

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" A " BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1818/AHD/2019

निर्धारण वर्ष/Asstt. Year: 2015-2016

Rajvee Tractors Pvt. Ltd., NH No.8, Nr. Hanuman Temple, Pimplodi Motipura, Ahmedabad-383001. PAN: AACCR1228E	Vs.	The A.C.I.T., S.K. Circle, Himatnagar.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Shailesh J. Shah, A.R
Revenue by	:	Shri Deelip Kumar, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **14/06/2022**
घोषणा की तारीख /**Date of Pronouncement**: **29/07/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeal)-2, Ahmedabad, dated 31/10/2019 arising in the matter of Assessment Order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2015-2016.

2. The assessee has raised the modified grounds of appeal:

1. *That the impugned addition made by the Learned Assessing Officer and sustained by the Learned Commissioner of Income Tax (Appeals) under section 143(3) r.w.s 147 of the Income-Tax Act, 1961 is erroneous, wrong, illegal, arbitrary, bereft of jurisdiction and unsustainable in law.*

2. *The proceeding initiated under section 147 and notice issued and said to be served under section 148 is wrong and illegal. The assessment made is liable to be annulled/cancelled.*

3. *That, learned A.O. has erred and Learned Commissioner of Income Tax Appeals has wrongly sustained impugned addition without considering the four weeks time from the date of communication of order, rejecting the appellants objections to reasons recorded by A.O. against the notice u/s. 148.*

4. *The learned Commissioner (Appeals) has erred in confirming the income assessed under the head 'Addition of Unaccounted Receipt' (On Money) at Rs. 1,96,37,500/- on the basis of computer prints which was a draft agreement, which was unsigned, without Sale consideration in the alleged documents and not signed by the witness is wrong, illegal and against the facts and law of the case.*

5. *That, the Learned Assessing Officer, has erred and the Learned Commissioner of Income Tax (Appeals) has wrongly sustained the impugned addition made vis-as-vis the sale of Land at Himatnagar, Tal. Mouje.Motipura, Village S.N.24/3 paikie Survey no. 24/3 Plot No.A,B and Plot No. 1 to 7 on the alleged basis of Cash consideration having been received by the Assessee against the sale of land. Without rejecting the books of account and the proof of possession of Cash. The addition made on the basis of Statement Recorded of third party and during survey u/s, 133A has no evidentiary value.*

6. *That the Learned Assessing Officer, has erred and Learned Commissioner of Income Tax (Appeals) has wrongly sustained the impugned addition and during survey proceedings without completing the assessment proceedings tax has been recovered though the relevant assessment year was 2016-17.*

7. *Tat the Learned Assessing Officer, has erred and Learned Commissioner of Income Tax (Appeals) has wrongly sustained the impugned addition appears to have framed the Assessment order without mentioning under which section of the income tax act, the addition on account of unaccounted receipt has been made.*

8. *On the facts and in the circumstances of the case the CIT (A) and the Assessing officer have erred in not bringing on record any evidence to prove that the appellant has actually received the said cash which in fact is neither as found by the appellant nor found invested any were by the appellant.*

9. *That, since the order of the Learned Commissioner of Income Tax (Appeals) on the above issues suffers from illegality, and infirmity and is devoid of any merit, the impugned addition sustained by the Learned Commissioner of income Tax (Appeals) ought to be quashed and your assessee be given such relief as prayed for.*

10 *That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.*

3. The assessee has raised as many as 10 grounds of appeal but the issue revolves to the addition made by the AO for Rs. 1,96,37,500/- representing the undisclosed sale consideration against the sale of property.

4. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of "TAFE" make Tractors & Spare Parts. There was a survey operation at the business premises of the assessee dated 22/01/2015 under the provision of section 133A of the Act. As a result of survey, the assessee has made disclosure of an income of Rs.3,13,00,000/- representing the advance received against the sale of land which was duly offered to tax in the income tax return. The property was sold by the assessee to a party namely M/s Ohm Developers for a consideration of Rs. 3,51,00,000/- as recorded in the books of accounts.

4.1 There was also a survey operation u/s 133A of the Act, at the premises of the M/s Ohm Developers. As a result of survey operation, a draft sale deed was found between the assessee and M/s Ohm Developers wherein the sale consideration was shown at Rs. 5,47,37,500/- leading to a difference in the sale consideration of Rs. 1,96,37,500/- which was less/short reported by the assessee. The AO also found that M/s Ohm Developers has also admitted to have invested unaccounted income of Rs. 1,96,37,500/- on the purchase of the property in the application made before the Settlement Commission.

