

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No.2903/Mum/2019 (Assessment Year 2012-13)

ITO, Ward-3(4) 2 nd Floor, Rani Mansion Murbad Road, Kalyan(W) Mumbai-421 301	Vs.	Shakuntala Builders & Developers 01, Shakuntala Shopping Complex, Kalyan Shill Road, Lodha Heavan, Nilje, Dombivli(E)-421 204 PAN : ABMFS4522N
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri T.S.Khalsa
Date of Hearing	22.09.2021
Date of Pronouncement	06.12.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against the order of learned Commissioner of Income Tax (Appeals)-1 dated 19.02.2019 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under:-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) was justified in deleting the addition of Rs. 4,85,57,320/- made u/s 69C without appreciating the fact that the transaction has not been shown in the balance sheet as advance for plot."

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 4,85,57,320/- made u/s 69C without appreciating the fact that the sale agreement has not been cancelled and as such the transfer of land (ownership) has taken place and full value of assets has not been shown in the balance sheet.

3. The order of the CIT(A) may kindly be vacated and that of the AO may be restored.

3. Brief facts of the case are as under:-

Briefly stated facts of the case are that in this case the return of income, *declaring total* income at Rs. 11,64,300/- was filed on 24.09.2012 for A.Y. 2012-13. The case was selected for scrutiny under CASS. The assessee is a proprietor of M/s Shakuntala Builders & Developers dealing in Builders & Developers. The assessment order u/s 143(3) was passed on 30.03.2015, wherein total income was computed at Rs. 5,49,39,330/-. In the assessment order, the A.O. made addition of Rs. 5,37,75,031/- u/s 143(3) of the I.T. Act, 1961 (including Rs. 4,85,57,320/- u/s 69C of the I.T. Act, 1961 on account of undisclosed income in land, addition of Rs. 19,28,099/- u/s 68 of the I.T. Act, 1961 on account of bogus unsecured loans and addition of Rs. 32,89,6127/- on account of unverifiable expenses claimed in P & L Account).

4. On the issues of addition of Rs. 4,85,57,320/-. The AO has made the impugned addition by observing as under:-

“During the assessment proceeding the AR of the assessee submitted copy of land agreement entered with M/s. Divesh Construction on 31/11/2011 for consideration of Rs. 4,57,79,500/- + stamp duty & registration charges of Rs. 27,77,820 thus the total of Rs.4,85,57,320/- for land bearing Surve NO. 121/1B,121/1C, 121/1D, 121/1E, 121/6, 121/1B, 121/17C & 121/7B1 admeasuring area of land 9469.59 Sq. Mtrs. Situated at Mauje- Nilje gaon Tal Kalyan. The AR of the assessee was ask to explain the sources of investment .made by the firm and also ask to explain why said transaction not reflected in Balance sheet. The AR unable to explain moreover AR unable to produce the documentary evidences in this regard. Ongoing trough the details of agreement the seller party i.e. M/s. Divesh Construction Mehta Road Ghatkopar Mumbai. Has confirmed that it has received the entire consideration from purchaser which mentioned on page No. 5 column No.1 of the said agreement.”

5. Upon assessee’s appeal Ld.CIT(A) noted that assessee’s submissions and obtained a remand report and thereafter deleted the additions. We may gainfully refer to the order of Ld.CIT(A) in this regard as under:-

“The assessee has submitted that:
In this connection are enclosing the following:

1)Balance sheet & P&L account with schedule for F.Y. 11 -12	
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2) Agreement for purchase of land	
3) Dispute about land court case	

The client had given the cheques of C.K.P.Co-Op Bank Ltd and Bank Of Baroda, Which were not honored as stop payment order was given. The transaction has not being completed. It was not entered in the books of accounts, Advance given Rs. 15000000/- is shown in books of accounts, and the payments and stop payments details are as follows.

Date	Bank	Cheques No	Amount	Status
24/01/2011	C.K.P Bank	363526	5000000	Cleared
29/01/2011	C.K.P Sank	363527	2500000	Cleared
21/02/2011	C.K.P Bank	363528	2500000	Cleared
01/03/2011	C.K.P Sank	363529	2500000	Cleared
05/04/2011	C.K.P Bank	363530	- 2500000	Cleared
04/05/2011	C.K.P Bank	363531	5000000	Stop Payment
04/05/2011	C.K.P Bank	363532	5000000	Stop Payment
04/05/2011	C.K.P Bank	363533	5000000	Stop Payment
30/04/2011	B.O.B	518210	5000000	Stop Payment
30/05/2011	B.O.B	518211	5000000	Stop Payment
15/06/2011	B.O.B	518212	5779500	Stop Payment

So, the learned I. T. O. without going into the details of the transactions & without understanding the same has added such a huge amount as undisclosed income. The same is requested to be deleted.

In the remand proceedings, the AO through ftis Joint C/T has stated that;

“ The assessee is engaged in the business of builders and developers. During the year the assessee has purchased a land vide registered purchase deed dated 31.12.2011. The said land was purchased from M/s Divyesh Construction and others. In this agreement M/s Dheer Trading & Investment Co. was consenting party. Purchase consideration of the said land was fixed at Rs. 4, 57, 79, 500/- and the market value for the purpose of stamp duty was also Rs. 4,57,79,500/-. The assessee paid an amount of Rs. 4,57,79, 500/- through 11 cheques of various dates- In the purchase agreement on page no. 11, the seller of the land has acknowledged the receipt of payment of Rs. 4,57,79, 500/~. This asset (land of Rs. 4,57,79,500/-) is not reflected in the balance sheet of the assessee as on 31.03-2011. The AO therefore, made addition of Rs. 4,85,57,320/-u/s 69C. It appears that the AO was of the opinion that the assessee paid Rs. 4,85,57,320/- (including stamp duty) out of undisclosed sources. The assessee was therefore asked to explain why the said land is not reflected in the balance sheet as on 31. 03. 2012. The assessee claimed that payment of Rs. 1.5 crore only was paid towards purchase of land. The assessee submitted that 11 post dated cheques totaling to Rs. 4, 57, 79, 500/~ were given to the seller of the land for which the seller of the land gave acknowledgement on page no. 11 of the agreement The assessee further submitted that cheques of Rs. 1.5 crore only were encashed and the remaining cheques were not encashed as the assessee issued stop payment instruction as the title of the land was not clear. Thus the assessee paid only Rs. 1.5 crore towards purchase of land and the remaining amount is not yet paid. On verification of bank account statement, it is seen that cheques of Rs. 1.5 crore were only cleared and the remaining cheques are not yet cleared. The details of cheques which were cleared and which were not cleared are submitted by the assessee on 29.08.2017. (copy enclosed). The assessee explained that out of total payment, Rs. 1.25 crore were paid in F. Y. 2010. 11 and only Rs. 25 lakh were paid in F. Y. 2011-12. On going through the bank account statement it is observed that during the year under consideration, the assessee has paid only Rs. 25 lakh to M/s Dheer Trading Company for purchase of land out of opening bank balance as on 01.04.2011. Scrutiny assessment for A. Y. 2011-12 has been already completed. The assessee was asked to explain why this amount of Rs. 1.5 crores paid on 31.03.2012 is not reflected in the balance sheet as on 31. 03.2012. The assessee explained that this amount of Rs. 1.5 crore is grouped under the head advance for plot. The assessee furnished break-up of an amount of Rs. 1.5 crore which was shown in the balance sheet as advance against plot. -Thus the assessee has explained that out of total payment of Rs. 4,57,97,500/- only Rs. 1.5 crore was paid and this amount of Rs. 1.5 crore is shown in the balance sheet under the head advance against plot.”

I have gone through the Assessment Order, submission of the appellant and the Remand Report of the AO, duly forwarded by the JCIT. It is evident from the evidences filed before me during the appellate proceedings that the said land transaction was never completed. Verification of bank account reveals that Cheques of Rs. 1.5 Crores were cleared while the remaining cheques were stopped. The AO did not go into the details of the said transaction. During the appellate proceedings the appellant had also filed papers of the High Court which clearly evidenced that the said land had gone into dispute. The transaction has been shown in the balance sheet as advance for plot. The addition of Rs. 4,85,57,320/- u/s 69C of the IT. Act, 1961 is deleted and this ground of appeal is allowed.”

6. Against the above order, revenue is in appeal before us.

7. We have heard the Ld. DR and perused the records. We find that in the remand report, it has been accepted by the AO after verification, that assessee has only paid 1.5 crores during the year, which is reflected as advance for plot. However, by no stretch of imagination this proves that the transaction is not complete. It is not the case that agreement has been cancelled.

In such situation, when the agreement is duly registered and has not been cancelled on what basis, Ld.CIT(A) has given a finding that transaction is not complete is not explained. No examination has been done about the possession and other aspects. What happened subsequent to the stop payment direction given to the bank is also not examined Hence, we deem it appropriate to remit the issues to the Ld.CIT(A). Ld.CIT(A) is directed to consider the issue afresh examining all the aspects and pass an order as per law. Needless to add assessee should be granted adequate opportunity of being heard.

8. In the result, this appeal by the revenue is allowed for statistical purpose.

Pronounced in the open court on 06.12.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 06/12/2021
Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai