

**IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR BENCH,
NAGPUR**

BEFORE SHRI SANDEEP GOSAIN, JM & SHRI O.P. KANT, AM

ITA Nos. 127 & 128/NAG/2021
Assessment Years: 2014-15 & 2015-16

Nilesh Mahendra Kothari, Kothari Bhawan, Naik Lane, Sarafa Bazar, Itwari, Nagpur.	Vs.	D.C.I.T., Central Circle-2(2), 207, Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur-440001.
PAN No.: ADSPK 3851 A		
Appellant		Respondent

Assessee by: Shri Hitesh P Shah (CA)
Revenue by : Shri Pradeep Hedao (CIT-DR)

Date of Hearing: 27/10/2021
Date of Pronouncement: 20/12/2021

ORDER

PER: SANDEEP GOSAIN, J.M.

Both these appeals have been filed by the assessee against the common order of the Id. CIT(A)-3, Nagpur dated 28/07/2021 for the A.Y. 2014-15 and 2015-16 respectively.

2. Both these appeals have common issue, therefore, for the sake of convenience and brevity, a common order is being passed.

3. Firstly, as a lead case, we take ITA No. 127/Nag/2021 for deciding the appeals. In this appeal, the assessee has raised following grounds of appeal:

- “1. *The Hon. CIT(A) ought to have appreciated the fact that the assessment order passed U/s 143(3) r.w.s. 153A of the I.T. Act is bad in law.*
2. *Hon. CIT(A) was not justified in confirming the addition of Rs. 8,00,000/- made by the Id. A.O. as unexplained expenditure on account of cash payment made towards land dealing without appreciating the facts and circumstances of the case.”*

4. The brief facts of the case are that the assessee has filed his return of income for the year under consideration on 31/07/2014 declaring total income of Rs. 8,69,300/-. It was processed U/s 143(1) of the Income Tax Act, 1961 (in short, the Act) on 05/11/2014. A search and seizure operations U/s 132 of the Act was carried out at the residential premises of the assessee on 10/09/2014. During the search, some loose papers found and seized and after making enquiry, the A.O. passed assessment order dated 23/12/2016 U/s 143(3) r.w.s. 153A of the Act determining the total income of the assessee at Rs. 16,69,300/- by making addition of Rs. 8.00 lacs on account of unexplained expenditure on account of cash payment made to Shri Madhav Mohta.

5. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A), who after considering the submissions of the parties and material placed on record, upheld the action taken by the A.O. Against which, the assessee has preferred the present appeal before the ITAT on the grounds mentioned above.

6. The Id. AR appearing on behalf of the assessee has reiterated the same arguments as were raised before the Id. CIT(A) and also relied upon the written submissions filed before the Id. CIT(A) and the contents of the same as reproduced below:

- "1. *Our Client is an individual, having sources of income from Salary and Other Sources. He had filed his return of income on 31/07/2014, declaring total income at Rs.8,69,300/-. The said return was processed U/S. 143(1) on 05/11/2014.*
2. *Search and seizure operation U/S. 132 of the Act was carried out at the Residential Premises of Our Client on 10/09/2014 and Notice U/S. 153A of the Act was issued on 19/05/2015. In response to the Notice U/S. 153A, he had filed his return of income on 30/09/2016, declaring the Total Income of Rs.8,69,300/-.*
3. *Thereafter, notice U/S. 143(2) alongwith notice U/S. 142(1) was issued on 23/11/2016 asking for specific information. Our Client had attended from time to time and furnished the required details.*
4. *During the Search and seizure operation, loose papers were found and seized. The Seized Documents were identified as B/1 at Page No. 17, which contained the following notings:*

6/7/2014
<i>Nilesh Koth Rs. 200=00 Haste Yogesh For Mohta 2800=00 cleared</i>
<i>Total 37.80 18.00 Ch 19.80 cas</i>

- 4.1 *Alongwith this paper, Page No. 18- 24 containing vouchers of 'Gorewada M-1' having signature of 'Madhav' with Revenue Stamp was found. These Vouchers contain the dates and Amounts as follows :*

<i>Page No. of seized document</i>	<i>Date</i>	<i>Amount</i>
18	28/11/2013	Rs.5,00,000/-
19	30/11/2013	Rs.5,00,000/-
20	11/11/2013	Rs.3,00,000/-
21	13/11/2013	Rs.3,00,000/-
22	18/11/2013	Rs.3,00,000/-
23	25/11/2013	Rs.2,00,000/-
24	03/12/2013	Rs.5,00,000/-

- 4.2 *The Copy of seized Annexure B-1 is enclosed herewith at Pages 1 to 28 for Your Honour's immediate reference and record.*
5. *The Ld. A.O. had asked the assessee to explain about the seized documents and the source of the transaction.*
6. *In response to the same, submission dated 24/11/2016 and 19/1/2016, were filed explaining as follows :*

"as regards the page number 17, it was claimed that the paper contain rough jotting without any details and cannot be identified with any specific transaction.

Further, as regards pages 18 to 24, it was explained that the debit vouchers are receipts issued by Mr. Madhav Mohta of Ramdaspath against payment for purchase of plot in Gorewada. The Plot was jointly purchased with his wife (Mrs. Madhu Kothari) for Rs.35,00,000/- out of which amount of Rs.26,11,000/- was paid through post dated cheques and cash."

- 6.1 *However, the Ld. A.O. rejected the said submission and has made addition of Cash Expenditure of Rs.8,00,000/- to the income of Our Client under following assumptions and presumptions :*

That the then Ld. A.O., after perusing the Seized document i.e. B/1 page number 17, had arrived at a conclusion that the payments of Rs.37,80,000/- had been made by Assessee to 'Mohta'.

That the Assessee has failed to explain the source of the payment made in cash.

- 7 *In this regard, we would like to bring the following facts of Our Client's case to the notice of Your Honour :*

7.1 During the year under consideration, Our Client with his wife had agreed to jointly purchase a Plot for Rs. 35,00,000/- at Gorewada from Mr. Madhav Vallabhdas Mohta admeasuring 1012.33 sq. meters out of the total property admeasuring 8100 sq. mtrs.

8 We are enclosing herewith the Copy of the Agreement to Sell between Mr. Madhav Mohta (Seller) and Mr. Nilesh Kothari and Mrs. Madhu Kothari (Purchaser) The same will enable Your Honour to appreciate the fact that the Agreed Value for the Plot admeasuring 1020.33 sq. mtrs. was fixed at Rs.35,00,000/- only.

8.1 Our Client and his wife had made payments of Rs.26,11,000/-. The payment schedule is as follows :

Mr. Nilesh Kothari			
Date	Mode of Payment	Cheque and Cash dated	Amount
11/11/2013	Cheque — BOB	22-12-2013	1,50,000
18/11/2013	Cheque — BOB	27/12/2013	3,00,000
		Total Cheque Payment (A)	4,50,000
25/11/2013	Cash	25/11/2013	2,00,000
28/11/2013	Cash	28/11/2013	2,00,000
03/12/2013	Cash	03/12/2013	1,00,000
		Total Cash Payment (B)	5,00,000
		Total (A+B) '..... I	9,50,000
Mrs. Madhu Kothari			
11/11/2013	Cheque — BOB	22/12/2013	1,50,000
13/11/2013	Cheque — BOB	27/12/2013	3,00,000
28/11/2013	Cheque — BOB	29/12/2013	3,00,000
30/11/2013	Cheque — BOB	30/12/2013	3,00,000
03/12/2013	Cheque — BOB	03/12/2013	3,00,000
		Total Cheque Payment (A)	13,50,000
02/11/2013	Cash	02/11/2013	11,000
30/11/2013	Cash	30/11/2013	2,00,000
03/12/2013	Cash	03/12/2013	1,00,000
		Total Cash Payment (B)	3,11,000
		Total (A+B) II	16,61,000
		TOTAL PAYMENT (I + II)	26,11,000

8.2 As regards the balance amount of Rs.8,89,000/-, it was agreed that the same will be paid once the Registration of the Sale Deed takes place, as mentioned in the Agreement to Sell.

- 8.3 *Later, Our Client came to know that the said purchased Plot falls under the No development green Zone and hence the Registration of the said Plot was not possible until the said Plot is converted from the No development green Zone Area.*
- 8.4 *Further, Our Client also came to know that Mr. Madhav was not a Trustworthy person as he had Sold the same Plot of Land to other persons also.*
- 8.5 *Due to the above disputes regarding the purchased Plot, the Registration was put on hold and therefore, the balance amount of Rs.8,89,000/- was not paid to Mr. Madhav.*
- 8.6 *As regards the Cash payment, we are enclosing herewith the following details which could not be submitted during the course of assessment proceedings as the same were not available at that point of time, with a request that the same may please be considered as Additional Evidence and accepted on record:*
- 1) *Madhav Mohta's ledger Account in the books of Mr. Nilesh Kothari reflecting the amount of Rs.9,50,000/- paid in Cash and Cheque. — Page 29.*
 - 2) *Madhav Mohta's ledger Account in the books of Mrs. Madhu Kothari reflecting the amount of Rs.16,61,000/- paid in Cash and Cheque. - Page 30.*
 - 3) *Ledger Account of Cash In hand in the books of Mr. Nilesh Kothari showing the total cash in hand including gift received of Rs.2,00,000/- and payment of Rs.5,00,000/- for purchase of the property from that. - Pages 31 to 34.*
 - 4) *Ledger Account of Cash In hand in the books of Mrs. Madhu Kothari showing the total cash in hand including gift received of Rs.1,00,000/- and payment of Rs.3,11,000/- for purchase of the property from that. - Page 35.*
 - 5) *Return Acknowledgement, Computation of Income and Balancesheet of Mr. Nilesh Kothari for the Assessment year 2012-13, 2013-14 and 2014-15. - Pages 36 to 50.*

- 6) *Return Acknowledgement, Computation of Income and Balancesheet of Mrs. Madhu Kothari for the Assessment year 2012-13, 2013-14 and 2014-15. - Pages 51 to 65.*
 - 7) *Gift Confirmation Letter from Mr. Harsh (brother of Mr. Nilesh) for Rs.2,00,000/-Confirming the Gift to Mr. Nilesh for the purchase of Property. - Page 66*
 - 8) *Gift Confirmation Letter from Mrs. Nirmala (mother of Mrs. Madhu) for Rs.1,00,000/-Confirming the Gift to Mrs. Madhu for the purchase of Property. - Page 67*
 - 9) *Return Acknowledgement and Computation of Income of Mr. Harsh Kothari for the Assessment year. — Pages 68 to 69.*
 - 10) *Return Acknowledgement and Computation of Income of Mrs. Nirmala Kothari for the Assessment year. Pages 70 to 72.*
9. *The above documents will enable Your Honour to appreciate the fact that our client and his wife were having sufficient own cash and had also received genuine gift from their real brother and mother of Rs.2,00,000/- and Rs.1,00,000/-, respectively and the same was utilized for the purchase of the said property. However, they were under a bonafide belief that as the gift amount were not substantial and the same were received from blood relations, the Ld. A.O. would accept the same without any reservation as the said amount were exempt under the Income Tax Act.*
10. *It is also to be noted that if the representative of our client had guided him about the requirements of the Ld. A.O., our client would have obtained and submitted the said confirmation letters and return acknowledgments to the Ld. A.O. during the assessment proceedings only.*
11. *The above facts show that our client could not submit the said documents during, the assessment proceedings due to the above circumstances beyond his control.*
12. *In view of the above facts and circumstances of the case, we humbly request your Honour to kindly accept the above evidences as additional evidences, on record and delete the said unjustified addition in the interest of justice and equity.”*

7. On the other hand, the Id. CIT-DR has vehemently supported the orders of the lower authorities.

8. We have considered the rival contentions and carefully perused the material placed on record. From perusal of the record, we observed that the addition of Rs. 8.00 lacs was made in the present case by the A.O. and upheld by the Id. CIT(A) by holding that in fact the assessee had made more amount to the seller of the property as per page No. 17 of Annexure-B1 i.e. the seized document. However, on the other hand, the Id. AR has vehemently contended that the said page No. 17 of Annexure-B1 is a rough paper containing rough jotting. The said contention of the Id. AR was rejected by the Id. CIT(A). It is important to mention here that during the pendency of first appeal before the Id. CIT(A), the assessee had moved an application for leading additional evidences under Rule 46A and the said application was allowed and the additional evidences were also admitted by the Id. CIT(A). The Id. AR has taken a specific ground that, although, during the year under consideration, the assessee and his wife agreed to jointly purchased a plot at Rs. 35.00 lacs from Mr. Madav Vallabhdas Mohta and in this regard, an agreement to sell between Mr. Madav Vallabhdas Mohta i.e. the seller and Mr. Nilesh Kothari and Mrs. Madhu Kothari i.e. the assessee as well as his wife, who was purchaser, has also been mentioned. In the said agreement, the value of the property was fixed at Rs. 35.00 lacs and the

measurement of the plot was specifically mentioned as 1020.33 sq.mt. and in this regard, the part payments were made by the assessee and his wife through cheques whereas it was also agreed that the balance amount would be paid at the time of registration of the sale deed. However, as per specific stand taken by the Id. AR that the registration of the sale deed could not take place as later on, the assessee came to know that the plot falls under the "No Development Green Zone" and thus, it was not possible to get the registration of the said plot done up. It was also specifically pleaded that the said plot could not be converted from the "No Development Green Zone" area, therefore, keeping in view the said fact, the deal could not be materialized. Thus, in this way, no cash payment was made to the seller of the plot in question. The Id. AR has also drawn our attention to the fact that the A.O. had also recorded the statement of seller of plot i.e. Mr. Madav Vallabhdas Mohta, who had also categorically denied of receiving the balance sale consideration through cash and moreover the said seller had also admitted that the registration of the sale deed could not take place and hence, in this way, the entire facts of the present case goes to show that the deal of the purchase of plot could not be materialized because of the above mentioned facts and therefore, there was no question of making balance payments to the seller. In this regard, we draw strength from the decision of the Hon'ble Supreme Court in the case of **Dhakeswari Cotton Mills Ltd.**

26 ITR 775, wherein it has been held that *"even though Income Tax Authorities including the Assessing Officer has unfettered discretion and not strictly bound by the rules and pleadings as well as materials on record and is legitimately entitled to act on the material which may not be accepted as evidence, nevertheless such discretion does not entitle them to make a pure guess and base an assessment entirely upon it without reference to any material or evidence at all"*.

We also draw strength from the decision of the Hon'ble Allahabad High Court in the case of **CIT Vs. Rameshwar Prasad Bagla -68 ITR 653 (All)** wherein it is well settled that *in case of circumstantial evidence, the totality of circumstances has got to be taken into consideration and the combined effect of all those circumstances is determinative of the question as to whether or not a particular fact is proved*. In the case before us, except the said seized papers, no other corroborative evidence has been brought on record by the AO. Whereas the assessee has proved beyond doubt the fact that the said property is still in dispute. The seller also has denied of getting any further payment from the assessee before the AO. Hence we agree with the arguments of AR that no prudent businessman will give full money to the seller, if the property being purchased is in dispute. Considering the above mentioned facts and circumstances of the case, we are of the view that the addition made by the A.O. and upheld by the Id. CIT(A) on the basis of

seized document is without any basis or foundation more particularly when no specific facts by virtue of documents have been placed on record and have not rebutted by the Revenue, thus, in this eventuality, no addition was warranted. Accordingly, we direct to delete the addition made by the A.O. and confirmed by the Id. CIT(A).

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

10. Now we take ITA No. 128/Nag/2021 for the A.Y.2015-16.

In this appeal, grounds of appeal, facts of the case and submissions of both the parties are identical to the grounds, facts and submissions of ITA No. 127/Nag/2021 for the A.Y. 2014-15, therefore, our finding given in ITA No. 127/Nag/2021 for the A.Y. 2014-15 shall apply mutatis mutandis in this appeal also.

11. Finally, in the result, both these appeals of the assessee are allowed.

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

Sd/-
(O.P. KANT)
Accountant Member

Sd/-
(SANDEEP GOSAIN)
Judicial Member

Nagpur

Dated:-20/12/2021

*Ranjan

Copy of the order forwarded to:

1. The Appellant- Shri Nilesh Mahendra Kothari, Nagpur.

2. The Respondent- The D.C.I.T., Central Circle-2(2), Nagpur.
3. CIT
4. The CIT(A)
5. DR, ITAT, Nagpur
6. Guard File (ITA No. 127 & 128/Nag/2021)

By order,

Asst. Registrar