gone through the relevant material on record. The AO has categorically recorded that when the assessee was confronted with accommodation entries made through hawala dealers, he disclosed a sum of Rs.60.74 lakh as additional income. A copy of the letter offering such additional

income dated 04-03-2013 has been placed at page 41 of the paper book. It has been mentioned therein that the assessee purchased and used material at its work sites but movement of material was misplaced. It further records that “As such we are submitting entire purchases amounting to Rs.60,74,186/- during financial year ended on 31-03-2010 (A.Y. 2010-11) as disallowance u/s.37(1) of the Income-tax Act, 1961”. In view of the above categorical admission by the assessee, there remains nothing which can be done further in this regard. The Pune Benches of the Tribunal in M/s. Chhabi Electricals Pvt. Ltd. and others Vs. DCIT vide its order dated 28-04-2017 in ITA No.795/PUN/2014 and others, has divided such cases of the beneficiaries of accommodation entries into certain categories. One of the categories talks of 100% addition of the amount of bogus purchases, whereas in other category, it has been held that 10% over and above the normal GP rate should be added. Since the assessee has himself offered 100% of the amount of purchases for taxation during the course of assessment proceedings, which is one of the categories in the case of M/s. Chhabi Electricals Pvt. Ltd. (supra), we hold that no further relief can be granted to the assessee in this regard.

8. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 07th March, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th March, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The CIT Central, Pune

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-03-2019	Sr.PS
2.	Draft placed before author	06-03-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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