

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6898 to 6900/Del/2015
Assessment Year: 2013-14

DCIT, Central Circle-20 , Ist Floor Room No 104, ARA Center Jhandewala Complex New Delhi	Vs.	Gulab Chand Ladhani W-4, D/5 Khasra No 459 Keshav Kunj ane W 4 Western Avenue Sainik farm New Delhi PAN AETPC2326L
DCIT, Central Circle-20 , Ist Floor Room No 104, ARA Center Jhandewala Complex New Delhi	Vs.	Paritosh Ladhani W-4, D/5 Khasra No 459 Keshav Kunj ane W 4 Western Avenue Sainik farm New Delhi PAN AAZPL 6041K
DCIT, Central Circle-20 , Ist Floor Room No 104, ARA Center Jhandewala Complex New Delhi	Vs.	Ekansh Ladhani W-4, D/5 Khasra No 459 Keshav Kunj ane W 4 Western Avenue Sainik farm New Delhi PAN ACDPL 4448G
(Appellant)-		(Respondent)

Assessee by :	Shri Kapil Goel, Advocate
Revenue by:	Smt Nidhi Srivastava CIT DR
Date of Hearing	06/08/2019
Date of pronouncement	07/10/2019

ORDER

PER PRASHANT MAHARISHI, A. M.

1. All these 3 appeals filed by The Learned Deputy Commissioner Of Income Tax, Central Circle – 20, New Delhi (the learned assessing officer) against the order of The Commissioner Of Income Tax (Appeals) – 27, New Delhi dated 30/10/2015 are

emanating from the same issue in case of above 3 assessee[father and his two sons] , therefore they are heard together and disposed of by this common order.

2. The grounds of appeal raised by the learned assessing officer are also identical wherein the addition deleted of INR 11,000,000 as undisclosed income in the hands of the one assessee and rupees one crore in the hands of another to assessee's of the same family is challenged.
3. The brief facts of the case shows that as assessee is operation u/s 132 of The Income Tax Act was conducted in the learning group of cases on 18/12/2012. Pursuant to the above such facts as recorded in the assessment order of Mr Gulab Chand Ladhani shows that pursuant to search the assessee filed its return of income on 30/7/2013 declaring total income of INR 4 0922470/-. The assessee has shown income under that income from salary and house property. During the course of search the main allegation against the group was that, they actively participate in land dealing in real estate investment. During the course of search a personal diary titled as annexure A – 1 was recovered and seized from the residential premises of the assessee wherein handwritten details of various amounts advanced for different level land deals on several dates by himself and his two sons Paritosh and Ekansh earning profit from such land deals was found. The learned assessing officer found eight pages of the diary and tabulated eight transactions of the property. He also referred to the statement u/s 132 (4) of the assessee. The learned assessing officer also took note of letter dated 21/12/2012 wherein the assessee offered INR 50,000,000 in his hands and identical sum in the hands of his two sons as undisclosed income. He noted that the assessee has undisclosed income of INR 135,000,000 is whereas the assessee has offered a sum of INR 34,000,000, and INR 35,000,000 have been offered in the hands of his sons. Therefore it was found that assessee has disclosed INR 104,000,000 against the surrendered income of INR 135,000,000 and therefore undisclosed income works out to INR 31,000,000 which has not been shown by the assessee despite making a disclosure under section 132 (4) of the income tax act and also submitting a letter to the income tax officer. Accordingly he made an addition of INR 11,000,000 in the hands of the assessee, and rupees one crore each in the hands of his two sons. Assessment u/s 143 (3) read with section 153A of the income tax act 1961 was passed on 31/3/2015 wherein to the returned income of INR 4

0922470/- a further addition of undisclosed income on account of land advances of INR 11,000,000 was added. Accordingly the total income along with some other minor addition was determined at INR 5 2134721/-.

4. Assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A wherein it has been challenged that the addition of INR 11,000,000 has been made solely on the basis of amounts are rendered by the assessee but ignoring the retraction made by him by filing the return of income showing other income at INR 34,000,000 against the surrendered amount of INR 45,000,000. Assessee further stated that undisclosed income of INR 1 to 5250000/- has been worked out based on personal diary by the assessee and the copy of the diary is part of the assessment order. It was further stated that on looking at the diary and the statement of the assessee the addition has been made. It was further stated that the seized diary is a dumb document having no evidentiary value. The learned CIT – A deleted the above addition stating that no incriminating document was found and seized which could put a light in respect of the real estate business by the assessee in its statement. It was further held that the statement was recorded when the search was continuing for long hours. Therefore he held that it fact shows that the disclosure were not based on any calculation of undisclosed income or on the basis of the seized papers or document. The disclosure so made was also not based on any valuables. He further held that since the assessee has already declared a sum of INR 34,000,000 and have paid the tax thereon along with the cash seized of Rs 212250/- at the time of search. Therefore, he held that only on the basis of the presumption that large-scale land dealing was going on cannot be made the basis for addition. According to him the learned assessing officer should have ascertain the investment by way of further inquiries in this regard. As there is no incriminating evidences was found against the assessee which could suggest to show that the lender willing to pay as he deleted the above addition of INR 11,000,000 in the hands of the assessee and rupees one crore each in the hands of his sons.
5. The learned AO aggrieved with the order of the learned CIT – capital has preferred this appeal before us.
6. Before the commencement of the argument by the learned departmental representative, the learned authorised representative filed a petition under rule 27 of the income tax

appellate tribunal rules to support the finding of the learned CIT – A on legal grounds. It was the argument of the learned authorised representative that assessment is passed u/s 143 (3) of the income tax act and the jurisdictional notice u/s 143 (2) was issued on 13/11/2014 when return was filed by the assessee on 30/7/2013 and last date for issue of notice u/s 143 (2) in the present facts would be only up to 30/9/2014. Therefore the impugned notice issued beyond that particular time limit makes the assessment framed under section 143 (3) as void ab initio. For this proposition, the learned authorised representative relied upon the plethora of judicial precedents.

7. Apparently as per para number 2 of the assessment order it is apparent that the assessee has filed its return of income on 30/7/2013 whereas the notice u/s 143 (2) of the act was issued to the assessee on 13/11/2014. There is no mention in the assessment order of issue of any notice u/s 143 (2) of the act prior to the date i.e. 13/11/2014 prior to 30/9/2014. Therefore the learned CIT – A was directed to submit whether any such notice was issued to the assessee prior to 30/9/2014 u/s 143 (2) of the income tax act. For this purpose, the time was granted of 15 days. However till to date, no information is supplied.
8. At the time of dictation of the order it was found that this is the appeal filed by the revenue in all the assessee where the addition contested is of INR 11,000,000 in the hands of the assessee Shri Gulab Chand Ladhani and Rs 1,00,00,000 in the hands of his 2 sons. Therefore, the impugned tax effect involves in all these three appeals is less than the prescribed limit for filing of the appeal before the tribunal.
9. Now as these appeals are concerned, relief granted by the CIT(A) by way of deletion of the above addition, tax effect involved would be less than ₹ 50.00 lakhs. This also applies to pending appeals.
10. Therefore, we are of the view that the present appeal of the Revenue falls within the purview of the CBDT Instruction cited (supra). It is not disputed by the Revenue that tax effect on the disputed addition is not more than ₹ 50 lakhs, and therefore, keeping in view the above CBDT circular and provisions of section 268A of the Income Tax Act, we are of the view that the present appeal of the Revenue deserves to be dismissed. It is dismissed.

11. However, it is observed that in case on re-verification at the end of the AO it can be demonstrated that the tax; effect is more, or Revenue's case falls within the ambit of exceptions provided in the Circular, then the Department will be at liberty to approach the Tribunal for recall of this order. Such application should be filed within the time period prescribed in the Act. In view of the above, the appeal of the Revenue is dismissed due to low tax effect.
12. In the result, all these three appeals of the Revenue are dismissed due to low tax effect. Order pronounced in the open court on 07/10/2019.

-Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 07/10/2019

A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi