

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3682/Del/2019 : Asstt. Year : 2014-15

Chander Prakash Chawla, 14, Dream Land House, 1/18-B, Asaf Ali Road, New Delhi-110002	Vs	ACIT, Circle-46(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AADPC4885A		

ITA No. 5231/Del/2019 : Asstt. Year : 2014-15

ACIT, Circle-46(1), New Delhi	Vs	Chander Prakash Chawla, 14, Dream Land House, 1/18-B, Asaf Ali Road, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AADPC4885A		

Assessee by : Sh. Y. K. Sud, CA &

Sh. S. S. Kalra, CA

Revenue by : Sh. Avikal Mannu, Sr. DR

Date of Hearing: 09.11.2020

Date of Pronouncement: 27.11.2020

ORDER

Per Bench:

The present appeals have been filed by the assessee and revenue against the orders of the Id. CIT(A)-16, New Delhi dated 08.03.2019.

2. In ITA No. 3682/Del/2019, following grounds have been raised by the assessee:

"A. That the CIT(A) was not justified in sustaining the disallowance of Rs.2,02,65,593/- on account of Short Term Capital loss incurred by the appellant on sale and purchase of the Equity Shares.

B. That while sustaining the disallowance of Short Term Capital loss, the CIT(A) failed to appreciate not only the submissions made by the appellant but also the vital facts and the evidence which clearly supported the sale and purchase of the shares. Hence, the actions of the AO & the CIT(A) are required to be vacated.

C. That the CIT(A) further erred by sustaining the action of the AO in placing the reliance on the statement recorded of an official of the Axis Bank at the back of assessee and further not providing any opportunity of cross examination to the assessee. Such action of the AO & CIT(A) cannot be sustained as clearly against the natural justice.

D. That both CIT(A) & AO have exceeded their jurisdiction by giving a finding that appellant assessee should not have invested in the shares of the company namely India Infotech & Softwares Ltd. and further CIT(A) has also upheld the disallowance purely on the basis of suspicion by ignoring the direct evidence filed by the assessee.

E. That the CIT(A) has wrongly upheld the disallowance of Rs.1,16,04,591/- made out of interest claimed u/s 24b of the Income Tax Act, 1961."

3. In ITA No. 5231/Del/2019, following grounds have been raised by the revenue:

"1. Ld. CIT(A) has erred on facts and in law by deleting the questionable credit entries of Rs. 1,80,00,000/- received by assessee from M/s True Value Contractors P. Ltd. merely on the basis that assessee produced additional evidence before the Ld. CIT(A) that such amount was paid from SBI and not from Axis Bank/Citi Bank as per affidavit of such creditor filed originally dated 29.03.2017 without

overcoming twin hurdles, firstly that it was a bogus make believe transaction where a property worth market value of Rs. 3,51,62,400/- (according to Sub-registrar) was claimed to be sold to M/s True Value Contractors P. Ltd. that too through unregistered sale agreement at three times more value of Rs. 9 crore against which such advance of Rs. 1.80 crores was received, and second part assessee failed to prove any basis of subsequent claim that such buyer backed out because property prices fell and thus the creditor of such amount agreed for assessee forfeiting such amount.

2. Ld. CIT(A) has erred on facts and in law by deleting amount of Rs. 1,80,00,000/- without prejudice to ground no (i), that forfeiture of any advance paid to the seller for purchase of any immovable asset being not income u/s 56(2)(ix) in AY 2014- 15 by not considering that such forfeiture of advance paid to the seller would be taxable revenue income u/s 28 of I.T. Act, 1961 when such immovable asset is part and parcel of business assets of assessee shown in accounts of M/s Per Media Enterprises."

Appeal of the assessee in ITA 3682/Del/2019:

4. The assessee has filed the grounds of Short Term Capital loss and interest u/s 24(b).
5. At the outset, it was brought to the notice of bench by the Id. AR that the assessee has filed application under the "Direct Tax Vivad se Vishwas Act 2020" and has already submitted Form 1 and 2.
6. Keeping in view the exercise of option by the assessee to opt for the scheme, the appeal of the assessee is being dismissed as infructuous with liberty to the assessee to approach the Tribunal in case the "Form 3" has not been issued by the designated authority.

Appeal of the Revenue in ITA 5231/Del/2019:**Addition on account of Unexplained Income:**

7. The facts of the issue and the arguments taken up by the assessee before the revenue authorities as per the order of the Id. CIT (A) are as under:

"The brief facts of the case are that the assessee received an advance of Rs. 1.80 Crores from True Value Contactors (P) Ltd. Delhi in pursuance to the agreement to sell off his Plot No. 5, Road-H-9, DLF Qutab Enclave Complex, Gurgaon. The copy of the agreement signed by both the parties and also duly witnessed by two witnesses was filed before the AO at the time of assessment. The agreement have been reproduced by AO on page 18 to 21 of assessment order. The salient features of agreement are as follows:-

i. The assessee is the seller and M/s. True Value Contractors (P) Ltd. which is a company registered vide CIN U45201DL2005PTC13297J having its registered office at C-17 G/F Gurunanak Pura, Laxmi Nagar, New Delhi through its director Mr. Saurab Jain as buyer.

ii. The total consideration of the sale of said property is duly mentioned as 9 Crores in clause no. 1 of the agreement and further in the said clause it is clearly mentioned that the earnest money of Rs.1.80 Crores has been paid by the buyer by making 4 RTGs from his account to the account of the seller and details have been duly mentioned in the agreement to sell. The balance payable amount has been agreed as 7.20 Crores and the installments and due dates are also mentioned in the agreement itself. Further other various clauses which are the

normal clauses in the agreement to sell are also mentioned in the agreement. The agreement has been duly signed by both buyer and seller and also it is duly witnessed by two witnesses.

iii. Thereafter the assesses further filed a copy of letter dated 10.02.2014 written by buyer i.e. M/s. True Value Contractor (P) Ltd. informing their inability to make balance payment because of their tight financial position. Further the buyer has also written in the letter that he has no objection for forfeiture of the amount paid by him. The power of forfeitures is also available as per the clause no. 2 of the agreement to sell which may kindly be referred to. The aforesaid letter is available at page 23 of the Asstt. Order.

iv. The A.O. further sought information from the Sub- Registrar Gurugram enquiring about the circle rate of property which was 70000/- per sq. yard as per the information provided by Sub-Registrar. Although there is no connection of circle rate and the market value but despite this fact she worked out the total value of the property as per the circle rate at Rs.3,51,62,400/-. It may be submitted here that circle rate is fixed by the Govt., as a minimum price of the property on which the stamp duty is recovered and it has nothing to do with the market value which can be much more or even less than the circle rate fixed by the Govt. The A.O. has exceeded her power by trying to interfere with the agreement to sell which is clearly a contract between the buyer and the seller for a specific consideration and it is not for the A.O. to determine that what could be the market value of a particular plot which can even vary looking into location of plot or other market factors such as accessibility, land development of the area which the A.O. has nowhere tried to

considered those factors. Hence this action of the ITO cannot be sustained on this ground.

v. The A.O. further in para 5.3 of her order observed that the forfeited amount of Rs. 1.80 Crores does not appear in the books of accounts of the assessee and also she observed that the assessee has not discharged his onus of establishing the identity, genuineness and credit worthiness of the same. Further she referred to the statement of the assessee recorded by her in which while answering the question no 50 the assessee had stated that he had no contact with the buyer after 2014. However the A.O. had stated that the assessee had submitted a bank statement of True Value Contractors (P) Ltd./Jafna Contractors (P) Ltd. which had been scanned and made a part of the assessment order. Further in para 5.3 the AO has alleged that the amount of Rs. 1.80 Crores which is a forfeiture of advance was not found as a credit entry in the books of account of the assessee. This observations of the A.O. are not only factually incorrect but it appears that she has not even applied her mind to the books of account of the assessee where the same has been credited. In this regard the assessee would like to draw your kind attention to the copy of account of True Value Contractors (P) Ltd. wherein Rs. 1.80 Crores has been reflected as receipts through RTGS from True Value Contractors which stands duly credited to their account and on 31st March as a forfeiture of the advance the credit of Rs. 1.80 Crores has been credited to the drawing account of Mr. C.P. Chawla the assessee and the resultant credit "balance of Rs. 82,81,764/- has been reflected in his capital account in the balance sheet. The copy of account and the balance sheet are

enclosed herewith for your kind perusal and are enclosed at pages 1 to 6. Further the AO has stated that in the statement of the assessee recorded by her the assessee has stated that the assessee had no contact with True Value Contractor (P) Ltd./Jafna Contractor (P) Ltd after 2014. In this regard it is submitted that once the transaction is complete the assessee is not supposed to keep any track of the proposed buyer. Hence no cognizance can be taken from this statement of the assessee. It may further be added that the AO has stated that the assessee has filed bank statement of Axis Bank vide his letter dated 15.12.2016. The assessee in this regard would like to submit that this statement of Axis Bank was already available with the assessee which was obtained by him at the time of payment made by the buyer.

vi. In para 5.4 the AO has stated that on the basis of copy of bank statement from where the money has travelled through RTGs to the account of the assessee the letter was sent for verification by her to the Axis Bank and she has stated that Axis Bank vide their letter dated 28.12.2016 has stated that account no. 9130200 32425869 belongs to one M/s Excel Buildtech (P) Ltd in the name of Basheshwar Nath, 4132, Naya Bazar, New Delhi without confronting this statement of the bank to the assessee. All she did was she issued a final notice u/s 142(1) to the assessee on 28.12.2016 to file various details on 30.12.2016 and the reason of short notice she has given that the case was getting barred by limitation on 31.12.2016. In para 3.4 of the said notice she has brought to our notice that Axis Bank has stated that the said account from where the RTGs has come belongs to M/s. Excel Builtech(P) Ltd. And just on the

basis of that she concluded that the intention of the assessee is malafide and she gave a show cause as to why Rs. 1.80 Crore be not treated as income of the assessee.

vii. In this regard the assessee would like to submit that at the very outset the AO has made up her mind without confronting the material to the assessee to treat the forfeited amount as income from undisclosed sources. It is pertinent to mention here that she has just given 2 days notice u/s 142(1) to the assessee and that too without confronting the letter received from the bank wherein the bank had denied that account from where the money has travelled does not belong to the purchaser i.e. True Value Contractors (P) Ltd./Jafna Contractors (P) Ltd. Her action is totally against the principle of natural justice and she acted in a predetermined mind to make this uncalled for addition despite all the clear evidences provided by the assessee. Now the appellant assessee would like to make the following submissions before your goodself in this/regard:

- a. The advance paid by the buyer is through the RTGs and the details of the same are clearly mentioned in the agreement to sell (Refer to page 19 of Asst. Order) and the same is signed and witnessed by the buyer.*
- b. Despite this on the allegation levied by the AO the assessee had very limited time of just 1 day to file further evidence in this regard but however the assessee confronted its own bank State Bank of India for the verification of the facts and the SBI vide their certificate dated 04.03.2017 (copy enclosed) has certified that Rs.*

1.80 Crores have been credited to the account of Chancier Parkash Chawla, the assessee in his account No. 10237358054 from Axis Bank Ltd. Further the SBI has also given details of RTGS wherein it is very clearly mentioned that this RTGS has been made by True Value Contractors (P) Ltd. and stand received from Axis Bank (copy enclosed). The above certificates of SBI are enclosed at pages 7 & 8.

- c. The assessee then made the search of the records of the Registrar of Companies to trace the whereabouts of True Value Contractors (P) Ltd./Jafna Contractors (P) Ltd. And the search report of ROC record is enclosed herewith wherein it was confirmed that company is existing having its Registered office at C-17, Gurunanakpura, Laxmi Nagar Delhi and has filed its last Balance Sheet of 31.03.2016 and Annual Report of AGM on 27.09.2016 (copy enclosed). The search report is enclosed at pages 9 & 10. After that the assessee approached the Director of Jafna Contractors (P) Ltd. and obtained affidavit from them in further confirmation of the payment made by them and they have confirmed these payments in para 3 of the affidavit and also confirmed the forfeiture of the earnest money in para 4 of the affidavit. Further in para 5 they have stated that the name of the company True Value Contractors (P) Ltd. was changed to Jafna Contractor (P) Ltd. on 22.03.2016 (copy of the affidavit is enclosed for your kind perusal). The copy of Affidavit is enclosed at pages 11 to 13.*

viii. The AO has given her findings starting from para 5.5 of the order and the parawise rebuttal and submissions of the assessee are as following:-

(a) In para 5.5 the AO has alleged that the assessee has furnished the false bank statement which the assessee has already rebutted in the submissions made above in para no. vi & vii. Further the AO has observed that the agreement to sell is not on the Stamp Paper and therefore not a legal paper. In this regard it is submitted that an agreement can be executed even on the normal papers and it is not understood that how she has given a finding that the papers are not the legal papers having no evidentiary value. It is further submitted here that this agreement has been signed by purchaser and seller and even the consideration paid by the purchaser is through the banking channel and is proved and even the agreement has been - confirmed-by the purchaser by way of affidavit. Hence this agreement have complete evidentiary value and cannot be treated as fake. If it all AO had any doubt she could have summoned the purchaser and the witnesses to the agreement which she failed to do so possibly because of paucity of time. The finding of the AO deserves to be set aside.

(b) In para 5.6 she has referred to the show-cause notice dated 28.12.2016 which was given with. The preset mind giving assessee only one day time to rebut the letter of Axis Bank procured by her at the back of the assessee and not even confronting the same to the assessee and giving the assessee an opportunity to explain. This action of the AO is totally against the principles of natural justice. The statement of Axis Bank procured at the back of the assessee cannot be relied

upon. Even— otherwise by way of an additional evidence now being filed the assessee has proved the forfeiture of Rs. 1.80 Crores received from True Valuer/Jafna Contractors (P) Ltd. as genuine.

(c) In para 5.7 the AO has reproduced the reply of the assessee dated 30.12.2016 wherein the assessee completely met with all the requirements for proving the cash credit in the books of the assessee and discharge his onus completely as stated above.

(d) In para 5.8 the AO has again alleged that Rs. 1.80 Crores received by the assessee in his bank account from Axis Bank account no.913020032425869 does not find place in the statement of Axis Bank filed by the assessee. This finding is totally factually incorrect and the transfers are clearly reflected in the statement of account of Axis Bank filed by the assessee. However on her enquiries from the Axis Bank she found out that account number mentioned on the statement is not correct and it pertains to some Excel Builtech (P) Ltd. Thus she concluded that statement given by the assessee is false and with a malafide intention. In this regard it is submitted that as already mentioned above this statement was given to the assessee by True Value Contractors (P) Ltd. And as it is it was filed before the AO. However on pointing out by the AO the assessee has procured further evidence such as certificate from SBI supported by complete narration and Ref. Nos. of RTGS sent by Axis Bank to the A/c of the assessee and the affidavit of True Value Contractors (P) Ltd. and has proved that the cash credit of Rs. 1.80 Crores has travelled by way of RTGS from Axis Bank through True Value Contractors (P) Ltd. only and if the earlier

statement which was given by the buyer is by any chance is not proper no cognizance can be taken after the complete proofs which have been filed by the assessee now. It has been wrongly alleged by the AO that intention of the assessee is malafide because the assessee has completely discharged his onus to prove the cash credit by way of proper evidence.

(e) In para 5.9 the AO has again mentioned that the agreement to sell is without any legal stamp paper and simply on this basis she has made a presumption that nobody would give a advance of Rs. 1.80 Crores without any legal assurance. The AO had again tried to go beyond her powers and interfere into an agreement which has been proved and confirmed beyond any doubt by both the parties.

(f) In para 5.10 the AO has alleged that the copies of letter dated 10.02.2014 and receipt dated 02.02.2014 are ineligible and therefore she has doubted the advance of Rs. 1.80 Crores paid by the purchaser. In this regard it is submitted that both the letter and receipt are totally eligible and photocopy of the same are enclosed herewith for your ready reference. Kindly see pages 14 & 15. Even the assessee can produce original for your verification. Even otherwise this payment-of Rs. 1.80 Crores has been acknowledged by both the parties in the agreement to sell and the payment has been made through the Banking Channels by way of RTGs duly confirmed by the bank and also the affidavit of the buyer which has been filed before your goodself to prove that the objections are without any basis.

(g) In para 5.11 the AO has doubted-the market value of the plot on the basis of the circle rate for which we have already

made our submissions in para 3(iv) of our submissions and also the assessee in his statement recorded by AO has explained this fact while answering to question no. 51. Further the AO has put a charge that the assessee had tried to evade tax. This charge of the AO is completely baseless without any evidence since the amount received and forfeited by the assessee would reduce the cost of the asset and at the time of the sale the capital gain would go up with the same amount. Hence there cannot be any tax evasion. The complete copy of statement of the assessee is enclosed at pages 16 to 27.

(h) The observation of the AO in para 5.12 is factually incorrect understanding and applying her mind on the books of accounts and details of the same have been explained in our submissions in para 3(v).

It is well settled law that where the assessee has established the identity of the creditor and the transaction has been done through the banking channel the initial burden cast upon the assessee to prove the credit is discharged and no addition u/s 68 & 69 can be made Your attention is drawn towards the following judgments:-

- i. 292 ITR (P&H) 597 - CIT \s Jeeta Khan*
- ii. 299 ITR (P&H) 53 - CIT Vs Kulwiant Singh & Co.*
- iii. (2015) 372 ITR 232 (Cat)*
- iv. (2015) 378 ITR 351 (Del)*
- v. (2006) 205 CTR 0571 CIT vs Glowcom Impex (P) Ltd.*
- vi. 173 TTJ (Chd) UO 75 - DCIT Vs Loil Health Foods Ltd.*

Assessee having filed copy of certificate of incorporation of the creditor company and confirmation from the creditor as well as the bank statement of the creditor; besides its own bank statement which support the assessee's explanation that the loan was given by the creditor to the assessee on four dates through banking channels, the initial burden that lay upon he assessee to prove the identity existence of the creditor> its creditworthiness and genuineness of transaction has been discharged by it and, therefore, addition under s. 68 was not justified.

In view of above facts and the legal position the addition of Rs.1,80,00,000/- made by the A.O. is requested to be deleted.

The finding of the AO was also perused and is detailed as under:

The assessee vide letter dated 15/12/2016 submitted that an advance of Rs.1,80,00,000/- was received from True Value Contractors Pvt. Ltd. (C-17, G/F, Guru Nanak Pura, Laxmi Nagar, Delhi-110092) as advance money on account of deal for sale of plot no. 5, Road H-9 in the residential colony known as DLF Qutab Enclave Complex, Dist Gurgaon. Further, vide, letter dated 16/12/2016 the assessee submitted the copy of letter dated 10/02/2014 of True Value Contractors Pvt. Ltd. informing their inability to make the balance payment because of their tight financial position and their no objection to forfeiture of earnest money.

5.1 Summon u/s 131 of the Income Tax, Act 1961 was issued to True Value Contractors Pvt. Ltd and Jaafa Contractors Ltd—(in

whose Axis account the advance money is credited), both the summon remained unserved as per the Inspector report dated 16/12/2016. When the same was confronted to the assessee by Q. no 50 of the statement recorded u/s 131 the reply given was that: "I have no contact with them after 2014 and I do not know their where about, I have already provided the documents".

5.2 Also vide letter dated 19/12/2016 information was sought u/s 133(6) from Sub-Registrar, Gurugram, Haryana to provide the circle rate of the property as mentioned above. The submission made by them vide letter dated 20/12/2016 shows that circle rate for DLF Phase-I is Rs. 70,000/- per sq. yards for residential property. The area in the above mentioned property is 502.32 sq yards as per the submission made by the assessee, which means the circle rate comes out to be Rs. 3,51,62,400/-.

5.3 The amount of Rs. 1,80,00,000/- being forfeiture of advance was not a credit entry appearing in the books of accounts and the assessee was notable to discharge the onus of establishing the identity, genuineness and creditworthiness of the same. There were contradictions noted in the statement recorded of the assessee, that is in the answer to Question no. 50 the assessee has stated that he had no contact with the True Value Contractors Pvt. Ltd./Jaffa Contractors Pvt. Ltd. after 2014. However, during the course of assessment proceedings the assessee has submitted the bank statements and other details of True Value Contractors Pvt. Ltd./Jaffa Contractors Pvt. Ltd. vide letter dated 15/12/2016. The bank statement of Axis Bank having Account no. 913020032425869, submitted by the assessee is scanned as under (extracted in body of order):

5.4 Information was sought u/s 133(6) from The Manager, Axis Bank, Statesman House, New Delhi to verify the bank statement of Jaffa Contractors Pvt. Ltd. submitted by the assessee vide letter dated 15/12/2016. In response to notice u/s 133(6) Axis Bank has made submission vide letter dated 28/12/2016 wherein he has stated that the Account no. 913020032425869 belongs to M/S Excel Buildtech Pvt. Ltd., in the name of Sh. Basheshwar Nath, 4132, Naya Bazar, New Delhi contrary to the claim made by the assessee. The relevant portion of the bank statement of M/S Excel Buildtech Pvt. Ltd. is reproduced as under:

5.5 In view of the above, it was established that the assessee had furnished false bank account statement. Even the agreement between True Value Contractor Pvt. Ltd. and the assessee in respect of the alleged sale of land was neither stamped nor on legal paper, thereby having no evidentiary value. Thus, the credit entry of Rs. 1,80,00,000/- was not explained by the assessee.

5.6 Vide letter dated 28/12/2016 the assessee was show caused as to why the above mentioned amount of Rs.1,80,00,000/- shown by him as advance received and forfeited and which remains unexplained income should not be added back to the total income of the assessee as per the provisions of Income Tax Act, 1961.

5.7 In response the assessee vide letter dated 30/12/2016 submitted the following which is reproduced as under: scan show cause

5.8 The submissions filed by the assessee have been considered but not found tenable and satisfactory. The assessee bps stated that he has received the amount from A/C no. 913020032425869 only. Whereas it has already been brought on record vide para 5.4 mentioned above that the said account is in the name of M/S Excel Buildtech Pvt. Ltd. and there are no entries of Rs.1,80,00,000/- in respect of the assessee on the relevant dates as seen from the bank statement of M/S Excel Buildtech Pvt. Ltd. as reproduced above.

Also, the account of True Value Contractors Pvt. Ltd Operated in the name of Jaffa Contractors Pvt. Ltd which was submitted by the assessee himself vide letter dated 15/12/2016 has already been proved to be false as mentioned in para 5.4. above. Therefore, the statement given by the assessee is fake and clearly shows the malafide intention of the assessee.

5.9 Further, the agreement to sell (reproduced below) submitted by the assessee with respect to sale of plot no. 5, Road H-9 in the residential colony known as DLF Qutab Enclave Complex, Distt. Gurgaon, submitted by the assessee vide letter dated 26/12/2016 between both the parties was without any legal stamp paper and it is unlikely that an advance payment to the tune of Rs. 1,80,00,000 given by second party (True Value Contractors Pvt. Ltd.) would be possible without any legal assurance from the first party (assessee). In the same letter the assessee has further submitted that "the agreement being produced was agreement within the parties and not on any legal stamp paper". This itself raises doubt on the veracity of the claim of the assessee.

5.10 The genuineness of the transactions are further questionable by the fact that the receipt of payment (reproduced below) of advance money to the tune of Rs.1,80,00,000/- submitted vide letter dated 15/12/2016 and also the copy of letter dated 10/02/2014 of True Value Contractors Pvt. Ltd informing their inability to make balance payment vide letter dated 16/12/2016 are not certified copies and have illegible signature of the party that is True Value Contractors Pvt. Ltd. The copy of the same is reproduced below.

5.11 Even the circle rate of the property, as informed by the Sub-Registrar; Gurugram u/s 133(6) comes out to be Rs. 3,51,62,400/- as against the said value of Rs.9,00,00,000/- by the assessee submitted vide letter dated 15/12/2016. The assessee made an agreement of Rs.9,00,00,000/- which is almost two and a half times the circle rate and in respect of the same the second party gave an advance of Rs. 1,80,00,000/- (without any legal agreement) and the advance was forfeited within a month of the so called agreement. These facts indicate beyond doubt that it is a bogus transaction and was a deliberate attempt on the part of the assessee of evade taxes.

5.12 Now, going by the accounting treatment for forfeiture of advance, it is seen that the entry can be passed in two ways-

- (i) By crediting the asset account*
- (ii) By crediting the capital account*

The assessee has not credited the asset account as the value of asset being plot nor 5, Road H-9 in the residential colony known as DLF Qutab Enclave Complex, Dist Gurgaon is shown as same

in Balance Sheet as on 31/03/2014. The other entry could have been increase of capital. However, the assessee has shown drawings of Rs.1,80,00,000/- scan on account of forfeiture of advance. However, the amount of Rs.1,80,00,000/- has not been withdrawn by the assessee from bank account as is evident from the bank statement of the assessee furnished by the assessee. Therefore, even the accounting has not been done in the books of accounts. The account of drawings is reproduced as below:

In view of the above, the claim of the assessee with regard to the advance money received to the tune of Rs.1,80,00,0/00/- is a concocted one and the assessee has failed to discharge the onus of explanation for the same. Hence, the amount of Rs.18,00,00,000/- is being added back to the total taxable income of the assessee on the grounds of unexplained income. Penalty proceeding U/s 271(I)(c) of I. T. Act are being initiated for furnishing inaccurate particulars of his income.

Discussion & Decision

The facts of the case, the submissions of the AR and the finding of the AO were examined. The brief facts of the case are that during the year under consideration the appellant signed an agreement with one True value Contractors (P) Ltd (now Jaffna contractors) for sale of Plot No 5, Road H-9 in the residential colony- DLF Qutub Enclave, Distt. Gurgaon for an amount of Rs.9 crore. The appellant received Rs.1.80 crore as earnest/advance money as detailed in clause 1 of the agreement to sell. However, subsequently, the deal fell through and the buyer True value Contractors agreed to forfeit the

amount of Rs.1.80 crore paid as earnest money. These facts were brought to the notice of the AO appellant during the course of assessment proceedings. The appellant submitted that payment was made by the buyer from his Axis bank account through RTGS in 4 tranches and was credited in the bank account of the seller appellant. The AO made independent inquiries. Summons were issued to the buyer to verify the facts detailed by the assessee but were not responded to. Information u/s 133(6) was also called for from the manager, Axis bank to verify the bank statement of the buyer. The manager informed that Account No 913020032425869 belonged to M/s Excel Buildtech (P) Ltd in the name of Bashershar Nath resident of 4132, Nasa Bazar, New Delhi. A perusal of the account showed there was no entry of Rs 1.80 crore. The AO confronted this fact to the appellant and subsequently made an addition on this account holding that the amount of Rs 1.80 crore was unexplained income of the appellant.

Before me, during the course of appellate proceedings, the appellant, through his AR, contended that the advance money was a bank to bank transfer via RTGS and was detailed in the agreement to sell. The appellant also filed an application for admission of additional evidence under Rule 46A which I have admitted as discussed in Para 4 of my order. The appellant filed the following additional evidence:

- Certificates issued by SBI certifying the payment though RTGS amount of Rs 1.80 crore by True Value contractors (P) Ltd.*

- *The report from the Ministry Of Company Affairs showing the name/address of the company True value Contractors (P) Ltd (now Contractors).*
- *Affidavit of True value Contractors (P) Ltd certifying the forfeiture earnest money paid by them to the appellant.*

The comments of the AO were requisitioned on the application for admission of additional evidence. I have already adjudicated on the admissibility application in para 4 of my order. Here, I will examine the additional grounds on merits. The AO's comments on the merits of the additional evidence are reproduced as under:

4. As per the submission of the assessee in his letter during the appeal vide his letter dated 23/05/2017, additional evidences are:

- c) Certificate issued by the SBI.*
- d) Statement of the account of the assessee.*

5. While making addition of Rs. 1,80,00,000/- as it was mentioned in the Assessment order assessee was not able to prove the genuineness of the transaction with M/s True Value Contractors Pvt. Ltd./Jaffa Contractors Pvt. Ltd. Also the bank account/details provided by the assessee for the M/s True Value Contractors Pvt. Ltd./Jaffa Contractors Pvt. Ltd. i.e. 913020032425869 was found wrong and the same was found to be the A/c of M/s Excel Buildtech Pvt. Ltd.

6. Also the agreement to sell submitted by the assessee with respect of the sale of the property was without any legal stamp paper, which raised doubt on the veracity of the claim of the

assessee. Also the assessee had not credited the asset account or the capital asset account with the amount of the forfeiture of the advance; instead the assessee has shown the same in his drawings account.

7. Now assessee is submitting the Certificate issued by the SBI and his Statement of the account, but still the same are not acceptable as these submissions are readily available with the bank and could have been submitted during the assessment. After providing reasonable opportunities to the assessee he failed to provide the above mentioned submissions. So, the above mentioned amount i.e. Rs. 1,80,00,000/- was added back to the taxable income of the assessee.

8. Also, assessee's contention that AO asked for the submissions at the last moment, doesn't hold ground as its assessee's own account, so assessee intentionally delayed the assessment proceedings to the last hour so that proper investigation or inquiry could not be made.

From a perusal of the above, it is clear that the AO has refrained, commenting on the merits of additional documents filed and has simply stated that the certificate of SBI could have been filed during assessment proceedings and as it was not filed then, and hence it may not be admitted under Rule 46A. The AO's comments do not controvert the credibility of the bank certificates and refraining to comment upon this relevant document suggests a tacit acceptance of the credibility of the documents so filed. Be that as it may I will now examine the claim of the appellant vis-a-vis, the finding of the AO.

The appellant has claimed that the AO has wrongly held that the amount of Rs 1.80 crore is unexplained income of the appellant. The AR has claimed, on behalf of the appellant that all manner of evidences have been filed to substantiate the claim that the receipt of Rs 1.80 crore is the nature of forfeited earnest/advance money for sale of Qutab enclave property. The appellant first drew my attention to the various evidences on record before the AO i.e.

- An agreement to sell between the appellant and the buyer True Value Contractors(P) Ltd which clearly shows that Rs 1.80 crore were paid by the buyer to the appellant as earnest money through RTGS from their Axis bank accounts The relevant page of agreement to sell is scanned and reproduced as under(overleaf):

NOW THEREFORE, THIS AGREEMENT WITNESSTH AS FOLLOWS:

1. Sale Price:

The total sale consideration for the sale of the said property has been fixed at Rs 9,00,00,000/- (Rupees Nine Crores only), of which the BUYER has paid a sum of Rs. 1,80,00,000/- (Rupees one crore eighty lacs only) as per details given below:

Date	Bank	Mode of payment	Amount (Rs.)
01.01.2014	Axis Bank Ltd.	RTGS	50,00,000/-
01.01.2014	Axis Bank Ltd.	RTGS	50,00,000/-
02.01.2014	Axis Bank Ltd.	RTGS	40,00,000/-
02.01.2014	Axis Bank Ltd.	RTGS	40,00,000/-
Total			1,80,00,000/-

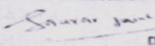
As "Earnest Money" by RTGS through Axis Bank prior to the execution of this Agreement, receipt of which the VENDOR hereby confirms and acknowledges. The balance sum of Rs. 7,20,00,000/- (Rupees Seven Crores Twenty Lacs only) shall be payable as follows:

- A sum of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lacs only) shall be payable on or before but not later than 20th January, 2014.
- A sum of Rs. 1,80,00,000/- (Rupees One Crore Eighty Lacs only) shall be payable on or before but not later than 15th February, 2014.
- Balance gross sum of Rs. 3,60,00,000/- (Rupees Three Crores Sixty Lacs only) shall be payable through Demand Draft/Bank Transfer on or before but not later than 30th March, 2014, upon receipt whereof, the VENDOR shall forthwith execute the Sale Deed in respect of the said property in favor of the BUYER.

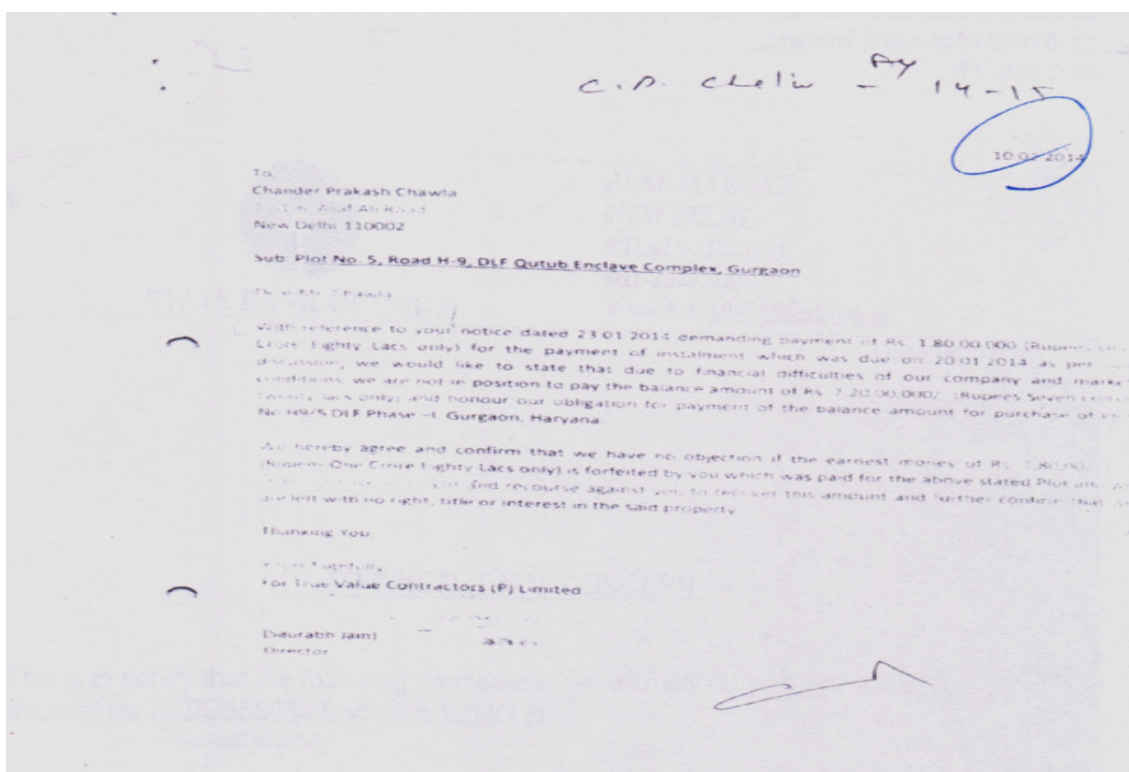
2. It is mutually agreed that time is essence of the agreement and any delay in future payments by the BUYER shall lead to forfeiture of Earnest Money as mentioned above, and this Agreement shall stand automatically cancelled, and the VENDOR shall be free to deal with the said property without any objection from the BUYER. In such a situation, the amounts paid by the BUYER to the VENDOR over and above the Earnest Money only shall be returned by the VENDOR to the BUYER without any interest, damages, claims or penalty and such transfer shall be sufficient discharge on the part of the VENDOR.

3. The sale contained herein is on an "AS IS WHERE IS" basis. The BUYER has conducted the legal due diligence and is fully satisfied with regard to the title of the said property. The VENDOR shall adhere to his obligations under this Agreement. It will not be open to the BUYER to delay any payment on any ground whatsoever. Any notice

For True Value Contractors Pvt. Ltd.


Director 2





- Letter from True Value Contractors detailing the fact of forfeiture of Rs 1.80 crore. A scanned copy of the letter is reproduced as under(overleaf):



- Copy of the ledger account of True Value Contractors reflecting a journal entry of Rs 1.80 crore as transferred amount on 31.03.2014.
- Copy of Drawings account of CP Chawla also reflecting credit of the said amount. The credit balance in this account was then transferred to the capital account of CP Chawla.

- Copy of Axis bank Account of True Value Contractors (P) Ltd showing a debit of Rs 1.80 crore (Ref Page 13 of assessment order)

Regarding the information obtained by the AO from the Manager Axis bank, the appellant stated that it was information of the wrong bank account. Further, this fact was confronted only on 28.12.2016 and the appellant was required to rebut it by 30.12.2016. This could not be done on account of paucity of time and was therefore filed as additional evidence during the appellate proceedings. The additional evidence was examined. It is noted that the SBI has certified the receipt of Rs 1.80 crores in the SBI account of the appellant. A scanned copy of the certificate is detailed as under (overleaf):

 STATE BANK OF INDIA		ASAF ALI ROAD NEW DELHI PH-011-23233141, 011-23237223 e-mail- sbi.00745@sbi.co.in
		Date:04/03/2017
<u>TO WHOM IT MAY CONCERN</u>		
This is to certify that the following transactions were credited to Sh Chander Parkash Chawla account no 10237358054 from Axis Bank Ltd.		
Date	Amount	UTR No
01/01/14	50,000,00	UTIBH14001063922
01/01/14	50,000,00	UTIBH14001063895
02/01/14	40,000,00	UTIBH14002090386
02/01/14	40,000,00	UTIBH14002098649
 Branch Manager		 

The SBI has also given a detailed certificate of the transaction with a detailed narration which very clearly states that the amounts have emanated from the bank account of True Value Contractors (P) Ltd. A scanned copy of the certificate is reproduced as under (overleaf):

STATEMENT OF THE ACCOUNT : 00000010237358054 FOR THE PERIOD 20140101 TO 20140304

select to_date('31-dec-1899','DD-MON-YYYY')+VALUEDATE as VALUEDATE ,to_date('31-dec-1899','DD-MON-YYYY')+POSTDATE as POST_DATE,TRANCODE,jrlno as JOURNAL_NO,AMOUNT,BALANCE,CHEQUENO,NARRATION ,INB_REF_NO from output0052745272 order by recno desc

ERROR at line 1:
ORA-00942: table or view does not exist

VALUEDAT	POST_DAT	TRANCODE	JOURNAL_NO	AMOUNT	
BALANCE	CHEQUENO	NARRATION		INB_REF_NO	
20140101	20140101	1045 14484172	5000000	6995494.62	0
RTGS UTIBH14001063922 TRUE VALUE CONTRACTORS PRIV					
20140101	20140101	1045 14486757	5000000	11995494.62	0
RTGS UTIBH14001063895 TRUE VALUE CONTRACTORS PRIV					
20140101	20140101	1023 20803930	400000	12395494.62	
279796					
20140101	20140101	51081 23811207	-12000056	395438.62	
237584 RTGS SBINH14001315339 AXIS SECURITIES LTD					
20140102	20140102	1045 2660924	135041	530479.62	0
NEFT*CITI0000002*CITIN14400501235*CLARKSON SHIPPI					
20140102	20140102	1045 20465302	4000000	4530479.62	0
RTGS UTIBH14002090386 TRUE VALUE CONTRACTORS PRIV					
20140102	20140102	1045 29392146	4000000	8530479.62	0
RTGS UTIBH14002098649 TRUE VALUE CONTRACTORS PRIV					
20140102	20140102	51081 31205131	-7500056	1030423.62	
237585 RTGS SBINH14002325139 AXIA SECURITIES LTD					
20140106	20140106	1045 14979861	1590000	2620423.62	0
RTGS HSBCH14006773250 CHANDER PARKASH CHAWLA(JT)					
20140106	20140106	51073 38993061	-950000	1670423.62	
237587					
20140107	20140107	1045 5491872	357074.77	2027498.39	0
NEFT*UTIB0000248*AXISP14007000515*AXIS SECURITIES					
20140107	20140107	1055 12259090	-1250000	777498.39	0
20140107	20140107	51072 36919278	-200000	577498.39	237588
Paid to anila					
20140108	20140108	1020 1632728	303372	880870.39	1
BOB BY CLEARING					
20140108	20140108	1020 1632732	104889	985759.39	1
KOT BY CLEARING					

(Handwritten signatures and stamps are present at the bottom of the document.)

From a perusal of the above certificate of SBI, it is apparent that the AO fell into error in holding that the amount of Rs 1.80 crore did not emanate from the bank account of True Value Contractors (P) Ltd and was hence unexplained income of the appellant. An affidavit from Jaffna Contractors (P) Ltd (previously True Value Contractors (P) Ltd. was also filed to authenticate claim. In normal circumstances, an affidavit does not have any evidentiary value. However, the SBI certificates corroborate the deposition in the affidavit and the affidavit can therefore not be brushed aside. Also, the AO has failed to controvert the veracity and credibility of the SBI certificates furnished by the appellant and reproduced supra. It is apparent that the AO relied upon a bank certificate pertaining to the account of one Excel Buildtech instead of the bank account of True value contractors (P) Ltd. As this fact was confronted to the appellant at the fag end of the assessment proceedings and as he was allowed only a day to rebut the same, the error and the consequent conclusions of the AO were based on a factually incorrect premise. This error came to light only after the appellant furnished the SBI bank certificates certifying that the payment of Rs 1.80 crore, credited in the bank account of the appellant via RTGS was from True Value Contractors (P) Ltd. Also, the AO's claim that this amount of forfeiture is not reflected in the books of account of the appellant is factually incorrect. It is clearly credited in the bank account of the appellant and is further transferred to the capital account of the appellant as discussed supra. Here, it is pertinent to observe the provisions of Section 51 of the Income Tax Act are applicable for the A.Y 2014-15, which is the year before me in appeal, wherein it is mandated that the advance money

forfeited will be reduced from cost of acquisition at the time of the sale of property. The new provisions under section 56(2)(ix), applicable from the A.Y 2015-16, however mandate that such a forfeiture be treated as 'income from other sources' in the hands of the assessee. This latter provision is not applicable in the instant year.

In the light of the above detailed discussion and after due examination of all evidences on record I hold that the addition by the AO has been made on a wrong factual premise. This addition is accordingly deleted."

8. Heard the arguments of both the parties and perused the material available on record.

9. In nutshell, the assessee received an amount of Rs.1,80,00,000/- on account of sale of property and received money from one entity namely "True Value Contractors Pvt. Ltd." whose name has been changed to "Jaffna Contractors". The amount has been duly reflected in the bank account of the assessee and a certificate from the State Bank of India that the payments to the tune of Rs.1,80,00,000/- have been received from Axis Bank into the account of the assessee. The copy of the bank statements have been duly provided to the revenue authorities. The amount forfeited subsequently of Rs.1,80,00,000/- is not taxable under "income from other sources" u/s 56(2)(ix) in the assessment year 2014-15 but is a subject matter of provisions of Section 51 of the Act effective for the year under consideration. Hence, we

decline to interfere with the order of the Id. CIT (A) on this issue. The appeal of the revenue is dismissed.

10. In the result, the appeal of the assessee and the appeal of the revenue are dismissed.

Order Pronounced in the Open Court on 27/11/2020.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 27/11/2020

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR