

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

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.792/Del/2016  
Assessment Year: 2008-09

Romi Lal Nanda,  
B-23/3. Nanda Lodge,  
Shakti Nagar,  
Delhi.

Vs ITO,  
Ward-20(1),  
New Delhi.

PAN: ACBPN9457F

(Appellant)

(Respondent)

Assessee by	:	Shri R.S. Singhvi, CA & Shri Satyajeet Goel, CA
Revenue by	:	Shri Saras Kumar, Sr. DR
Date of Hearing	:	26.08.2020
Date of Pronouncement	:	28.09.2020

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28<sup>th</sup> January 2016 of the CIT(A)-12, New Delhi, relating to assessment year 2008-09.

2. Facts of the case, in brief, are that the assessee is an individual and filed the original return of income at Rs.1,15,534/-. Subsequently, the case of the assessee was reopened on 21<sup>st</sup> June 2011 by issuing notice under section 148 of the Act.

The copy of the reasons recorded for the reopening of the assessment was given to the assessee on 12.11.2011. The assessee filed the return of income in response to the notice under section 148 on 8<sup>th</sup> August 2011 declaring total income at Rs.12,04,461/-. During the course of assessment proceedings, the statement of the assessee was recorded under section 131 of the Act on 26<sup>th</sup> February 2013, during which he was confronted with the fact that the amount received in cash consisted of Rs.11 lakhs and Rs.50 lacs recorded on some sheet of paper seized during the course of search in the case of Shri Shashi Kant Aggarwal. The assessee stated that he has not received any money other than Rs.8,42,000/- as per agreement to sell the property being Flat No.312, Deepali, Nehru Place New Delhi. However, to buy peace of mind, the assessee agreed to surrender the amount of Rs.11 lakhs and, accordingly, filed the return of income declaring the same income. According to the AO, merely because the assessee denied to have received the amount of Rs.50 lakhs cannot be accepted. He, therefore, substituted the sale consideration at Rs.69,42,000/- as against the sale consideration of Rs.19,42,000/- shown in the return filed in response to the notice under section 148 and, accordingly, determined the total income at Rs.50,04,461/-. In appeal, the Id.CIT(A) upheld the action of the AO by observing as under:-

ø9.4 I have carefully considered the observation of the Assessing Officer and submissions of the Appellant and case laws relied on by the Appellant. It is seen that Appellant had filed his original return of income of Rs.1, 15,534/-. During the year, he had sold a house property ie. Flat No.312, Building No. 92 at Deepali Nehru Place, New Delhi to Sh. Shashi Kant Aggarwal and Sons HUF of B-312, Saraswati Vihar, New Delhi for an amount of Rs.8,42,000/- and he received the amount of Rs.8,42,000/- through pay order no. 480393

dated 01.01.2008 from Sh. Shashi Kant Aggarwal and Sons HUF. Therefore, a Search and Seizure operation was conducted in the case of Micromax Group of Companies on 10.02.2011 and during the Search proceedings some incriminating documents were seized. Sh. Shashi Kant Aggarwal is one of the directors of Micromax Group of Companies and during Search of the residence of Sh. Shashi Kant Aggarwal, also, some incriminating documents were found and one of the documents was money receipt dated 10.11.2007 which reflected transaction of property Flat No. 312 at Dipali, Nehru Place in cash in the form of money received by Romi Lai Nanda amounting to Rs.1 1,00,000/- in cash as part payment against sale of Flat No. 312, Nehru Place to Sh. Shashi Kant Aggarwal for Rs.61,00,000/-. It was also stated that balance amount remained was Rs.50,00,000/- out of the total amount of Rs.61,00,000/- (Sixty One Lakhs only). Money receipt was signed by Sh. Sanjiv Nanda brother of Appellant and also by Sh. Shashi Kant Aggarwal.

9.5 During post search inquiry in the Micromax Group of Companies, statement of Appellant was recorded by Investigation Wing on 18.04.2011. Parts of the statement are reproduced as under :-

Q.4. Please state the details immovable properties in which you have dealt in the form of buying/selling/advance receipt/paid etc. in the financial year

Ans. I sold out the property in the form of a flat no. 312, building no. 92, Deepali, Nehru Place, New Delhi to Shri Shashi Kant Aggarwal and Sons (HUF) of B-312, Saraswati Vihar, New Delhi-110034. The agreement to sell valued was Rs.8.42 lacs which I received though pay order vide no. 480393 dated 01/01/2008 from Shri Shashi Kant Aggarwal & Sons, HUF.

