

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1350/PUN/2017
निर्धारण वर्ष / Assessment Year: 2008-09

Madhukar Narayan Patil, C/o. Mr. Deepak Madhukar Patil, 104, Neelkanth Krishna, Plot No.32, MCCH Society, Panvel, Raigad- 410206. PAN : BNQPP0996Q	Vs.	ITO, Ward-3, Panvel.
Appellant		Respondent

Assessee by : Shri B. C. Malakar
Revenue by : Shri M. Jasnani

Date of hearing : 08.03.2022
Date of pronouncement : 11.03.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 2, Aurangabad ['CIT(A)' for short] dated 23.03.2017 for the assessment year 2008-09.

2. Briefly, the facts of the case are as under:

The appellant is an individual and no return of income under the provisions of section 139 of the Income Tax Act, 1961 ('the

Act') was filed for the assessment year 2008-09. Subsequently, based on the information received from the Investigation Wing of the Department, Mumbai that the appellant had received on-money payment on sale of plots situated at CIDCO Plots bearing Plot No.08, Sector- 56, admeasuring 450 sqm by Jai Corp Group, the Income Tax Officer, Ward- 3, Panvel, Dist.- Raigad ('Assessing Officer') issued a notice u/s 148 calling upon the appellant to file the return of income. However, no return of income was filed by the appellant in response to said notice u/s 148 of the Act. The appellant also not complied with the other notices issued u/s 143(2) and 142(1) of the Act. Therefore, in these circumstances, the Assessing Officer completed the assessment to best judgement by making addition of Rs.42,73,530/- based on the information furnished by the Investigation Wing of the Department, Mumbai that the appellant was paid on-money payment of Rs.42,73,530/- on transfer of the plot to M/s Iconic Realtors Ltd. (an entity of Jai Corp Group). Accordingly, the Assessing Officer completed the assessment by bringing to tax as 'short term capital gains' of Rs.11,50,000/- and on-money receipt of Rs.42,73,530/- u/s 144 r.w.s 147 of the Act vide order dated 24.03.2014.

3. Being aggrieved by the above assessment order, an appeal was filed before the Id. CIT(A) contending that in the absence of evidence of receipt of on-money of Rs.42,73,530/-, no addition should have been made. It was contention of the assessee that the assessment has been made without making available to the assessee evidence/material evidence, recorded statements. The said contention of the assessee had been rejected by the Id. CIT(A). The Id. CIT(A) duly considering the statement/evidence against the assessee held the addition made is based on the evidence found as result of search and seizure operations in the hands of Shri Madhukar Narayan Patil who is a land aggregator for Jai Corp Group. The Id. CIT(A) discussed in detail the facts of case in his findings vide para 14 and 15 of the impugned order. Accordingly, the Id. CIT(A) dismissed the appeal filed by the assessee.

4. Being aggrieved by the order of the Id. CIT(A), the appellant is before us in the present appeal.

5. The Id. Counsel submitted that the addition was made by the Assessing Officer solely on the basis of surmises, conjectures and third party's statement without offering any cross-examination to the appellant. Without prejudice to this argument, it was further

contended that the property sold was jointly held by 5 persons and the entire on-money consideration cannot be taxed in the hands of appellant alone.

6. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submitted that the assessee had not availed opportunities given by the Assessing Officer nor filed the return of income in response to notice issued u/s 148 of the Act. He also submitted that the evidence relied upon by the Assessing Officer for the purpose of making addition was furnished to the appellant. However, the appellant had not availed opportunity of rebutting the evidence. Therefore, the action of the lower authorities should be upheld.

7. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the taxing on alleged receipt of on-money payment of Rs.42,73,530/- based on the information found as a result of search and seizure operations in the hands of Shri Madhukar Narayan Patil and Jai Corp Group. On mere perusal of the assessment order, it would reveal that the appellant had neither complied with the notice issued u/s 148 nor responded to the notices issued u/s 143(2) and 142(1) of the Act. In

these circumstances, based on the information/evidence furnished by the Investigation Wing of the Department, Mumbai found as result of search and seizure operations in the hands of Shri Madhukar Narayan Patil who is land aggregator for Jai Corp Group, the Assessing Officer completed the assessment. No pleadings were made either before the ld. CIT(A) or during the course of hearing before the Tribunal, as to how the appellant was prevented from causing appearance before the Assessing Officer or complying with the statutory notices u/s 148/ 143(2) & 142(1) of the Act. Therefore, the Assessing Officer was justified in making an *ex-parte* assessment to the best of judgement of the Assessing Officer. The ld. CIT(A) has clearly discussed these facts of the case in great detail vide para 15 of his order. During the course of hearing before us, the appellant had not rebutted the findings of the ld. CIT(A) given in para 15 of his order. Similarly, the evidence and statement given by Shri Madhukar Narayan Patil were supplied to the appellant during the course of proceedings before the ld. CIT(A). The only course of action open to the appellant is to rebut the assessment by cogent reliable evidence, which the appellant failed to do so. In these circumstances, the contentions raised by the

appellant before us cannot be accepted. Therefore, we do not find any infirmity in the order of the ld. CIT(A). Hence, the appeal is dismissed.

8. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 11th day of March, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th March, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Aurangabad.
4. The Pr. CIT-2, Thane.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.