

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Shri P.M. Jagtap, Vice President
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 1638/Ahd/2017
Assessment Year 2012-13**

Shri Pragnesh K. Modi, 12-A, Suyog Bungalows, Opp. Ashwaraj Bungalows, Nr. Prahlad Nagar Auda Garden, Prahlad Nagar, Ahmedabad PAN: AGIPM6008Q (Appellant)	Vs	The ITO, Ward-1(2)(5), Ahmedabad (Respondent)
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**Assessee by: Shri Divyang Shah, A.R.
Revenue by: Ms. Pooja Parekh, Sr. D.R.**

Date of hearing : 25-07-2022
Date of pronouncement : 12-10-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals)-10, Ahmedabad in Appeal no. CIT(A)-10/ITO-WD/1(2)(5)/119/15-1 vide order dated 29/03/2017 passed for the assessment year 2012-13.

2. The assessee has raised following grounds of appeal:-

“1. The CIT(A) erred in law as well as on facts in :

a) Appreciating the facts of the case and upholding the addition under the section 69 of the act for Rs.97,12,000/-. The same may be deleted by your honor now.

b) The CIT(A) has not understood at all the cases and the evidences on records and has even not properly considered the remand report of the AO it may be noted that after having the glance at the evidences the AO had nothing to offer.

c) It is requested to your honor sir to please consider the same evidences and remand back the same matter to the AO to pass a proper reasoned order.

2. The CIT(A) has erred in law as well as on facts in confirming the interest levied under section 234A /B/C of the act.”

3. During the course of assessment, the Assessing Officer observed from the Annual Information Return (AIR) that during the year, the assessee has purchased immovable properties amounting to Rs. 97,12,300/- on different dates. However, it is seen from the records that the assessee has not disclosed his sources of investment. The Assessing Officer observed that the investment made in the immovable properties was not recorded in the

books of accounts by the assessee. Vide show cause notice, dated 12-03-2015, the Assessing Officer asked the assessee to explain the transaction and submit the details and documentary evidences to verify the genuineness of the transactions. However, the assessee did not furnish any details, documentary evidences to the Assessing Officer despite issuance of several letters/notices to the assessee. Further, nobody attended nor filed any written submission to the Assessing Officer during the course of assessment proceedings. In absence of any details regarding purchase of aforesaid properties, the Assessing Officer treated the entire transaction of Rs. 97,12,300/- as the assessee income from unexplained investments u/s. 69 of the Act in the hands of the assessee.

4. In appeal before Id. CIT(A), the assessee submitted that out of 14 properties referred to in the assessment order, the assessee has been involved only in three properties and his share in the land was only 354 sq. metres. The assessee submitted that in the other 11 sale deeds with respect to other properties mentioned in the assessment order, the assessee is just a confirming party and not 'owner' with respect to the said properties. The assessee submitted that by entry of name in the sale deed one does not become the owner of the property and in support of his contention he relied on the case of ITO vs. Departmental Representative. Vandana reported at 180 TTJ 505 (Mumbai ITAT). Thus, in any case, the assessee submitted that the addition may be restricted to Rs. 56,39,400/- only, which is with respect to investment made by the assessee in the aforesaid three properties. However, the assessee submitted that even in respect of three properties, in which admittedly the assessee made investment, all the sources of the

5. The assessee is in appeal against the aforesaid addition confirmed by the Id. CIT(A). Before us, the Id. counsel for the assessee submitted that assessee was a partner in M/s Balaji Infrastructure during the impugned assessment year. The Id. Assessing Officer received information through AIR that 14 properties amounting to Rs. 8,77,24,000/- were purchased by 10 different persons wherein the assessee is one of the purchasers of the said properties. Accordingly, the Assessing Officer considered 1/10th total consideration of 14 properties as unexplained investment u/s. 69 of the Act which amounts to Rs. 97,12,300/- in the hands of the assessee. The Id. counsel for the assessee submitted that the underlying 14 properties are agricultural land and therefore could not be purchased in the name of partnership firm M/s Balaji Infrastructure, since as per local laws agricultural land can be acquired by agriculturists only. Due to this reason, all 14 properties were purchased in the name of the farmers, who are also the partners in the partnership firm M/s. Balaji Infrastructure. Therefore, amount of the payments for purchasing the underlying properties was paid by M/s. Balaji Infrastructure and if any payment is made by any of the partners of M/s. Balaji Infrastructure, then the same is considered as capital investment by partners in the said partnership firm. However, from the perusal of each sale deed of the 14 underlying properties, it is not clear as to who makes the payment for investment in all the underlying properties. Therefore, due to this drafting error in the sale deed, the Assessing Officer could not identify the exact payment made by the assessee. In either of the cases, either the payment is made by Balaji Infrastructure or the payment is made by the partner-cum-purchaser of underlying properties which is considered as capital contribution in the said partnership firm. The Id.

counsel for the assessee submitted a chart/table before us giving details of payment which have been made by M/s. Balaji Infrastructure for the underlying property amounting to Rs. 2,94,44,025/- by way of account payee cheques. Accordingly, the ld. counsel for the assessee submitted that out of total payment of Rs. 8,77,24,000/- for the 14 properties, Rs. 2,94,44,025/- is paid by M/s. Balaji Infrastructure to different sellers. Further, the ld. counsel for the assessee produced another chart before us giving details of payment made by the assessee amounting to Rs. 56,39,400/- and submitted that said payment has been made in respect of only three properties. The ld. Counsel for the assessee further submitted that balance payment which is made by other purchasers is Rs. 5,26,40,575 (Rs. 8,77,24,000- (total payment for 14 properties) less Rs. 56,39,400/- (payment made by assessee) less Rs. 2,94,44,025/- (payment made to Balaji Infrastructure)). The ld counsel for the assessee submitted that so far as the payment made by the other buyers is concerned, i.e. other than the assessee and M/s Balaji Infrastructure, the assessee does not have bank statements of those buyers and the assessee has no control to retrieve this information. Accordingly, he made a request to remand the matter back to the file of Assessing Officer so that Assessing Officer can make necessary inquiries with the respective buyers to verify the remaining payments. In this regard, name of the buyers, PAN and address are available in the sale deed itself.

6. In response, the ld. Departmental Representative referred page no. 8 of the paper book and submitted that the assessee has not been able to provide any proof that other partners have made investments in the balance properties. Accordingly, all the arguments taken by the assessee are

baseless. Therefore, in absence of any evidence, it is not possible for the Assessing Officer /CIT(A) to place any reliance on the submission made by the assessee. The Id. Departmental Representative further pointed out on perusal of the sale deeds, there is no mention of name of the assessee as a partner in M/s. Balaji Infrastructure. Therefore, the assertion that the property was purchased in capacity as partner of M/s Balaji Infrastructure is unfounded. The Id. Departmental Representative drew our attention to page 477 of the paper book in support of this contention. Further, the Id. Departmental Representative also submitted that in the return of the income the assessee has declared salary income and therefore it is not clear whether the assessee is salaried employee or an agriculturist. Further, the Departmental Representative submitted that the assessee has sought to place reliance on substantial additional evidences produced for the first time before the Hon'ble ITAT, which cannot be entertained at this stage since both the Assessing Officer and Id. CIT(A) gave substantial opportunity to the assessee to produce these details before them, and the assessee did not avail this opportunity at earlier stages of hearing despite sufficient opportunity. Further, the Id. Departmental Representative submitted that since the assessee's name is appearing in 11 sale deeds where he is asserting that he is only a confirming party, the onus is on the assessee to prove that he is only a confirming party in these sale deeds and he is not the owner of the property. However, the assessee has not been able to discharge this onus cast upon him. Therefore, the Id. Departmental Representative submitted that the Id. CIT(A) is not erred in facts and in law in confirming the addition u/s 69 of the Act.

7. We have heard the rival contentions and perused the material on record. The argument taken up by the assessee is that he is not the owner of the properties and in respect of 11 properties he is only a confirming party. Further, out of the total consideration Rs. 8,77,24,000/- in respect of 14 underlying properties, the total payment made by the assessee is only Rs. 56,39,400/- (in respect of only 3 properties in respect of which the assessee has duly explained the source of investment) and out of the balance payment, a sum of Rs. 2,94,44,025/- has been paid by Balaji Infrastructure and the balance amount of Rs. 5,26,40,575/- has been made by other purchasers (who are partners in M/s Balaji Infrastructure, along-with the assessee). We observe that the Assessing Officer in the absence of supporting material produced before by the assessee (despite several opportunities being granted to the assessee) made addition of Rs. 97,14,300/- on estimated basis by considering 1/10th of the total consideration of 14 properties as unexplained investments u/s. 69 of the Act in the hands of the assessee. From the above facts, it is however not very clear as to whether the assessee was a confirming party in respect of 14 properties referred to the Assessing Officer and also what was the precise investment in the aforesaid properties made by the assessee and consequently the amount that may be taxed in the hands of the assessee. In view of the above facts, in the interest of justice, we are restoring the matter back to the Assessing Officer in order to ascertain from the facts whether the assessee is only a confirming party in respect of the aforesaid transaction of investment in 14 properties or whether he is a owner in respect of such properties, the precise investment made by the assessee in the aforesaid properties and also to verify whether the source of such investment has been duly explained by the assessee. In

the result, the matter is being restored to the file of Assessing Officer with the above directions.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12-10-2022

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT
Ahmedabad : Dated 12/10/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रहित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद