

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Pune)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.265 & 266/RPR/2016

निर्धारण वर्ष / Assessment Years : 2010-11 & 2011-12

Shri Khushiram Kundnani
Prop. R.S. Finance, E-2,
Maruti Business Park,
Raipur-(C.G.)
PAN : AEVPK3467J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Central Circle, Raipur (C.G)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Prafulla Pendse, A.R

Revenue by : Shri P.K Mishra, CIT D.R

सुनवाई की तारीख / Date of Hearing : 04.02.2022

घोषणा की तारीख / Date of Pronouncement : 21.02.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The captioned appeals filed by the assessee are directed against the respective orders passed by the CIT (Appeals)-I, Raipur dated 01.03.2016, which in turn arises from the respective orders passed by the A.O under Sec. 153A r.w.s.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 28.03.2014 for assessment years 2010-11 & 2011-12. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first take up the appeal filed by the assessee for the assessment year 2010-11 wherein the assessee has assailed the impugned order on the following grounds of appeal before us :

- “1. That the order of the Ld. CIT(A) is bad in law as well as on facts.
2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in sustaining addition of Rs.1,40,000/- made by the Ld. AO as unexplained investment u/s.69 of the Income Tax Act, 1961.
3. That any other relief/deduction which the Hon'ble Court may deem fit be granted to your appellant.
4. That the appellant craves leave to urge, add, amend, alter, enlarge, modify, substitute, delete any of the ground or grounds to adduce fresh evidence at the time of hearing of the appeal.”

2. Search and seizure proceedings were conducted u/s. 132(1) of the Act dated 21.03.2012 at the business premises of the assessee, i.e., E-2, Maruti Business Park, G.E Road, Raipur. During the course of search proceedings the assessee was found in possession of certain incriminating documents, viz. LPS-1 (Page Nos.1 to 13), which was an 'agreement' executed between one Shri Manish Pinjani and M. Ahuja Project India Pvt. Ltd. As per the aforesaid incriminating material, the ledger a/c of M. Ahuja Project India Pvt. Ltd. (supra) in the books of M/s. R.S. Infrastructure Pvt. Ltd. (a non-existing entity) revealed that the following payments were made to M. Ahuja Project India Pvt. Ltd. :-

S. No.	Financial Years	Amount of Investment
01.	2009-10	1,40,000/-
02.	2010-11	3,95,000/-
03.	2011-12	3,51,000/-
	Total	8,86,000/-

Also, the aforesaid incriminating material comprised of a copy of account of Shri Manish Pinjani, Clay Castle, 1024 SF (2BHK)/Clay Castle 1478 (SF) No. 47 Manish Pinj (Rp) for the period 01.04.2010 to 31.03.2011, as per which an amount of Rs.1 lac was shown to have been received on 01.03.2011 in cash as against the said persons outstanding liability for the said amount that was brought forwarded from the preceding year. On

being called upon to put forth an explanation as regards the contents of the aforesaid incriminating materials/documents, the assessee admitted that the amount of Rs. 1 lac (supra) was given by him to Shri Raju Pinjani, who was the natural guardian of Shri Manish Pinjani (supra), which thereafter was refunded to him during the period relevant to assessment year 2011-12. However, the assessee distanced himself both from the contents of the aforementioned 'agreement' (supra) as well as the ledger account of M. Ahuja Project India Pvt. Ltd. appearing in the books of account of M/s. R.S. Infrastructure Pvt. Ltd. Not finding favour with the aforesaid explanation of the assessee, the Assessing Officer rejected the same. It was observed by the Assessing Officer that the name of Shri Manish Pinjani (supra) (as appearing in the 'agreement') was, thereafter substituted by that of one Shri Sunil Talariya who incidentally was a partner in M/s. R.S. Fincap, i.e an associate concern of the assessee. Also, the Assessing Officer on a perusal of the seized document observed that an amount of Rs.1 lac was paid by M/s. R.S. Automobile on 20.01.2010 from its own account to Shri Manish Pinjani (supra). Backed by the aforesaid facts, the Assessing Officer held a conviction that the impugned payment aggregating to Rs.8,86,000/- (supra.) that was made over the years i.e. F.Y. 2009-10 to F.Y 2011-12 was nothing but the unexplained investment made by the assessee. In the absence of any plausible explanation coming forth from the assessee, the Assessing Officer assessed the aforesaid

amount of Rs.1,40,000/- as an unexplained investment of the assessee u/s 69 of the Act. Accordingly, the Assessing Officer vide his order passed u/s.143(3) of the Act dated 28.03.2014 assessed the income of the assessee company at Rs.11,16,420/-.

3. Aggrieved, the assessee assailed the assessment order before the CIT(Appeals). However, the CIT(Appeals) did not find favour with the contentions advanced by the assessee and dismissed the appeal. For the sake of completeness, the observations of the CIT (Appeals) are culled out as under:

“2.3 Facts being as above, the additions have been made on the basis of details found in seized loose paper LPS-9. Additions are Rs.1,40,000/- in A.Y. 2010-11 and Rs.3,95,000/- in the A.Y. 2011-12. These are investments/payments made in the two financial years. The assessee has accepted payment of Rs.1,00,000/- granted as loan to Shri Raju Pinjani. The document LPS-9 was seized from appellant’s premises. It was for the appellant to explain the contents of these papers, what is the relation of R.S. Fincap with appellant, if appellant had no connection what soever how these papers were found from his premises. These questions have remained answered in the submission. Appellant contends that the said transactions were never the subject matter of purchase by the appellant and except for loan of Rs.1 lakh given to Shri RajuPinjani no other investment was made by the assessee. If appellant accepted advancing part of the transaction i.e. loan of Rs.1 lakh and denies the other investment he must furnish evidence in support of his denial. No such evidence has been furnished either before the AO or at the appellate stage. The appellant contends that the AO has no material on the basis of which addition has been made. However, the appellant has ignored the position of law in respect of search assessment that primary onus is on the appellant to explain with evidence the

material found from his premises. Therefore, the addition made by the AO is sustained and the ground taken by the appellant is rejected.”

4. Assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Before advertng to the issue in hand, we think it apt to succinctly cull out the facts which had led to the impugned addition in the hands of the assessee. Issue involved in the present appeal hinges around the contents of an incriminating documents marked as LPS-9 (Page 1 to 13) which is an ‘agreement’ executed between Shri Manish Pinjani and M. Ahuja Project (I) Pvt. Ltd., that was seized in th course of the search proceedings conducted u/s 132(1) of the Act on 21.03.2012 at the business premises of the assessee i.e E-2, Maruti Business Park, G.E Road, Raipur. On a perusal of the aforesaid incriminating material, we find that the same comprises of, viz. (i) an ‘agreement’ (undated) between Shri Manish Pinjani and M. Ahuja Project (I) Pvt. Ltd. (executed on stamp paper of Rs.50/-) dated 30.08.2010 a/w the terms and conditions forming part of the said ‘agreement’; (ii) the copy of ledger account of Shri Manish Pinjani, Raipur appearing in the books of account of M/s. R.S. Infrastructure (I) Pvt. Ltd., therein, reflecting the payment aggregating to Rs.8,86,000/- (supra) made over the years i.e. F.Y. 2009-10 to F.Y. 2011-12. (iii) Copy of ledger account of Shri Manish Pinjani as appearing in the books of M/s. R.S. Automobiles, therein, reflecting the transaction of advancing of a loan of Rs.1 lacs to the

aforementioned person i.e. Shri Manish Pinjani on 20.01.2010 which thereafter was repaid by him (in cash) on 01.03.2011; and (iv). the copy of acceptance letter of Shri Sunil Talariya wherein he had sought for transfer of the entire amount deposited by him to Shri Siyawar Saran Tiwari, Raipur and had stated to give his consent for transfer of the deposit in favour of Shri Siyawar Saran Tiwari, Raipur.

5. As can be gathered from the contents of the aforesaid incriminating documents that were found and seized during the course of search and seizure proceedings, we find that Shri Manish Pinjai S/o. Shri Raj Kumar Pinjani had vide an undated "agreement" executed on a stamp paper of Rs.50/- dated 30.08.2010 agreed to purchase a Plot No.47 from M/s. M. Ahuja Project (I) Pvt. Ltd. for a consideration of Rs.19 lacs. Thereafter, the rights in the aforesaid plot as per an acceptance letter of Shri Sunil Talariya (to whom the same was transferred by Shri Manish Pinjani) were finally transferred in favour of Shri Siyawar Saran Tiwari, Raipur. Also, as observed by us hereinabove, the incriminating materials comprises of a ledger account of Shri Manish Pinjani (supra) as appearing in the books of M/s. R.S. Infrastructure (I) Pvt. Ltd., which as stated by the Assessing Officer was a non-existent concern. Further, we find that the copy of ledger account of Shri Manish Pinjani (supra.) as appearing in the books of R.S Automobiles, Raipur evidencing receipt/repayment of loan of Rs.1 lac

forms a part of the aforesaid seized document. In the backdrop of the aforesaid material, we are of the considered view that the property in question, viz. Plot No.47 at Vill. Dunda, Raipur was initially agreed to be purchased by Shri Manish Kumar Pinjani and M. Ahuja Project (I) Pvt. Ltd. vide an 'agreement', dated 30.08.2010 (executed on a stamp paper of Rs.50/-). However, rights of the aforesaid property were thereafter transferred in favour of Shri Sunil Talariya (supra.) who thereafter, vide a letter of consent (supra.), had agreed to transfer his rights in the aforesaid property in question to Shri Siyawar Saran Tiwari, Raipur. Also, the assessee had filed before us a copy of the registered purchase deed, dated 04.04.2014 which evidences that the aforesaid Plot No.47 had been purchased by the Shri Siyawar Saran Tiwari (supra) from M. Ahuja Project (I) Pvt. Ltd.

6. Backed by the aforesaid facts, we are of the considered view that the property in question i.e. Plot No.47 (supra) was initially agreed to be purchased by Shri Manish Pinjani, who thereafter, had transferred his interest in the same to Shri Sunil Talariya (supra), wherein the latter had finally transferred all his interests in the said property i.e. rights etc. to Shri Siyawar Saran Tiwari (supra). On a perusal of the aforesaid seized records, we find that Shri Siyawar Saran Tiwari had vide a registered deed,

dated 04.04.2014 purchased the property in question from M. Ahuja Project (I) Pvt. Ltd.

7. Admittedly, as per sub-section (4A) of Section 132 and Section 292C of the Act, where any document is found in the possession or control of any person in the course of a search proceedings u/s.132 of the Act, then, in any proceedings under this Act, it may be presumed that, viz (i) such document belong or belongs to such person; (ii) that the contents of such documents are true; and (iii) that the signature and every other part of such document which is purported to be in the handwriting of any particular person are in that person's hand writing. However, we cannot remain oblivious of the fact that the presumption contemplated in the aforesaid provision is a rebuttal one. In the case before us, we may herein observe, that the contents of the seized document in no way makes any reference to the assessee before us, viz. Shri Khushiram Kundnani. At this stage, it would be relevant to point out that the possession of the aforesaid document was found in the course of search proceedings conducted at the business premises situated at E-2, Maruti Business Park, G.E Road, Raipur, i.e., the premises from where the business of M/s. R.S Fincap, a partnership concern comprising of the assessee and Shri Sunil Talariya (supra.) was being run. In view of the aforesaid fact, we are of the considered view, that Shri Sunil Talariya (supra) had at a specific point of

time interest in the property in question i.e prior to the transfer of the same to Shri Siyawar Saran Tiwari (supra.) and therefore, the fact that the incriminating document in question which makes a reference of a payment aggregating to Rs.8,86,000/- (supra) over the years i.e. F.Y. 2009-10 to F.Y. 2011-12 belonged to the said person, viz. Shri. Sunil Talariya cannot be ruled out. Admittedly, apart from the aforesaid seized document i.e. ledger account of Shri Manish Pinjani (supra.) appearing in the books of account of M/s. R.S. Automobiles, Raipur, proprietary concern of the assessee evidencing receipt/repayment of loan of Rs.1 lacs by Shri Manish Pinjani (supra) to the assessee was also seized in the course of the aforesaid search proceedings and form part of the seized document. Viz. LPS-13 (Page No. 1 to 13). However, we are of the considered view, that the said fact on a standalone basis can in no way establish to the hilt a nexus of the assessee with the contents of the incriminating document evidencing payment of Rs.8,86,000/-(supra.) towards purchase of the aforesaid property in question i.e. Plot No.47 (supra.). Backed by our aforesaid observations, we are of a strong conviction that as no nexus between the contents of the aforesaid incriminating document evidencing payment of Rs.8,86,000/- has been established with the assessee before us, therefore, we are of the considered view that the addition of the same could not have been made in the hands of the assessee. WE, thus, in terms of our aforesaid observations vacate the addition of Rs.1,40,000/- made by the

Assessing Officer during the year under consideration. The **Ground of appeal No.2** is allowed in terms of our aforesaid observations.

8. **Ground Nos. 1, 3 and 4** being general in nature and hence, are dismissed as not pressed.

9. In the result, the appeal of the assessee in ITA No.265/RPR/2016 for the assessment year 2010-11 is allowed in terms of the aforesaid observations.

ITA N.266/RPR/2016
A.Y.2011-12

10. As facts and the issues involved in the present appeal remains the same as were there before us in the assessee's appeal for assessment year 2010-11 in ITA No.265/RPR/2016, therefore, our order therein passed while disposing off the appeal of the assessee for assessment year 2010-11 shall apply mutatis-mutandis for disposing off the present appeal in ITA No.266/RPR/2016 for the assessment year 2011-12. Accordingly, the order passed by the CIT(A) is set-aside and the assessment framed by the AO under section 153A r.w.s.143(3) dated 28.03.2014 is vacated on the same terms.

11. In the result, appeal of the assessee in ITA No.266/RPR/2016 for the assessment year 2011-12 is allowed in terms of our aforesaid observations.

12. In the combined result, both the appeals of the assessee are allowed in terms of our aforesaid observations.

Order pronounced on 21st day of February, 2022.

Sd/-
JAMLAPPA D BATTULL
ACCOUNTANT MEMBER

Sd/-
RAVISH SOOD
JUDICIAL MEMBER

रायपुर/ RAIPUR ;

दिनांक / Dated : 21st February, 2022

SB

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Raipur (C.G)
4. The Pr. CIT-1, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	04.02.2022	Sr.PS/PS
2	Draft placed before author	08.02.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		