

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1930/PUN/2016

निर्धारण वर्ष / Assessment Year : 2010-11

Assistant Commissioner of Income Tax,
Latur Circle, Latur

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Kiran L. Mantri,
Mantri Construction,
Rajiv Gandhi Chowk,
Ausa Road, Latur

PAN : AAVPM0197R

.....प्रत्यर्थी / Respondent

Assessee by : Shri V.L. Jain
Revenue by : Shri N. Ashok Babu

सुनवाई की तारीख / Date of Hearing : 17-07-2019

घोषणा की तारीख / Date of Pronouncement : 01-08-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Aurangabad dated 06-06-2016 for the assessment year 2010-11.

2. The Department has filed revised grounds of appeal. The same are as under :

“1. On facts and circumstances of the case the CIT(A) erred in deleting the addition of Rs.2,10,000/- u/s. 69C as unexplained expenditure which was paid out of books in a purchase transaction of land at Murud.

2. On facts and circumstances of the case the CIT(A) erred in deleting the addition of Rs.7,00,000/- u/s. 69A which was received out of books in a sale transaction of land.

3. On facts and circumstances of the case the CIT(A) erred in deleting the addition of Rs.76,87,000/- u/s. 69 which was unexplained and received out of books in a transaction of land.”

3. Shri V.L. Jain appearing on behalf of the assessee vehemently defending the order of Commissioner of Income Tax (Appeals) submitted that the addition of Rs.2,10,000/- u/s. 69C of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) on account of unexplained expenditure made by the Assessing Officer was deleted by the Commissioner of Income Tax (Appeals) as the transaction pertains to Financial Year 2008-09 relevant to the assessment year 2009-10. Any transaction not relating to the impugned assessment year cannot be subject matter of assessment or appeal.

3.1 In respect of ground No. 2 of the appeal relating to addition of Rs.7,00,000/- u/s. 69A of the Act the ld. AR submitted that the addition was made by the Assessing Officer merely on surmises and conjectures. The assessee had received advance of Rs.7,00,000/- against sale of plots comprising in Gat No. 118, 119, 120 and 122 admeasuring 39.10 Sq. Mtrs. The transaction was not complete and hence, the said amount was shown in the books as advance. The Assessing Officer treated the said advance as income of assessee against sale of plots of land. The Commissioner of Income Tax (Appeals) after appreciating the facts of the case and documents on record deleted the addition holding that the advance

received against sale of land cannot be treated as income of assessee till the time the transaction is complete.

3.2 In respect of ground No. 3 of appeal the ld. AR submitted that the addition has been made merely on the basis of scribbling on the document seized during survey action. Nowhere against the figures either the date is mentioned or any narration is given establishing nexus with the transaction of sale of land. The assessee had purchased two pieces of land vide two separate registered sale deed dated 15-02-2010. The market value of each parcel of land was Rs.8,00,000/-. Thus, total value of transaction was Rs.16,00,000/- which has been duly reflected in the books of assessee. The Commissioner of Income Tax (Appeals) after examining the seized documents deleted the addition.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the assessment order and prayed for reversing the findings of Commissioner of Income Tax (Appeals) on the issues against which the Revenue in appeal.

5. Both sides heard. Orders of authorities below perused. In ground No. 1 of the appeal the Revenue has assailed the action of Commissioner of Income Tax (Appeals) in deleting the addition of Rs.2,10,000/- u/s. 69C on account of unexplained expenditure. The Commissioner of Income Tax (Appeals) has observed that the transaction pertains to Financial Year 2008-09 relevant to the assessment year 2009-10. The Revenue has not controverted these findings of First Appellate Authority. In the absence of any contrary material we find no reason to interfere with the factual findings of Commissioner of Income Tax (Appeals). Since the transaction pertains to the period relevant to assessment year 2009-10, no addition

qua such transaction can be made in assessment year 2010-11. The ground No. 1 of the appeal is devoid of any merit and hence, the same is dismissed.

6. The ground No. 2 of the appeal by the Department is against deleting the addition of Rs.7,00,000/- u/s. 69A of the Act. The assessee has admitted that he received Rs.7,00,000/- as advance against sale of plots comprising in Gat No. 118, 119, 120 and 122 at village Murud, Akola. The transaction of sale of land is still pending at the close of Financial Year 2009-10 relevant to the assessment year 2010-11. The Commissioner of Income Tax (Appeals) after appreciating the facts held that the advance cannot be treated as income of assessee till the time transaction is complete. We find no reason to interfere with the reasoned findings of Commissioner of Income Tax (Appeals) on this issue. Hence, ground No. 2 of the appeal by the Department is dismissed sans merit.

7. The third ground of appeal is against deleting the addition of Rs.76,87,000/- on account of unexplained investments. The addition has been made by the Assessing Officer on the basis of document seized during survey action. The said document has been placed on record at page 7 of the paper book. An examination of the document reveal that two figures i.e. 1225000 and 8062000 has been scribbled at the bottom of the page. Thereafter, both the figures have been added and the total of the figures 9287000 is mentioned. A reading of scribbling of the said figures does not reveal as to what these figures represent. The Assessing Officer has presumed that the aggregate figure i.e. 9287000 is the amount of investment made by the assessee for purchase of land. The addition has been made by the Assessing Officer merely on presumption without establishing the link between the said figures with the transaction of

purchase of land. The assessee has admitted that two parcels of land were purchased vide two separate sale deeds both dated 15-02-2010. The market value of both the parcels of lands was valued at Rs.8,00,000/- each for stamp duty. The Assessing Officer has not sought any report from the DVO to determine the market value of land before making the addition. We observe that the findings of Commissioner of Income Tax (Appeals) in deleting the addition are justified. Hence, we uphold the same. Consequently, ground No. 3 of the appeal by the Revenue is dismissed being devoid of any merit.

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

Order pronounced on Thursday, the 01st day of August, 2019.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st August, 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, Aurangabad
4. The Pr. Commissioner of Income Tax-2, Aurangabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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