

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.2280/PUN/2016
निर्धारण वर्ष / Assessment Year : 2006-07

M/s. S.K. Bhansali & Associates,
11945/17, Sujay Housing Society,
Shivajinagar, Pune – 411045

PAN : AAHFS8598L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 3(2), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.2609/PUN/2017
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. S.K. Bhansali & Associates,
Office No. 402, Bhansali House,
1187/61, J.M. Road,
Shivajinagar, Pune – 411045

PAN : AAHFS8598L

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 2(4), Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri V.L. Jain & Nitin Rander
Revenue by : Shri Ashok Babu

सुनवाई की तारीख / Date of Hearing : 28-06-2019

घोषणा की तारीख / Date of Pronouncement : 10-07-2019

आदेश / ORDER**PER VIKAS AWASTHY, JM :**

These two appeals have been filed by the assessee. ITA No. 2280/PUN/2016 is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 11-08-2016 for assessment year 2006-07. In ITA No. 2609/PUN/2017 the assessee has assailed the order of Commissioner of Income Tax (Appeals)-2, Pune dated 21-10-2016 for assessment year 2010-11.

Since, the issue raised in both the appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are disposed of vide this common order.

2. The brief facts of the case as emanating from the records are : A search and seizure action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out on Gita Group of concerns from Karnataka and Tapadia Family group concerns at Pune on 06-06-2012. During the course of search at the premises of aforesaid parties certain incriminating documents were found and seized. The seized documents inter alia indicated that Tapadia family had sold land at Baner to the assessee and had received 'on-money'. Tapadia family received cash aggregating to Rs.2,53,76,665/- over and above the consideration recorded in agreement. Purportedly, the cash was received by Tapadia family from assessee in two financial years, as under :

Financial Year	Assessment Year	Amount
2005-06	2006-07	Rs.97,74,069/-
2009-10	2010-11	Rs.1,42,65,106/-
Total		Rs.2,53,76,665/-

2.1 Consequent to seizure of incriminating documents in search action, assessment of the assessee for assessment years 2006-07 and 2010-11 were reopened. Notices u/s. 148 were issued to the assessee. In response to the notice the assessee filed return of income declaring the same income as was returned in the original return for assessment year 2006-07. For the assessment year 2010-11 the assessee vide letter dated 07-04-2014 stated that the original return filed may be treated as return in response to notice u/s. 148 of the Act. The Assessing Officer after considering the documents on record and submissions of assessee vide assessment order dated 28-03-2014 passed u/s. 143(3) r.w.s. 147 of the Act made addition of Rs.97,74,069/- u/s. 69B of the Act in assessment year 2006-07. For assessment year 2010-11 vide order dated 27-03-2015 passed u/s. 143(3) r.w.s. 147 of the Act for similar reasons the Assessing Officer made addition of Rs.1,42,65,106/- u/s. 69B of the Act.

Against the findings of Assessing Officer for the respective assessment years, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) after considering the submissions of assessee dismissed both the appeals vide separate impugned orders. Now, the assessee is in second appeal before the Tribunal.

3. The assessee has assailed the findings of Commissioner of Income Tax (Appeals) by raising following grounds in ITA No. 2280/PUN/2016 for assessment year 2006-07 :

- “1. *The learned CIT(A) erred in confirming that proper opportunity of hearing was provided to the assessee by the Assessing Officer and that there was no violation of the principles of natural justice.*
2. *The learned CIT(A) erred in law and on facts in confirming the addition of Rs.97,74,069/- u/s. 69B of the Income Tax Act, 1961 on account of unaccounted cash expenditure.*

3. *The appellant craves leave to amend or alter the grounds or act to the same as being necessary.*”

Similar grounds have been raised by the assessee for the assessment year 2010-11 in ITA No. 2609/PUN/2017.

4. Shri V.L. Jain appearing on behalf of the assessee submitted that the authorities below have erred in making addition u/s. 69B for alleged payment of cash as ‘on-money’ for purchase of plot at Baner, Pune to the vendors of plot. The ld. AR submitted that the addition has been made merely on the basis of statement of sellers of plot without there being any cogent evidence to substantiate that cash payments were made by assessee over and above agreed amount of consideration recorded in agreement. The documents on the basis of which the additions have been made in the hands of assessee is an internal document of Tapadias and Vinod Bansal, the vendors of the land. A perusal of seized documents would reveal that : (i) the date of alleged cash payments made by the assessee are not mentioned; (ii) the seized document does not bear the signature of assessee/appellant; (iii) the name of assessee does not appear on the seized document; and (iv) how the cash amount allegedly received by the vendors of the land is bifurcated is not mentioned in the seized document.

4.1 The ld. AR further contended that the assessee was not afforded sufficient opportunity to cross-examine Shri Ajay B. Tapadia whose statement was used by the Department for making the addition in the hands of assessee. The statements recorded at the back of assessee cannot be used to make additions in the hands of assessee. The authorities below should have afforded opportunity of cross-examination to

the assessee. In support of his contention the ld. AR placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Smt. Sunita Dhadha in Income Tax Appeal No. 197/2012 decided by the Hon'ble Rajasthan High Court on 31-07-2017;
- ii. Sri G. Mahesh Babu Vs. Pr. Commissioner of Income Tax in SLP No. 39980 of 2017 decided on 23-02-2018 by Hon'ble Supreme Court of India;
- iii. Jaydeep M. Kher Vs. Dy. Commissioner of Income Tax in ITA No. 973/PN/2013 for assessment year 2003-04 decided on 28-12-2016;
- iv. Commissioner of Income Tax Vs. M/s. Ashish International in Income Tax Appeal No. 4299 of 2009 decided on 22-02-2011 by Hon'ble Bombay High Court.

4.2 The ld. AR submitted that the additions have been made for both the impugned assessment years i.e. assessment years 2006-07 and 2010-11 in respect of same transaction of purchase of land by the assessee from Tapadia family.

5. On the other hand Shri Ashok Babu representing the Department vehemently defended the impugned orders. The ld. DR submitted that a perusal of incriminating documents seized during search action from the premises of Tapadia family and annexed along with the assessment order for assessment year 2006-07 clearly indicates the amount received by the sellers against cheque and the amount received in cash. The ld. DR submitted that the recipients of the amount i.e. Tapadia family has admitted the receipt of cash 'on-money' from the assessee. The ld. DR referred to the statement of Ajay B. Tapadia recorded on 07-06-2012 u/s. 132(4) of the Act. The ld. DR pointed that in response to Question No. 18

Ajay B. Tapadia has explained the seized document and in response to Question No. 19 he has categorically stated that the land was sold to the assessee and the sale consideration was received @ Rs.750/- per sq. ft. in two parts i.e. Rs.215/- per sq. ft. by way of cheque and Rs.535/- per sq. ft. in cash. The ld. DR further contended that the Tapadias have offered the cash component of consideration received from assessee on sale of plot to tax. The receipt of cash admitted by Tapadia family was offered to tax as under :

A.Y.	Name of assessee	Amount
2006-07	Deepa B Tapadiya	Rs.61,98,429/-
2006-07	Yash B Tapadiya	Rs.35,75,640/-
2010-11	Ajay B Tapadiya	Rs.1,42,65,106/-
Total		Rs.2,40,39,175/-

5.1 As regards the opportunity of cross-examination, the ld. DR submitted that the Assessing Officer had issued summons to Ajay Tapadia twice. On both the occasions, Ajay B. Tapadia remained absent for cross-examination. Hence, it is not a case where the opportunity of cross-examination was not afforded to the assessee. The assessee had entered into an agreement for purchase of land with Tapadias, the primary responsibility was on the assessee to ensure his presence for cross-examination. The assessee could have produce Tapadia as his own witness to deny the cash transaction for purchase of land.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in both the appeals has raised solitary issue assailing the findings of First Appellate Authority qua addition u/s. 69B of the Act. The main plank of

arguments of the assessee challenging the addition in the impugned assessment years are, that the document seized in search operation carried out the premise of Tapadia family does not bear the name or signatures of the assessee/appellant. The assessee has further asserted that the addition cannot be made merely on the basis of declaration made by Tapadiya family without affording opportunity of cross-examination to the assessee.

7. The assessee has purchased land from Tapadia family. During the search and seizure action on Tapadia family, Shri Ajay Tapadia admitted that they have received 'on-money' in the transaction of sale of land to the assessee. Tapadia family has offered the amount of on-money allegedly received from the assessee for tax. Undisputedly, the document seized during search operation at the premises of Tapadia family does not bear the name of the assessee. However, a perusal of document clearly shows the entire transaction and bifurcation of money to be received by way of cheque and cash on sale of land, purchased by the assessee.

In so far as the plea of assessee that opportunity to cross-examination Ajay B Tapadiya on whose statement addition is made in the hands of the assessee is concerned, we find that the Assessing Officer had summoned Ajay B Tapadiya for cross-examination on two occasions. However, on both the occasions Ajay B Tapadiya did not turn up for cross-examination. Thus, it is not a case where the opportunity of cross-examination was not provided to the assessee. The assessee had entered into transaction for purchase of land with Tapadias. The assessee made no effort either to obtain clarification from Ajay B Tapadiya regarding on-money payments nor the assessee could ensure presence of Ajay B Tapadiya before the Assessing Officer to dispel that there was no involvement of on-money in the transaction.

8. The assessee has failed to dislodge the allegation of on-money payments. The documents seized from the premises of Tapadias during search operation coupled with unrebutted statement of Ajay B Tapadiya explaining the entire transaction as recorded on seized document clearly indicates assessee's involvement in on-money payment for purchase of land. We find no infirmity in the order of Commissioner of Income Tax (Appeals) in confirming the addition with respect to on-money payment for purchase of land, in the hands of assessee. Accordingly, the impugned order is upheld and the appeals of assessee are dismissed being devoid of any merit.

9. In the result, both the appeals of assessee are dismissed.

Order pronounced on Wednesday, the 10th day of July, 2019.

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

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 10th July, 2019

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-2, Pune
4. The Pr. Commissioner of Income Tax-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy// आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune