

आयकर अपीलीय अधिकरण “बी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM
AND SHRI DR. DIPAK P. RIPOTE, AM

आयकर अपील सं. / ITA No.1457/PUN/2017 & ITA No. 1785/PUN/2017
निर्धारण वर्ष / Assessment Year : 2012-13

Sunil Eknath Loharkar,
D-223, Meri Colony,
Dindori Road,
Nashik – 422 004.

PAN : ABMPL0633R

.....अपीलार्थी / Appellant

बनाम / V/s.

ACIT, Circle -1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pramod Shingte
Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 20.07.2022
घोषणा की तारीख / Date of Pronouncement : 23.09.2022

आदेश / ORDER

PER S. S. GODARA, JM :

1. These assessee's twin appeals for assessment year 2012-13 arise against the CIT(A)-1 Nashik's as many orders dated 21.03.2017 and 18.05.2017, respectively in proceeding u/s. 143(3) and section 271(1)(c) of the Income Tax Act; in short "the Act".

Heard both the parties. Case files perused.

2. We come to the assessee's quantum appeal ITA No.1457/PUN/2017. His first and foremost substantive ground seeks to reverse both the lower authorities action making section 68 unexplained cash credit addition of Rs.37,19,000/- during the course of assessment as affirmed in the CIT(A)'s lower appellate discussion. The CIT(A)'s findings dealing with relevant facts read as under.

"4.3 I have considered the facts of the case, the assessment order and the submission of the appellant. The facts discernible from records are:-

- 1. The assessee deals in land trading.*
- 2. The assessee follows the mercantile system of accounting.*
- 3. In the Return of Income filed, no income is shown from Land Trading.*
- 4. No expenses and Receipt account from Land Trading is shown.*
- 5. The assessee has deposited cash in his bank account of ₹37,19,000/- in 4 different bank accounts as under:-*

<i>Name of the Bank</i>	<i>Amount deposited (₹)</i>	<i>Period of Deposit</i>
<i>DCB Bank</i>	<i>19,20,000/</i>	<i>05/04/2011 to 31/12/2011</i>
<i>PNB Bank</i>	<i>6,04,000/</i>	<i>07/04/2011 to 31/12/2011</i>
<i>Shri Ganesh Co-op Bank</i>	<i>10,45,000/</i>	<i>14/09/2011 to 21/11/2011</i>
<i>SBI Bank</i>	<i>1,50,000/</i>	<i>25/04/2011</i>
<i>Total</i>	<i>37,19,000/</i>	

6. *The assessee has explained the cash as advance received against sale of land from Bhaskar Madhav Bochare and Shri Anil Sampat Rao Bochare.*
7. *The assessee has filed agreement to sale dated 02/04/2011. Agreement to sale is neither notarised nor registered.*
8. *Bhaskar Madhav Bochare & Anil Sampat Rao Bochare are not assessed to tax, nor they possess PAN.*
9. *The AO on verification of 7/12 extracts filed, from website of Govt, of Maharashtra, has found that the entire land does not belong to Bhaskar Madhav Bochare and Anil Sampat Rao Bochare from whom the cash is received.*
10. *No proof of them having agriculture income to this magnitude is produced before the Assessing Officer.*

Therefore the creditworthiness of Bhaskar Bochare and Anil Bochare was not proved.

11. *The Assessing Officer asked the assessee to produce the parties. The assessee did not do so.*

12. *Since the creditworthiness of Shri Bhaskar Bochare & Anil Bochare was not proved and genuineness of the transaction could not be established to the satisfaction of AO the amount of ₹37,19,000/- was added u/s 68.*

4.4 *Before me the appellant's A.R. reiterated on the same submission made before Assessing Officer. Neither the two parties who have allegedly advanced money to the appellant are produced nor any confirmation is filed nor any proof for agriculture income is filed.*

4.5 *Shri Bhaskar Bochare and Shri Anil Bochare do not file the returns of income. Hence, from the departmental records, the creditworthiness of parties nor the genuineness of the transaction can be ascertained. The 7/12 extract filed is no testimony of the lender having agriculture income. The Assessing Officer after verification has ascertained that Shri Bhaskar Bochare and Shri Anil Bochare are not the owners of the entire land. It is a matter of common knowledge that the agriculture income is the biggest conduit for legalising black money.*

4.6 *In 2010-11, India's total GDP was ₹ 78,77,947/- crore which included agricultural income of ₹ 1,319 crore but the farmers during the same year made an annual return of ₹ 2 thousand lakh crore (approx) which is next to impossible.*

4.7 In 2012-13, similar data showed the agriculture income to surpass DP that too by 7.5 times which is questionable.

(The data at para 7.1 & 7.2 has been sourced from internet www.newsnation.in)

Thus any creditworthiness which is explained through the source of agriculture income needs far deeper investigation. The circumstantial evidence, the past and present conduct of assessee cannot be ignored in this regard.

4.8 The appellant was asked that since seven years from entering agreement to sale has passed what is the status of transaction of sale as on date. Till the date of passing the order neither the sale has taken place nor the allegedly huge cash advance of ₹37,19,000/- has been returned, to the Bochare's.

4.9 The appellant's A.R. has stated that there is dispute among parties so the sale has not fructified. However no proof or details for dispute has been produced.

4.10 The whole explanation of the appellant's A.R. seems surreptitious to me. I am really intrigued that in this era of depressed agrarian economy who will advance interest free ₹38 lacs for considerable length of time and in return neither receive land nor the principal amount. There is no evidence on record brought before me or AO to show the effort to complete the deal.

4.11 In A.Y. 2010-11 there was cash deposit in assessee's account of ₹44,69,950/- which the assessee had explained as advance against sale of land to Vinod Joshi and Sanjay Loharkar. They were also agriculturist not assessed to tax. The assessee was specifically asked that 8 years have passed so explain the status of transaction. The assessee vide letter dated 16/12/2016 replied that transaction is not complete as the

impugned land is under litigation. The advance of ₹44,69,950/- is not refunded. The sale deed is not yet complete.

4.12 Thus from above facts the modus operandi of the assessee can be deciphered. The assessee is into business of trading of petroleum products, land dealing, development and building contracts. It is a matter of common knowledge that in all these activities there is huge cash generation and also large tax avoidance/evasion. To me it appears that the assessee to legitimise its cash generated in its business with intention of evading tax has introduced cash credits in its account camouflaging it through advance against sale of lands. The agreements for same are neither registered nor sale deeds are completed nor advance so received is refunded under the garb of dispute. Undoubtedly dispute can happen but recurrence of dispute of similar nature in successive assessment years acts as a clear modicum of evasion of taxation.

4.13 Thus to ascertain the modus operandi adopted by the assessee, I tried to look for similar cases. In this regard, while adjudicating the appeal of another assessee i.e. Mr. Devendra Ultraf Singh who was also represented by C.A. Shri Ganesh Kale, I find that there was similar cash deposit of ₹ 25,42,500 in the bank account of Mr. Devendra Ultraf Singh Yadav AABPY0228R A.Y. 2009-10 which is explained as advance against sale of land. Further on enquiry in that case, I found that till date i.e. after 9 years of the agreement to sale, the transactions are neither complete nor the advance is returned. Thus it is plausible that with intention to evade tax Shri Devendra Ultraf Singh Yadav introduced his own money in garb of advance against sale of land. The source of such advance is always through agriculture income which is always in cash so that no money trail can be established.

4.14 Further, in the instant case, assessee has not furnished any account for land dealing in its individual capacity nor has returned any

business income from its land dealing activity, nor any income from its partnership concern i.e. Royal Galaxy Developers.

4.15 The assessee has filed its copy of accounts during the course of appellate proceedings. It was observed that only copy of accounts of M/s Shivanjali Lubricants proprietorship concern was filed where he deals in petroleum products. No accounts for Royal Galaxy Developers was filed. Vide this office letter dated 03/03/2017 the assessee was asked to file accounts of Royal Developers alongwith partnership deed.

4.16 The partnership deed shows that the deed was made on 19th March Though the total capital contribution by partners is 5.8 crores from the account of Royal Developers it is observed that there is no activity. All this fact on record clearly shows that no business income is shown by the assessee on account of land dealing & Building contracts.

4.17 Before me the assessee has neither produced the confirmation of advances received from Shri Bhaskar Bochare and Anil Bochare. The source of such advance is also not explained through documentary or corroborative evidence. The parties are neither produced before me nor before Assessing Officer. Hence neither the creditworthiness of the parties nor the genuineness of transaction is proved either to satisfaction of Assessing Officer or me.”

3. We have given our thoughtful consideration to the rival submissions assessee's detailed paper book running into 186 pages stands perused. It transpires during the course of hearing that the assessee all along has attributed source of the impugned cash sum as advances pertaining to land deals in the regular course of business involving his agreement dated 02.04.2011 alongwith co-owner Shri Sanjeev G. Rasane on the one hand and

vendee's S/Shri Bhaskar Madhav Bochare and Anil S. Bochare involving plot nos. 26,27, 32 and 33 situated at S.No.484, Satpur, Nashik. We note in this factual backdrop that the Revenue has itself filed on record the ACIT, Circle-2, Nashik's remand report dated 07.08.2018 accepting genuineness of the foregoing sale agreement and further doubting creditworthiness of the vendee's capacity of having paid cash of sum of Rs.5.4 lakhs forming subject matter of adjudication in case of Shri Rasane. We are next informed that the impugned addition in co-vendor's hands stood deleted which has attained finality. All these assessee's arguments fail to convince us. We make it clear that it was assessee's onus all along to have produced the alleged vendee(s) S/Sh Bochare(s) to have paid the cash amount of Rs. 37.19 lakhs to him. Neither the same stands discharged in assessment nor is the CIT(A)'s proceedings. This is indeed coupled with the fact that there is no statement coming from Bochare's that they had paid the impugned sum of Rs.37.19 lakhs to assessee only. We thus conclude that all the preceding developments in Rasane case (supra) hardly help the assessee in his vehement contentions seeking to involve "necessary assumption" only from Rasane case are rejected. The impugned additions is upheld

4. The assessee's second substantive grievance challenges the correctness of the both the lower authorities action adding 50 % of his agricultural income claim amounting to Rs.3,05,640/-; coming to Rs.1,52,820/- in issue. Learned counsel could hardly dispute the fact that the assessee has not received any agricultural income through banking channel as he only claims

to have sold all his crops in cash. That being the case, we hardly seen any reason to disturb the learned CIT(A)'s action arriving at the impugned estimation at the rate of 50%. This second substantive ground is rejected therefore.

5. Lastly comes the assessee's third substantive grievance that the CIT(A) has erred in law and on facts in making enhancement of Rs.44,69,550/- representing advances received against the sale of property which stood deleted by the tribunal in earlier years. Suffice to say, we are of the opinion the same deserve to be deleted on the legal aspect itself in light of CIT Vs Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC), CIT Vs Sardari Lal & Co. (2001)251ITR 864 (Del.) (FB) and CIT Vs Union Tyres (1999) 240 ITR 556 (Del.) settling the law the CIT(A)'s enactment jurisdiction does not include to adding a new source/head of income in first appellate proceedings. We adopt the same reasoning to delete the impugned enhancement addition of Rs.44,69,650/- in issue for this precise reason alone. The assessee's instant former appeal ITA NO. 1457/PUN/2017 is partly accepted in preceding terms.

6. Coming the assessee's latter appeal ITA NO. 1785/PUN/2017 , we note at the outset the same has arisen from the CIT(A)'s action levying 271(1)(c) penalty of Rs.13,81,120/-, as a consequence his foregoing enhancement addition of Rs.44,69,650/-, which itself stands deleted (supra). The assessee's instant latter appeal succeeds as the necessary corollary therefore.

7. To sum up, the assessee's former appeal ITA NO. 1457/PUN 2017 is partly allowed and latter case ITA No. 1785/pun/2017 is allowed in above terms. A Copy of this common order be placed in the respective files.

Order pronounced in the Open Court on this 23rd day of September, 2022.

Sd/-

(DR.DIPAK P.RIPOTE)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(S.S. GODARA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23rd September, 2022.

Ashwini

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) -1, Nashik.
4. The PCIT-1, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" 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.

ITA No.1457/PUN/2017 &
 ITA No. 1785/PUN/2017
 A.Y. : 2012-13
 Sunil Eknath Loharkar,

S.No.	Details	Date	Initials
1	Draft dictated on	20.07.2022	
2	Draft placed before author	21.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
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		