

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

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
[Through Video Conferencing]**

ITA No.4282/Del/2016
Assessment Year: 2007-08

ACIT, Circle-12(2), New Delhi	Vs.	M/s. I.G. Builders & Promoters (P) Ltd., C-581, Defence Colony, New Delhi
PAN :AAACI1640K		
(Appellant)		(Respondent)

Appellant by	Ms. Anima Barnwal, Sr.DR
Respondent by	Sh. Vinod Ralhan, CA

Date of hearing	27.09.2021
Date of pronouncement	14.10.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 06/05/2016 passed by the learned Commissioner of Income-tax (Appeals)-4, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2007-08, raising following grounds:

1. *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition made amounting to Rs.1,90,50,000/- on account of payment made from an unaccounted sources.*
2. *The appellant craves leave for reserving the right to amend, modify, add or forego any ground(s) of appeal at any time before or during the hearing of the appeal.*

2. Briefly stated facts of the case are that assessment under section 143(3) of the Income-tax Act, 1961 (in short 'the Act') was completed on 30/12/2009 at total income of ₹ 17,85,843/-. Subsequently, the Assessing Officer noticed that assessee entered into an agreement for purchase of land in Defence Colony, New Delhi, for a total consideration of ₹ 2,90,50,000/-, however, in the books of account value of the said land was recorded only at ₹ 1 Crore. In view of the information, the Assessing Officer recorded reasons that income has escaped the assessment in terms of section 147 of the Act and issued notice under section 148 of the Act, asking the assessee to file return of income. The assessee vide its letter dated 06/05/2014 submitted that return filed on 29.10.2007 might be treated as return filed in pursuant to notice under section 148 of the Act. The objection filed by the assessee against issuance of the notice under section 148 of the Act was disposed of by the Assessing Officer. After considering submission of the assessee, the Assessing Officer made addition of ₹ 1,90,50,000/- as payment made from undisclosed sources and assessed total income of the assessee at ₹ 2,08,35,840/- in his order dated 09/03/2015 passed in terms of section 147 read with section 143(3) of the Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and filed detailed submission. The assessee submitted that addition has been made on the basis of a draft deed, a soft copy of which was seized from the computer of deed writer Sh. Naresh Gupta. It was further submitted that Sh. Naresh Gupta himself stated of not having aware about any such transaction of purchase by the assessee at quantum recorded in the draft deed. After considering submission of the assessee, the

Ld. CIT(A) deleted the addition holding that unsigned deed found in the course of the search may not be sufficient for the Revenue to prove that the entries represented undisclosed income of the assessee. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the parties appeared through video conference facilities. We have heard rival arguments and perused the material on record, including orders of the lower authorities. The facts in brief in relation to adjudication of the ground have been summarized by the learned CIT(A) in Para 4 of the impugned order, which have not been disputed by the parties. The relevant part of the order of the Learned CIT(A) is reproduced as under:

“4. The AO relied on the seized deed and made the addition of Rs. 1,90,50,000/- on the basis of documents found during the search and seizure of AKN Group. According to the document seized the land bearing no. 387, Block- A, Defence Colony, New Delhi was purchased by the company having total consideration of Rs. 2,90,50,000/- but property was registered by assessee for Rs. 1,00,00,000/-. The AO after considering the reply of the appellant held that the payment was of Rs 1,00,00,000 + 1,90,50,000 = 2,90,50,000/- as per the seized document.

The appellant has submitted that it is engaged in construction business. Consequent to the search operation of AKN Group, a search operation was carried out on the business and residence premises of Sh. Naresh Gupta, a document deed writer of the properties in AKN Group. During the course of search operation digital data was seized from which an agreement was found giving details of transaction of purchase of residential plot by the assessee company M/s I.G. Builders & Promoters Pvt. Ltd. from Smt. Damyanti Sharma, Smt. Neelam Dhingra, Smt. Vishwa Kanta Sharma and Sh. Sanjay Kumar Sharma. It is in respect of land bearing no. 387 in Block A situated at Defence Colony, New Delhi for total consideration of Rs. 2,90,50,000/- and entire first floor of the proposed building in favor of second party i.e. Smt. Vishwa Kanta Sharma and Sh. Sanjay Kumar Sharma.

Sh. Naresh Gupta, document deed writer in his statement recorded on oath u/s 131(1A) of the Income tax Act, 1961 has

admitted that the during the drafting of various instruments, data from Master Documents is copied and while cutting/pasting/ data of some other clients are also copied by mistake which shows various discrepancies/variance as per actual figures/amounts/terms. Further, the document deed writer, Mr. Naresh Gupta has submitted his letter in writing on 16.02.2015 which is reproducing here:

'This is in reference of the case of M/s I G Builders & Promoters Pvt. Ltd for A.Y. 2007;

Documents under reference seized from the hard disc have no evidentiary value in the eye of law. It does not reflect true nature of transaction. I am not aware of any money transaction between the parties. I am in consultancy and drafting of various deeds for the sale/purchase of properties of my various clients. Sometimes cut/paste of various documents in the computer shows discrepancy and not true character of the documents. True character of the documents may be ascertained from the concern parties.

*Regards,
Naresh Gupta,
(Advocate)
{R-36, Greater Kailash-1, New Delhi}"*

Furthermore, Authorized Representative of Assessee's Company also submitted the letter dated 13.03.2015 from Sh. Naresh Gupta which is reproducing here:-

"This is in continuance of my statement dated 16.02.2015, given to you. I further state that I am in to profession of providing consultancy services to my various clients, regarding Real Estate Matters. During the course of consultancy, I do draft various documents under the instruction of Clients. Sometimes under the instruction of seller, sometimes under the instructions of Purchaser and sometimes under the instruction of Real estate Agents. I do not remember as to under whom instruction I drafted the document picked up from my hard disk.

That during the course of drafting of various instruments, data from the Master Document is copied and sometimes during such cutting/ pasting, data of some other file is also copied by mistake, which shows various discrepancies/ variance as per the actual figures/ amounts/ terms. Therefore, simply picking up file from the hard disk of the Computer will not reflect true

nature of the contract True nature of the contract can only be gathered from the contracting parties only."

The following case laws with similar facts which support the assessee's contention are mentioned below:-

- *CIT Vs. Jaipal Aggarwal [2013] 212 Taxman 1 (Delhi)*
- *Sharad Chaudhary, New Delhi vs Department Of Income Tax (itat, Delhi) (25.07.2014)*
- *Delhi Tribunal in case of Mahan Foods Ltd. vs. CIT [2009] 27 DTR 185.*
- *Gujarat High Court in case of CIT vs. Maulik Kumar K. Shah 307 ITR 137*
- *Honorable Supreme Court in the case of Mohd. Yusuf & ANR. Vs. D & ANR. AIR 1968Bom112*
- *Decision of Delhi Tribunal in case of SK Gupta v/s DCIT 63 TTJ 532*
- *The apex court in Central Bureau of Investigation v. V.C. Shukla (1998) 3 SCC 410."*

4. In the background of the above facts, the Ld. CIT(A) deleted the addition of observing as under:

"I have considered the submissions of the appellant, the findings of the A.O., the fact including the relevant seized documents on record. Naresh Gupta, the deed writer, also submitted his statement dated 16.02.2015 and 13.03.2016 stated that he is not aware about the transactions between the parties. Further, he is used to copy /paste method for drafting the documents on the instruction of parties/builders/ dealer.

The principle laid down by the Supreme Court and various other Tribunals is that as per section 34 of the Evidence Act, 1872 loose sheets of papers are not to be considered as "book" and here deed seized is in admissible as evidence and cannot be relied upon. Addition made on unsigned deed is not justified and Revenue has to bring some corroborative evidence to show that the document seized actually show some transaction and the assessee earned income from undisclosed sources. The Revenue can tax only those receipts, which must have been proved to be income in the hands of recipient. Reference may be made to the decision of the Supreme Court in Central Bureau of Investigation v. V.C. Shukla (1998) 3 SCC 410 has laid down that File containing loose sheets of papers is not book and hence entries therein are not admissible under section 34 of the Evidence Act, 1872. Similar view has been also taken by Honorable Supreme Court in the case of Mohd. Yusuf & ANR. Vs.D & ANR. AIR 1968 Bom 112 and by Gujarat High Court in case of CIT vs. Maulik Kumar K. Shah 307 ITR 137. In the following cases the Tribunal

have held that merely on the basis of dumb documents seized, i.e. from which nothing could be clearly understood, cannot form a justified base for making additions -Sharad Chaudhary, New Delhi vs Department Of Income Tax (ITAT, Delhi) (25.07.2014); Delhi tribunal in case of Mahan Foods Ltd. v. CIT (2009) 27 DTR 185. Therefore, merely unsigned deed found in the course of search may not be sufficient for the revenue to prove that the entries represent undisclosed income of the assessee.

As far as the evidentiary value of the entries in the above books of accounts are concerned the matter of taxability cannot be decided on the basis of entries which the assessee may choose to make in his accounts but has to be decided in accordance with the law. The taxability of the amount on the basis of unsigned seized document depends on the credibility and taxability of the same in accordance with the Law and not on the basis of unsigned drafted deed. The Income tax authorities cannot assess all receipts, they can assess only those receipts which may amount to be income. Therefore where they assess a receipt, they must find it to be income and they cannot do assess they have some material to justify their findings.

In Pushkar Narain Saraf Vs CIT [1990] 86 CTR (All) 110:[1990]183 ITR 388 (All): TC 61R. 433, the Court has held that provisions of section 132(4A) is available only for the limited purpose of seizure. In the course of block assessment proceedings, the Assessing Officer label the entries as income under Provisions of Act or deeming Sections 68, 69, 69A and 69C etc. but the burden is on the Department to prove that the entries represent undisclosed income of the assessee.

Therefore, after considering all the above facts the unsigned seized document does not show the true and fair view of actual money transitions between the parties. Thus the addition of Rs 1,90,50,000/- is hereby deleted The ground of appeal is allowed to the assessee.”

5. On perusal of the above facts of the case and finding of the Ld. CIT(A), we find that the Assessing Officer has reopened the case and made addition of ₹ 1,90,50,000/- on the basis of soft copy of a deed found from the computer of deed writer Sh. Naresh Sharma. No copy signed by the assessee and seller parties with a transaction of Rs.2,90,50,000/- has been found during the course of the search of Sh Naresh Gupta. The deed writer, himself

has denied of having aware of any money transaction between the parties, which was recorded in the computer. He stated during the course of search that amount mentioned may be as a result of cut/paste of various documents in the computer. We find that the Assessing Officer has made addition only on the basis of said unsigned deed and no corroborative evidences have been brought on record to show that purchase transaction was executed by the assessee at the rate mentioned in the computer of Sh. Naresh Sharma. The Assessing Officer has not carried out any inquiries from the seller of the land also. The assessee cannot be penalised merely on the basis of an unsigned deed found from the premises of a third-party. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any error in the same. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute and dismiss the ground No.1 of the appeal of the Revenue. The ground No. 2 being general in nature, is dismissed as infructuous.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 14th October, 2021

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 14th October, 2021.

RK/-(DTDC)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi