

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

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.421/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

Rajkumar B. Agarwal,  
283, Budhwar Peth,  
Pune-411 002.  
PAN : AESPA6982R

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Deputy Commissioner of Income Tax,  
Central Circle-1(2), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 09.01.2020

घोषणा की तारीख / Date of Pronouncement : 10.01.2020

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeals), Pune-11 dated 22.12.2016 for the assessment year 2007-08  
as per the following grounds of appeal on record:

*"1. The learned CIT(A) erred in confirming the validity of reopening u/s.  
148 and the consequential reassst. order passed u/s.147 without*

*appreciating that the reopening by the learned A.O. u/s. 148 was on the basis of reason to suspect and therefore, the entire proceedings including the order passed u/s.147 was bad in law.*

*2. The learned CIT(A) further erred in not appreciating that no separate order was passed by the learned A.O. in respect of the objections raised by the assessee on the reasons recorded for reopening the case and hence, the final reasst. order passed u/s.147 was not valid at all.*

*3. The learned CIT(A) erred in confirming the addition of Rs.1,87,00,000/- in the hands of the assessee on the ground that the assessee had received the said amount on account of transfer of tenancy rights held by the assessee in the shop at Laxmi Road, Pune.*

*4. The learned CIT(A) erred in confirming the addition made by the A.O. of Rs.1,87,00,000/- on the basis of the tax evasion petition filed by third party without appreciating that no addition could be made in the hands of the assessee on the basis of the evidences furnished by the third party and accordingly, the entire addition should be deleted.*

*5. The learned CIT(A) failed to appreciate that the evidences furnished by the third party did not indicate that the assessee had received any amount of Rs.1,87,00,000/- for transfer of tenancy rights and further, there was no signature of the assessee on the said documents, no addition could be made in the hands of the assessee on the basis of the said documents and the entire addition made should be deleted.”*

2. At the time of hearing, the Ld. AR of the assessee at the very outset submitted that he is not pressing Ground No.1 & 2 and therefore, **Ground No.1 & 2 are dismissed as “not pressed”**.

3. **Ground Nos. 3 to 5** pertains to the issue of confirming addition of Rs.1,87,00,000/-.

4. The brief facts as to **Ground Nos. 3 to 5** are that the assessee is an individual filed his return of income for the assessment year 2007-08 declaring total income of Rs.30,18,451/-. The return was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) and assessment was reopened by issuing the notice u/s.148 of the Act on 27.03.2014 which was served on 29.03.2014. In the reasons for re-opening the assessment a copy of which is filed in the paper book at Page Nos. 3 and

4, it is stated therein that following informations were received from Investigation Wing on the basis of TEP (Tax Evasion petition). These informations were that shop No. 30 and 31 at Saraswati Vilas, Lakshmi Road, Pune are owned by the. Trust Maharashtra Girls Education Society (MGE Society), Huzurpaga, Pune 411 030 which is a Charitable Trust carrying out the activity of running of School. These two shops were given on lease by the Trust to late Smt. Sushilabai B. Agarwal on a nominal monthly rent. It is also seen that the said tenancy rights (in respect of said shop no. 30 and 31 at Saraswati Vilas Building, Laxmi Road, Pune) were transferred to Shri. Shamjibhai Shah and other on 15/07/2006 against cash consideration of Rs.2.12 crore. It is learnt that Smt. Sushilabai B Agarwal has passed away in the year 2005. Thus, as on the date of above cash transaction of Rs.2.12 crore, Smt. Sushilabai B Agarwal was no more alive and therefore the noting of "inclusive of 1.87 rajkumarji" indicates that cash of Rs.1.87 Crores was paid to Rajkumar B Agarwal as he is the legal heir of Smt. Sushilabai B Agarwal. Thus on the basis of the TEP information and the loose paper noting indicating cash payment to Rajkumar Agarwal, the Assessing Officer completed reassessment u/s.143(3) r.w.s.147 of the Act and Rs.1.87 crores were added to the income of the assessee.

5. That before the Ld. CIT(Appeals), the assessee vehemently argued that the Assessing officer made addition simply on the basis of noting appearing in the loose paper which is not at all corroborated by any other evidences. There is mention of 1.87 but whether it is Rupees or something else or what exactly is the quantification of that amount whether in thousands, lakhs or Crores nothing is stated in the loose paper. That in absence of such quantification of amount as evident in Para 3 of the Assessing Officer's order, he has considered the business locality and taken the value in Crores which is

absolutely hypothetical and presumptions basis. That further, addition has been made in the hands of the assessee Rajkumar B. Agarwal but in the entire loose paper there is no mention of payment to the said Rajkumar B. Agarwal. There is no signature also appearing in that loose paper of Rajkumar B. Agarwal. In absence of signature of the assessee acknowledgement of receipt of any amount cannot be presumed on the assessee for taxation purpose. Even, the Ld. CIT(Appeals) in his order at Para 23 records that "*further the impugned papers contain signatures of the parties to the transaction, though assessee's signatures are not there.*". That irrespective of recording this finding, the Ld. CIT(Appeals) as per detailed reasons appearing in his order which is on record, had upheld the addition in the hands of the assessee.

6. That before the Bench, the Ld. AR of the assessee reiterated the submissions made before the Assessing Officer as well as before the Ld. CIT(Appeals) and referred to the said loose paper which is annexed at Page 13 of the paper book filed before us. The Ld. AR contended that there is no statement or noting in the loose paper stating any amount was paid to the assessee i.e. Rajkumar B. Agarwal. That further, as accepted by the Ld. CIT(Appeals), there is no signature of the assessee i.e. Rajkumar Agarwal in that paper. Therefore there is no evidence of acknowledgement of the assessee and no addition can be made in his hands. That further, additions cannot sustain in the hands of the assessee since absolutely there are no corroborative evidences to substantiate that any amount was received by the assessee.

6.1 The Ld. AR placed reliance on the decision of the Pune Bench of the Tribunal in the case of **Pradeep Amrutlal Runawal Vs. TRO (2014) 149 ITD**

**548/47 taxmann.com.293 (Pune- Trib.)** and in this case, some loose papers were seized wherein certain amounts were written against the name of the assessee. The Assessing Officer made addition of said amount as undisclosed income in the name of the assessee. No evidence was found relating to existence of any transaction between assessee and 'D Group' and no corroborative evidence was found to suggest that the assessee had actually received the said amount. The Tribunal held that no addition could be made merely on the basis of noting in loose papers found during search proceedings in case of 'D Group' against the name of assessee.

6.2 The Ld. AR of the assessee further relied on the decision of the Hon'ble Bombay High Court in the case of **Addl. CIT Vs. Miss Lata Mangeshkar (1974) 97 ITR 696** wherein the addition was made in the hands of the assessee on the basis of some entries in the books of third persons. The Hon'ble Bombay High Court held that it is settled legal position that simply placing reliance on some loose papers the Assessing Officer is not justified in making addition in absence of other corroborative evidences to that effect.

7. The Ld. DR has placed reliance on the orders of the Sub-ordinate Authorities.

8. We have perused the case record and heard the rival contentions. We have also analyzed the facts and circumstances in this case. It is an undisputed fact that the additions were made as per TEP and the noting found in the loose papers wherein the name of the assessee is mentioned and against the name of the assessee 1.87 is written but whether it is an amount in thousand, Lakhs or Crores nothing is evident from that noting. The Assessing Officer concluded it to be crores simply on basis of the business

locality which is, therefore, on guesswork, surmises hypothetical basis. The Ld. CIT(Appeals) in his order has also observed that there is no signature in that loose paper of the assessee i.e. Rajkumar B. Agarwal. The Revenue Authorities could not bring any other corroborative evidences to substantiate the said noting in the loose paper. The entire addition has been based on this single noting found in this loose paper without any corroborative evidences. Even at the time of hearing, the Ld. DR could not place on record any relevant document, evidences in order to substantiate and corroborate the addition made on the basis of that entry in the loose paper. We have already perused the findings of the Pune Bench of the Tribunal in the case of **Pradeep Amrutlal Runawal Vs. TRO (supra.)** and decision of the Hon'ble Bombay High Court in the case of **Addl. CIT Vs. Miss Lata Mangeshkar (supra.)** wherein it is a settled legal position that it is not correct for the Assessing Officer to just rely on the noting found on the loose paper and make addition in the hands of the assessee if there is no corroborative evidences or materials substantiating to that effect.

In this case, noting in the loose paper on the basis of which the Assessing Officer reopened the assessment did not contain any signature of the assessee and it is also not established whether at all any amount was received by the assessee and most important the Department could not bring on record any other corroborative evidences in support of the addition made. We take guidance from the decision of the Hon'ble Bombay High Court in the case of **Addl. CIT Vs. Miss Lata Mangeshkar (supra.)**.

9. In view of the aforesaid discussion and on examination on facts, we set aside the order of the Ld. CIT(Appeals) and direct the Assessing Officer to

delete the addition from the hands of the assessee. Thus, **Ground Nos. 3 to 5 raised in appeal by the assessee are allowed.**

10. In the result, **appeal of the assessee is partly allowed.**

Order pronounced on 10<sup>th</sup> day of January, 2020.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 10<sup>th</sup> January, 2020.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Pune-11.
4. The CIT(Central), Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	09.01.2020	Sr.PS/PS
2	Draft placed before author	10.01.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		