

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 52/JP/2021
निर्धारण वर्ष/Assessment Year : 2016-17

Shri Narendra Lakhi 75, Gopal Ji Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	The DCIT, Central Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AARPL 0856 E		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से/ Revenue by : Shri B. K. Gupta (Pr.CIT)

सुनवाई की तारीख/ Date of Hearing : 28/10/2021
उदघोषणा की तारीख/Date of Pronouncement: 28/10/2021

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 28.05.2021 of Id. CIT(A)-4, Jaipur for the assessment year 2016-17.

The assessee has raised the following grounds:-

"1. The Id. CIT(A) has erred on facts and in law in confirming the addition of Rs. 54,50,000/- made by the AO on account of alleged investment in purchase of land at village Jamdoli only on assumption and presumption without bringing any material on

record that such payment is made in the year under consideration. She has further erred in confirming the addition without considering the fact that due to family disputes of seller the transaction has not yet materialized and therefore, no such payment has been made.

1.1. The Id. CIT(A) has erred on facts and in law in confirming the addition by holding that as per the sale agreement actual possession of the property has been given to the assessee and therefore, addition in the year under consideration is justified ignoring that the sale agreement is dt. 30.04.2008, assessee is not yet in the possession of property and there is no evidence that payment of Rs. 54.50 lacs has been made in the year under consideration.”

2. The appellant craves to alter, amend and modify any ground of appeal.

3. Necessary cost be awarded to the assessee.”

2. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference.

3. There was a search action U/s 132 of the IT Act on 10.12.2015 in case of the assessee. The dispute in the present appeal is regarding addition made by the AO while framing assessment U/s 143(3) r.w.s 153B(1)(b) of the Income Tax Act on account of unexplained investment for purchase of land vide agreement dated 30.04.2008 found during the course of search and seizure action. The Assessing

Officer has noted that as per said agreement the assessee agreed to purchase the property situated at village Jamdoli, Agra Road, Jaipur for a total consideration of Rs. 85,51,000/- from Shri Dayal Chetwani. Further, it is stated in the agreement that the assessee paid Rs. 24,00,000/- in cash and Rs. 1,51,000/- through cheque to the seller at the time of the agreement. Further a sum of Rs. 5,50,000/- was to be paid by the assessee in the next month of the agreement i.e. May, 2008. The balance amount of Rs. 54,50,000/- was to be paid by the assessee before the registration sale deed therefore, the AO has considered the said amount of Rs. 54,50,000/- as unaccounted payment/expenditure to be assessed for the year under consideration. The assessee challenged the action of the AO before the Id. CIT(A) and contended that due to the dispute between the family members, the seller could not execute the sale deed and therefore, the transaction was not materialized and the balance payment was not paid by the assessee till date. The assessee contended that in the absence of any record to show that the assessee has paid the balance payment the same cannot be treated as unaccounted expenditure or investment for the year under consideration. The Id. CIT(A) did not accept the

contention of the assessee and confirmed the addition made by the AO while passing the impugned order.

4. Before the tribunal, the Id. AR of the assessee has submitted that the Assessing Officer has accepted that the payment to the extent of Rs. 29,50,000/- apart from the cheque payment of Rs. 1,51,000/- pertains to the assessment year 2009-10 and the same cannot be added for the year under consideration. He has further submitted that the Assessing Officer has recorded this fact that the time period of payment of balance amount of Rs. 54,50,000/- is not known but the same is held to be unaccounted expenditure made by the assessee for the purpose of investment in the property during the current year. Therefore, the addition is made by the AO only on the basis of assumption and presumption of payment made by the assessee during the year without any incriminating material. There was no material or basis to presume that against the agreement dated 30.04.2008 the assessee paid the alleged amount of Rs. 54,50,000/- during the year under consideration. It is settled law that for the purpose of making addition on account of unexplained investment U/s 69 of the I.T. Act the burden to prove that such investment has been made and that too in a particular year is on the person who alleges so. Neither the AO nor

the Id. CIT(A) has brought any evidence on record to effect that the investment of Rs. 54,50,000/- has been made by the assessee during the year under consideration. Thus the addition without any evidence and without discharging the burden to prove is unjustified and uncalled for and liable to be deleted. In support of this contention he has relied on the following decisions:-

- PCIT Vs Vivek Prahladbhai Patel (2016) 237 Taxman 331.
- CIT Vs Agile Properties (P) Ltd. (2014) 107 DTR 201.
- CIT Vs Khandelwal shringi & Co. (2017) 159 DTR 59.
- ACIT Vs Govindbhai N. Patel (2015) 2015 Taxman 575.

5. The Id. AR has further submitted that the property in question was owned by Late Shri Harish Kumar who has also executed a will dated 12.07.2006 in favour of one Kumari Veena Shah. There was dispute between family members of the deceased regarding inheritance of the property through the will and the case was filed in the court of Ld. Additional and District Sessions Judge, Jaipur. Therefore, it is evident from the court record and order dated 22.02.2014 of the Id. Additional and District Sessions Judge that there was dispute between family members of deceased Late Shri Harish Kumar. The assessee explained these facts that due to the dispute between family members

of the seller transaction could not materialise and no payment other than paid at the time of agreement was made by the assessee.

6. On the other hand, the Id. DR has submitted that so far as the order of the Ld. Additional and District Sessions Judge is concerned it is not clear whether this property was part of the dispute in the case before the court. Even otherwise this is an additional evidence which was not produced before the authorities below. He has further submitted that the AO as well as Id. CIT(A) has recorded that the assessee surrendered income of Rs. 24,00,000/- being the amount paid by the assessee at the time of execution of the agreement and therefore, in the absence of any record to show that the transaction was not concluded and the assessee has not paid the balance amount it is a natural corollary to treat the balance amount of the purchase consideration as unaccounted payment made by the assessee. He has relied upon the orders of the AO as well as Id. CIT(A).

7. We have considered the rival contentions and perused the material available on record. There is no dispute that during the course of search and seizure an agreement dated 30.04.2008 regarding purchase of the property by the assessee from one Shri Dayal Chetwani was found showing the total purchase consideration of the land at Rs.

84,00,000/- the said agreement to show that the assessee paid Rs. 24,00,000/- in cash and Rs. 1,51,000/- vide cheque dated 30.04.2008 out of the total consideration and the balance amount of Rs. 60,00,000/- was to be paid by the assessee subsequently. The said agreement further, enumerates time and manner of payment by the assessee regarding the balance amount of Rs. 60,00,000/- out of which a sum of Rs. 5,50,000/- was to be paid within a month from the agreement, Rs. 25,00,000/- was to be paid to the Oriental Bank of Commerce to discharge the mortgage loan taken on this property and the balance of Rs. 29,50,000/- was to be paid at the time of registration of sale deed. Even otherwise without discharging the charge of mortgage with the bank the property could not be transferred through a registered sale deed. So far as the payment of Rs. 24,00,000/- in cash and Rs. 1,51,000/- by cheque is concerned there is no dispute regarding the said payment as it is paid at the time of agreement dated 30.04.2008 and the assessee has accepted the same. The Assessing Officer has also recorded this fact that the said amount of Rs. 24,00,000/- paid at the time of agreement and Rs. 5,50,000/- was to be paid in the next month of the agreement pertains to the assessment

year 2009-10. The relevant part of the order at page 3 of the assessment order reads as under:-

"It is observed that as per the agreement, the assessee made the payment of Rs. 31.01 lakhs in thy AY 2009-10 against the transaction, while the period of balance payment of Rs. 54,50,000/- is not known. Since, the unaccounted payment of Rs. 24 lakhs & Rs. 505 lakhs pertains to the AY 2009-10, the same cannot be added in the year under consideration. However, with respect to the unaccounted expenditure of Rs. 54,50,000/-, since the time period of the payment of this amount is not known and also not disclosed by the assessee, the same is held to be the unaccounted expenditure made by the assessee for the purpose of investment property during the current year and accordingly, added to his total income for the AY 2016-17. Penalty proceedings u/s 271AAB(1)(c) are initiated due to concealment of income spent towards making investment in property."

Therefore, the AO has not made any addition in respect of the payment of Rs. 24,00,000/- in cash at the time of agreement and further of Rs. 5,50,000/- was to be paid in the next month of the agreement. Except this agreement dated 30.04.2008 there was no other material found during the course of search to show that the assessee has made the balance of purchase consideration to the seller. The assessee explained before the AO well as Id. CIT(A) that due to the dispute between family

members to the seller the transaction did not materialize and no payment other than paid at the time of agreement was made by the assessee. The AO has also accepted this fact that there was no material to show that the balance payment was made by the assessee and even the time period of the alleged payment. In support of his presumption the AO has not referred any evidence or material. Once there was no material available with the AO to show that the assessee has made the payment of the balance purchase consideration of Rs. 54,50,000/- the addition cannot be made on the basis of presumption. The Assessing Officer instead of conducting any enquiry to find out the correct facts about the alleged payment has proceeded only on the basis of assumption and presumption regarding the alleged payment of Rs. 54,50,000/-. Further, he has also assumed that the payment has been made during the year under consideration. In the absence of any material or other facts to indicate that the alleged payment was made by the assessee and that too in the year under consideration the addition made by the AO merely on the basis of assumption and presumption has not justified. The Id. CIT(A) has confirmed the addition made by the AO by giving the reasons that the assessee has not explained the details of payment. It is pertinent to note that once the

assessee has denied any payment except the payment made by the assessee at the time of agreement, the assessee is not supposed to produce any evidence of non existing transaction. Further as per terms of the agreement the assessee was to pay Rs. 25,00,000/- for discharge of loan amount against the property and once this payment is not made by the assessee to discharge the property in question from the mortgage charge of the bank which is matter of record then it cannot be presumed that the assessee has made the said payment. The Assessing Officer instead of discharging his duty to bring any material on record to show that the assessee has made unaccounted payment during the year under consideration the addition made purely on the basis of presumption it is not justified and the same is liable to be deleted. Accordingly the addition made by the AO is deleted.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 28/10/2021.

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 28/10/2021.

***Santosh.**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Narendra Lakhi, Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-3, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 52/JP/2021}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar