

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 5561/Mum/2018 (A.Y. 2011-12)

Monika Anand Gupta 8D Twilite Cosmos Horizen, Near Blue Star Compound, Pokharan Road No. 2, Thane-W Pincode : 400 601. PAN : ALWPG3927B (Appellant)	Vs.	ITO, Ward 1(2) Kalyan (Respondent)
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Assessee by	Shri Pranav Phadke
Department by	Shri Pravin Salunkhe
Date of Hearing	30.03.2022
Date of Pronouncement	21.04.2022

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 27.7.2018 pertains to A.Y. 2011-12.

2. The grounds of appeal read as under :-

1) The Ld. CIT (A) erred in not considering the fact that the impugned notice u/s. 148 was illegal since the reasons recorded before issuing the same were baseless, and as such, the reassessment proceedings in pursuance thereof is vitiated.

2) The Ld. CIT (A) also failed to consider that the impugned order is passed mechanically by the Ld. Assessing Officer without affording an opportunity to the appellant to defend her case, and as such, the same is liable to be annulled on account of non application of mind and violation of principles of natural justice.

3) The Ld. CIT (A) also failed to consider that the appellant was never given any opportunity to cross-examine the person who made the statement against the appellant, much less, the alleged material was never provided to her, and as such, the same is violation of principle of natural justice.

4) The Ld. CIT (A) lost sight of the fact that any statement made by and person u/s. 132 [4] cannot be used against any third person and therefore

the impugned addition based thereon made by the Ld. Assessing Officer is illegal.

5) It is therefore prayed that the Hon'ble Members may be pleased to delete the impugned addition amounting to Rs. 4,00,000/- in A.Y. 2011-12 or in alternative the Hon'ble Members may be pleased to pass any such other order or orders in favor of the appellant in the interest of justice.

3. Brief facts of the case are that information was received from the Dy. Director of Income Tax (Inv), Unit 1(4), Mumbai that assessee along with her husband, had paid on-money of Rs 8,00,000/-, against purchase of flat in building Horizon /Twilight, developed by Cosoms Group. In view of the above information the AO had reason to believe that income to the extent of Rs 4,00,000/- (appellant's share being 1/2) had escaped assessment, in the hands of the appellant in A Yr 2011 -12. The AO, after recording the necessary reasons for reopening/satisfaction, as per provisions of Section 147 of the Act, issued the notice u/s 148 of the Act which was duly served upon the assessee. The Assessing Officer made the addition by observing as under :-

6. The reasons for reopening the assessment was provided to the assessee. This office has received concrete information on the above issue. As stated earlier, during the course of the search conducted in the Cosmos group, statement of related persons including Shri Suraj Parmar, one of the three Chief Promoters of the Cosmos Group was recorded, wherein he has accepted that cash transactions are being made in sale of flats/shops/offices. Moreover, from the excel sheet/tally data found during the course of search, it was found that Mrs. Monika Sharad Gupta purchased a flat no.8 in Horizop/Twilight building jointly with her husband for a total consideration of Rs.76,67,471/- and the assessee Mrs. Monika Sharad Gupta has paid in cash Rs.8,00,000/- on 23/2/2011, 1/2 share of the joint transaction of Rs.8.00,000/- comes to Rs.,4,00,000/-.

7. Further, as per the provisions of section 132(4A) of the Act, which is reproduced as under:

"Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-

(i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;

- (ii) That the contents of such books of account and other documents are true; and
- (iii) That the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

8. In the instant case, as stated earlier, Shri Suraj Pannar, one of the three chief promoters has given a statement during the course of search u/s. 132(4) of the I.T. Act 1961, which is admissible as an evidence in the Court of Law. The contents found and seized during the course of search are also true as per the provisions of section 132(4) of the IT Act 1961.

9. Thus, there is relevant material for forming a reasonable belief that income has escaped assessment and, therefore, the initiation of reassessment proceedings by issue of notice under section 148 of the Act is in order.

10. In view of the above Rs. 4,00,000/- is added to the total income of the assessee. Penalty proceedings u/s 274 r.w.s. 271(1)(c) are separately initiated for furnishing inaccurate particulars of Income.”

4. Upon assessee's appeal learned CIT(A) confirmed the addition.
5. Against the above order assessee is in appeal before ITAT.
6. I have heard both the parties and perused the record. I find that the addition for on-money payment has been done in this case without any corroborative material found from assessee. The addition is solely based upon some statement of the builder. Such additions are not sustainable on the touchstone of Hon'ble Supreme Court decision in the case of CIT vs P.V Kalyanasundasram 164 Taxman 78 (SC). Moreover there is nothing on record to suggest that so called electronic evidence collected by revenue at the builder's office is compliant with the requirement of section 65B of Evidence Act regarding admissibility of electronic evidence. Hence, I set aside the orders of the authority below and direct that the addition be deleted.

7. In the result, appeal is allowed.

Order pronounced in the open court on 21.04.2022.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/04/2022

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

PS