

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.288/Del 2019 & 6856/DEL/2018
Assessment Year: 2008-09 & 2009-10

Sh. Picheswar Gadde C/o.M/s. RRA Tax India D-28, South Extension, Part-I, New Delhi-110049 PAN No.AAJPG7365H	Vs	ITO Ward – 10 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Pranshu Goel, CA
Respondent by	Sh. Atiyu Ahmed, Sr. DR

Date of hearing:	18/01/2021
Date of Pronouncement:	20/01/2021

ORDER

PER N. K. BILLAIYA, AM:

ITA No.288/Del/2019 and 6856/Del/2018 are two separate appeals of the assessee preferred against two separate orders of the CIT(A)-22, New Delhi dated 30.10.2018 and 30.08.2018 pertaining to A.Y. 2008-09 and 2009-10.

2. Both these appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. We will first take up ITA No.288/Del/2019 A.Y. 2008-09. At the very outset the counsel for the assessee stated that he is not pressing the grounds by which the assessee has challenged the validity of the reopening of the assessment. Accordingly ground No. 1 and 2 are dismissed as not pressed.

4. Vide ground No.3 and 4 the assessee has challenged the addition of Rs.2.50 crores.

5. Facts relating this ground show that during the course of survey at the business premises of the assessee on 30.06.2014 and 01.07.2014 one of the documents impounded was marked as A-1 page 89 and which is as under :-

Vijayawada Land Details - Lingaya's

1	Amount paid by P G Sir - Cash	5,000,000
2	Paid from SBI A/c - 30284283717	
Date	Purchased from	
12/12/2007	Tammiseti Sadguru Murthy	250,000
	Ande China Veeranjanyulu	272,000
18-1-2008	Tata Maheswara Rao	500,000
21-1-2008	Bommu Talireddy	250,000
	Bommu Talireddy	250,000
	Bommu Talireddy	250,000
	Bommu Talireddy	250,000
	Bommu Talireddy	405,000
22/2008	Samala Kall Prabhavathi	265,000
	Samala Kall Prabhavathi	352,000
	Manyam Sambalish	142,000
22-11-2008	Tayi Srinivasa Rao	444,000
	Mame M Srinivasa Rao	440,000
21-01-2009	Tayi Nageswara Rao	306,000
	Total Land Value	<u>9,436,000</u>

(Rupees Ninty Four Lacs Thirty Six Thousand only)

Investment in LJT- Viveka Institute by P G Sir

Deposit in LJT Delhi A/c	8,500,000
Cash paid by P G Sir	7,500,000
Loan from Personal A/c	8,000,000
	<u>20,000,000</u>
Amount Refunded	2,500,000
Balance Due	<u>17,500,000</u>

(Rupees One Crore Seventy Five Lacs Only)



(Signature)
 (D. R. LAMBA)
 Income Tax Officer
 Ward-10(1), No. 334A,
 C. R. Building, New Delhi

THIS ANNEXURE IS
 THE TRUE COPY OF
 THE ORIGINAL DOCUMENT

(Signature)

6. On the basis of this document the AO formed a belief that cash of Rs. 50 lacs was paid for Vijaywada land. Further the AO found that Rs.65 lacs, 75 lacs and 60 lacs were paid to LJT – Viveka Institute by the assessee

7. The assessee was asked to explain these transactions found to be noted on the document impounded at the time of survey. In his reply the assessee vehemently stated that said document is dumb document and the entries in the said document have no logical inference.

8. The AO rubbished the contention of the assessee stating the provisions of section 292C of the Act clearly apply and, therefore, onus is upon the assessee to explain the nature of transaction.

9. The assessee through an affidavit once again reiterated that the account number mentioned in the impounded document does not belong to him or to his family member. The AO issued summons u/s. 131 of the Act to the General Manager, State Bank of India who in his reply stated that the State Bank account pertains to Vijaywada Branch and the Bank Manager of Vijaywada Branch confirmed that the bank account pertained to Lingaya Society. The AO was of the firm belief that the assessee is related to Lingaya Society and based upon his conviction, the AO made the addition of Rs. 2.50 crores. The assessee carried the matter before the CIT(A) but without any success.

10. Before us the counsel for the assessee vehemently stated that the said alleged document on the basis of which the addition is made is nothing but a dumb document. It is the say of the counsel that the document is neither in the hand writing of the assessee nor does bear any signature of the assessee. The counsel further stated that the presumption u/s. 292 C of the Act is rebatable presumption and is not conclusive proof. For this proposition reliance was placed on the decision of the Hon'ble Supreme Court in the case of P. R. Materani 2006 157 Taxmann 325.

11. Per contra the DR strongly supported the findings of the authorities below.

12. We have carefully considered the orders of the authorities below. The document on the basis of which the impugned additions have been made is exhibited elsewhere. A bare perusal of the said document show that first entry of Rs. 50 lacs pertains to Vijaywada Land. There is no evidence brought on record to show that the assessee or Lingaya Society has purchased any land at Vijaywada. The other entries of Rs. 75 lacs, 65 lacs and 60 lacs pertained to Lingaya Jan Kalyan Trust (LJT). Incidentally LJT came into existence only on 10.07.2009 as evident from the PAN card exhibited at page 203 at the paper book. When the LJT was not even in existence in the year under consideration i.e. A.Y. 2008-09 there cannot be any question of giving any loan/ investment to LJT

or in the name of LJT. It appears that the entire additions have been made on the presumption that provisions of section 292C of the Act clearly apply on the facts of the case. In our considered view the additions made merely on presumptions u/s. 132 (4A) / 292C of the Act cannot be sustained as the presumption had to be backed by direct and corroborative evidence that the notings has materialized into income or unexplained income/ unexplained expenditure.

13. A perusal of the assessment order and that of the first appellate authority clearly show that there is no corroborative / demonstrative evidence to justify the additions so made.

14. When the AO came to know that the bank account at Vijaywada belongs to Lingaya Society then the AO should have made atleast some necessary enquiries from the said society but we find that neither the AO nor the first appellate authority has done any such exercise. We further find that the AO did not accept the contention of the assessee that the said document is a dumb document. According to the AO a document can be considered as dumb document only when it has no reference as to any person or identity or to any date or to any amount. We find that no dates have been mentioned in the impugned entries which are basis of the additions. We fail to understand when no dates have been mentioned then how the AO came to the conclusion that the document pertains to A.Y. 2008-09. Further the entries relating to LJT which according to the AO pertained to A.Y. 2008-09 have to be

demolished on the fact that LJT came into existence on 10.07.2009 which falls in F.Y. 2009-10 relating to A.Y. 2010-11.

15. Considering these facts in totality we are of the considered view that the additions made by the AO are without any corroborative evidence brought on record, therefore, we have no hesitation in deleting the addition of Rs. 2.50 crores. Ground No. 3 and 4 are accordingly allowed.

16. Ground No.5 relates to the addition of Rs.976340/-.

17. Facts relating to this addition show that on perusal of the bank statement the AO noticed that an amount of Rs.3.99 lacs has been credited on 24.04.2007, 2.50 lacs is credited on 13.10.2007 and Rs.177340/- was also found credited. The assessee was asked to explain the credit entries. Assessee explained that Rs. 4 lacs has been received from M/s. Sun India Finlease Private Limited as loan and Rs. 2.50 lacs is the loan repaid by M/s. Gyan Kund Trust Educate and Rs.177340/- is the loan taken from wife Smt. Sunita Gadde. The AO did not accept the explanation of the assessee and made the impugned additions.

18. Assessee agitated the matter before the CIT(A) but without any success.

19. Before us the counsel for the assessee stated that there is no credit entry of Rs. 3.99 lacs on 24.04.2007. It is the say of the counsel that in fact on 03.04.2007 the assessee has taken loan from M/s. Sun India Finlease Private Limited. The counsel pointed out that the confirmation was filed which was not examined by the AO. The counsel further stated that the assessee has repaid the loan in the year itself which is also not properly examined by the AO / CIT(A).

20. The DR strongly supported the findings of the lower authorities.

21. Further on the amount of Rs.2.50 lacs the counsel drew our attention to the copy of the confirmation of M/s. Gyan Kund Trust Educate and pointed out that the said amount is the loan repaid by the trust out of the opening balance. It is the say of the counsel that this evidence has also not been appreciated by the authorities below. The DR strongly placed reliance on the findings of the AO/ CIT(A).

22. We have given a thoughtful consideration to the orders of the authorities below and have also considered the relevant documentary evidence brought on record. Exhibit 210-212 are the copy of confirmation of account of M/s. Sun India Finlease Private Ltd. a perusal of the same show that on 03.04.2007 loan of Rs. 4 lacs was received by cheque No.119552. We further find that

starting from 10.04.2007 to 24.10.2007 the loan has been repaid fully. We find that the AO/ CIT(A) have not even bothered to consider this documentary evidence which contains the PAN details of M/s. Sun India Finlease Private Ltd. Further even the AO has confused himself with the date. As mentioned elsewhere on 24.04.2007 there is no credit entry of this amount and it is only credited on 03.04.2007. In our considered view assuming that the appellant introduced his own accounted cash in the form of loan to show his accounted capital, what benefit a person would derive if the same loan is repaid immediately thereby reducing the accounted capital. Considering the fact in totality we do not find any merit in this addition of Rs.4 lacs and the same is direct to be deleted.

23. Exhibit 213 of the paper book is the confirmation of M/s. Gyan Kund Trust Educate and it can be seen that on 01.04.2007 there was an opening balance of Rs.15 lacs out of which on 13.10.2007 Rs. 2.50 lacs was repaid by cheque No. 770251. Exhibit 215 show that on 08.12.2006 loan of Rs 5 lacs was given by cheque No. 175852 and on 0802.2007 loan of Rs 10 lacs was given by cheque No.917483. Since the entry of Rs.2.50 lacs is nothing but the repayment of loan given by the assessee in earlier assessment years no addition need to be made on this account. We accordingly direct the AO to delete the addition of Rs.2.50 lacs also.

24. The Counsel did not press the addition of Rs.177340/- and the same is confirmed. Ground No. 5 is partly allowed ground No. 6 and 7 are not pressed and the same are dismissed as not pressed.

25. In the result, the ITA No.288/Del/2019 is partly allowed

ITA No. No.6856/Del/2018 (A.Y. 2009-10)

26. Vide ground No.1 and 2 the assessee has challenged the validity of the reopening of the assessment

27. Facts on record show that on the basis of the information received from the office of the DDIT (Investigation)-1, Faridabad through DCIT, Central Circle-1, Chandigarh, the AO came to know that during the course of survey conducted on the premises of the assessee various incriminating documents were found and examined. As per the investigation reports the AO came to know that the assessee and his wife has paid a consideration of Rs. 3.15 crores towards purchase cost of Farm House bearing No. 1, Dera Mandi, Chattarpur, New Delhi. The seller Smt. Jaya Sharma in her statement stated that the assessee and his wife have paid of Rs. 3.15 crores out of which 2.10 crores was paid in cash.

28. On the basis of this information noticed u/s. 148 was issued and served upon the assessee.

29. Before us the counsel for the assessee vehemently challenged the reopening of the assessment. It is the say of the counsel that the AO has issued notice after four years and without applying his mind on the facts which were already there before issuing the notice u/s. 148 of the Act. The counsel further stated that the AO has not applied his mind while recording the reasons to believe and before issuance of notice u/s. 148 of the Act. The counsel pointed out that in the reasons to believe the AO has mentioned the investigation report received from DDIT, Faridabad. However, while recording the reasons to believe that the income has escaped assessment the AO has not placed reliance on any such document and instead the AO simply recorded his reasons to believe placing reliance on statement of 3rd party Smt. Jaya Sharma. The counsel further stated that the AO has placed reliance on the statement of the third party which was recorded behind the back of the assessee and inspite of several requests made during the course of the assessment proceedings, the AO did not give any opportunity to cross examine Smt. Jaya Sharma. The counsel strongly contended that the reopening is bad in law and the assessment order so framed deserves to be quashed.

30. The DR strongly relied upon the assessment order and the findings of the first appellate authority.

31. We have carefully considered the orders of the authorities below. A bare perusal of the assessment order of the AO show that

the AO has specifically mentioned that he has considered the past assessment record of the assessee. If the AO had infact gone through the assessment history of the original return than the AO would have noticed that on 21.06.2011 a notice u/s. 142 (1) was served upon the assessee with the following questionnaire :-

<u>Sh. Picheshwar Gadde - A.Y. 2009-10</u>	
1.	List of Bank accounts giving the account No. branch & name of the bank for all the accounts alongwith copy of the bank pass books.
2.	Details of club membership, credit cards owned by you.
3.	Copy of Form 16 alongwith copy of Form No. 12BA issued by employer. .
4.	List of all companies/concerns where you are Director/partner/ proprietor alongwith percentage of holding/ interest in each concern.
5.	A brief note on size of family including details of the institution where the children are being educated.
6.	Details of all investments in movable & immovable property alongwith supporting evidence
7.	Details of foreign trip(s), if any, undertaken during the period, with sources of funding and purpose of the trip.
8.	Statement of affairs (including details of immovable properties) as on 31.03.2008 & 31.03.2009.
9.	Full details with all supporting documents for all transactions in immovable properties undertaken during the year.
10.	Details of all transactions in shares with supporting broker's bills and evidence of payment of STT (long term as well as short term), if any.
11.	Evidence of interest paid on borrowed capital set off against Income from house property. Please also submit a copy of the rent agreement for properties let out.
12.	Last assessment order passed u/s 143(3) of the Income Tax Act.
13.	Evidence for claim of deductions under Chapter VIA.
14.	Copy of accounts viz. Profit & Loss account, Balance Sheet. Etc. for the business being carried out.
15.	Full details with supporting documents for Short Term Capital Gain of Rs. 26,05,182/- during the year.
16.	Details of 'Income from other sources' Rs. 3,99,456/-.
<p><u>The submission should be duly page numbered alongwith the summary index at the top. A statutory notice u/s 142(1) is enclosed herewith.</u></p>	

32. Further the AO would have found the following reply :-

01. The property sold during the year was a joint property between the assessee and his wife Mrs Sunita Gadde. Total payment received against that has been reflected in the assessee's bank statement.
02. The assessee had purchased properties during the year under assessment. Relevant documents pertaining to Agricultural Land amounting to Rs.1.05 crores & Flat No. A-7 1st Floor Shivalik, New Delhi amounting to Rs. 28 lacs are enclosed herewith. Details of other two more properties purchased during the year will be furnished on the next hearing.
03. Confirmations from Mr. Dinesh Sadana ; Mr Jayaram Rao Komati; Mr Rajling Gadde ; Mrs Sunita Gadde & Mrs Kalpana Komati are enclosed.

33. Exhibit 7 to 28 is the copy of the sale deed in respect of Farm House bearing No. 1, Dera Mandi, Chattarpur, New Delhi. A perusal of the said sale deed show that the transaction amount of the said property is Rs. 1.05 crores and the original assessment order dated 21.11.2011 which was framed u/s. 143 (3) of the Act is placed at page 29 of the paper book.

34. As mentioned elsewhere the assessment has been reopened after four years and, therefore, the first proviso to section 147 of the Act clearly apply which reads as under :-

“Provided that where an assessment under subsection (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income

chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

35. The aforementioned proviso clearly state that no action shall be taken under this section after the expiry of four years unless any income has escaped by reason of the failure on the part of the assessee to make a return u/s. 139 or to disclose fully and truly or on material facts necessary for his assessment.

36. As mentioned elsewhere the assessee has filed the return of income u/s. 139 (1) of the Act which was duly assessed u/s. 143 (3) of the Act. All the queries raised by the AO were duly replied by the assessee with supporting documentary evidences.

37. Merely because some unrelated party in her statement has stated that the assessee and his wife have paid consideration over and above the transaction value would not justify the reopening and the impugned addition, firstly because the said statement was recorded behind the back of the assessee for which no opportunity of cross examination was given and secondly, there is no evidence brought on record to show that the actual sale consideration was

much higher than that mentioned in the sale deed. In fact the stamp valuation authorities have accepted the stamp duty on the transaction value of 1.05 crores and, therefore, no adverse inference should have been drawn by the AO.

38. In our considered opinion on the facts of the case in hand as discussed here in above reopening is bad in law. We accordingly quash the notice issued u/s 148 of the Act thereby quashing the assessment order dated 29.12.2016 framed u/s. 143 (3) r.w.s. 147 of the Act.

39. Since we have quashed the assessment order itself, we do not find it necessary to dwell into the merits of the case ITA No.6856/Del/2018 is accordingly allowed.

Order pronounced in the open court on 20.01.2021.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:-20 .01.2021

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.01.2021
Date on which the typed draft is placed before the dictating Member	20.01.2021
Date on which the typed draft is placed before the Other member	20.01.2021
Date on which the approved draft comes to the Sr.PS/PS	20.01.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	20.01.2021
Date on which the fair order comes back to the Sr. PS/ PS	20.01.2021
Date on which the final order is uploaded on the website of ITAT	20.01.2021
Date on which the file goes to the Bench Clerk	20.01.2021
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	