Q.7. Please recall and recollect whether you received any advance in cash for proposed selling of any property in the financial year 2007-08 ?

Ans. I now recollect and recall that I had received an amount of Rs.1 1,00,000/- in cash from one person Shri Shashi Kant Aggarwal S/o. Shri Satya Kishore Aggarwal, R/o. B-312, Saraswati Vihar, New Delhi-110034 in the financial year 2007-08. This advance was received by me on 10/11/2007 on account of proposed sale of flat no. 312, Deepali, Nehru Place, New Delhi.

Q.8. I am showing you one page of receipt dated 10/11/2007 which appears to be written by your brother Shri Sanjeev Nanda R/o. B-23/3, Shakti Nagar, New Delhi-110007 in which it has been written that Rs.1 1,00,000/- was paid to you in cash by Shri Shashi Kant Aggarwal. (as stated above). Please offer your comments on this documents ?

Ans. I agree and admit that I received Rs.1 1,00,000/- in cash against the proposed sale of the aforesaid property from Shri Shashi Kant Aggarwal and the paper was written by my brother Shri Sanjeev Nanda.

Q.9. Have you offered this amount of Rs. 11,00,000/- for taxation in your return of income ?

Ans. No, but I shall compute the tax on the aforesaid amount and pay the same within a reasonable period of time. I will also file a return of income after paying the applicable tax for the assessment year 2008-09 before my assessing officer immediately after paying the tax.

Q.10. Please state the total sale consideration received by you from Shri Shashi Kant Aggarwal against the sale of property at Flat No. 312, Deepali Building, Nehru Place, New Delhi in cash/cheque/any other form ?

Ans. I received the following amounts against that sale :-

1. Cash advance Rs. 11,00,000/- on 10/11/2007
2. Demand Draft of Rs.8,42,000/- vide no. 480393 dt. 01/01/2008

9.6 From perusal of the statement dated 18.04.2011, it may be seen that Appellant in his statement recorded on 18.04.2011 stated in answer to query no. 7 that he had received an amount of Rs.1 1,00,000/- in cash from Sh. Shashi Kant Aggarwal s/o Sh. Satya Kishan Aggarwal, r/o B-312, Saraswati Vihar, New Delhi in A.Y. 2007-08 on 10.11.2007 as advance on account of proposed sale of Flat No. 312, Deepali, Nehru Place, New Delhi. In answer to query no. 8, Appellant has admitted that money receipt was written by his brother Sh. Sanjiv Nanda and he had received Rs.1 1,00,000/- against proposed sale of property at B-312, Deepali, Nehru Place, New Delhi. Further, in answer to query no. 10, he further admitted that he received Rs.1 1,00,000/- on 10.11.2007 and Demand Draft of Rs.8,42,000/- on 01.01.2008. Therefore, there is no dispute that Appellant had sold his property at 312, Building No. 92, Deepali, Nehru Place, New Delhi to Sh. Shashi Kant Aggarwal and Sons (HUF) and there is also no dispute that money receipt dated 10.11.2007 was on account of advance for sale of the Same property at 312, Building No.92, Deepali, Nehru Place, New Delhi. Further, he also identified the signature of his brother and admitted that money receipt was signed by his brother Sh. Sanjiv Nanda on his behalf. It is also mentioned in the last page of statement that he had given this statement voluntarily and without any pressure, force and coercion and he has also stated that he found that the statement was recorded correctly.

9.7 Further, in response to notice u/s 148, he has filed the return of income disclosing the amount of Rs.1 1,00,000/- surrendered by him on the basis of the document in the form of money receipt seized on 10.11.2007 during the course of Search and Seizure operation at Micromax Group of Companies. Therefore, authenticity and genuineness of the document has been established by him and it is also proved that contents of the document in the form of money receipt dated 10.11.2007 were true and genuine. Appellant has himself admitted that

the amount of Rs.8,42,000/- for sale of property vide registered sale deed was not true and property was actually sold for Rs.8,42,000/- plus Rs.61,00,000/- which he received in cash. Further, it is seen that Appellant has never denied in the statement that transaction was done only for Rs.1 1,00,000/- and not for Rs.61,00,000/- apart from the amount of Rs.8,42,000/- shown in the Sale Deed. The money receipt dated 10.11.2007 is very specific and clear that out of Rs.61,00,000/-, Rs.1 1,00,000/- have been paid and balance Rs.50,00,000/- is to be paid. Therefore, it is apparent that Appellant has received cash of Rs.50,00,000/- on later date. Therefore, there is no substance in the claim of Appellant that this amount was surrendered to buy peace. It is not the case of Appellant that he is not able to substantiate his claim with documentary evidence and, therefore, he has surrendered to buy peace of mind.

9.8 Statement of Appellant was also recorded by Assessing Officer on 26.02.2013. Parts of which is reproduced as under :-

Q.5. In your statement recorded on 18.04.2011 you have admitted that you have received Rs.1 1 lac in cash against the sale of Flat No. 312, Deepali, Nehru Place, New Delhi from Sh. Shashi Kant Aggarwal as per receipt dated 10.11.2007 which appears to be written by your brother Sh. Sanjeev Nanda R/o B-23/3, Nanda Lodge, Shakti Nagar, Delhi-110007. Please tell when you have received the balance payment of Rs.50 lacs. As per the receipt Rs.11 lac received by you was only part payment of the total agreed amount which was Rs.61 lacs. Have you declared the balance payment of Rs.50 lacs in your Income tax return ?

Ans. I have not received any money other than Rs.8,42,000/- as per agreement to sell. I have not issued any receipt of Rs.1 1 lac and same was admitted in the statement recorded on 18.04.2011 stated to be photocopy of receipt by my brother Sh. Sanjeev Nanda in order to avoid litigation and on the assurance that the proceedings will be finally concluded.

I don't admit any receipt in cash.

Q.6. How it is possible that you have admitted the fact that you have received Rs.1 1 lac in cash against the sale of property Flat No. 312, Deepali, Nehru Place, New Delhi, the amount was in toto as per the receipt dated 10.11.2007. In that receipt, it is written that Rs.11 lac is a part payment and the balance remained is Rs.50 lacs from Sh. Shashi Kant Aggarwal S/o. Satya Kishor Aggarwal, B-312, Saraswati Vihar, Delhi-110034.

Ans. I have not admitted receipt of Rs. 11 lac and the surrender was only to buy peace and not confirmation of receipt of cash. Further, I was not shown original receipt alleged to be issued by my brother Sh. Sanjeev Nanda and as such there is no evidence for receipt of any consideration in cash for sale of above said property.

Q.7. In your statement recorded on 18.04.2011 you have not stated that you were surrendering an amount of Rs.11 lac to avoid litigation and buy peace. Please explain. You have written below the statement recorded that the above statement has been read out by me and found recorded correctly. This statement has been given by me voluntarily without any pressure, force and coercion.

Ans. During the relevant period I was not well and I was not prepared for any such statement or any legal assistance and the said statement was on the basis of assurance by the concerned officer.

9.9 From perusal of the statement dated 26.02.2013, it is apparent that Appellant after almost one year and 10 months, has accepted that he had admitted to surrender of Rs.1 1,00,000/- in his statement dated 18.04.2011. In answer to query no. 7 he has confirmed that receipt of Rs.1 1,00,000/- was admitted in the statement recorded on 18.04.2011 and he has also confirmed that receipt was by his brother Sh. Sanjeev Nanda. It is also to be noted that Appellant has not denied that there was no transaction of Rs.61,00,000/- and that transaction was done only for Rs. 11,00,000/- and not for Rs.61,00,000/-. Appellant has further stated that surrender was to buy peace of mind however, in answer to query no. 7 it was pointed, out to the Appellant that he has not stated so in statement recorded on 18.04.2011. Appellant has no submission to make except that he was not well and not prepared.

9.10 Appellant is also wrong in contending that there is no factual or legal basis for any additional consideration as document in the form of money receipt dated 10.11.2007 was seized during Search and he has admitted that the document pertained to him, therefore, genuineness of the document has been established him and he has also filed the return showing part of the amount transacted in the money receipt which confirms that contents of the said money receipt were true and genuine. It cannot be the case of Appellant that part transaction is correct in the money receipt dated 10.11.2007 and the other part of the transaction is not correct as the money receipt depicts the transaction as a whole which he has admitted and, also, he did deny that he did not received the balance amount of Rs.50,00,000/-.

9.11 Therefore, Ld. Assessing Officer has reason to believe that amount of total cash involved in the transaction was not disclosed by Assessee and, therefore, income had escaped assessment. The twin condition for reopening the assessment has been fulfilled in this case. Appellant is wrong in contending that once settlement was arrived, it is not open to initiate further proceedings. There is no legal basis for such a claim. Appellant had himself stated in answer to query no. 9 of statement dated 18.04.2011 that he will file a return of income after paying the tax.

9.12 Contents of the money receipt dated 10.11.2007 were found to be true and correct which was admitted by the Appellant. Further, he has not retracted his statement recorded on 18.04.2011 and in statement recorded on 26.02.2013 by Ld. Assessing Officer has admitted that contents of his statement recorded on 18.04.2011 were true, therefore, there is no substance in the claim of Appellant. Therefore, in this case, it is the Appellant who had admitted and surrendered Rs.1 1,00,000/- as his undisclosed income. Thereafter, he filed the return of income disclosing Rs.1 1,00,000/- surrendered during the course of statement recorded on 18.04.2011 in past- search inquiry in Micromax Group of Companies. Therefore, content of the document seized in the form of Money Receipt is true and genuine. It has not been proved otherwise by the Appellant by producing some other cogent evidence.

9.13 Honøble Supreme Court in the case of Pullangode Rubber Produce Co. Ltd. vs. State of Kerala & Anr., 91 ITR 18 (SC) have held the proposition that an admission is an extremely important piece of evidence but it cannot be said that it is conclusive. Therefore, it was open to the Appellant who had made the statement to show that it was incorrect. Appellant has not produced any material to show that the statement made by him was incorrect.

9.14 It is further seen that Investigation Wing had recorded the statement of Appellant on 18.04.2011 and after more than two years, Assessing Officer recorded another statement of Appellant on 26.02.2013 in which he has accepted that during statement recorded on 18.04.2011 he had surrendered Rs.1 1,00,000/-. This statement was after one year and ten months, therefore, Appellant had thought over the same for more than a year and 10 months and then he has confirmed his surrender made in the statement dated 18.04.2011, Therefore, there is no substance in the claim of Appellant.

10. In the result, the appeal is dismissed.ö

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

ö(i). That on the facts and circumstances of the case, the CIT(A) is not justified in confirming addition of Rs. 50 lacs as part of sale consideration without any factual and legal basis.

(ii) That the addition was made merely on the basis of photocopy of dumb sheet of paper, which is neither authentic nor has any evidentiary value.

(iii) That the assessing officer and CIT(A) has totally disregarded facts of the case and content of statement dated 26/02/2013.

2(i). That the reference to statement record on 18/4/2001 is of no relevance as even the said statement was not based on any admissible evidence and the assessee merely agreed on the basis of suggestion and assurance of ADI and in order to avoid litigation and to buy peace and as such said statement cannot be taken as a basis for admission of alleged sale consideration of Rs. 50 lacs.

(ii). That ADI having already recorded statement in respect of very same issue and obtained surrender of Rs. 11 lac, no further addition is called for.

(iii). That in the absence of any evidence for receipt of Rs. 50 lacs, there is no ground or basis for any such addition and same is not sustainable under the law.

3. That orders of lower authorities are not sustainable on the facts or under the law.

4. The Id. Counsel, referring to the reasons recorded, copy of which is placed at page 16 of the paper book, submitted that the case of the assessee was reopened for receipt of cash of Rs. 11 lakhs plus Rs.50 lacs, totaling to Rs.61 lacs and the assessee has not offered capital gain for taxation. He submitted that in response to an enquiry from the Investigation Wing of the Income Tax Department, the assessee to buy peace of mind surrendered Rs.11 lacs as unaccounted sale consideration in cash merely on the basis of cancelled photocopy of some sheet of papers found which do not even have any signature of the assessee. Since the assessee was suffering from multiple illness, therefore, to buy peace of mind on account of ill health, paid full tax and interest of Rs.3,20,345 on Rs. 11 lakhs and revised his return of income after considering the alleged sale consideration in cash amounting to Rs.11 lacs. He submitted that the so-called seized paper obtained during the course of search operation in the case of Micromax Group of Companies is a cancelled sheet of paper and has no evidentiary value and,

therefore, no addition can be made simply on the basis of a noting on loose paper in absence of any corroborative material. Further, the said seized paper was not found from the premises of the assessee and was not in the handwriting of the assessee or bear the signature of the assessee. Since the said papers are unsigned and unauthenticated, the entries therein are not sufficient to fasten liability on the assessee. He submitted that the AO also did not conduct any further enquiry by summoning the buyer as named in the alleged seized paper although their address was very much available with the AO. Referring to the statement recorded by the Investigation Wing under section 131 of the Act on 18<sup>th</sup> April 2011, the Id. counsel for the assessee submitted that vide reply to question number 7, the assessee had submitted that he had received an amount of Rs.11 lakhs in cash from Shri Shashi Kant Aggarwal during financial year 2007-08 on account of proposed sale of Flat No.312, Deepali, Nehru Place New Delhi. He submitted that the receipt dated 10.11.2007, which was written by the brother of the assessee Shri Sanjeev Nanda, was confronted to the assessee which he had admitted and to buy peace of mind had agreed to pay taxes on Rs. 11 lakhs. However, there is no evidence of receipt of any cash of Rs.50 lakhs. Even before the AO, during the assessment proceedings also, the assessee categorically had denied the receipt of any further amount. Therefore, in absence of any evidence with the Department, the addition made by the AO and sustained by the CIT(A) is uncalled for. He accordingly submitted that the addition made by the AO and sustained by the CIT(A) should be deleted.

5. The Id. DR, on the other hand, heavily relied on the order of the CIT(A). Referring to the finding of the CIT(A) from pages 9 to 15 of the order, he submitted that the Id. CIT(A) has given valid reasons while sustaining the addition of Rs.50 lakhs. Therefore, the same being based on facts of the present case should be sustained and the grounds raised by the assessee should be dismissed.

6. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute in the impugned appeal is regarding the addition of Rs.50 lakhs made by the AO on account of unaccounted cash receipt for sale of property which has been upheld by the CIT(A). It is the submission of the Id. counsel that during the course of examination by the Investigation Wing, the assessee was confronted with a receipt for Rs.11 lakhs and the assessee was never asked for any further amount received by him. It is only during the assessment proceedings that the AO confronted regarding the receipt of Rs.50 lacs and, therefore, in absence of any material before him, he could not have made the addition since the so-called Rs.50 lacs was a cancelled receipt which the Investigation Wing considered proper not to confront with the assessee.

7. We find some force in the above argument of the Id. Counsel. A perusal of the receipt of Rs. 50 lacs, copy of which is placed at page 19 of the paper book, shows that it is a cancelled one. The AO has not confronted the contents of the said

receipts from Shri Shashi Kant Aggarwal, although his complete address was mentioned in the said sheet of paper. Since the Investigation Wing after considering this cancelled cheque has never confronted the assessee regarding the receipt of Rs.50 lacs, therefore, in absence of any other corroborative material before the AO, he is not justified in making the addition. A perusal of the assessment order shows that the AO has simply made the addition merely on the basis of presumption. Although the assessee has surrendered an amount of Rs.11 lakhs, at no point of time the assessee has agreed for addition of Rs.50 lacs. As mentioned earlier, although complete address of the payer was available in the cancelled money receipt, the AO has never bothered to summon Shri Shashi Kant Aggarwal to find out the authenticity of the said receipt. Under these circumstances, we are of the considered opinion that the CIT(A) is not justified in sustaining the addition of Rs. 50 lacs made by the AO on the basis of a cancelled money receipt found during the course of search conducted in the case of Micromax Group of Companies on 10<sup>th</sup> February, 2011. Accordingly, the same is directed to be deleted. The grounds raised by the assessee are accordingly allowed.

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

The decision was pronounced in the open court on 28.09.2020.

Sd/-

(SUCHITRA KAMBLE)  
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)  
ACCOUNTANT MEMBER

Dated: September, 2020.

dk

Copy forwarded to

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

Asstt. Registrar, ITAT, New Delhi