

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
&
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1973/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2014-15)

Income Tax Officer Ward-1, Gandhinagar 4 th Floor, Udyog Bhavan, Sector-11, Gandhinagar- 382011	बनाम/ Vs.	Shri Bhavin Mukeshbhai Patel Plot No. 1384/1, Sector-2B, Gandhinagar-382007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AKQPP8084M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mukesh Thakwani, Sr.D.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri M. K. Patel, A.R.

सुनवाई की तारीख / Date of Hearing	14/10/2022
घोषणा की तारीख /Date of Pronouncement	31/10/2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 15.06.2017 passed by the Ld. Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad arising out of the order dated 23.12.2016 passed by the Income Tax Officer, Ward-1, Gandhinagar, under Section 143(3) of the

Income Tax Act, 1961 (hereinafter referred as to 'the Act') for Assessment Year 2014-15.

2. The deletion of addition of Rs.2,64,88,300/- under Section 68 of the Act on account of undisclosed income is the subject matter before us.

3. The assessee, an individual, filed his return of income on 19.01.2015 declaring total income of Rs.29,880/- and having agricultural income of Rs.48,756/-. The case was selected for scrutiny under the CASS due to the reason of having large investment made in the property by the appellant compared to the total income. It is relevant to mention here that the assessee has also having business of brokerage of Real Estate and having a colour shop in the name of Escon Colour Company.

4. The short fact leading to the case is this that the assessee, as per AIR Information, has purchased property at Rs.5,14,75,200/- with one co-owner on 13.05.2016 lying and situated Survey No.284/B/4, Ambapur, Gandhinagar. Since, the basic details regarding the proof of investment and the source of investment was not filed by the assessee, a show cause notice dated 13.07.2016 was served, in response whereof on 20.07.2016, the assessee in writing placed this particular fact of not purchasing the property in question rather than the same was purchased by (i) Chehar Realty Pvt. Ltd. & (ii) Iscon Procon Pvt. Ltd. Since the PAN of the assessee was used as per AIR information further show cause was issued to furnish the copy of purchase deed, break-up of payment, audited balance sheet and bank statement of Iscon

Procon Pvt. Ltd. alongwith proof of transaction made by the company. It was placed on record that the assessee is the Director of the said company and the signing authority of the company and, therefore, wrongly instead of PAN of the company, the assessee's PAN was mentioned. However, such plea taken by the assessee was not found to be acceptable and hence, in the absence of source of purchase of the said property being verified the entire amount of Rs.2,64,88,300/- being the consideration amount was added to the total income of the assessee as unexplained and undisclosed income under Section 69 of the Act. The same was, in turn, deleted by the Ld.CIT(A). Hence, the instant appeal before us.

5. We have heard the parties and perused the materials available on record.

5.1 Before the Ld. CIT(A), the assessee submitted as follows:

“Kind reference is invited to our previous written submission dt. 02-05-2017, enclosures thereto and the' hearing that took place on 03-05-2017. In this regard we beg to make following further submissions for your Honour's kind consideration.

2. *In the course of hearing we have been desired to file copy of the cash book of the Company, Iscon Procon Pvt. Ltd., showing the source of investment made for purchase of the Ambapur land jointly with another company, Chehar Realty Pvt. Ltd. accordingly we are producing herewith a copy of the cash book showing availability of funds and the investment of Rs.2,72,95,650/-as appearing in the ledger account of 'Ambapur Land' at page 8 of the Paper-Book enclosed with our previous written submission referred to above.*

3. *In view of the above position and the documents filed the following indisputable facts emerge for consideration.*

- i. *That the investment for the Ambapur Land has not been made by the appellant herein, but the Company, Iscon Procon Pvt. Ltd.*
- ii. *That this factual position has been confirmed by the Company,*
- iii. *That the Company has now produced the cash book for the F. Y. 2013-14 showing the investment.*

4. Your Honour will kindly see that the learned AO has made such a huge addition in the hands of the appellant merely because through mistake his PAN came to be mentioned on the document of purchase instead of that of the Company. The confirmations filed by the Company and the other joint purchaser, Chehar Realty Pvt. Ltd. as also the document of purchase of land itself evidenced the fact that the purchase was by the Company, were ignored by the AO.

4. Your Honour will kindly appreciate that the addition made by the AO is supposed to have been made u/s. 69 of the Act. The said Section reads as under.

"SECTION 69-UNEXPLAINED INVESTMENTS

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

[Emphasis supplied]

Thus, it would be seen that the condition precedent for resorting to S. 69/69B etc. for making such an addition is that the investment has in fact been made by the assessee which is not satisfactorily explained. In the instant case the AO has made the addition without proving the fact that the appellant has made the investment. On the contrary, with the confirmations of the buyer, and the sale deed itself it was established that the investment was made by the Company. Your Honour are aware that the burden is on the Revenue to prove the fact that investment is made during the relevant financial year before the S. 69 is invoked to make the addition. In the instant case facts emerging from the record before the AO proves that the investment is not made by the appellant. In these circumstances, it is submitted that the addition is unwarranted and unjustified on facts and in law. It is therefore prayed that the addition of Rs.2,64,88,300/- made by the AO may kindly be deleted.

5. We request your Honour to kindly consider the above submissions as well as the previous submissions and to delete the addition of Rs,2,64,88,300/- and oblige."

5.2 Considering the statement made by the assessee, the Ld. CIT(A) granted relief by deleting the addition with following observations:

"6. I have considered the facts of the case, assessment order and the submission filed by the appellant. The Chehar Realty Pvt Ltd (PAN: AADCC4540K) and Iscon Procon Pvt Ltd (PAN: AACCI5097E) purchased land for Rs.5,14,75,200/-. In the sale deed, as against name of Iscon Procon, PAN of the appellant who is also Director in the said company. The AO has made addition of Rs.2,64,88,300/- being 50% of total value of land on the ground that appellant has not explained the source of payment. However, the AO has made such addition without appreciating the fact that-

- i) Land is purchased by both the companies.

- ii) *The companies have owned upon land transactions and stated that land has been purchased by them.*
- iii) *Wrong mentioning of PAN of appellant director does not mean that land is purchased by the appellant.*
- iv) *The appellant has submitted copy of land ledger account along with annual accounts wherein above land purchased is duly disclosed.*

Even the AO has not rebutted such documentary evidences which fully justify that appellant is not the owner of the property but the name of the appellant was mentioned as Director of Iscon Procon Pvt Ltd hence, addition made by the AO of Rs.2,64,88,300/-.

It is observed that the said Iscon Procon Pvt Ltd has shown purchase, of the above land in cash and shown as purchase in P&L account as well as part of closing stock. If AO is not satisfied with the sources of payment as disclosed by Iscon Procon Pvt Ltd, or applicability of provisions of section 40A(3), appropriate action may be taken in the case of said company as per provisions of law. The disallowance and addition made of Rs.2,64,88,300/- is held not justified and is directed to be deleted. Relevant ground of appeal is allowed in favour of the appellant.”

5.3 After considering the entire aspect of the matter, we find that the Ld.AO has made addition of 50% of the total value of the land as the appellant has not been able to explain the source of payment made in respect of purchase of land. However, it appears from the detailed submissions made by the assessee supported by the sufficient documents, particularly, the cash book of the company, namely, Iscon Procon Pvt. Ltd. showing the source of investment made for such purchase of land situated at Ambapur, Gandhinagar, with another company, namely, Chehar Realty Pvt. Ltd., which establishes the fact of purchase of land by both the companies. Merely, because the assessee's PAN number was mentioned as he was the Director of one of the company, the purchase cannot be said to be made by him when the purchase has been shown in the P&L account by the said company itself as well as part of the closing stock of the said company, namely, Iscon Procon Pvt. Ltd. In that view of the matter, the addition made by the Ld.AO has been rightly found to

be not justified and deleted by the Ld.CIT (A), which, in our considered opinion is just and proper so as to warrant interference. In that view of the matter, the Revenue's ground of the appeal is found to be devoid of any merit and thus dismissed.

6. In the result, Revenue's appeal is dismissed.

This Order pronounced on 31/10/2022

Sd/-
(P. M. JAGTAP)
VICE PRESIDENT
Ahmedabad; Dated 31/10/2022

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

True Copy

S. K. SINHA

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad