

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI George Mathan, Judicial Member and
Shri Anil Chaturvedi, Accountant Member**

**I.T.A. No. 1942 & 1943/PUN/2017
Assessment Years: 2009-10 & 2010-11**

Ram Dinkar Jadhav
Khetia Road, At Shahada,
Dist. Nandurbar – 425 409

PAN ; ABLPJ 4651 Q

Appellant

Vs.

I.T.O. Ward 14(1), Pune

Respondent

Appellant by : Shri Pramod Shingte
Respondent by : Shri Alok Malviya

Date of hearing : 20-02-2020
Date of Pronouncement: 21-02-2020

ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

These two appeals filed by the assessee are directed against consolidated order of the learned CIT(A)-2, Kolhapur in Appeal No. PN/CIT(A)-13/ITO Central 1, Nasik/391-392/2015-16/75 dated 5-5-2017 for A.Y. 2009-10 and 2010-11.

2. Shri Pramod Shingte, is represented for the assessee and Shri Alok Malviya is represented for the Revenue.

3. It was submitted by the learned A.R. that there was a search and seizure action in Suyojit Group of cases. As a consequence of the said search, survey has been conducted at the office premises of M/s. Vijay Construction, Nasik. In the course of survey, certain documents were impounded. One of the said documents contained entries shows the assessee's name and an amount of Rs. 1,05,00,000/- having been paid to said M/s, Vijay Construction during the period from 3-8-2008 to 3-1-2009. The said page also showed interest payment payable from January to March 2009 so also for the period from April 2009 to November 2009. On the basis of the said documents found in the course of survey in the case of M/s. Vijay Construction, the A.O had made an addition of Rs. 10,64,622/- for A.Y. 2009-10 and an addition of Rs. 22,51,784/- for A.Y. 2011-11 representing interest as mentioned in the said documents found. It was his submission that the assessment order came to be passed on 10-2-2014 in respect of both the assessment years. It was his submission that the assessment order for A.Y. 2009-10 was the subject matter of revision u/s 263 wherein the learned Pr. CIT had proposed to bring to tax the amount of Rs. 1,05,00,000/- as mentioned in the said document found in the course of survey in the case of Vijay Construction as undisclosed income of the assessee. It was his submission that the said order of revision came to be quashed by the co-ordinate Bench of this Tribunal in ITA No. 1684/PUN/2015 vide order dated 20-7-2018. It was his submission that as the assessment orders were in appeal before the CIT(A), the learned CIT(A) consequently issued enhanced notice on the assessee for A.Y. 2009-10 wherein he proposed to enhance the assessment by bringing to tax as undisclosed income an amount of Rs. 1,05,00,000/- as mentioned in the documents seized in the course of survey of M/s. Vijay Construction. It was the submission of the learned A.R that the said amount of Rs. 1,05,00,000/- has been questioned by the A.O in the case of

M/s. Vijay Construction and no addition had been made in the hands of M/s. Vijay Construction. The learned A.R drew our attention to page 9 to 12 of the paper book which is a copy of the assessment order in the case of M/s. Vijay Construction. Further, the learned A.R drew our attention to page 29 to 31 of the paper book which is a copy of the submissions made by M/s. Vijay Construction before its Assessing Officer in the course of assessment proceedings. The learned A.R brought our attention to page 31, para 19, which was the explanation with regard to the amount of Rs. 1,05,00,000/-. The explanation is extracted herein below for brevity.

“Rs. 1,05,00,000/- - This amount is inclusive of Rs. 75 lacs received as Advance against Sus property from Ashish Barter Pvt. Ltd. Through Ram Kaka and Rs. 30 lacs Gift received from Lata Vijay Jadhav (my mother) received through Ram Kaka Copy of confirmation letter from Ashish Barter and from M/s. Lata Jadhav are enclosed herewith.”

4. It was his further submission that the amount of Rs. 1,05,00,000/- represented the amount of Rs. 75,00,000/- received as advance from M/s. Ashish Barter Pvt. Ltd., through the assessee who is the uncle of Shri Pawan Vijay Jadhav, who was a partner in M/s. Vijay Construction. The learned A.R drew our attention to page 77 of the paper book which was the confirmation letter issued by M/s. Ashish Barter Pvt. Ltd., in respect of advance given to M/s. Vijay Construction for the amount of Rs. 75,00,000/-. It was his further submission that the amount of Rs. 30,00,000 was gift received from Mrs. Lata Vijay Jadhav, the mother of Pawan Vijay Jadhav. However, the assessee's name was mentioned there as the amount was brought by the assessee. It was submitted by the learned A.R that the confirmation letter in respect of mother of the assessee was also produced before the A.O in the case of M/s. Vijay Construction. It was his submission that the amount having been explained no addition has been made in the hands of the M/s. Vijay Construction. It was further submitted that the amount did not belong to the

assessee herein as the amounts were advances given by M/s. Ashish Barter Pvt. Ltd., and the gift by the mother of Pawan Jadhav, one of the partners of M/s. Vijay Construction. It was his further submission that as no portion of the amount related to the assessee, no addition was liable to be made in the hands of the assessee. It was the further submission that as the amount of Rs. 1,05,00,000/- did not belong to the assessee, no addition on account of interest in respect of the same was liable to be added in the hands of the assessee.

5. In reply, the learned Departmental Representative for the Revenue vehemently supported the orders of the A.O and the CIT(A). It was his submission that in the course of survey, a document has been found which was showed the name of the assessee and an amount of Rs. 1,05,00,000/- has been received by M/s. Vijay Construction from the assessee herein and interest payment details were also there in the said paper which referred to the assessee only. It was his submission that the addition made by the A.O and as confirmed by the learned CIT(A) in respect of the interest as found in the documents seized in the course of survey in the case of Vijay Construction wherein the assessee's name has been mentioned was liable to be confirmed. It was his further submission that the enhancement as made by the learned CIT(A) of the amount of Rs. 1,05,00,000 for A.Y. 2009-10 which represented the deposit made by the assessee in the seized documents found in the course of survey of M/s. Vijay Construction was liable to be confirmed.

6. We have heard the rival contentions and perused the material on record. A perusal of the assessment order in the present case clearly shows that the assessment order is ex parte assessment order. However, a perusal of the assessment order in the case of M/s. Vijay Construction clearly shows that M/s.

Vijay Construction has been questioned in regards to the said amount of Rs. 1,05,00,000/-. The Assessing Officer of M/s. Vijay Construction who examined all these details has considered the explanation given therein that the amount of Rs. 1,05,00,000/- included the amount of Rs. 75,00,000/- being the advance from M/s. Ashish Barter Pvt. Ltd., and an amount of Rs. 30,00,000/- representing gift from the mother of Shri Pawan Vijay Jadhav, a partner of M/s. Vijay Construction. It is after considering the explanation that no addition has been made in the hands of either Pawan Vijay Jadhav or Vijay Construction Pvt. Ltd. The said document is in fact the document found in the course of survey of M/s. Vijay Construction Pvt. Ltd. M/s. Vijay Construction Pvt. Ltd. has given an explanation in respect of the said document. The Assessing Officer in respect of M/s. Vijay Construction has accepted explanation given by the assessee therein. Now, it would be farfetched for the A.O in the case of assessee herein to take a stand that the amount of Rs. 1,05,00,000/- belongs to the assessee just because the assessee's name is mentioned in the seized document. We also note the fact that confirmation letters have been produced in respect of amount of Rs. 75,00,000/- being the advance received from Ashish Barter Pvt. Ltd. and the gift of Rs. 30,00,000/- from the mother of Shri Pawan Vijay Jadhav. This being so, we are of the opinion that the enhancement done by the learned CIT(A) in respect of the amount of Rs. 1,05,00,000/- in the hands of the assessee is unsustainable and is deleted.

7. As we have already held that the amount of Rs. 1,05,00,000/- is the undisclosed income in the hands of the assessee. The said amount does not in any way relate to the assessee and consequently the interest in respect of the said amount cannot be added in the hands of the assessee. In the

circumstances, the addition of the interest made for the A.Y. 2009-10 and 2010-11 also stands deleted.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in open Court on this 21st day of February 2020.

Sd/-
(ANIL CHATURVEDI)
Accountant Member

sd/-
(GEORGE MATHAN)
Judicial Member

Pune; Dated : 21st February 2020.

Ankam

Copy of the Order is forwarded to :

1. Assessee
2. Respondent
3. The CCIT (International Taxation) West Zone, Mumbai
4. PCIT (Central), Nagpur
5. The Addl/Jt. (Central) Range, Nasik
6. The A.O, ITO (Central)-1, Nasik
7. The D.R. ITAT Pune Bench 'B'
8. Guard file

True copy

By order

Sr. Private Secretary
ITAT Pune Bench, Pune

1	Draft dictated on	20.02.2020	Sr. PS/PS
2	Draft placed before author	20.02.2020	Sr. PS/PS
3	Draft proposed and placed before the second Member		
4	Draft discussed/approved by second Member		
5	Approved draft comes to the Sr. PS/PS	-21-02-2020	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	21-02-2020	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		