

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं  
माननीय श्री जी. मंजूनाथा, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.3182/Chny/2019  
निर्धारण वर्ष /Assessment Year: 2011-12

M/s.Anjali Infrahousing LLP,  
New No.49, Old No.25,  
Barnaby Road, Kilpauk,  
Chennai-600 010.  
[PAN: AASFA 7681 D]  
(अपीलार्थी/Appellant)

v. The Asst. Commissioner of  
Income Tax,  
Central Circle-1(3),  
Chennai.  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.D. Anand, Adv.  
प्रत्यर्थी की ओर से /Respondent by : Mr.AR.V.Sreenivasan,  
Addl.CIT  
सुनवाई की तारीख/Date of Hearing : 14.12.2021  
घोषणा की तारीख /Date of Pronouncement : 29.12.2021

**आदेश / ORDER**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-16, Chennai, dated 24.10.2019 and pertains to AY 2011-12.

**2.** The assessee has raised the following grounds of appeal:

- 1. The order of the Learned CIT(A) is erroneous, both on facts and law*
- 2. The Learned CIT(A) erred in not considering the various submissions made before him and erred in blindly confirming the addition, based on an unsigned and unverified paper found in the premises of another person/ company*
- 3. The CIT (A) erred in confirming the assessment of AO by invoking and concluding the assessment/s 153C r.w.s 153A without any incriminating material and without*

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*giving any basis for placing reliance on an unverified loose paper as incriminating material, which is a well settled law in various decisions of judiciary.*

*4. The Learned CIT(A) erred in confirming the action of the A.O in adding the difference between the land cost as mentioned in an unverified loose sheet and the registered sale deed as "unexplained income" of the appellant, without giving any basis for placing reliance on an unverified loose paper.*

*5. The Learned CIT(A) erred in confirming the action of the A.O in making the addition based on a loose sheet, without making any enquiry with either the seller of the land or the other parties through whom the land transaction was effected*

*6. The Learned CIT(A) erred in not appreciating that the onus of the A.O in proving the veracity of the unverified loose sheet by making proper enquiries has not been discharged and the addition has been made blindly based on the loose sheet without any enquiry and by ignoring all the submissions made in this regard.*

*7. The Learned CIT(A) erred in not considering the various judicial decisions relied upon during the proceedings before him and failed to adjudicate on the same.*

*8. The Learned CIT(A) erred in confirming the action of the A.O in levying interest u/s.234A / 234B / 234C, which is not as per law.*

*9. The Appellant craves to add new grounds and /or alter or amend the above grounds for these and other grounds and submissions that may fcs adduced during the proceedings, the appellant prays that the order of the CIT(A) may kindly be cancelled and render justice to the appellant.*

*For these and such other reasons that may be urged at the time of hearing, it is respectfully prayed that the Hon'ble Tribunal be pleased to pass orders granting such relief as it may deem fit in the interest of equity and justice.*

**3.** Brief facts of the case are that the assessee is engaged in the business of real estate and construction, filed its return of income for the AY 2011-12 on 03.10.2012, admitting a total income of Rs.12,160/-. A search and seizure operation u/s.132 of the Act was conducted on 20.11.2014 in the Sugal & Damani Group of cases. During the course of search proceedings at the Marketing Office of a connected case M/s.Ankur Foundations Pvt. Ltd., of Sugal & Damani Group, a document vide Annexure ANN/TM/AFPL/B&D/S-1 was found and seized, which contains some hand written jottings of cost of land and construction cost. The case was taken

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up for scrutiny and during the course of assessment proceedings, the AO noticed that the assessee has purchased 2.4 acres of vacant land from M/s.Asiatic Oxygen Ltd., vide Sale Deed dated 28.10.2010, registered as document No.3877 of 2010, SRO, Villivakkam. As per the said registered deed, the consideration for the property was fixed at Rs.58.06 Crs. However, the guideline value of the property as on the date of Sale Deed was at Rs.32,23,11,800/-. The guideline value of the property when search took place on 20.11.2014 at Rs.79,25,70,000/-. Further, on 31.10.2012, enquiry was conducted by the Intelligence & Criminal Investigation Wing of Director of Income Tax, Chennai on M/s.Asiatic Oxygen Ltd., about sale transaction and as per said investigation, the consideration paid for purchase of the property was shown at Rs.58.06 Crs.

**4.** During the course of assessment proceedings, the AO on the basis of document found during the course of search in the premises of M/s.Ankur Foundations Pvt. Ltd., called upon the assessee to explain as to why difference between the land cost shown in incriminating document and the value shown in the Sale Deed cannot be treated as unexplained income. In response, the assessee vide letter dated 24.12.2016 submitted that plain paper containing hand written jottings found in the possession of a third party is a dumb document and has no evidentiary value and thus, nothing can be attributed to the assessee and its transaction of purchase of property from M/s.Asiatic Oxygen Ltd., and hence, question of making additions towards unexplained income does not arise. The AO, however, was not

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convinced with the explanation furnished by the assessee and according to him, if you go by incriminating document found during the course of search coupled with circumstantial evidences being ownership of land, on which, M/s.Ankur Foundations Pvt. Ltd., was developing a housing project clearly shows that there is a nexus between material found during the course of search and purchase of property. Therefore, he opined that the assessee has failed to explain contents recorded in incriminating material found during the course of search and thus, the presumption contained u/s.292C of Income Tax Act, 1961, clearly applies to the assessee and as per which, whether any document, inter alia, shall be presumed to be belonging to such person and that contents of the document are true. In such case, the onus is on the assessee to disprove the document and its contents that the document and contents are not true. The assessee except stated that the figures recorded in the document are not real, but failed to explain the seized document with any evidence and thus, opined that the assessee has paid consideration for purchase of property over and above what was stated in the Sale Deed and accordingly, the difference amount of Rs.21,94,12,160/- has been treated as unexplained income of the assessee and brought to tax. The relevant observations of the AO are as under:

*3.4 The assessee vide reply dated 24.12.2016 made its submissions. The company laid emphasis on the fact that the seized material is a dumb document and has no evidentiary value. The submissions of the assessee have been duly considered but are not acceptable. The assessee's statement that the cost mentioned therein is only an estimated cost of land and estimated cost of construction and does not represent any factual figure is only self-serving. It may be relevant to mention here that the assessee has not disputed the stand of the department that the impugned seized material relates to the residential project by name "Palm Spring" developed by one of the group concerns. The assessee is only*

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*disputing the figures mentioned therein as not being actual figures. It may be relevant to provisions of sec 292C of the IT Act, 1961 which presumes that where any document, inter-alia other things is found, in the possession or control of any person in the course of search u/s. 132/133 A, such document shall be presumed to be belong to such person and that the contents of such documents are true. In which case, the onus is on the to disprove the document found or to prove either that the document does not belong to him or contents therein are not true. The assessee has merely stated that the figures recorded in the document are not real figures without bringing a concrete explanation/ evidence on record to prove the same. Hence the difference amount of Rs.21,94,00,000/- is treated as unexplained income of the and brought to tax. Penalty proceedings u/s.271(l)(c) are initiated separately.*

**Computation of Total Income**

<i>Income Returned</i>	<i>Rs.12,160/-</i>
<b>Add:</b> <i>Unexplained income as discussed above</i>	<i>Rs.21,94,00,000/-</i>
<i>Assessed income</i>	<i>Rs.21,94,12,160/-</i>

**5.** Being aggrieved by the Assessment Order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed certain additional evidences which were forwarded to the AO for his comments. The AO vide his Remand Report dated 05.03.2019 commented upon additional evidences filed by the assessee and its admissibility. The AO further observed that additional evidences filed by the assessee being financial statements of the seller of the property cannot be admitted at this stage. A copy of the Remand Report was given to the assessee for his comments. The assessee vide its letter dated 06.08.2019 strongly opposed the findings of the AO in the Remand Report in the light of the additional evidences filed by the assessee and argued that except a dump sheet found during the course of search in third party case, no other evidences were brought on record to indicate that the assessee has paid consideration over

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and above sale consideration shown in the registered deed and thus, the presumption drawn by the AO in the light of the provisions of Sec.292C of the Income Tax Act, 1961, when document was not found in the possession of the assessee, is not applicable.

**6.** The Ld.CIT(A) after considering the submissions of the assessee and also taken note various facts including incriminating material found during the course of search, held that as per the seized document, cost of the land was mentioned at Rs.80 Crs. and thus, if you compare cost of the land as per the registered deed, there is a difference of Rs.21.94 lakhs which is nothing but on-money paid for purchase of the property and hence, opined that there is no error in the reasons given by the AO to make addition towards difference in value of the property as unexplained income of the assessee. The relevant findings of the Ld.CIT(A) are as under:

*6.1 Assessee purchased 2.4 acres of land from M/s.Asiatric Oxygen Ltd. and the sale consideration paid as per the sale deed was Rs.58,06,00,000/-. M/s.Ankur Foundations Pvt. Ltd., is promoting this land for constructing a residential apartment by name "Palm Spring". The total constructed area of the Pal Spring site is 3,08,000 sq.ft. There is no dispute about these facts.*

*In the notings in the seized document seized during the course of search proceedings in the case of M/s.Ankur Foundations Pvt. Ltd., Chennai on 20.11.2014, vide annexure ANN/TMIAFPLIB&D/S-I at Page No.51, the constructed area was mentioned as 3,08,000 sq.ft. and the cost of land was mentioned as Rs.80,00,00,000/-.*

*Hence, the Assessing Officer construed that the land cost mentioned in the seized document is related to the land purchased by the assessee from M/s.Asiatric Oxygen Ltd. Hence, the Assessing Officer treated the difference in the sale consideration paid amounting to Rs.21,94,00,000/- (Rs.80,00,00,000 - Rs.58,06,00,000) as unexplained income.*

*6.2 In the written submission, the AR mainly contested that the seized material relied upon by the Assessing Officer is only a loose sheet of paper without any date*

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*or signature and the handwriting in the same does not belong to the Partners or the Chief Executive of the assessee.*

*6.3 There is no dispute about the fact that M/s.Ankur Foundations Pvt. Ltd., is promoting the 2.4 acres of land purchased by the assessee for constructing a residential apartment by name "Palm Spring". The total constructed area of the Palm Spring site is 3,08,000 sq.ft. There is no dispute about these facts.*

*In the seized material (ANN/TMIAFPLIB&D/S-I at Page No.51) the constructed area was mentioned as 3,08,000 sq.ft. and the cost of land was mentioned as Rs.80,00,00,000/-. There is no dispute about these facts also.*

*As the constructed area (3,08,000 sq.ft.) mentioned in the seized document is correct, the Assessing Officer is justified in believing that cost of the land recorded in the same seized document as the actual cost paid. Moreover, the assessee did not file any valuation report from the registered valuer to establish that the land does not fetch that much value in the market.*

*Hence, the addition of Rs.21,94,00,000/- is upheld.*

**7.** The Ld.AR for the assessee submitted that the Ld.CIT(A) erred in sustaining the additions made by the AO towards difference in cost of the land as per loose sheets found during the course of search in the case of third party without appreciating fact that said document was a dumb and further which was not in the possession of the assessee. The Ld.AR for the assessee further referring to the provisions of Sec.292C of the Act, argued that the presumptions contained in Sec.292C is applicable only when any documents or books of accounts found in the possession of a person and further when such document was found in the possession of a person, the presumption is that the documents and contents therein belongs to the person from whose custody said document was found. In this case, the document found during the course of search in the case of M/s.Ankur Foundations Pvt. Ltd., is neither belongs to the assessee nor any reference to the land purchased by the assessee from M/s.Asiatric Oxygen Ltd., and

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thus, on the basis of provisions of Sec.292C of the Act, liability cannot be fastened on the assessee. The Ld.AR further referring to various documents including Sale Deed submitted that as per the Sale Deed, the value of the property was much higher than the guideline value of the property as on the date of sale. Further, said guideline value was revised in the year 2014 when the search took place, as per which, approximate value of the property was at Rs.80 Crs. Therefore, based on the guideline value of the property, the developer of the land must have written some calculation for his own purpose. However, said documents cannot be linked to the assessee and its purchase transaction of land from M/s.Asiatic Oxygen Ltd. Therefore, he submitted that the Ld.CIT(A) has clearly erred in confirming the addition made by the AO.

**8.** The Ld.DR, on the other hand, strongly supporting the orders of the Ld.CIT(A) submitted that when a document found in the possession of a person, it is the obligation of the person from whom said document was found to explain its contents, otherwise as per the provisions of Sec.292C, the presumption is that said document and contents therein is belong to the person from whose custody said document was found and further the contents of the document are true and correct. In this case, although the document was not found in the possession of the assessee, but there is a relationship between the assessee and M/s.Ankur Foundations Pvt. Ltd., where the said document was found, as per which, M/s.Ankur Foundations

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Pvt. Ltd. was developing the land owned by the assessee and hence, it is incorrect to accept the argument of the assessee that said document does not belong to him and he need not to explain the contents of the said document. The Ld.CIT(A) after considering relevant facts has rightly held that the AO is right in presuming that incriminating material found during the course of search belongs to the assessee and contents thereon is true and correct.

**9.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The factual matrixes of the impugned dispute are that the assessee had purchased 2.4 acres of vacant land from M/s.Asiatic Oxygen Ltd., on 28.10.2010 for a consideration of Rs.58.06 Crs. The guideline value of the property as on the date of the sale was at Rs.32,23,11,800/-. The guideline value of the property has been subsequently revised, which is as on the date of search i.e. 20.11.2014, is above Rs.80 Crs. From the above, what is clear is that there is a time gap of four years from the date of purchase of property by the assessee from M/s.Asiatic Oxygen Ltd., and the date of the search i.e. 20.11.2014. It is necessary to keep in mind, the timing gap between the date of purchase and the date of search to decide the issue. Admittedly, the search took place in the case of Sugal & Damani Group on 20.11.2014 was not covered the assessee and its affairs. The document Annexure ANN/TM/AFPL/B&D/S-1 found and seized during the course of search in the

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premises of M/s.Ankur Foundations Pvt. Ltd., is a loose sheet containing some jottings. As per the said incriminating document, it was written that the land cost at Rs.80 Crs. and construction cost of 3,08,000 sq. ft. building at Rs.100 Crs. @ Rs.1,500/- per sq.ft. Except this, nothing more was written about the case of the assessee and its land purchased from M/s.Asiatric Oxygen Ltd., in the year 2010. The AO on the basis of the said incriminating material inferred that the document found during the course of search in the premises of M/s.Ankur Foundations Pvt. Ltd., belongs to the assessee and thus, after considering the sale consideration paid for purchase of the said land, the difference amount has been treated as unexplained income. The AO has come to the above conclusion only on the basis of relationship between the assessee and M/s.Ankur Foundations Pvt. Ltd. As per which, the land owned by the assessee was developing by M/s.Ankur Foundations Pvt. Ltd. Based on the said relationship, the AO came to the conclusion that the document found in the premises of M/s.Ankur Foundations Pvt. Ltd., is belonging to the assessee and contents therein are true and correct.

**10.** We have given our thoughtful consideration to the reasons given by the AO in the light of the arguments advanced by the Ld.AR for the assessee and we ourselves do not subscribe to the reasons given by the AO for the simple reason that the purported incriminating document found during the course of search in the premises of M/s.Ankur Foundations Pvt. Ltd., was

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not seized from the possession of the assessee. The purported incriminating document is only loose sheet which contained some hand written jottings. Further, the document containing not only the cost of the land but also the estimate of cost of construction. From the above, it is clear that in the said document neither any reference to the property owned by the assessee nor purchase consideration paid for purchase of property from M/s.Asiatic Oxygen Ltd. Therefore, on the basis of the said document, the presumptions containing u/s.292C cannot be drawn that said document is belongs to the assessee and the contents therein is true and correct. Because, as per the provisions of Sec.292C of the Act, presumption to books of accounts would come into play only where books of accounts, inter alia, the other documents found in the possession or control of any person in the case of search u/s.132 or survey u/s.132A. In such case, it may be presumed that such books of accounts, other documents belong to such person and the contents of such books of accounts and other documents are true and correct. Since, incriminating material was not found in the possession of the assessee, presumptions contained u/s.292C cannot be drawn to hold that the said document is belong to the assessee and contents therein are not true and correct and thus, the assessee need not to explain the said document. This legal proposition is supported by the decision of the Hon'ble Delhi High Court in the case of CIT v. Anil Khandelwal reported in (2015) 93 CCH 0042, wherein, it was held that the presumption u/s.134(4A)/292C is available only in the case of persons from

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whose possession and control documents are found and it is not available in respect of a document found in the possession of a third party. The Hon'ble Delhi High Court while examining the issue has considered various case laws including the decision of the Hon'ble Supreme Court in the case of CBI v. V.C.Shukla reported in 1998 taxmann.com 2155 (SC), wherein, the Hon'ble Supreme Court clearly held that the loose sheets have been ruled out as of any evidentiary value. Further, the loose sheets cannot be accounts books of a party. Even if it is taken as an informal accounting, it is not a record of the assessee. Even assuming such entries are correct and authenticate they cannot without independent evidence to fix a liability upon a person. The Hon'ble High Court after considering the ratio of the Hon'ble Supreme Court in the above case clearly held that the loose sheets, if any, found in the possession of a third party, therefore, be outside the purview of Sec.34 of the Evidence Act, 1972. Therefore, the Revenue would not be justified in resting its case just on the loose papers and documents found from third party if such documents contained narrations of transactions with the assessee. The Hon'ble High Court of Kerala in the case of CIT v. Cordial Company reported in (2019) 308 CTR 0159 (Ker), has considered an identical issue and held that the initial burden necessarily had to be discharged by the Department especially when the additions were proposed on one, other than the person whose premises was searched from where the documents were recovered. Therefore, we are of the considered opinion that the addition made by the AO on the basis of the loose papers

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found during the course of search in the case of a third party, that too without any reference to the assessee by relying provisions of Sec.292C of the Income Tax Act, 1961, is completely erroneous and incorrect. Therefore, on this count itself, the addition made by the AO cannot be sustained.

**11.** Be that as it may be. The assessee has purchased the property vide registered document on 28.10.2010 and as per the said document, the consideration paid for purchase of property was at Rs.58.06 Crs. The guideline value of the property as on the date of registration was at Rs.32,23,11,800/- which is much lesser than the consideration paid for purchase of property. The inquiry conducted by the Intelligence & Criminal Investigation Wing of Director of Income Tax, Chennai on M/s.Asiatic Oxygen Ltd., about the transaction does not throw any the light of on-money paid by the assessee for the purchase of property. The statement obtained from Mr.Narendra, Director of M/s.Ankur Foundations Pvt. Ltd., on 08.11.2016 also supports the case of assessee, because, he had categorically denied the contents recorded in the loose sheets found during the course of search to the assessee and the property purchased from M/s.Asiatic Oxygen Ltd. The loose paper contained jottings not only on the cost of land but also the cost of construction and estimated cost of sales. Therefore, from said document, what best can be inferred is that the developer must have worked out the cost of project and sales realization in

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the light of guideline value of the property as on the date of search and cost of construction of building. But, it cannot be said that the developer of the project was recorded consideration paid for purchase of property by the assessee from M/s.Asiatic Oxygen Ltd., about four years ago. We, further, are of the view that the purported document which contains some hand written jottings may denote land cost to be released and also cost of construction while selling the plots to the buyers. But, it cannot be said that it is a document evidencing the real cost of land purchased by the assessee from M/s.Asiatic Oxygen Ltd., and further consideration paid for the said land. This is because, when the assessee has purchased impugned land in the year 2010, the guideline value of the property as on the date of sale was much lesser than the consideration paid by the assessee. Further, it is also not in dispute that the guideline value of the property has been subsequently revised which is as on the date of search was about Rs.80 Crs. Based on subsequent value of land as on date of search, it cannot be presumed that the assessee must have paid on-money for purchase of land, when there is four years of time gap between date of purchase and date when document was found. Therefore, we are of the considered view that the AO as well as the Ld.CIT(A) have clearly erred in arriving at a conclusion that the assessee has paid consideration for purchase of property over and above what was stated in the registered Sale Deed, based on a piece of loose sheet found in the possession of a third party, which contain certain hand written jottings that too without any reference to the assessee and its

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land purchase. Hence, we direct the AO to delete the additions made towards difference in value of the property as unexplained income of the assessee.

**12.** In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 29<sup>th</sup> day of December, 2021, in Chennai.

**Sd/-**

(वी. दुर्गा राव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**

(जी. मंजूनाथा)

**(G. MANJUNATHA)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29<sup>th</sup> December, 2021.

**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF