

आयकर अपीलिय अधिकरण

मुंबई पीठ "डी"

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "D", MUMBAI

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री राजेश कुमार, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आअसं. 6828/मुं/2018 (नि. व.2013-14)

ITA NO. 6828/MUM/2018 (A.Y.2013-14)

DCIT, CC-6(3),

Room No.1926, 19th Floor,

Air India Building,

Nariman Point,

Mumbai 400021

..... अपीलार्थी /Appellant

बनाम Vs.

Shri Rajesh J. Jogani

BW-7012/13, Bharat Diamond Bourse,

BKC, Bandra (East),

Mumbai-400051.

PAN: ABNPJ1523F

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vijay Jaiswal [DR (CIT)]

प्रतिवादी द्वारा/Respondent by : None

सुनवाई की तिथि/ Date of hearing : 22/10/2020

घोषणा की तिथि/ Date of pronouncement : 29/10/2020

आदेश / ORDER

PER VIKAS AWASTHY, JM:

This appeal by the revenue is directed against the order of Commissioner of Income-Tax (Appeals)-54, Mumbai [In short ('the CIT(A)') dated 17.09.2018 for the Assessment Year 2013-14.

2. The brief facts of the case as emanating from records are: A search and seizure action under section 132 of the Income tax Act, 1961 (hereinafter referred "the Act") was carried out at the premises of M/s Param Properties on 04.09.2015. During the course of search certain loose papers were found and seized. The said documents reveal transactions in the name of assessee. The assessee denied to have any link with the transactions with the Param Properties. However, the assessee admitted that the assessee had paid Rs. 25,00,000/- to M/s DRB Ravani Developers for booking a flat in the housing project Celestial Dreams. It was further contended that transaction with M/s DRB Ravani Developers was direct transaction without there being any intermediary or agent. The assessee denied to have made any transaction in cash. To support his contentions, the assessee filed affidavit sworn in by Shri Dilip Bhai Ravani, partner in M/s DRB Ravani Developers. Not convinced with the submissions of assessee, the Assessing Officer (AO) made addition of Rs. 1,87,00,000/- on the basis of entries on loose papers seized from the premises of M/s Param Properties.

Aggrieved by the assessment order dated 29.12.2016 passed under section 143(3) r.w.s. 153A of the Act. The assessee filed appeal before the CIT(A). The CIT(A) after examining the facts of case and documents on record deleted the addition. Against the findings of CITA), the revenue is in appeal before the Tribunal.

3. Shri Vijay Jaiswal representing the department vehemently defended the addition made by AO on account of unaccounted investment in the project developed by DRB Ravani Developers to M/s Param Properties. The Id. DR submitted that during assessment proceedings, the assessee admitted that if any addition is made on the basis of loose sheets the same should be made in the name of assessee and not in the name of Sangeeta Jogani. The Id. DR further contended that looses sheets found during the course of search proves beyond doubt that the assessee has made investments in the project developed by M/s DRB Ravani Developers through M/s Param Properties. The CIT(A) has failed to considering vital aspects and has deleted the addition. The DR prayed for reversing the findings of CIT(A) and restoring the additions made by AO.

4. We have heard the submissions made by Id. DR and have examined the orders of authorisers below. The addition has been made in the hands of assessee on account of undisclosed investment under section 69 of the Act on the basis of loose sheets found and seized at the premises of M/s Param Properties. The contention of the assessee before the lower authorities is that the assessee had no business transaction with Param Properties, the assessee had booked a flat with M/s DRB Ravani Developers which was subsequently cancelled. An affidavit from Shri Dilip Bhai Ravani was also furnished before the Assessing Officer, wherein he had stated that the assessee has booked a flat with DRB Ravani Developers for a consideration of Rs. 1,68,07,500/-. Booking amount of Rs. 25,77,250/- including service tax of Rs. 77,250/- was received from the assessee. Upon subsequent cancellation of the flat, the amount was refunded to the assessee. Shri Dilip Bhai Ravani also affirmed that there was no intermediary/broker in the said transaction.

5. The CIT(A) after considering the document on record and the decisions of the Tribunal in the case of Rivera Properties Pvt. Ltd. (Mumbai Trib.) and Jawaharbhair Atmaram Hathiwala vs. ITO reported in 128 TTJ 36 (Ahmd. Trib.) and various other decisions held that the addition made on the basis of documents/loose papers seized from third party premises without any corroborative evidence cannot be sustained.

6. It is an un-rebutted fact that the loose sheets on the basis of which addition has been made in the present case were seized from the premises of third party with whom the assessee had no transactions. The revenue has failed to establish link between M/s Param Properties and the flat booked by assessee with DRB Ravani Developers. It is not emanating from records or from seized documents that the assessee booked the flat through Param Properties. Shri Dilip Bhai Ravani representing DRB Ravani Developers has sworn an affidavit that the flat was booked by the assessee which was subsequently cancelled and the booking amount was refunded. As per the affidavit there was no intermediary/ broker in the said transaction. The Revenue has not brought on record any transaction to establish direct link between the assessee and M/s Param Properties. During search at the premises of the assessee, no document was found which could suggest that the assessee has made undisclosed investment in properties through M/s Param Properties.

7. We further observe that there is no statement from the proprietor/partner of M/s Param Properties, admitting that there was transaction for investment in properties by the assessee through the firm. Merely on the basis of unsigned loose sheets seized from third party without their being corroborative evidence additions cannot be made in the hands of

assessee. We concur with the findings of CIT(A) and uphold the same. The appeal of revenue is devoid of any merit and hence, dismissed.

8. In the result, appeal by the revenue is dismissed.

Order pronounced in open Court on **Tuesday** the **29th** day of October, 2020.

Sd/-

(RAJESH KUMAR)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 29/10/2020

S.K., PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL
MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar)
ITAT, Mumbai