

आयकरअपीलीयअधिकरण,सुरतन्यायपीठ,सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER
आ.अ.सं./I.T.A No.1418/AHD/2016

निर्धारणवर्ष/Assessment Year: 2010-11

Jigar Veljibhai Sheta, 606, Lalbhai Contractor Complex, Nanpura, Nr Parsi Library, Surat-395 001. [PAN: BUQPS 9374 E]	V.	Income Tax Officer, Ward-1(3)(2), Surat.
अपीलार्थी / Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by	Shri Rasesh Shah - AR
राजस्वकीओरसे /Revenue by	Smt. Anupama Singhla, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	10.12.2019
उद्घोषणाकीतारीख/Pronouncement on:	13.12.2019

आदेश /O R D E R

PER O.P. MEENA, AM:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income tax (Appeals)-II, Surat (in short “the CIT (A)”) dated 03.03.2016 pertaining to assessment year 2010-11.
2. Ground No. 1 to 3 are pressed before us, therefore the same are treated as dismissed as not pressed.
3. Ground no. 2 to 4 are against the confirmation of addition of Rs.15,00,000/- u/s.69B treating the same as unaccounted investment without appreciating the facts and submissions.

4. Brief facts of the case are that a search was carried out in the premises of Shri Babubhai Gadara, wherein a paper was found which had contained entries of cheques and cash payments of purchase of land situated at Katargam, Surat. On investigation, it was found that Shri Mahendra Babubhai Gadara along with the appellant and five other persons had purchased this land. The cheque amount was of Rs.21,80,000/- paid on 20-01-2010 cash of Rs.1,29,000/- paid on 26-01-2010 and the last entry of the cash was written as Rs.1,50,000/-. However, the total mentioned is Rs.3,809/- only which means Rs.38,09,000/- which shows that cash written of Rs.1,50,000/- is actually Rs.15,00,000/- and not Rs.15 lacs. The AO has held that the total payment for land made for his own share by Shri Mahendrabhai Babubhai Gadara was Rs.38,09,000/- out of which Rs.21,80,000/- is through cheque, Rs.1.29 lacs is for stamp duty and for registration and the rest Rs.15,00,000/- was paid on-money. The AO held that this Rs.15,00,000/- payments was the share of Shri Mahendrabhai Gadara which is 10% share in land purchase, the appellant had also 10%, hence he might have made payment of Rs.15,00,000/- as on-money out of the books of account. Therefore, the AO made the addition u/s.69B of Rs.15 lacs as on-money out of books of account. Accordingly, the AO treated the same as unexplained cash in the hands of the assessee.

5. Being aggrieved, the assessee carried the matter before the CIT(A). However, the CIT(A) confirmed the said addition on the ground that land mentioned in the seized paper was purchased by the assessee

with other person in which the assessee had his share, therefore the assessee being co-owner made have paid on-money, hence the addition so made by the AO was confirmed.

6. Being aggrieved, the assessee filed before this Tribunal. The ld. counsel submitted that the reliance placed on the pocket diary of Mahendrabhai Godara which does not belonged to the assessee. The same was found from Mahendrabhai Babubhai Godara. The assessee has not paid any such amount of Rs.15,00,000/- as alleged by the AO, therefore the addition made on presumption basis u/s.69B as unaccounted investment is required to be deleted.

7. The ld counsel relied on the decision in the case of CIT vs. Sunita Dhadda [ITA no. 197/ 2012(Raj.) dated 31-07-2017] of Hon'ble High Rajasthan High Court, wherein it was held that no addition can be made on the basis of presumption on third party statement without cross-examination of the third party. The ld. counsel further submitted that the AO has failed to allow cross-examination of the party to the assessee. Therefore, no addition can be sustained in the light of decision in Kishanchand Chellaram v. CIT 125 ITR 713 (SC). The ld. counsel further reliance in the case of Andaman Timber Industries v. CIT (2015) 281 CTR 241 (SC) wherein it was held that not allowing the assessee to cross examine the witnesses by the adjudicating authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice

because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness for the statements and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. It should be pertinent to note that in the impugned order passed by the adjudicating authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the adjudicating authority. Further, presumption u/s.292C is that paper found from possession of person belonged to him only, hence, no liability can be fastened upon the assessee.

8. Further, there was no liability for closing material before the AO. Therefore, the addition made on the basis of third party statement cannot be used in the case of assessee, to whom neither the cross-examination was allowed nor the assessee was allowed in the issue.

9. We have heard the rival submissions and perused the material available on record. We find that the AO has failed to allow examination to the assessee, with respect to the entries mentioned in the seized diary or alleged to the assessee. The AO has presumed that the assessee has also paid on-money for purchase of property whereas no corroborating evidence has been brought on record. Therefore, the addition made behind the back of the AO cannot be legally sustained. Accordingly, the guidance made by the AO is therefore deleted.

10. In the result, the appeal of the assessee allowed.
11. Order pronounced in the open court on 13-12-2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 13th December, 2019/S.Samanta, PS
Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

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By order

Assistant Registrar, Surat