

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And

SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2005/AHD/2016

अाधरण वष/Asstt. Year: 2006-2007

D.C.I.T, Circle-1(1)(1), Ahmedabad.	Vs.	Nitinbhai Ramchandra Patel Ambali Bopal Road, Arbaligam, Ahmedbad. PAN: ACRPP9175E
---	-----	--

(Applicant)	(Respondent)
Revenue by :	Shri L.P. Jain, Sr.D.R
Assessee by :	Shri P.M. Mehta, A.R

सुनवाई का ताराख/Date of Hearing : 05/03/2019

घोषणा का ताराख /Date of Pronouncement: 27/05/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax,(Appeals)-1, Ahmedabad [Ld.CIT(A) in short], dated 30/05/2016 arising in the matter of assessment order passed under s. 143(3) r.w.s 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 27/03/2014 relevant to Assessment Year (AY) 2006-07.

The Revenue has raised the following grounds:

“That the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.2,29,37,063/- made u/s 69 of the I.T.Act, 1961 on account of unexplained investment on purchase of land”

On the fact and in the circumstances of the case and in law, the CIT(A) ought to have upheld the order of the Assessing Officer to the extent mentioned above since the assessee has failed to disclose his true income/book profit.

The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored to the above extent. The appellant craves, to leave, to amend or alter any ground or add a new ground which may be necessary.

The issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition made by the AO amounting to Rs. 2,29,37,063/- on account of unexplained investment on the purchase of land.

2. Briefly stated facts are that the assessee is an Individual and filed his ROI declaring total income of Rs. 53,45,320/-00. A search was carried out under section 132 of the Act at the premises of the Shri Rohit Chanduji dated 21-09-2010. During the search, a document was found relating to the sale of Block No. 76 & 77 admeasuring 40777 sq.yard by the Shri Rohit Chaduji Thakor and his family members to the following person

(1)Nitin Kumar Ramchandra Patel

(2)Chandrikaben Patel

(3)Mahesh kanhiya lal patel.

2.1 The AO further on page 48 & 49 of annexure BS-25 seized from the residential premises of Shri Rohit found that the rate per sq. yard is fixed at Rs. 1125/- only. Accordingly, the sale consideration of above land should have to Rs. 4,58,74,125/- only. But in the sale deed of block no 77 (19223 sq meter) total consideration shown of Rs. 30,00,020/- only. On a question by the AO, the assessee submitted as under:

- (1) The sale deed was executed at a rate, not below the jantri / stamp value of the land under consideration.
- (2) His (assessee) name or the name of any co-owner of the said land is not mentioned in the seized document.
- (3) There is no evidence of acceptance of entering the transaction at the rate mentioned in page 48/49 by any of the party mentioned therein. Similarly, there is no statement under section 132(4) of the Act suggesting the name of the assessee.
- (4) In the absence of any corroborative evidence, no addition can be made only based on noting appearing on page 48/49.
- (5) The name mentioned on the page 48/49 are as under:
 - (i) Ratibhai
 - (ii) Kantibhai
 - (iii) Dalabhai
 - (iv) Dashrathji masangji
 - (v) Kanubhai (Witness)
 - (vi) Baldevbhai (Witness)
 - (vii) (not legible) Shankarji Thakore (witness)
 - (viii) Sanjaybhai Patel.
 - (ix) Rohit Thakore
 - (x) Patel Pradipbhai Bachibhai

(6) Nothing contained in the seized document that the appellant has purchased from the Shri Rohit at the rate mention in the seized document and not at the rate mention in the sale deed.

(7) It is proposed to make addition without providing the opportunity of cross-examination of Shri Rohit.

2.2 However, the AO rejected the contention of the assessee by observing that:

- 1) It is clear from the sale deed that the Shri Rohit Thakor, along with his family members, sold the block nos. 77 & 76 to the assessee at a value of 30,00,020/- only. However, the rate found in the seized material was at 1125 per sq.yard. As per the seized document, the sale consideration worked out at Rs. 4,58,74,125/- only.
- 2) The assessee has not furnished the detail of source for purchasing of the above land.

2.3 As per deed, the assessee has 50% shares. Therefore the amount of Rs. 2,29,37,063/- being 50% of the actual value of Rs. 4,58,74,125/- added to the total income of the assessee as unexplained investment.

3. The aggrieved assessee preferred an appeal before the Ld.CIT (A) the assessee before the Ld.CIT (A) in addition to the submission placed before the AO submitted as under:

- 1) Addition was made by the AO only based on loose paper found during a search at a third party. However, such loose papers do not prove that the assessee has made any on money payment.
- 2) The assessee further submitted that Shri Rohit purchased the piece of land on 15/03/2005 as per clause no. 5-page nos. 14-15 of the sale deed. However, the loose paper shows that Shri Rohit received an advance payment on said land dated 05/03/2005. Thus the loose papers do not relate to him (assessee).
- 3) The presumption available u/s 132(4A) of the Act is only against the person in whose case search was conducted.
- 4) The assessee without prejudice to the above further submitted that he had purchased only block 77. As such he did not purchase Block bearing no. 76. The AO also stated this fact in SCN dated 19/03/2014 and in the reason of reopening the assessment dated 26/09/2013.
- 5) The loose paper based on which the AO has made addition itself states that the payment of Rs. 58,74,125 was made on 5/3/2005; hence this amount falls in AY 2005-06.
- 6) The assessee has made payment of Rs. 30,00,020/- along with his co-owners (assessee share 50% as stated in the sale deed) through banking channel.
- 7) In Remand report The AO admitted the fact that
 - i. The assessee has paid Rs. 15 lacs through banking channel.

- ii. Statement recorded u/s 132(4) during the search of Shri Rohit regarding the unexplained investment in block 76 & 77 is not available on record.
 - iii. As per government record being the extract of 7/12 dated 13/03/2011 concerning to block 76 is in the name of Dev (Bopal) Co-op Housing society Ltd. and one pravin kumar dayaji thakkar. The position during the relevant financial year is not available. The Block bearing no. 77 is in the name of the assessee along with 2 other people.
4. The Ld.CIT(A) after considering the submission made by the assessee allowed the appeal of the assessee by observing as under:

On careful consideration of observation of Assessing Officer and contention of the Appellant, it is observed that the Assessing officer has made addition on the basis of loose papers found at the premises of Third Person namely Shri Rohit C Thakor. The Assessing officer has while passing Assessment order contended that the Appellant has purchased both the plot of Land having Block No: 76 and 77 at a consideration of Rs.1,125/- per Sq. Yard. The Assessing officer has calculated total consideration of Rs.4,58,74,125/- for purchase of said land on the basis of loose paper seized from the premises of the Third Person and accordingly 50% of the consideration amounting to Rs.2,29,37,063/- being Appellant's share of 50% on purchased of said land was considered as unexplained investment and added to total income of the Appellant. During the course of Assessment Proceeding as well as Appellate Proceeding the Appellant submitted Copy of Sale Deed for purchase of land from Rohit C Thakore, Source of consideration paid for purchase of land. The Appellant has also referred to the loose paper found from the premises of Rohit C Thakore on the basis of which impugned addition towards unexplained Investment was made and copy of such loose paper was provided during the course of Appellate Proceeding. During the course of Appellate Proceeding the Appellant submitted that the addition made on the basis of loose paper without providing opportunity of being heard is not justified and asked to provide opportunity of cross examination of the person on the basis of whose statement the addition was made. In view of such facts remand report was called from the Assessing officer in view of provisions of Rule 46A of the Act asking certain formation/clarification from the record of the department.

The Assessing officer has not made any negative comment on merits of the case regarding payment of on- money by Appellant for purchase of plot of land. Further on analysis of loose paper it is appreciated that the name of the Appellant and co-owner was not mentioned in the loose paper seized from the premises of the seller Rohit C Thakore. Even the statement of Rohit C Thakore recorded u/s 132(4) is not available on the record of department and accordingly it is appreciated that the Assessing officer was not having any cogent evidences on the basis of which it can be proved that the Appellant had paid any on money for purchase of land in question as per the rate mentioned in the loose paper found at the premises of Rohit C Thakore. Thus argument of the Appellant that the addition towards unexplained investment u/s 69 is not justified merely on the basis of presumption made from loose paper found at the premises of the third person which is without any corroborative evidence is found to be acceptable. The case of the Appellant is squarely covered by the decision of In case of Construction Pvt Ltd Tax Appeal No, 79 of 2000 held as under:

"14. A perusal of the impugned order of the Tribunal indicates that the Tribunal, upon appreciation of the evidence on record, has recorded the following findings:

- The basis of the department's case for making the additions of Rs.45 lakhs was the document appearing at serial No.22 of Annexure A-1 of the panchnama found from the residence of Sureshbhai A. Patel who is a partner of Gokul Corporation, as well as other documents found during the search on 21.9.95.

- If the evidentiary value of the said loose papers and documents is considered the same cannot possibly construed as books of account regularly kept in the course of business. Such evidence would, therefore, be outside the purview of section 34 of the Evidence Act, 1872 in the light of the ratio of the decision of the Supreme Court in the case of Central Bureau of Investigation v. V.C. Shukla & Others, (1998) 3 SCC 410.

-The revenue would not be justified in resting its case on the loose papers and documents found from the residence of a third party even if such documents contain narration of transaction with the assessee.

- The presumption under section 132 (4A) of the Act would not be applicable to a third party from whose possession such papers and documents had not been found by the revenue.

- The statements recorded at the back of the assessee would not conclude the case against the assessee particularly when the makers of the statements have not been allowed to be interrogated by the assessee.

- Shri Suresh Patel and Shri Deepak Patel are brokers and the transactions involving the receipt of on money have been, according to the revenue, arranged through these persons. Mere testimony of these brokers tendered

at the back of the assessee would not be sufficient to establish that on money has been received by the assessee.

- The document appearing at page 22 of Annexure A-1 shows the payment of Rs.20 lakhs on 20.9.1994 on the cancellation of the Silver Arc Scheme with Gautam Adani. Apparently it is a cancellation of the deal and the amount has been returned to the assessee by Shri Adani. There is nothing on record as to when the money was originally paid.

- As per the books of account of the assessee a sum of Rs.25 lakhs has been paid by cheque on 8.5.1995 to Govind C. Patel in respect of Silver Arc Deal. If that be so, the return of Rs.20 lakhs in cash on 20.9.94 does not fit in with the sequence of events.

- There appears to be confusion regarding the identity of the parties with whom the Silver Arc deal had been entered into by the assessee. According to Shri Deepakbhai Mehta, the Silver Arc deal was entered into by the assessee company with Shri Adani whereas return of Rs.20 lakhs in cash on 20.9.94 appears to have been made by Shri Govind Patel to the assessee.

- The statements of Shri Sureshbhai and Deepakbhai do not bring out full facts with regard to the transactions relating to Silver Arc as well as Kundan Nagar involving the assessee.

- In the case of Silver Arc, addition has been made on substantive basis in the case of Shri Manoj Vadodaria and protective basis in the case of Gautam Adani Management & Consulting Services Ltd.

- The statement of Shri Manoj Vadodaria which was recorded at the back of the assessee, would not in any manner lend any support to the impugned additions made in the assessee's case.

15. On the basis of the aforesaid findings of fact recorded by it, the Tribunal deleted the addition of Rs.45 lakhs with the observation that the Assessing Officer had failed to adduce evidence in support thereof.

16. Thus, it is apparent that the conclusions arrived at by the Tribunal are based upon the aforesaid findings of fact recorded by it upon appreciation of the evidence on record. On behalf of the revenue nothing is pointed out to show that the findings recorded by the Tribunal are in any manner perverse, nor is it the case of the revenue that the Tribunal has taken into consideration any irrelevant material or that any relevant material has been ignored. The conclusion arrived at by the Tribunal on the basis of the findings of fact recorded by it cannot in any manner be said to be unreasonable. In the aforesaid premises, the impugned order of the Tribunal being based upon findings of fact recorded by it upon appreciation of the evidence on record, which findings have not been dislodged by the

revenue by pointing out any evidence to the contrary, therefore, does not warrant any interference.

17. The question is accordingly answered in the affirmative."

In the result it is held that addition towards unexplained investment for purchase of plot of land made on the basis of paper seized from the residence of Third Party is required to be deleted particularly when the name of the Appellant was not mentioned on the loose papers and even it is not written by the Appellant. With regard to the Plot of land having Block No: 76 it is observed that the Assessing officer has while submitting remand report accepted the fact that the said plot is not purchased by the Appellant as per 7/12 extract of the land revenue record and considering such facts the addition of Rs. 1,02,09,375/- being unexplained investment for purchase of land Block No: 76 is directed to be deleted.

3.6. Further regarding addition towards unexplained investment made for purchase of Plot of Land Block No: 77 the Assessing officer has while submitting remand report accepted that there are no evidences on record of department which shows that the Appellant has made payment at Rs. 1,125/- per Sq. Yard. The similar disallowance towards unexplained investment in purchase of Land Block No: 77 was deleted by Hon'ble CIT(A) -13 vide its order dated 18/03/2014 in case of co-owners of land purchased by Appellant. Even there is no evidence on the record of department on the basis of which it can be proved that the Appellant has made payment as per the rate mentioned in the department.

It is seen that the Appellant along with co- owners has purchased land having Block No: 77 for consideration of Rs.30,00,020/-. The Appellants' share is 50% in the said land and consideration of Rs. 15 lacs is paid by the Appellant through account payee cheque. During the course of Appellate Proceeding the Appellant has submitted copy of Bank account of UTI from which it is clearly evident that the payment for purchase of land is made through banking channel from deposit made from his account maintained with Bhagwati Flour Mills Pvt Ltd and even the Assessing officer has while submitting remand report accepted the said fact. Thus the source of consideration of Rs. 15 Lacs paid for purchase of land having block No: 77 is duly explained by the Appellant and considering these facts the addition towards unexplained investment in purchase of this plot of land is also entirely deleted. This ground of appeal of the Appellant is allowed.

Being aggrieved by the order of the Id. CIT-A, the Revenue is in appeal before us.

5. The Id. DR before us vehemently supported the order of the AO.

6. On the other hand, the ld. AR filed a paper book containing pages from 1 to 227 and reiterated the submissions as made before the authorities below. The ld. AR before us vehemently supported the order of the ld. CIT-A.

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the instant case, a document was found during search under section 132(4) of the Act, conducted at the residential premises of Shri Rahul Chaduji Thakor containing the details of the sale for the 2 plots bearing block number 76 and 77 admeasuring 40777 square yards in aggregate at the rate 1,125/- per square yard.

7.1 The assessee purchased one of the piece of land bearing block No. 77 along with 2 co-owners at the rate of Rs. 30,00,020.00 only. The share of the assessee in the purchase of such land was shown 50% as per the sale deed.

7.2 However, the AO presumed that the assessee has acquired both the pieces of land out of his undisclosed income. As per the AO, the total value of the plot based on the seized document comes to Rs. 4,58,74,125/-whereas the assessee has incurred the cost of Rs.30,00,020.00 only. Thus the difference in the value of the plot as per seized document comes at Rs. 4,28,74,125.00, but the AO treated the entire amount as the undisclosed investment, and 50% of it was attributable to the assessee amounting to Rs. 2,29,37,063 which was added the total income of the assessee.

7.3 The Ld. CIT (A) on appeal deleted the addition made by the AO by observing that there was no documentary evidence found suggesting that the assessee has made any payment over and above his share in the property bearing block No. 77. The Ld. CIT (A) also noted that the block No. 76 is not

in the name of the assessee and therefore there is no question of making any addition in the hands of the assessee in respect of such block.

7.4 From the preceding discussion, we note certain facts as detailed under:

- i. The name of the assessee did not appear in the document seized during the search. Indeed the seized document was containing the detail about the sale purchase of the 2 lands, and the assessee purchased 1 of the land bearing No. 77. But the land bearing block No. 76 was not purchased by the assessee. Therefore in our considered view, the same cannot be the subject matter of any addition on account of undisclosed income in the hands of the assessee.
- ii. There was no piece of evidence demonstrating that the assessee has made the payment in respect of the purchase of land bearing No. 77 over and above stated in the sale deed.
- iii. The statement obtained under section 132(4) of the Act was not made available to the assessee for the cross verification.
- iv. Even the AO in his remand report has not alleged that the assessee has made the unexplained investment in the property purchased by the assessee.

In addition to the above, we also note that the assessee purchased the piece of land bearing block No. 77 at Rs. 30,00,020/- which is the value determined for Stamp duty purposes. Thus it is also not a case that the assessee has purchased such land at a value less than stamp value.

7.5 The Ld. DR has also not brought anything on record contrary to the finding of the Ld. CIT (A). Thus After considering the facts in totality, we hold that there was no evidence available on record suggesting that the assessee has made any investment out of undisclosed sources of income. Hence we do not find any infirmity in the order of the Ld. CIT (A). Thus the ground of appeal of the Revenue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 27/05/2019 at Ahmedabad.

-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated
manish

(True Copy)
27/05/2019

-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER