

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1880/Del/2017
Assessment Year: 2007-08

Veer Savarkar Katyal,
329, Sainik Vihar,
Pitampura,
New Delhi.

Vs ITO,
Ward-42(2),
New Delhi.

PAN: ABDPK7569E

(Appellant)

(Respondent)

Assessee by	:	Shri Ved Jain, Advocate & Miss Umang Luthra, Advocate
Revenue by	:	Shri S.S. Rana, CIT, DR
Date of Hearing	:	03.12.2019
Date of Pronouncement	:	06.12.2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 31st January, 2017 of the CIT(A)-14, New Delhi relating to assessment years 2007-08.

2. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30th October, 2007 declaring the total income at Rs.1,91,180/-.

In this case, information was received through the Dy. Director of Income-tax

(Inv.), Unit-1(1), New Delhi, vide letter F.No.DDIT(Inv.)/Unit-1(1)/UM/2013-14/912 dated 05.03.2014 that a search and seizure operation was conducted in the case of M/s Unitech Machines Group on 18.02.2013. As per information provided, the assessee had purchased one property V3S-Omaxe from Mrs. Brij Bala & M/s Yogum Developers Ltd. for Rs.1,05,55,375/- in cash. On the basis of this information, proceedings u/s 147 of the Income Tax Act, 1961 were initiated and after recording reasons and getting requisite approval u/s 151(2) of the IT Act 1961, the Assessing Officer issued a notice u/s 148 of the IT Act dated 26.03.2014. The Assessing Officer issued notice u/s 142(1) to the assessee and also u/s 143(2) calling for certain information regarding the investment made by the assessee. However, in absence of any proper compliance from the side of the assessee, the Assessing Officer made addition of Rs.1,05,55,375/- being the unexplained investment out of income from undisclosed sources. The Assessing Officer accordingly determined the total income of the assessee at Rs.1,07,46,560/-.

3. Before the CIT(A), the assessee challenged the addition on merit as well as the validity of reassessment proceedings. So far as the merit of the case is concerned, the Id.CIT(A) noted that the property was purchased by the assessee along with two other persons. Since the assessee's share is only 1/3, the Id.CIT(A) sustained the addition of Rs.35,18,458/- i.e., 1/3 of the total investment as against Rs.1,05,55,375/- made by the Assessing Officer. So far as the validity of the

reassessment proceedings are concerned, the Id.CIT(A) upheld the validity of reassessment proceedings.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal raising the following grounds:-

“1. That the order of the learned Commissioner of Income Tax (Appeals) is bad both on law and facts.

2. The part of impugned order is contrary to the evidence and material on record, contrary to the principles of law and binding judgments of the Court, contrary to the relevant provisions of the Act and deserves to be quashed and set aside.

3. That the learned Commissioner of Income Tax (Appeals) has grievously erred confirming the invocation of the provisions u/s 147 made by learned Assessing Officer and who does not have any reason to believe that the income chargeable for the year has escaped the assessment.

4. That the learned Commissioner of Income Tax (Appeals) has erred in sustaining an addition of a sum of Rs. 3518458/-, on estimation basis, without substantiating any reason for arriving at such amount of Rs. 3518458/- in the absence of any material on record.

5. Without prejudice to the above, the learned Commissioner of Income Tax (Appeals) should not have accepted the addition of Rs. 3518458/- being the amount of cash paid to Sh. Sushant Chabra and Smt. Bala Chabra on account of purchase of property, in complete disregard of the fact that the appellant purchased property in question which was owned only by Sh. Sushant Chabra and not jointly by Sh. Sushant Chabra and Smt. Bala Chabra as alleged.

6. That the appellant craves leave and prays that the relief claimed above or any other relief, to which the appellant is entitled, may kindly be allowed.”

5. The Id. counsel for the assessee, referring to the letter addressed to the Assessing Officer, copy of which is placed at pages 10-13 of the paper book, drew the attention of the Bench to page 11 and submitted that the assessee had asked the

Assessing Officer to provide the copies of such purported documents and also requested him to provide an opportunity to the assessee to confront the person on the basis of whose statement action erroneously has been initiated in the case of the assessee. Relying on various decisions, he submitted that the reassessment proceedings initiated by the Assessing Officer is not valid as per law. So far as the merit of the addition is concerned, the ld. counsel for the assessee submitted that no proper opportunity was granted by the Assessing Officer and the addition has been made merely on the basis of surmises and suspicion and, therefore, the same should be deleted. He submitted that it is the settled principle of law that no concealed income can be taxed twice i.e., once in the hands of a person where it is discovered and again in the hands of another person. In his alternate contention, the ld. counsel submitted that he has no objection if the matter is restored to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate the case on both the issues i.e., the validity of reassessment proceedings and the addition on merit by providing copies of the documents which are the basis for reopening of the assessment and making the addition.

6. The ld. DR, on the other hand, while supporting the order of the Assessing Officer and the CIT(A), fairly conceded that he has no objection if the matter is restored to the file of the Assessing Officer for fresh adjudication.

7. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of

the assessee. We have also considered the various decisions cited before us. We find, the Assessing Officer, in the instant case, on the basis of the information obtained from the Investigation Wing that the assessee had purchased one property V3S-Omaxe from Mrs. Brij Bala & M/s Yogum Developers Ltd. for Rs.1,05,55,375/- in cash, made the addition of the same to the total income of the assessee in the reassessment proceedings initiated u/s 147 of the Act. We find, the Id.CIT(A) sustained an amount of Rs.35,18,458/- being 1/3 of the total investment in the property since the said property was purchased by the assessee jointly with two other persons. It is the submission of the Id. counsel that despite request before the Assessing Officer as well as before the CIT(A), the documents/statements which were the basis for reopening of the assessment as well as the addition so made were never supplied to the assessee to rebut such allegations and the assessee was not given any opportunity to confront the persons whose statement was recorded and which is the basis of initiation of reassessment proceedings and for making the addition. It is also the submission of the Id. counsel that if the so-called documents/statements, which are the basis of initiation of reassessment proceedings and the addition, are provided to the assessee, the assessee is in a position to rebut the same. Considering the totality of the facts of the case and in the interest of justice, we deem it proper to restore the issue to the file of the Assessing Officer with a direction to provide the copy of the statement so recorded and the documents so obtained from the Investigation Wing which are the basis for initiation of reassessment proceedings and making the addition. The

Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purposes.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

The decision was pronounced in the open court on 06.12.2019.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 06th December, 2019

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Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi