

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.2061/Del./2015
Assessment Year 2009-2010

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| Smt. Kundan Singh, C-6 & 7/6529, Vasant Kunj, New Delhi. PAN AAXPS1361F | vs., | The ACIT, Central Circle-25, New Delhi. |
| (Appellant) | | (Respondent) |

ITA.No.1797/Del./2015
Assessment Year 2009-2010

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| The ACIT, Central Circle-4 [erstwhile CC-25], Room No.331, ARA Centre, Jhandewalan Extn., New Delhi. | vs., | Smt. Kundan Singh, C-6 & 7/6529, Vasant Kunj, New Delhi. PAN AAXPS1361F |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Gautam Jain, Advocate. |
| For Revenue : | Shri J.K. Mishra, CIT_D.R. |

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| Date of Hearing : | 04.04.2019 |
| Date of Pronouncement : | 29.04.2019 |

ORDER**PER BHAVNESH SAINI, J.M.**

Both the cross-appeals are directed against the Order of Ld. CIT(A)-23, New Delhi, Dated 31.01.2015, for the A.Y. 2009-2010.

2. We have heard the Learned Representatives of both the parties and perused the material available on record.

3. The Revenue has filed the appeal on the following grounds :

- “1. The order of the CIT(A) is not correct in law and facts.*
- 2. On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.4,85,74,816/- out of total addition of Rs.5,35,74,816/- made by AO on account of unexplained investment in immovable property at Mehrauli.*

3. *On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs.14,55,000/- made by AO on account of unexplained investment in immovable property at Arya Nagar.”*

4. The assessee has filed the appeal on the following grounds :
 1. *“That the Learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding an addition of Rs. 50,00,000/- under section 69B of the Act.*
 - 1.1. *That the Learned Commissioner of Income Tax (Appeals) while upholding the addition has overlooked documentary evidence placed on record by the appellant to show that the investment made by the assessee was duly explained out of the funds available with the appellant and therefore, addition sustained is not in accordance with law.*

1.2. *That the finding of the Learned Commissioner of Income Tax (Appeals) that “since amount of Rs.50,00,000/- is admitted by the appellant to be paid, a reasonable conclusion can be made that such cash was never received back and forms part of the consideration” is factually and legally misconceived and therefore, untenable.”*

5. The facts of the case are that search and seizure operations under section 132 were carried out in the case of Smt. Kundan Singh belonging to Ashok Kumar Singh group on 18.10.2011. Following the search, notice under section 153A was issued to the assessee. The assessee, in response thereto, filed the return, declaring income at Rs.37,78,810/- During the relevant year, income is derived from salary, income from Business and Profession and income from other sources. The A.O. issued statutory notices and called for explanation of assessee. The assessee filed requisite details and documents before A.O. The A.O. as regards the investment in immovable properties noted as under :

4. Investment in Immovable properties at Village Mehrauli ;

I. Pages 31-35 of Annexure A-1, found and seized during the search and seizure operation conducted at assessee premises on 18.10.2011, it is noted that a sale agreement has been entered between Smt. Kundan Singh and Sh. Arvind Chandela S/o Late Sh. Surajmal R/o WZ-283/12, West Block, Vishnu Garden, New Delhi for transaction with regard to the agriculture land measuring one bigha (1008 sq. yards approx.) bearing part of Khasra No.31/7 (0-15) and 31/14 (0-5) situated in the Revenue Estate of Village Mehrauli, New Delhi for a total consideration of Rs.2,97,87,408/-. As per these agreement you have paid following amounts to the seller:

- (i) Rs. 5,00,000/- in cash on 3.10.2008*
- (ii) Rs.20,00,000/-in cash on 6.10.2008*
- (iii) Rs. 5,00,000/- vide cheque No.200880 dated 15.10.2008 drawn on Syndicate Bank.*

The balance and final payment of Rs.2,67,87,408/- was promised to paid before 45 days from 3.10.2008.

- ii. *Vide Pages 36-40 of Annexure A-1, found and seized during the search and seizure operation conducted at your premises on it is noted that a sale agreement has been entered between Smt. Kundan Singh and Sh. Sandeep Kumar Singh S/o Sh. Pratap Singh R/o Village Kishan Garh, Mehrauli, New Delhi for transaction with regard to the agriculture land measuring one bigha (1008 sq. yards approx.) bearing part of Khasra No.31/7 (0-18) and 31/14 (0-2) situated in the Revenue Estate of Village Mehrauli, New Delhi for a total consideration of Rs.2,97,87,408/-. As per these agreement you have paid following amounts to the seller :*

(i) Rs. 5,00,000/- in cash on 3.10.2008

(ii) Rs.20,00,000/-in cash on 6.10.2008

(iii) *Rs. 5,00,000/- vide cheque No.200879 dated 15.10.2008 drawn on Syndicate Bank, R. K. Puram, New Delhi.*

The balance and final payment of Rs.2,67,87,408 was promised to paid before 45 days from 3.10.2008.”

5.1. The assessee was asked to furnish full details of the above transactions along with documentary evidences as under :

- (I) Date, amount, mode of payment of balance amount.
- (II) Date of execution of sale deed
- (III) Source of investment made

5.2. The assessee submitted before the A.O. that agreement to sell value of Rs.297.87 lacs as per page no.A-1/31-35 and pages 36-40 have not been executed by the assessee. These lands were purchased for Rs.31 lakhs and Rs.29 lakhs on 19.01.2009. The statement of Sh. Ashok Kumar Singh, Husband of Assessee was recorded on 16.03.2012 stating therein that the above seized paper

found in search contain copy of agreement to sell executed with seller by the assessee for consideration of Rs.2.97 crores each in respect of purchase of land measuring 1008 sq. yard baring part of Khasra No.31/07 and 31/14, village Mehrauli, New Delhi. It was further stated by him that deal could not be materialized since the sellers defrauded the buyer by stating the incorrect facts and the agreement to sell stands cancelled and void. But later on the same land was purchased by assessee in the same financial year.

5.3. The A.O. asked the assessee to furnish details of investment in purchase of immovable property, in which the A.O. intimated that as per the agreement the total sale consideration of both the land measuring 1008 sq. yard each in Village Mehrauli comes to Rs.5.95 crores. (2,97,87,408/- each). However, the sale deed of two lands were executed at Rs.60 lakhs, as against the actual consideration mentioned in the agreement . Assessee was, therefore, required to explain as to why the excess amount of Rs.5.35 crores paid in cash above of the said deal as per

agreement should not be considered as income of assessee from undisclosed sources.

5.4. The assessee submitted reply before A.O. which is reproduced in the assessment order in which the assessee briefly explained that assessee has paid only Rs.60 lakhs. The aforesaid agreement to sell was not materialized and not acted upon between the parties. It was submitted that two years have lapsed since the said statement has been recorded and where assessee had tendered an explanation that such agreement was not acted upon. However till date no contrary material to the said explanation has been brought on record. It was submitted that proposed addition is without any basis, illegal and invalid. During the course of search, no evidence was found to show assessee made payment of money to the extent of Rs.5.95 crores. Since no evidence was found during the course of search of making any payment in cash, therefore, addition is wholly unjustified. It was further submitted that proposed amount was more than ten times of the market value, therefore, said agreement was cancelled. It was submitted that even today

the circle rate of the aforesaid land is Rs.53 lakhs per acre and accordingly, sale consideration of Rs.60 lakhs is more than the circle rate. Valuation Report of the same was also filed to show that consideration as per the sale deed was fully justified which was the fair market value. The assessee also pleaded before A.O. that in case, any adverse material comes to his notice, assessee may be confronted for the same, so as to rebut the allegation of the Department. The assessee also relied upon various decisions in support of the contention that addition is wholly unjustified. The statement of Shri Ashok Kumar Singh, Husband of the Assessee and Seller were recorded at the time of assessment and after search in which they have denied to have executed agreement for a consideration of Rs.2,.97 crores each for two properties for the land measuring 1008 sq. yards. It was also stated that the land falls in agriculture zone, hence, deal was cancelled because in the agricultural land, no construction could be raised. Ultimately, later on, the said agricultural land was purchased at fair market value of Rs.60 lakhs in total for which sale deed have been executed.

5.5. The A.O. reproduced some part of the agreement and sale deed in the assessment order to show that cheque of Rs.5 lakhs each mentioned in the agreement to sell is the same amount which is mentioned in the sale deed. Therefore, if the agreement was cancelled, the same two cheques could not be mentioned in the sale deed. A.O, therefore, noted that there is misrepresentation and suppression of the facts with regard to value of the property. The A.O. noted that initially agreement to sell was executed between assessee and Shri Arvind Chandela, Shri Sandeep Kumar Singh through which, value was fixed at Rs.2.97 crores each, but, later on, sale deed have been executed for lesser amount. Therefore, it is an afterthought just to avoid the liability of the tax. The A.O. therefore, found that the deal mentioned in the agreement have been materialized and the total consideration of the purchase as per the agreement to sell comes to Rs.5,95,74,816/- (i.e., Rs.2,97,87,408/- each). However, the sale deed of the two lands have been executed at Rs.60 lakhs only. Therefore, excess amount of Rs.5,35,74,816/- is paid in cash in

respect of the aforesaid transaction which were treated as assessee's income from undisclosed sources. The addition of Rs. 5,35,74,816/- was accordingly made.

5.6. The A.O. further noted that assessee has made investment in purchase of nine plots at Aaya Nagar, Delhi, for a consideration of Rs.14,55,000/-. The assessee was asked to explain source of the investments in these plots. The perusal of the reply of the assessee reveal that details of the properties purchased was furnished by the assessee along with description of the properties. No source of investment was furnished by assessee. In the absence of the details, A.O. considered the same as income of assessee from undisclosed source and made addition of Rs.14,55,000/-.

6. Both the additions were challenged before the Ld. CIT(A). The written submissions of the assessee are reproduced in the appellate order, in which the assessee briefly reiterated the submissions made before A.O. and also briefly explained that statement of her husband Shri Ashok Kumar Singh was recorded on 16.03.2012 by ADIT, (Inv.),

New Delhi. He was shown seized agreements, to which, he has replied that the impugned lands were agricultural lands wherein no construction work can be done. The seller has defrauded us by selling such property concealing the fact that the property is covered by agricultural zone in which there cannot be any construction. It was, therefore, decided to cancel the said agreement which was never acted upon by the party. Thus, the deal was not materialized. Till date, no contrary material has been brought on record against the assessee. The assessee also referred to statements of seller Shri Sandeep Kumar Singh and Shri Arvind Chandela recorded by Investigation Wing in which Shri Sandeep Kumar Singh denied his signature on the agreement to sell as well as denied to have received any consideration over and above what is mentioned in the sale deed. Similarly, Shri Arvind Chandela refused to have executed the agreement to sell or to have received any cash over and above what is recorded in the sale deed. It is, thus, evident that the above sellers have denied receipt of any sum stated in the agreement and thus accepted that transactions of

sale have been recorded through sale deeds for a sum of Rs.60 lakhs only. The assessee relied upon decision of the Hon'ble Delhi High Court in the case of CIT vs. Ved Prakash 305 ITR 245 in which it was held that "no addition is tenable in view of non-availability of the corroborative evidence. In view of these facts, it was necessary for A.O. to bring some corroborative evidences on record before making the addition against the assessee. The sale deed clearly shows that amount is paid by assessee through banking channel and thus, the contents of sale deed cannot be disregarded. In support of this proposition, assessee relied upon Judgment of Hon'ble Kerala High Court in the case of CIT vs. Smt. K.C. Agnes (2003) 262 ITR 354 (Kerala), Judgment of Hon'ble Punjab & Haryana High Court in the case of Paramjit Singh vs. ITO (2010) 323 ITR 588 (P & H), Judgment of Hon'ble Delhi High Court in the case of CIT vs. Shakuntala Devi 316 ITR 46 (Del.), Judgment of Hon'ble Supreme Court in the case of CIT, Salem vs. P.V. Kalyanasundaram (2007) 294 ITR 49 (SC) and Order of ITAT, Chandigarh Bench in the case of Rajdeep Builders vs.

ACIT 52 SOT 62 (Chd.). Assessee, therefore, pleaded that no such addition could be made and no adverse inference could be drawn against the assessee. It was further pleaded that the circle rate of the impugned land is lesser than the amount mentioned in the sale deed. Notification to that effect was also filed to show that assessee executed sale deed at the fair market price. Since time was the essence of the agreement to sell, it was never complied with, therefore, such agreement cannot be relied upon. The A.O. did not make any further enquiry against the assessee before making any addition against the assessee. The assessee, then, sum-up the submissions by saying that the statement of the husband of the assessee shows that no sum was invested other than what is stated in the sale deed. The seller have denied any investment made over and above what is stated in the sale deed. The amount as per the sale deed was according to the circle rate. The valuation report have not been disputed by A.O. The assessee paid Rs.50 lakhs through the cash book maintained by the assessee. No direct or indirect evidence have been brought on record

about the payment of any on money in cash. No credible evidence have been brought on record to dispute the contents of the sale deed. The burden upon assessee have been discharged to prove the apparent consideration paid by the assessee. The report of the Inspector is not admissible in evidence which was also not confronted to the assessee before making any addition against the assessee. The assessee relied upon Judgment of the Honble Supreme Court in the case of Kishan Chand Chellaram vs. CIT 125 ITR 713 (SC) and Judgment of Hon'ble Delhi High Court in the case of CIT vs. SMC Share Broker Ltd., 288 ITR 345 (Del.) and Judgment of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Lal Singh 325 ITR 588 (P&H). The Ld. CIT(A) considering the submissions of the assessee and material on record, deleted the addition of Rs.4,85,74,816/-, however, maintained the addition of Rs.50 lakhs. The findings of the Ld. CIT(A) in paras 4.3 to 4.7 of the Order are reproduced as under :

*“4.3. I have carefully considered the assessment order,
the submissions made; and examined the*

documents filed and also weighed the evidence on record. The seized agreements to sell are no doubt evidence indicating the agreed consideration. The question here, however, is whether such agreement was acted upon and the agreed amount was actually paid to the two sellers of the properties purchased by the appellant. It is extremely relevant that the search was conducted on 18.10.2011 nearly three years after the agreements to sell and registration of properties. No statement was recorded in the matter at the time of search when the evidence was first collected. The first statement in the matter was recorded in the post search inquiry by the ADIT on 16.03.2012, wherein in his answer to question no.4 Sh. Ashok Kumar Singh, husband of the appellant, stated that the said agreements dated 03.10.2008 were cancelled and the advance given to the sellers was received back. This fact the AO has disbelieved for the reason that the said

statement was contrary to the fact that these properties had been finally registered in the name of the appellant soon thereafter on 19.01.2009. On being pointed out about this contradiction, the appellant vide here reply dated 24.03.2014 submitted before the AO that as no evidence was found to indicate any payment to the sellers over and above the registered amounts, for which evidence was found in the same search, it could not be concluded that the agreements to sell mentioning the consideration of Rs.2,97,87,408/- each were ever acted upon and, thus, there was no contradiction in the statement made by her husband before the ADIT. I also find that statement of one of the sellers Sh. Sandeep Kumar Singh was recorded on the same date wherein in his answer to question no.5 he denied that the signature on the document was his and in his answer to question no.5 he further denied having signed any agreement before execution of the sale

deed. I further find that statement of the other seller Sh. Arvind Chandela was recorded during the assessment proceedings on 24.03.2014 wherein in his answer to question no.5 he denied any knowledge of the said agreement to sell and admitted having received only Rs.5,00,000/- by cheque as per the said agreement.

4.4. The appellant, on the other hand had adduced evidence being valuation reports (dated 04.03.2014) of MCD registered surveyor -cum- valuer, quoting circle rates of agricultural hind in the said area at Rs.53,00,000/ per acre, stating the valuation of one plot to be Rs.30,99,000/- and the other plot to be Rs.28,97,400/- as on the date of registration of the said properties. The said valuation report remains uncontroverted. The only other evidence mentioned in the assessment order is that local enquiry by the income-tax inspector indicating that the price of land in Mehrauli area was Rs.3 crore for a plot of 1008 sq. yd. It is not

forthcoming from the assessment order as to what enquiry was made and whether the contents of the said enquiry report were made available to the appellant.

4.5. *There is no evidence to establish that the amount of Rs.5,35,74,816/- was paid by the appellant to the sellers, in cash or by cheques. The enquiry made by the circle inspector, if any, is contemporaneous and does not establish that the market value of the land was Rs.3 crore each in late-2008 / early-2009. The valuation reports and the circle rates prescribed by the registering authority are contrary to the conclusions reached by the AO and support (he claim of die appellant. In the circumstances, the addition of Rs.5,35,74,816/- cannot be legally sustained and is deleted.*

4.6. *There is no evidence that any amount other than the amounts specifically mentioned in the*

agreements to sell and also mentioned in the registered sale deeds was paid by the appellant to the two sellers. However, the agreements to sell, Appeal No.173/14-15 though denied by the two sellers, are admitted by the appellant. Therefore, the fact at the amount of Rs.50,00,000/- was paid in cash (Rs.25,00,000/- each) stands admitted. The husband of the appellant claimed before ADIT that the agreements were not acted upon and the amounts advanced were received back. Fact remains that the agreements were eventually acted upon and the sale deeds were duly registered. Fact also remains that the amounts of Rs.5,00,000/- each paid by cheques mentioned as in the agreements to sell were also mentioned in the registered sale deeds and formed part of the consideration paid by the appellant. Thus, admittedly, these amounts of Rs.5,00,000/- each were never received back by the appellant and form part of the final payment. In all, the

consideration admitted paid by the appellant amounted to Rs.25,00,000/- each in cash as per the agreements to sell; Rs.5,00,000/- each by cheques as per the agreements to sell; and additional Rs.25,00,000/- each as per the registered sale deeds. Thus, the total consideration for each plot paid by the appellant was Rs.55,00,000/-. The sellers have denied receipt of any cash, but that cannot be of any help to the appellant as appellant has admitted the payment of the above amounts, including the cash component. The claim of the appellant is that she paid but received back the cash and accordingly entries of credit and debit were duly recorded in the books of appellant's proprietorship. However, in view of denials by the two sellers regarding any receipt of cash, the fact of receipt back of cash amounting to Rs.50,00,000/- by the appellant is not established being disputed book entries in the accounts. Further, since the amount of Rs.50,00,000/- is admitted by the appellant to have been paid, a

reasonable conclusion can be made that the said cash was never received back and forms part of the consideration. Accordingly, I hold that the total consideration for the said two plots of land is Rs. 1,10,00,000/- (Rs.55,00,000/- each) and the amount of Rs.50,00,000/- paid in cash by the appellant is unexplained investment in the said properties by the appellant. I direct the AO to bring the aforesaid amount of Rs.50,00,000/- to tax u/s 69B of the Act.

4.7. In effect, the appellant gets relief of Rs.4,85,74,816/-. This ground of appeal is decided in these terms.”

7. Both the parties in appeal on the above grounds of appeal.

8. The Ld. CIT(A) as regards addition of Rs.14,55,000/-, reproduced the written submissions of the assessee in the impugned order, in which, the assessee explained the investments made in the purchase of the

plots. Copy of the Purchase Deed with bank statement were furnished. The assessee filed details of mode of payment supported by the documents and the bank statements. The assessee submitted that entire consideration have been paid by account payee cheques out of the bank account and bank account has been placed on record, therefore, no addition can be made. The Ld. CIT(A) noted that assessee runs a proprietorship business and maintains regular books of accounts, which had duly audited and income from such other business is regularly disclosed by the assessee in the return of income filed by her and due taxes paid thereon. The payments were made out of the said disclosed sources of the assessee and this fact has not been questioned or controverted. The details of payments made by cheque or cash were furnished during the assessment proceedings also. There is no evidence to establish that the properties were purchased out of the unaccounted income/source. No evidence have been brought on record, if the said properties were purchased through unaccounted income. The Ld. CIT(A), therefore, held that assessee has explained the

investment in the properties at Aya Nagar through known source of income, therefore, addition of Rs.14,55,000/- was deleted. Revenue is in appeal on this Ground.

9. The Ld. D.R. relied upon the Order of the A.O. He has referred to PB-57 which is first agreement between Shri Aravind Chandela and assessee. PB-63 is another agreement to sell between Shri Sandeep Kumar Singh and assessee in which sale consideration of Rs.2,97,87,408/- each have been mentioned. PB-69 is Sale Deed Dated 19th June, 2009 between Shri Aravind Chandela and Assessee for a sum of Rs.31 lakhs. PB-81 is second Sale Deed Dated 19.06.2009 between Shri Sandeep Kumar Singh and Assessee for a sum of Rs.29 lakhs in respect of the same property. The Ld. D.R. pointed-out from the sale deeds that cheque of Rs. 5 lakhs each Dated 15th October, 2008 is the same which is also referred in the agreement to sell. He has submitted that as per the agreements, the entire consideration shall have to be paid within 45 days and transaction has to be completed by that date. The sellers has completed the transaction by executing the sale deeds.

Therefore, presumption would arise against the assessee under section 292C and 132 (4A) of the I.T. Act that assessee has paid on money through cash over and above what is recorded in the sale deed. The Ld. D.R. relied upon Judgment of the Hon'ble Kerala High Court in the case of CIT, Kozhikode vs. O. Abdul Razak (2012) 20 taxmann.com 38 (Kerala), Judgment of Hon'ble Bombay High Court in the case of Surendra M. Khandhar vs. ACIT (2009) 224 CTR 409 (Bom.) and Judgment of Hon'ble Delhi High Court in the case of Bela Juneja vs. CIT 201 taxmann.com 392 (Del.). The Ld. D.R. submitted that since same parties are involved in the agreements to sell found during the course of search and the sale deeds executed of the same property, therefore, it was proved that higher consideration was paid by the assessee, for which, no source is explained. The Ld. D.R, however, stated that during the course of search, no cash receipt was found for payment of higher cash amount. The Ld. D.R. referred to PB-97 which is statement of Shri Sandeep Kumar Singh and PB-99 which is statement of Shri Aravind Chandela, who have denied agreement to sell

executed with the assessee. He has referred to PB-93, which is statement of Shri Ashok Kumar Singh, Husband of the Assessee, in which, he has admitted the execution of agreement to sell, but, explained that later on it was cancelled. The Ld. D.R, therefore, submitted that both the sellers have made a wrong statement. The Ld. D.R. submitted that statements recorded on oath cannot be denied and disputed. Thus, recovery of the agreement to sell would clearly attract Section 292C and 132(4A) of the Income Tax Act, 1961. The Ld. D.R. relied upon decision of Hon'ble Kerala High Court in the case of CIT, Kozhikode vs. O. Abdul Razak (supra), decision of ITAT Ahmedabad Bench in the case of Pravinbhai Keshavbhai Patel vs. DCIT, Central Circle-1(2), Ahmedabad (2014) 162 TTJ 171 (Ahd.-Tribunal), Judgment of Delhi High Court in the case of CIT vs., Anil Kumar Bhatia (2013) 352 ITR 493 (Del.) and Order of ITAT, Ahmedabad Bench in the case of Shailesh S. Patel vs. ITO, Ward-5, Palanpur (2018) 97 taxmann.com 570 (Ahd.Tribunal). The Ld. D.R, therefore, submitted that Ld. CIT(A) was not justified in deleting the addition in respect of

the amount mentioned in the agreements to sell. The Ld. D.R. as regards addition deleted by Ld. CIT(A) of investment made in Aya Nagar plots relied upon order of the A.O.

10. On the other hand, Learned Counsel for the Assessee, reiterated the submissions made before the authorities below and submitted that at the time of search no statement of assessee or any other person have been recorded. The statement of husband of the assessee was recorded much later 16th March, 2012. PB-49 and 50 are the part of statement of husband of the assessee, in which, he has explained that since it was agricultural lands in agriculture zone, in which, no construction could be raised, therefore, seller have defrauded the assessee. Hence, agreement was cancelled. No evidence of any payment over and above what is recorded in the sale deed was found during the course of search. He has relied upon same Judgments which were relied upon before Ld. CIT(A). He has submitted that circle rate of the property in question is much lower as against the amount mentioned in the sale deed. The sale deed is executed in June 2009 which is

much after the 45 days mentioned in the agreements to sell. The seller have denied receipt of any amount over and above what is recorded in the sale deeds. The seller have also denied signature on the agreement to sell. No corroborative evidence have been brought on record. The A.O. did not make any independent investigation. The valuation report submitted by the assessee have not been disputed by the A.O. which was as per circle rate. He has submitted that in these circumstances something more than stated in the agreement is required to be established on record to make any addition against the assessee.

10.1. Learned Counsel for the Assessee, therefore, submitted that Ld. CIT(A) has correctly deleted the addition of Rs.4.85 crores. However as regards addition of Rs.50 lakhs, he has submitted that assessee explained the same through cash book and that A.O. did not examine the same that when agreement to sell was cancelled, no amount could be treated to have been paid to the sellers. He has, therefore, submitted that even the addition of Rs. 50 lacs is unjustified.

11. We have considered the rival submission and perused the material available on record. The Income Tax Authorities have heavily relied upon the agreements to sell found during the course of search. Copies of the same are filed in paper book at pages 57 and 63. PB-57 is agreement to sell between Shri Aravind Chandela and Assessee. PB-63 is agreement to sell between Shri Sandeep Kumar Singh and Assessee, whereby, the agricultural land measuring 1008 square yards each was proposed to be purchased by the assessee from the seller. It is mentioned in the agreements that sale consideration of the property shall be Rs.2,97,82,408/- respectively, against which, Rs.30 lakhs each have been paid by the assessee. It is stated that balance payment of Rs.2,67,87,408/- each shall be paid by the assessee to the seller on or before 45 days from 3rd October 2008. It is also mentioned in the agreements to sell that time is the most essence of the agreements. It was also mentioned that in case of any dispute, the Delhi Courts will have jurisdiction over the same. Therefore, it is clear that time was the essence of the agreements and the entire

transaction shall have to be completed as per these agreements to sell by 18th November, 2008. However, during the course of search, no evidence has been found recovered or seized, if the above agreement to sell were acted upon by the parties or that the transaction relating to the agreements to sell have been materialized between the parties. No evidence was also found during the course of search, if any, amount mentioned in both the agreements to sell have been paid by the assessee to the seller. The agreements to sell have expired on 18th November 2008. Thus, the contention of assessee is correct that the agreements to sell have not been acted upon by the parties and no payment over and above what is mentioned in the sale deed have been paid by the assessee. The assessee explained that the statement of her husband was recorded on 16th March, 2012, in which he has clearly explained that since it was an agricultural land falling in agricultural zone, in which, no construction could have been raised, therefore, these agreements to sell were cancelled. The explanation of assessee was not found to be incorrect or false. It may also

be noted here that during the course of search no statement of the assessee was recorded to get her explanation in this regard. Therefore, even if some statement is made by the husband of the assessee later on would not be binding on the assessee, unless his statement was subjected to cross-examination on behalf of the assessee. Further, the assessee through her husband explained that since the sellers have defrauded, therefore, this agreement to sell was not acted upon. This fact is also corroborated by the fact that when time was the essence of the agreement to sell and entire transaction was to be completed within 45 days, which have expired on 18th November, 2008, the agreement to sell must have lapsed because of the non adherence to the time limit mentioned in the agreement to sell. The sellers in their statements recorded by the Income Tax Authorities, later on, have denied to have executed any agreement to sell with the assessee. They have also stated that they have not received any amount over and above what is stated in the sale deed. No evidence was found during the course of search, if any, cash paid by the assessee to the seller. No

receipt of any cash payment by assessee was found during the course of search. The assessee established that circle rate of the impugned agricultural land was less than the amount mentioned in the sale deeds. Thus, there was an in exorbitant amount mentioned in the agreement to sell which is beyond any comprehension. The sale deeds were executed later on in June 2009, after the expiry after 45 days of the time limit mentioned in the agreement to sell. This fact itself established that agreement to sell were never acted upon by the parties. No corroborative evidence was found during the course of search so as to prove that assessee paid cash of Rs.5.35 crores over and above what is stated in the sale deed. The A.O. did not make any independent enquiry into the matter to establish if assessee paid any cash amount.

11.1. The Hon'ble Delhi High Court in the case of CIT vs., Ved Prakash Choudhary (2008) 305 ITR 245 (Del.) held as under :

“During the search conducted at the residential premises of the assessee, two memorandums of understanding were recovered. These

memorandums were entered into between the assessee, R and M. In terms of the memorandum, the assessee had paid Rs.25 lakhs each towards part consideration for the purchase of agricultural land valued at Rs.123.30 lakhs to R and M. The Assessing Officer concluded that denial by the assessee was only to escape payment of tax liabilities and added Rs.50 lakhs in the hands of the assessee under section 69 of the Income-tax Act, 1961. The Commissioner (Appeals) as well as the Tribunal held that there was not enough evidence to add the amount in the hands of the assessee. On appeal :

Held, dismissing the appeal, that the assessee had stated that there was no transfer of money between the assessee, R and M and they had denied the receipt of any money from the assessee. In the face of these denials, there ought to have been corroborative evidence to show that there was in fact such a transfer of money. Both

the Commissioner (Appeals) as well as the Tribunal had come to the conclusion that there was no such material on record. The Assessing Officer relied on certain other transactions entered into by the assessee with R and M for drawing a presumption in respect of the transfer of money but the Tribunal rightly held that those were independent transactions and had nothing to do with the memorandums of understanding. No substantial question of law arose.”

11.2. The Hon'ble Madras High Court in the case of CIT vs. P.V. Kalyanasundaram (2006) 282 ITR 259 (Madras) has held as under :

“The burden of proving actual consideration in such transaction is that of the revenue. The Tribunal had given factual finding and, inter alia, held that the Apex Court in K.P. Varghese v. ITO [1991] 131 ITR 597 / 7 Taxman 13 held that the burden of proving actual consideration in such transaction is that of the revenue. The revenue, in

the instant case, had failed to discharge its duties.

[Para 5]

The Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied upon the statement given by the seller. If he would have taken independent enquiry by referring the matter to the Valuation Officer, the controversy could have been avoided. Failing to refer the matter was a fatal one. [Para 6]

In view of the above, there was no error in the order of the Tribunal and required no interference.”

11.3. The Hon'ble Supreme Court in the case of CIT vs. P.V. Kalyanasundaram (2007) 294 ITR 49 (SC) has confirmed the above Judgment of the Hon'ble Madras High Court by dismissing the Departmental Appeal.

11.4. The Hon'ble Kerala High Court in the case of CIT vs. Smt. K.C. Agnes (2003) 262 ITR 354 (Kerala) held as under :

“After considering the evidence and on the basis of the assessment order passed against the assessee, the case of the assessee that the property was purchased at the rate of Rs.8,000 per cent, had been accepted. Thus, the Tribunal allowed the appeal. The sale deed showed that the price was Rs.8,000 per cent while the agreement showed that the parties agreed to purchase the property at Rs.12,951 per cent. A receipt was also relied on in the form of a letter to show that the property was agreed to be purchased at Rs.12,951 per cent.

When a document shows a fixed price, there would be a presumption that it is the correct price agreed upon by the parties. It is true that on the basis of the agreement, the sale deed is executed. But it is not necessary that the price stated in the agreement will be the price shown in the sale deed.

Sometimes, it may be higher and sometimes it may be lower. Sometimes intentionally a lesser value may be shown in the sale deed. Even if it is assumed to be so, unless it is proved that the agreement was acted upon and unless the amount stated in the agreement was paid for the sale, none can come to the conclusion that the price mentioned in the sale deed is not correct. In the instant case, in the assessment of the purchaser, it was finally found that the amount was received only at Rs.8,000 per cent.

Taking all these matters into consideration, the Tribunal held that the property was sold at the rate of Rs.8,000 per cent. Thus, the Tribunal, on the basis of the facts and circumstances of the case and on the appreciation of evidence, came to the conclusion that Rs.12,951 was not the amount for which the property was sold. There is no rule that the amount shown in the receipt is the-actual amount paid.

Accordingly, the amount stated in the sale deed was the correct amount unless there were circumstances to ignore the same.

In the above view of the matter, the questions were answered in favour of the assessee and against the revenue.”

11.5. The Hon’ble Punjab and Haryana High Court in the case of Paramjit Singh vs. ITO (2010) 323 ITR 588 (P&H) held as under :

“Whether in view of settled principle that no oral evidence is admissible once documents contain all terms and conditions, sale consideration disclosed in sale deed in instant case was to be accepted and no oral evidence could have been adduced to contradict such sale consideration - Held, yes - Whether, thus, view taken by Assessing Officer as also confirmed by Tribunal was correct – Held yes.”

12. Considering the facts of the case, it is clear that assessee has been able to prove that agreement to sell have not been acted upon between the parties. As per the agreement to sell, the balance amount shall have to be paid within 45 days, but, there is no evidence on record to prove that assessee has actually paid the balance amount to the sellers. No evidence of any payment later on was also found or brought on record. Since it was conditional agreement and as such it was to be proved by the Revenue, whether the terms of the agreement have been complied with, which the A.O. in this case has failed to do so. The valuation of the property as per circle rate have not been disputed by the authorities below. No enquiry have also been made to the witness to the agreement to sell. Thus, on 18th November, 2008 the deal through agreement to sell deemed to have been cancelled as the time was the essence to the agreement. The Inspector is not a technical person to give report of valuation of the property. Therefore, no reliance could be placed upon his report.

13. The Ld. D.R. however, contended that one cheque each as mentioned in the agreement to sell is the same as have been mentioned in the sale deed. Perhaps, when the parties are same, the consideration paid above could have been referred to in the sale deed when fresh sale deed have been executed. Therefore, there is nothing wrong in the explanation of the assessee. The decisions relied upon by the Ld. D.R. thus would not support the case of the Revenue. Considering the totality of the facts and circumstances, in the light of the above discussion, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the addition of Rs.4,85,74,816/-. It may also be noted here that the Ld. CIT(A) maintained addition of Rs.50 lakhs on account of cash of Rs.25 lakhs mentioned in each agreement to sell. Since the explanation of assessee was not called for at the time of search proceedings or thereafter and that the sellers have denied to have executed any agreement to sell or have received any sale consideration as per the agreement to sell, there was no justification for the Ld. CIT(A) to have maintained the addition of Rs.50 lakhs. It

may also be noted here that the assessee explained before Ld. CIT(A) that whatever amount was paid initially to the seller was duly explained through the cash book maintained by the assessee and accepted in the impugned assessment. Therefore, these facts would show that the matter requires reconsideration at the level of the Ld. CIT(A) with regard to addition of Rs.50 lakhs. In view of the above discussion, we do not find any justification to interfere with the orders of the Ld. CIT(A) in deleting the addition of Rs.4,85,74,816/-. The Departmental Appeal is, thus, dismissed. However, as regards addition of Rs.50 lakhs maintained by the Ld. CIT(A), we set aside the order of the Ld. CIT(A) and restore this issue to his file with a direction to re-decide the addition of Rs.50 lakhs in the light of explanation of assessee by verifying the fact from the cash book produced by the assessee. The Ld. CIT(A) shall give reasonable, sufficient opportunity of being heard to the assessee.

14. In the result, Departmental Appeal on Ground Nos. 1 and 2 is dismissed, whereas appeal of Assessee allowed for statistical purposes.

15. As regards Ground No.3 in Departmental Appeal with regard to deletion of addition of Rs.14,55,000/- in respect of investment made in plots at Aya Nagar, the Ld. D.R. merely relied upon Order of the A.O. without pointing-out any infirmity in the Order of the Ld. CIT(A) in deleting the addition. The assessee explained before the authorities below that investment made in purchase of plots, assessee filed copies of the purchase deed with bank statements. The assessee also filed details of the mode of payment supported by documents of bank statements. The assessee submitted that entire consideration have been paid by Account Payee Cheques out of the Bank account. All the documentary evidences were placed on record. The Ld. CIT(A) considering the details on record noted that assessee has been carrying on proprietorship business and maintained books of account which are duly audited and such business have been disclosed to the Revenue Department in income tax returns. The Ld. CIT(A) found that payments for purchase of plots have been made out of the said disclosed source of the assessee which have not been controverted by the A.O. The

finding of fact recorded by the Ld. CIT(A) have not been rebutted through any evidence or material on record. Therefore, ground No.3 of the appeal of the Revenue has no merit and the same is accordingly dismissed.

16. To sum-up, appeal of the Department is dismissed. However, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 29th April, 2019

VBP/-

Copy to

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|----|---------------------|
| 1. | The appellant |
| 2. | The respondent |
| 3. | CIT(A) concerned |
| 4. | CIT concerned |
| 5. | D.R. ITAT "D" Bench |
| 6. | Guard File |

//By Order//

Asst. Registrar : ITAT : Delhi Benches : Delhi.