

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA no. 25/Nag./2017
(Assessment Year : 2008-09)

Fire Arcor Infrastrucute Pvt. Ltd.
53, Saroj, Ramdaspath
Nagpur 440 010
PAN - AABCF0909M

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-2(1), Nagpur

..... Respondent

Assessee by : Shri R.K. Ganriwala
Revenue by : Shri A.R. Ninawe



Date of Hearing - 22.06.2017

Date of Order - 29.06.2017

ORDER

PER AMARJIT SINGH, J.M.

The present appeal preferred by the assessee is directed against the impugned order dated 30th November 2016, passed by the learned Commissioner (Appeals)-3, Nagpur, relevant to the assessment year 2008-09. The grounds raised by the assessee are reproduced below:-

"1. The order passed by the Assessing Officer is illegal, incorrect and bad-in-law and without natural justice.

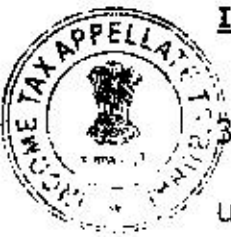
2. The addition made for ` 1,50,00,000 is incorrect, illegal, bad-in-law and without natural justice and the same is to be deleted."

2. Brief facts of the case are that the assessee filed its return of income under section 139 of the Income Tax Act, 1961 (for short "*the Act*") on 30th September 2009, declaring total income of ` 31,50,458. The return of income was processed on 3rd February 2010. A search and seizure action under section 132 of the Act was initiated in the case of Kondawar Group on 7th March 2013, which was concluded on 30th April 2013. During the search, a large number of incriminating documents and diaries were found and seized. In the seized material Annexure-B2, Item no.6 was belonging to assessee, therefore, notice under section 153C of the Act dated 4th August 2014 was issued and served upon the assessee. In pursuance of notice, the assessee filed return of income on 22nd August 2014, declaring total loss to the tune of ` 99,24,675. Therefore, notice under section 143(1) was issued and served upon the assessee. A copy of MoU was found and seized during the search, it came into the notice that the Kondawar Group purchased 151.66 acre land for Emphyrean Town Ship at Kothewada, Nagpur from the assessee. It was noticed that the assessee received an amount of ` 1.50 crore in cash. Since the copy of MOU was found, therefore, the assessee was asked to produce the original copy but the assessee failed to produce the same. The contention of the assessee



was that the entry with regard to the payment of cash to the tune of ` 1.50 crore was manipulated. The assessee relied upon the subsequent agreement dated 26th June 2000 to clear this ambiguity. Finding nothing justifiable, the Assessing Officer added the said amount to the income of the assessee. Being aggrieved, the assessee filed appeal before the first appellate authority, wherein, the learned Commissioner (Appeals) confirmed the assessment order. Therefore, the assessee feeling aggrieved is in further appeal before us.

ISSUE no.1 AND 2



3. Bothe the issues are inter-connected therefore are being taken up together for adjudication. In fact, both the issues leads to the addition of ` 1.50 crore. The learned Authorised Representative of the Assessee has argued that the photocopy of MOU was not sufficient to make the addition, therefore, the addition is liable to be deleted. It is also argued that the statement of Gopal Gondawar was recorded on 10th April 2013, which was retracted by him on 31st May 2013 and the copy of the same along with the documents were not provided to the assessee, therefore, the addition is wrong against law and facts. However, on the other hand, the learned Departmental Representative has strongly relied upon the order passed by the learned Commissioner (Appeals). We have heard the rival contentions and

perused the material available on record. The MoU dated 13th March 2007, executed between the Kondawar Group and the assessee was found in the possession of Shri Gopal Kondawar in which the said group purchased a land from assessee. According to the MoU, the assessee received an amount of ` 1.50 crore in cash. The plea of the assessee is that the said entry is manipulated and was also based upon the false statement of Gopal Kondawar who retracted the same later on. The assessee sold the land to the Kondawar Group. No doubt, in the said circumstances, the original MOU should be in the possession of the assessee. When the Assessing Officer demanded the original copy of the MOU, then the same was not made available by the assessee. The original document may through some light with regard to the manipulation of entry. The same was not produced by the assessee. The assessee admitted the transaction but took the plea that subsequently an another agreement dated 26th June 2007 was executed to clarify the transaction. But the said agreement nowhere speaks about the cash transaction of ` 1.50 crore. Since the MoU was admitted but the assessee who took the plea of manipulation of the entry of an amount of ` 1.50 crore, therefore, in the said circumstances, it was incumbent upon the assessee to prove his case by adducing the sufficient evidence on record. Assessee nowhere



Shri Karim Kamruddin Malik

proved the manipulation. No material of any kind was produced before us to which it can be assumed that the entry in the MOU dated 13th Marcy 2007 is manipulated and wrong against law and facts. The assessee took the plea of not providing of the document but we observe that the basic document is the MOU which he did not provide. The statement of Gopal Kondawar and agreement dated 26th June 2007 are concerned . The statement became immaterial after admission of MOU. Agreement no where clarify the entry in dispute. So far as the statement of Gopal Kondawar is concerned, the same is retracted one but can be taken into consideration to corroborate the documentary evidence i.e., the MOU. Therefore, under such circumstances, we are of the view that the assessee failed to adduce the sufficient evidence before us to prove his claim, hence, we are of the view that the learned Commissioner (Appeals) has decided the matter of controversy judiciously and correctly, which is not required to be interfered at this appellate stage.

4. In the result, assessee's appeal stands dismissed.

Order pronounced in the open Court on 29.06.2017

Sd/-
P.K. BANSAL
VICE PRESIDENT

Sd/-
AMARJIT SINGH
JUDICIAL MEMBER

NAGPUR, DATED: 29.06.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Nagpur City concerned;
- (5) The DR, ITAT, Nagpur;
- L(6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

[Signature]
सहायक पंजीकार
(Dy./Asstt. Registrar)
Assistant Registrar
TAA, Nagpur
आयकर अपील विभाग,
Income Tax Appellate Tribunal
नागपुर न्यायपीठ / Nagpur Bench



		Date	Initial	
1.	Draft dictated on	23.06.2017	}	Sr.PS
2.	Draft placed before author	26.06.2017		Sr.PS
3.	Draft proposed & placed before the second member	--		JM/AM
4.	Draft discussed/approved by Second Member	--		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	.06.2017	}	Sr.PS
6.	Date of pronouncement	.06.2017		Sr.PS
7.	File sent to the Bench Clerk	.06.2017		Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			