4.2 Based on the above, the proceeding u/s 148 of the Act, was issued against the assessee on account of escapement of income to the tune of Rs. 1,96,37,500/- only. However, the assessee before the AO requested to supply copy of the application made by the M/s.Ohm Developers before the Settlement Commission as well as copy of the order of the Settlement Commission. However, the AO denied to provide the same on the reasoning that these are confidential information of the third party which cannot be provided to the assessee. However, the AO was pleased to provide the copy of the draft sale deed to the assessee. The AO finally held that

the income of the assessee to the tune of Rs. 1,96,37,500/- has escaped assessment and therefore made the addition of the same to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the Ld. CIT(A), who also confirmed the order of the AO by observing as under:

I have carefully considered facts of the case, assessment order and written submission filed by the appellant. The Assessing Officer has made the addition of on-money of Rs.1,96,37,500/- on the sale of property at 24/3 Motipura, Himatnagar to M/s. Ohm Developers. The Assessing Officer in the assessment order has noted that a survey was conducted in the case of M/s. Ohm Developers and a draft sale deed of the property at 24/3 Motipura was found as per which sale consideration was shown at Rs.5,47,37,500/-. The appellant has shown sale consideration of Rs.3,51,00,000/-. M/s. Ohm Developers, before Settlement Commission, has accepted that on-money of Rs.1,96,37 500/- was paid in cash and has admitted as its income. The Assessing Officer has reopened the assessment and made the addition of on-money. The appellant has contended that it has entered into an agreement to sell in respect of said property on 26/3/2010 for a sale consideration of Rs.3,51,00,000/- and amount of Rs.15,00,000/- was received and the property was handed over. The appellant has contended that though property was registered on 6/7 2015, the sale price of the property should be taken as stamp duty value prevailing on 26/3/2010 and not that as the draft sale deed dated August 2013. The appellant also contended that draft sale deed unsigned and therefore, cannot be relied upon.

It is seen that the appellant has shown the sale of property as per sale deed registered on 6/7/2015 in the return of income. The draft sale deed which was found during course of survey at the premises of M/s. Ohm Developers reveals that the property was to be sold for Rs.5,47,37,500/-. M/s. Ohm Developers has admitted that on-money of Rs.1,96,37,500/- has been paid for purchase of the property Therefore, the Assessing Officer has correctly added the undisclosed receipt in the income of the appellant. As regards the appellant's argument for application of section 50C and deemed value of consideration, the same is not applicable in the case of undisclosed receipt of on-money. In view of the above, the addition made by the Assessing Officer is confirmed.

6. Being aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

7. The Ld. AR before us has filed a paper book running from pages 1 to 136 and challenged the order of the AO on its validity as well as on merit.

7.1 The Ld. AR on merit pointed out that the application made by M/s Ohm Developers before the Settlement Commission does not establish the fact that the assessee has received unaccounted payment of Rs. 1,96,37,500/- from the party which is liable to be taxed.

7.2 The Ld. AR further contended that the value as per stamp valuation authority stand at Rs. 3,5100,000/- only which was duly accounted in the books of accounts.

8. On the other hand the Ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contention of both the parties and perused the materials available on record. From the preceding discussion we note certain facts as detailed below:

i. Admittedly, the assessee has sold land to M/s Ohm Developers and according to the assessee the land was sold at Rs. 3,51,00,000/- only which is the value for the purpose of stamp duty. This fact has not been disputed by the authorities below.

ii. The draft sale deed based on which the addition has been made by the authorities below has never been signed by the assessee and therefore no credence can be given to such draft sale deed.

iii. Likewise, the admission before the Settlement Commission made by the third party cannot be used against the assessee until and unless it is provided to the assessee for the confrontation.

9.1 We also note that the Hon'ble Delhi High Court in the case of CIT vs Venita Gupta 46 taxmann.com 439 has observed as under:

The impugned order does not call for any interference. The fact that sellers had declared a sum of Rs. 16 crores as undisclosed income in respect of the said transaction cannot bind the assessee and her husband. They were not privy to the settlement application filed on behalf of sellers. In any event, what the Settlement Commission has said in the order in respect of sellers is that as per their calculations the premium amount came to Rs 13.3 crores but since they had declared more than that, the disclosure needed no disturbance.

9.2 We are also of the view that draft sale deed in the absence of other corroborative materials cannot substitute the evidence. The Hon'ble Supreme Court in case of Common Cause (A registered society) vs. Union of India reported in 77 taxmann.com 245, held that noting on loose sheet/diary does carry any evidentiary value under the provision of section 34 of the Evidence Act, the relevant extract reads as under:

Loose sheets of papers are wholly irrelevant as evidence being not admissible under section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.

9.3 We also find that Hon'ble Supreme Court in the case of CBI vs. VC Shukla [1998] (3) SCC 410 held that entry can be made by any person against the name of any other person in any sheet, paper or computer, but the same cannot be the basis of making charges against the person whose name noted on sheet without corroborating the same. The relevant extract reads as under:

From a plain reading of the Section it is manifest that to make an entry relevant thereunder it must be shown that it has been made in a book, that book is a book of account and that book of account has been regularly kept in the course of business. From the above Section it is also manifest that even if the above requirements are fulfilled and the entry becomes admissible as relevant evidence, still, the statement made therein shall not alone be sufficient evidence, still, the statement made therein shall not along be sufficient evidence to charge any person with liability. It is thus seen that while the first part of the section speaks of the relevancy of the entry as evidence, the second part speaks, in a negative way, of its evidentiary value for charging a person with a liability. It will, therefore, be necessary for us to first ascertain whether the entries in the documents, with which we are concerned, fulfil the requirements of the above section so as to be admissible in evidence and if this question is answered in the affirmative then only its probative value need be assessed.

9.4 In view of the above, the admission made by the buyer of the property before the Settlement Commission does not establish the fact that the assessee has received unaccounted consideration. Thus, we are not convinced with the findings of the authority below. Hence, we set aside the finding of the Ld. CIT(A), and direct

the AO to delete the addition made by him. Thus, the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 29/07/2022 at Ahmedabad.

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**
29/07/2022
Manish