



IN THE INCOME TAX APPELLATE TRIBUNAL SURAT BENCH, SURAT

BEFORE SHRI AMARJIT SINGH, JM & SHRI O.P.MEENA, AM

**ITA No.1501/Ahd/2013
(Assessment Year 2008-09)**

ITO, Ward-5(3) Room No.315, Aayakar Bhavan, Majura Gate, Surat.	Shri Mohmed Altaf Mohmed Azam Jarullah, Ward No.12/2949-A, Rani- Talao, Bar Bandhwad, Surat- 395003.
PAN/GIR No. AKAPJ1784A	
Appellant)	.. Respondent)

Revenue by	Shri Mayank Pandey (Sr. DR)
Assessee by	None
Date of Hearing	30/09/2019
Date of Pronouncement	30/09/2019

ORDER

PER AMARJIT SINGH (J.M):

The revenue has filed the present appeal against the order dated 07.03.2013 passed by the Commissioner of Income Tax (Appeals) –1 Majura Gate, Surat [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2008-09.

2. The revenue has raised the following grounds: -

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,29,16,850/- made by the AO on account of income from unknown sources.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating the fact found by the AO and ignored evidences collected by the AO for making addition of Rs.2,29,16,850/- on account of income from unknown sources.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) Surat ought to have upheld the order of the Assessing Officer, it is, therefore, prayed that the order of the Ld.CIT(A), Surat may be set-aside and that of the Assessing Officer’s order may be restored.”*

3. The brief facts of the case are that an information received from the Investigation Wing, Surat to the effect that the Shri Mohamed Amin S.M. Jaharullah with other co-owners have sold an immovable property bearing C. S. No.1/113 situated at Worli, Lower Parel, Mumbai. The property was sold with the help of power of attorney in favour of the Md. Altaf Mohmedazam Jarullah.



Sale consideration of Rs.2,29,16,850/- was deposited in bank accounts of owners with the Surat District Co-operative Bank Ltd. on 24.03.2008. Owners have refused the amount deposited in their bank account, therefore, the same amount was transferred to sundry account by the bank. As on date unclaimed amount of Rs.2,29,16,850/- is still lying with the sundry account of bank.

4. Shri Md. Altaf Mohmedazam Jarullah had sold the property with the help of power of attorney to M/s. Sumer Corporation on 19.03.2008, therefore, the notice u/s 148 of the Act was issued to him as well as other co-owner. No reply was received. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee refused to alienate the property. It is contended that anyone forged their power attorney and he did not received any amount. The AO nowhere found the reply of the assessee justifiable, therefore, raised the addition to the extent of 2,29,16,850/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the addition, therefore, the revenue has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The assessee nowhere appeared despite the notice was issued to him many times. The case is very old, therefore, we are decided the matter of controversy on the basis of the material available on record specifically on merits. Before going further, we deem it necessary to advert the finding of the CIT(A) on the issue:-

*“7.1 These three persons had 50 % share in the said property. After selling the property, 50 % of the total sale proceeds were deposited in the bank accounts of these co - owners by demand drafts. However, these co - owners wrote to the bank that the amount did not belong to them. In fact, they claimed that they had sold their 50 % share to OM Apollo Medicare Pvt Limited. Consequently, the amount was transferred to sundry account by the bank ie. Surat District Co - op Bank Ltd. They also claimed that they never issued ' Power of Attorney ' in favour of the appellant and it was a forged ' Power of Attorney *

7.2 The assessing officer stated that since the appellant had signed the sale deed, on behalf of the three co-owners, and the amount received has not been accepted by those owners, the same is assessable in the hands of the appellant, on protective basis. The appellant in his submission claimed that he only acted as a broker for the said sale deed and the Tower of Attorney^x was executed by the three co - owners.



7.3 Two appeals in the case of two co - owners have been decided by the undersigned. The details of those appellate orders are mentioned herein under :-

Sr No.	Case name	Appeal no.	Date of order
1	Mohammed Amin S M Jaharullah , through Legal heir. Mr Abdul Rahim Mohammed Jarullah.	CAS/1/TFR/436/12-13	28.02.2013
2	Gulam M. S. M . Jarullah, 27/4, Opp. Municipal Corporation Main Road, Mugalisara, Surat	CAS/1 TFR/437/120-13	28.02.2013

7.4 The paragraphs 8 to 8.7 of the said appellate order no. CAS/1 /TFR/436/12-13 dated in the case of **Mohammed Amin S M Jaharullah, through Legal heir. Mr Abdul Rahim Mohammed Jarullah** (Asstt Year 2008-09) passed by the undersigned, is reproduced herein under to keep all the facts in proper perspective as multiple allegations , and counter allegations have been made by different parties, at different forums / courts.

" 8. In this case, an information was received from the Investigation Wing, Surat stating that Mr Mohamed Amin S M Jaharullah with other co- owners has sold an immovable property bearing C. S. No. 1/113, situated at Worli, Lower Parel, Mumbai . The appellant ~s share was Rs. 1,14,58,700/- which was deposited in appellant "s bank account no. 10/8083 with The Surat District Co - operative Bank Ltd on 24.03.2008. However, the appellant claimed before the bank authorities that this amount does not belong to him and has not deposited by him. Consequently, the said amount was transferred to sundry account suspense account) by the bank,

8.1 During the course of assessment proceedings, the appellant explained that he alongwith his brother Mr. Gulam Mohyuddin SM Jaharullah, and sister Ms. Samsunnissa S M Jaharullah were 50 % owner of the said property. The remaining 50 % ownership was with another group of seven persons. The appellant sold the 50 % share to M/s Om Apollo Medicare Pvt Ltd vide its deed registered on 08.04. 2008. The date of transfer is claimed to be on 07. 03. 2008. i.e during the assessment year 2008-09. The appellant explained that all the ten co-owners entered into an agreement for sale with Om Dhanvantry Centers Pvt Ltd (now known as OM APOLLO MEDICARE PVT LTD) on 28.09.1995 and an advance of Rs. 20,00,000/- was received by all the co - owners . The remaining payment was not made by the buyer and the matter went into litigation. The appellant, his brother and sister sold their 50 % share in the property for Rs. 3 Crores vide above referred 'Conveyance Deed' registered on 08.04. 2008 to M/s Om Apollo Medicare Pvt Ltd.

8.2 The said consideration of Rs 3, 00, 00,000/- was divided into three co - owners in proportion to their respective shares and corresponding Capital gain / loss is claimed to have been shown by them including the appellant, in their respective returns of income. In the meantime, the another group of remaining co - owners sold the said property to another party i.e M/s. Sumer Corporation for Rs. 5.5 Crores. This sale was made by agreement dated 19.03.2008



registered on the same date. In this deed, one Mr. Mohmmmed Altaf Mohammedazam jaharullah singed on behalf of appellant, his brother and sister on the strength of an irrevocable 'Power of Attorney' dated 18th March, 2008. The appellant, his brother, and sister have disputed the genuineness of said 'Power of Attorney' and claimed that the said 'Power of Attorney' is forged. They claimed that they never gave such 'Power of Attorney' and never sold the property to M/s Sumer Corporation. They also claimed that the demand drafts in respect of that sale were deposited in the appellant's account by someone else and it was for this reason that the appellant wrote to the Bank authorities that the amount does not belong to the appellant.

8.3 In the meantime, various cases have been filed by different parties which are pending in different Courts of law. A criminal complaint no. 3800111/MISC/8 of 2008 has been filed before Metropolitan Magistrate 38th Court Mumbai by Mr Abdul Rahim Mohmmmed Amin Jaharullah , the legal heir of the appellant (and his son) against seven co-owners of the other Group, M/s Sumer Corporation, the notaries before whom the disputed 'Power of Attorney' is claimed to have been executed and the partners of M/s. Sumer Corporation regarding , the claim of forging the signatures of the appellant his brother and sister on the said 'Power of Attorney' and consequent sale of property to M/s. Sumer Corporation.

8.4 Apart from this criminal case, a Civil Suit no. 713 of 2009 has also been filed on 07.01.2008 by the appellant alongwith his brother and sister against the remaining seven co-owners , partners of M/s. Sumer Corporation, the Power of Attorney holder, the notaries before whom the 'Power of Attorney' was executed , etc for Civil rights in respect of the said property. This suit has been filed before the Hon 'ble Bombay High Court .Both these cases are claimed to be pending.

8.5 In the meantime, the Surat District Co - op Bank Ltd also filed Civil Suit in 2010 before the Principal Civil Judge, Surat against the Commissioner of Income Tax, Surat, the appellant's son and appellant's brother in respect of notice u/s 226 (3) issued by the Income Tax Officer.

8.6 In this background, the assessing officer held that by 31.03.2008, the assessee had not sold the property as the registration of the agreement of Rs3. Crore took place on 08.04.2008. However, the assessing officer observed that appellant 's share was sold twice. In view of pending litigations, Rs. 1, 14, 58,700/- deposited in the bank account but disowned by appellant was treated as assessee ' income ' from ' unknown source ' and added to the income. The present appeal is respect of the said addition.

8.7 The matter was also remanded to the A O vide letter dated 12.08.2010. The report dated 30.10.2010 was received which repeated contentions made in the assessment order and stated that all the contentions made in the assessment order and stated that all the contentions of appellant were considered by the AO and nothing new has been furnished by the appellant at the appellate stage.



7.5 The findings in said order as per para 7 to 7.10 are reproduced herein under for reference :-

"9. The facts related to this appeal have been examined. As per appellant's submission filed on 23.2.2013, (annexure A), the appellant, his brother, and sister received an amount of Rs. 3 crores as under :-

Sr No.	Particulars			Amount
	Advance Money 1995			Rs.10,00,000
1)	Shamshunnisha S Jarullah			
	Date		Amount	
	21.04.2008		Rs. 9,00,000	
	21.04.2008		Rs.1,00,000	Rs. 10,00,000
2)	Esrow account with Advocate Vinod Mistry & Co			
	Deposit			Rs 35,00,000
3)	M Amin S. Jarullah			
	09.04.2008	Cheque no.	Rs. 45,00,000	
	10.4.2008	856069	Rs. 9,00,000	
	10.4.2008	856070	Rs. 9,00,000	
	10.4.2008	856071	Rs. 9,00,000	
	10.4.2008	856048	Rs 3,00,000	
	25.4.2008		Rs. 50,00,000	Rs.1,25,00,000
4)	Gulam Mohiyuddin S Jarullah			
	Date	Cheque No.	Amount	
	09.04.2008		Rs 45,00,000	
	10.4.2008	856056	Rs.9,00,000	
	10.4.2008	856057	Rs. 9,00,000	
	10.4.2008	856058	Rs.9,00,000	
	10.4.2008	856059	Rs.9,00,000	
	10.4.2008	856060	Rs.9,00,000	
	11.4.2008	856049	Rs.5,00,000	
	11.4.2008	856050	Rs.7,00,000	
	11.4.2008	856061	Rs.9,00,000	
	12.4.2008	856062	Rs.9,00,000	Rs.1,20,00,000
			Total	Rs.3,00,00,000



9.1 It is noticed that M/s OM APOLLO MEDICARE PVT LTD had filed a suit No. 807 of 2008 in the Hon'ble Bombay High Court, against all the ten co- owners of the property for non-execution of Conveyance Deed pursuant to agreement of sale of 1995 for which Rs. 20,00,000/- was paid by the buyer. Consequent to the same, the appellant, his brother, and sister stated in the consent terms filed before the Hon 'ble Court that the defendant nos. 7,8 and 9 in the suit, (ie. appellant, his brother, and sister) agreed to sell their undivided 50 % share of Rs 3 Crores to M/s Om Apollo Medicare Pvt Ltd. Paragraphs 7 and 8



of the said consent terms dated 04.04.2008 are reproduced herein under :-

" 7. Agreed, declared and confirmed that as per the settlement arrived at between the Plaintiff and Defendant Nos. 7, 8, and 9, Defendant No. 7, 8 and 9 have agreed to sell their respective undivided share, right, title and interest as stated above for Rs. 3,00,00,000/- (Rupees three crores only) in full and final payment towards their respective undivided share of Defendant Nos, 7, 8 and 9.

8. Agreed, declared and confirmed that the Plaintiff through their Advocate have sent Demand Drafts as set out in the Plaintiffs Advocate's letter dated 19.03.2008 addressed to M/s. Vinod Mistry & Co, the present Advocates for Defendant Nos. 7, 8 and 9 and the said Demand Drafts shall remain in escrow with M/s. Vinod Mistry & Co till filing of these Consent Terms and execution of the Deed of Conveyance and registration thereof, whichever, is later. For the reference of number of Demand Drafts and the figures therein, the said letter is also annexed to these Consent Terms."

9.2 From a perusal of the above paragraphs, it is apparent that the consent terms were filed on 4.4.2008 i.e after the disputed sale deed in favour of M/s. Sumer Corporation was registered. As far as sale deed of 50% shares dated 07. 03. 2008, it was signed by M/s OM APOLLO MEDICARE PVT LTD on 17.03.2008 and was registered on 08. 04. 2008. This means that Hon'ble Court was not informed that the agreement was already signed on 07.03.2008/ 17.03.2008.

9.3 Since, the Hon 'ble High Court was not informed that the sale deed had been executed in March, 2008 itself, this gives some weightage to the A.O 's argument that deed was antedated. However,, paragraph 8 of the consent terms mentions receipt of demand drafts on 19. 3. 2008 which established that the consideration was received on 19. 3. 2008 even if, the deed was not executed as held by the assessing officer.

9.4 Since the stamp duty rates were increased from 01. 04. 2008, if antedating is established, section 50 C may get invoked. However, the words assessable ' in Section 50 C have been introduced with effect from 01.10.2009. Therefore, it may not be possible to invoke section 50 C, unless stamp duty authorities/ Courts hold it to be a case of ante dating and enhanced stamp duty is charged.

9.5 However, as far as this appeal is concerned, there are two issues involved.

1. Whether the property was sold in AY 2008-09 or in AY 2009-10?

2. What is the sale consideration?

9.6 As far as the present appeal for Asstt Year 2008-09 is concerned, the appellant has shown the sale consideration of Rs 1, 25,00,000/-in the return filed, which is his share in the 50 % property. The another group sold the same property for Rs 5.5 Crores, in which the share of the appellant, his brother, and sister is 50 %.



9.7 *The out come of these pending litigations may either be in favour of OM APOLLO MEDICARE PVT LTD or in favour of M/s Sumer Corporation. If it is in favour of OM APOLLO MEDICARE PVT, LTD , the appellatant, his brother, and sister will be assessed for sale consideration of Rs 3, 00,00,000 /-.*

9.8 *It is in favour of M/s Sumer Corporation, sale consideration will be 50 % of Rs 5.5 Crores. Both these sales can be held to be valid, i.e sale consideration can never be 11. 5 Crores (6 + 5.5) for all the ten co - owners. It can either be Rs 6 Crores or Rs 5.5 Crores for all the co - owners. Therefore, as far as addition made by the Assessing Officer is concerned, it cannot be sustained as that amounts accepting sale consideration of Rs. 11.5 Crores and treating both the sales as valid. Consequently, the addition made by the Assessing Officer is deleted.*

9.9 *For the removal of doubts, it is clarified that this appellate order is not a finding on any Civil or Criminal liabilities or rights of any party to any of the pending litigations in various Courts. It is also not a finding as to whether in which year, the Capital Gain should be assessable.*

9.10 *This appellate order is a finding only on the issue that if the property has been sold twice by different co - owners, finally, only one sale will be held as valid sale and in that case . Capital Gain will be only in respect of one sale. The appellatant can be taxed for consideration of both the sale considerations. Consequently, appeal is allowed."*

7.6 *From a perusal of the findings given the above order (supra) it is apparent that this amount of Rs.2,29,16,850/- cannot be taxed in the hands of the appellatant. The said amount never reached him and this will remain in the sundry account of the Bank, till the litigation gets settled. Even if the outcome of the litigation establishes that the 'Power of Attorney' was genuine, this amount will go the three co-owners who issued the 'Power of Attorney' as per appellatant. Consequently, the protective addition made by the AO in the case of the appellatant has no basis and therefore, the addition is deleted."*

6. On appraisal of the above said finding, we noticed that the assessee nowhere received an amount of Rs.2,29,16,850/-. The said amount lies with the sundry account of bank. The allegation of the assessee is that his power of attorney was forged by anyone and alienated the property wrongly and illegally. The matter of controversy is pending before the criminal court which may settled in future if any. Anyway the assessee nowhere received any amount, therefore, undoubtedly the amount in question is not liable to be taxed in the hands of the assessee. The facts are not distinguishable at this stage. Taking into account all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere



ITA No. 1501/Ahd/2013

A.Y.2008-09

with at this appellate stage. Accordingly, we decide these issues in favour of the assessee against the revenue.

7. In the result, the appeal filed by the revenue is **hereby ordered to be dismissed.**

Order pronounced in the open court on this 30/09/2019

Sd/-

Sd/-

(O. P. MEENA)
ACCOUNTANT MEMBER

(AMARJIT SINGH)
JUDICIAL MEMBER

सुरत/ **Surat, Dated:** 30/09/2019/Vijay Pal Singh, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, Surat