IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 4826/Del/2018
Assessment Year: 2011-12

RAMESHWAR LAL, C/O V.N. PUROHIT & CO, CAs 214, NEW DELHI HOUSE, 2ND FLOOR, 27, BARAKHAMBA ROAD, NEW DELHI – 110 001 (PAN: AAVPL2411M)	VS.	DCIT, CIRCLE 71(1), NEW DELHI
(APPELLANT)		**(RESPONDENT)**

Assessee by: Sh. Amit Sharma, Advocate
Revenue by: Ms. Parul Singh, S. DR.

ORDER

This appeal is filed by assessee against the Order dated 31.5.2018 passed by the Ld. Commissioner of Income Tax(A)-21, New Delhi relating to Assessment Year 2011-12 on the following grounds:-

1. *That the Ld. CIT(A) has erred both in law and on facts of the case in confirming addition of Rs. 5.00 lakhs as made by AO being money paid for purchase of residential property out of own funds.*
2. *That appellant craves leave to add, to amend or withdraw to any ground on or before the hearing of the appeal.*

2. The brief facts of the case are that assessee filed its return of income declaring an income of Rs. 16,17,759/- on 28.7.2011. The Addl. DIT(Inv.), Unit-I, Mumbai vide its letter dated 10.3.2016 forwarded information to Pr. CIT-20, Kolkata in the case of Cosmos Group, which is engaged in the business of building and construction. During the search proceeding, incriminating material relating to the on-money receipts of the assessee was unearthed and seized. The case of the assessee was

reopened u/s. 147 by the ITO, Ward 62(4), Kolkata after recording reason to believe and obtaining approval from Addl. CIT, Range-62, Kolkata. Notice u/s. 148 of the Act for AY 2011-12 was issued on 22.3.2016. The assessee vide its letter dated 27.4.2016 stated that he has already filed his income tax return for AY 2011-12 on 27.7.2011 which may be treated as income tax return filed in response to the notice u/s. 148 of the Act. Subsequently, order u/s. 127(2) of the Act was passed by PCIT-21, transferring the case from ITO, Ward 62(4), Kolkata to ACIT, Circle 71(1), New Delhi on 18.7.2016. The assessment record u/s. 127 of the Act was transferred vide letter dated 28.7.2016 and accordingly, notice u/s. 142(1) of the Act alongwith questionnaire was issued on 29.8.2016 and notice u/s. 143(2) of the Act was issued on 30.8.2016. In response, vide letter dated 14.9.2016, the assessee requested for copies of document seized during the search. The same were provided to the asseseee vide letter daedtd 7.11.2016. In response to the same, the AR of the assessee attended the hearing from time to time and filed the required details. The Assessee vide order sheet entry dated 18.11.2016 was required to show cause why cash payment amounting to Rs. 5,00,000/- paid in cash to Cosmos Group may not be added to the income as unexplained investment. The assessee vide his submission dated 24.11.2016, stated that he had paid Rs. 5,00,000/- in cash to COSMOS Construction during the FY 2010-11 out of his past savings over the years, and his wife and other family members. In support, neither any supporting document/ evidence nor any bank statement was filed by the assessee. AO observed that the submission made by the assessee regarding the nature and sources of investment made in the form of advance in cash amounting to Rs. 5,00,000/- to Cosmos Group is found to be evasive and unsatisfactory. Since no satisfactory explanation has been offered by the assessee about the nature and source of payment of cash, the value of the investment is deemed to be the income of the assessment of the relevant F.Y. and accordingly, the same was added to the hands of the assessee and the income of the assessee was assessed at Rs. 21,22,040/- u/s. 148 of the Act r.w.s. 143(3) of the I.T. Act, 1961 vide order dated

09.12.2016. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 31.5.2018 has dismissed the appeal of the assessee. Aggrieved with the impugned order dated 31.5.2018, assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee stated that Ld. CIT(A) has erred in law and on facts of the case in confirming the addition of Rs. 5.00 lacs as made by the AO being money paid for purchase of residential property out of own funds. Hence, the same may be deleted.

4. At the time of hearing, Ld. DR relied upon the order passed by the revenue authorities and stated that Ld. CIT(A) has elaborately discussed the issue in dispute and decided the same against the assessee by passing the well reasoned order and after giving adequate opportunity of being heard to the assessee. Hence, he requested that the appeal filed by the Assessee may be dismissed.

5. I have heard both the parties and perused the orders passed by the revenue authorities, I am of the view that Ld. CIT(A) has decided the issues in dispute against the assessee. For the sake of convenience, the finding of the Ld. CIT(A) on the issue in dispute mentioned at page no. 12 to 15 vide para no. 6.6 to 6.11 is reproduced as under:-

> *"6.6 Ground no. 2 of the appeal deals with the merit of the case where the appellant s challenged the addition of Rs. 5 lakhs made by the AO. The AO has discussed in the assessment order mentioned supra in para 4 that during the course of search and seizure operation conducted in the case of Cosmos Group incriminating material of accepting on-money from different parties have been found and in this regard information of payment of Rs. 5 lakhs by the appellant in cash was also gathered which is discussed by the AO in para 4 of the assessment order. However, in the chart the date of payment has been mentioned as 07.02.2010 which is*

actually 02.07.2010 i.e, 2nd July, 2010 which is clarified by the Ld. AR of the appellant during the course of appellate proceedings. Hence, it is held that the transaction relates to A.Y. 2011-12 only.

6.7 This is an undisputed fact that this transaction took place between the appellant and the Cosmos Group for the purchase of the apartment and all the payments of Rs. 27,58,512/- was made by the appellant through cheque on 25 occasions from 28.08.2010 to09.03.2013 except the amount of Rs. 5 lakhs for which the information was gathered by the AO as a result of search in the case of Cosmos Group and the source of this amount of Rs. 5 lakhs in cash could not be supported by the appellant during the course of assessment proceedings by any documentary evidence or bank statement. The plea of the appellant that the cash payment was made from past savings has not been accepted by the AO as per the detailed discussion made in the assessment order mentioned supra in para 6.8 The appellant on the other hand has filed a detailed written submission mentioned supra in para 5 and claimed that the AO has not considered the amount of Rs. 6,90,000/- which was withdrawn in the last two years before this investment and also claimed that the appellant's son is also employed with TCI who runs the household expenses for himself and her mother and he also withdrew Rs. 1,68,500/- and the initial payment of Rs. 5 lakhs in cash was made out of the accumulated savings of entire family.

The plea of the appellant has been considered and not found acceptable as this is a fresh plea taken by the appellant during the course of appellate proceedings

that the cash is out of accumulated savings of the entire family including his son. During the course of assessment proceedings he has only mentioned the saving of his income and petty savings made by the wife out of his income only. In this light, this fresh submission that the source of Rs. 5 lakhs cash belongs to his son also deserves to be rejected as the appellant has never claimed that he has ever taken money from his son for the investment for the purchase of this property before AO.

6.9 Further, the details given by the appellant of the withdrawal of amount of the last 2 years clearly suggests that the appellant has even withdrawn Rs. 5,000/- for his personal need. If this cash of Rs. 5 lakhs was lying in his house, why he will withdraw such petty amount from the bank. The transactions given by the appellant clearly shows that he has good banking habit and no prudent person will keep cash of Rs. 5 lakhs in his house for any emergency in the present scenario where the money can be withdrawn from the ATM and the payments also can be made through cheque, debit card, credit card, internet etc. Further, this is also relevant that the almost entire withdrawal of the last 2 years have been claimed by the appellant as his savings then what happened for his household expenses and from where these have been met Hence, clearly these submissions are an afterthought and given by the appellant when the clinching evidence of his payment in cash of Rs. 5 lakhs was recovered by the Department during the course of search and seizure proceedings form Cosmo Group.

6.10 Apparently the withdrawals from the bank account is made for meeting the expenses and not for keeping the money at house. Hence, the explanation of the appellant that cash of Rs. 5 lakhs is deposited out of savings is not supported by any documentary evidence and against the preponderance o(probability and deserves to be rejected. The Hon'ble Supreme Court in the following cases has held that Tax Authorities should take into account human probabilities in considering the evidences produced by the assessee.

In the case of Durga Prasad More 82 ITR 540 Hon'ble Supreme Court has held that surrounding circumstances and human probabilities should not be ignored by the Taxing Authorities and observed in para 8 and 13 as under :-

> *"8. it is true that an apparent must be considered real until it is shown that there are reasons to believe that the apparent is not the real party who relies on a recital in a deed as to establish the truth of those recitals, otherwise it will be very easy to make self-serving statements in documents either executed or taken by a party and rely on those recitals. If all that an assessee who wants to evade tax is to have some recitals made in a document either executed by him or executed in his favour then the door will be left wide open to evade tax. A little probing was sufficient in the present case to show that the apparent was not the real. The taxing authorities were not required to put on blinkers while looking at the*

documents produced before them. They were entitled to look into the surrounding circumstances to find out the reality of the recitals made in those documents.

13 .....Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities."

In the case of Sumati Dayal 214 ITR 801 Hon'ble Supreme Court has again given the importance of human probability and held that "The majority opinion after considering surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winning from races, was not genuine. It could not be said that the explanation offered by the appellant in respect of the said amounts had been rejected unreasonably and that the finding that the said amounts were income of the appellant from other sources was not based on evidence."

In the case of Me Dowell & Co. 1541TR 148 Hon'ble Supreme Court has held that "So far as the contention that it is open to everyone to so arrange his affairs as to reduce the brunt of taxation to the minimum, was concerned, the tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by restoring to dubious

methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges. Courts are now concerning themselves not merely with the genuineness of a transaction, but with the intended effect of it for fiscal purposes. No one can now get away with a tax avoidance project with the mere statement that there is nothing illegal about it."

6.11 In this light, I have no reason to interfere in the decision of the AO and the addition of Rs. 5 lakhs made by the AO u/s. 69 of the Act deserves to be confirmed."

5.1 After going through the findings of the Ld. CIT(A), I do not find any infirmity in the impugned order, hence, I uphold the well reasoned finding of the Ld. CIT(A) and dismiss the ground raised by the Assessee.

6. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on 04/03/2020. Sd/-

[H.S. SIDHU]
JUDICIAL MEMBER

Date 04/03/2020

"SRB"

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches