

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'A' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Smt. Kavitha Rajagopal (JM)

I.T.A. No. 386/Mum/2021 (A.Y. 2015-16)

Arvind Navrang Singh 1503, 1504 Thakur Jewel Thakur Village, 120 Ft. Road Kandivali East Mumbai-400 101. PAN : AGTPS2026B (Appellant)	Vs.	ACIT, CC-3 6 th Floor, A-Wing Ashar IT Park Road No. 16Z Wagle Indl. Estate Thane-West Pinocode-400 604. (Respondent)
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Assessee by	Shri Shashi Tulsian
Department by	Ms. Mamta Bansal
Date of Hearing	17.10.2022
Date of Pronouncement	04.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order passed by learned CIT (A)-11, Pune and it relates to the assessment year 2015-16. The assessee is aggrieved by the decision of the learned CIT (A) in confirming the addition of ₹ 86.15 lakhs

2. The facts relating to the case are stated in brief. The assessee herein belongs to MAAD group, which is engaged in the real estate business. The revenue carried out search and seizure action under section 132 of the Income tax Act and the assessee herein was also covered under the search. During the course of search proceedings, certain loose sheets were found, which contained financial transactions relating to a concern named M/s. Sai Sankalp Developers. Those loose sheets depicted that the assessee herein has contributed a sum of ₹ 86.75 lakhs as his capital by way of cash in the above said firm in addition to the contribution by way of cheque payments.

Hence, the assessing officer made enquiries with the assessee with regard to the entries found in the loose papers. The assessee submitted that the entries made in the loose papers were merely a proposal prepared to ascertain future requirement of cash. The AO did not accept the said explanations. He took the view that the assessee has introduced his unaccounted money in cash into the firm as capital. The AO held because the said loose sheets also depicted repayment of the above said amount. Accordingly he took the view that the entries found in the loose sheets are investments made by the assessee outside books of account. Accordingly the AO assessed the above said amount as income of the assessee in AY 2015-16.

3. Before the learned CIT(A), the assessee submitted that the loose documents are dumb documents and hence it lacks any credence. It was reiterated that the entries made therein are only proposal for making future investments, if required. In the alternative, even if the entries are taken as true, the loose sheets depict that repayment of the investment has been made on 27.5.2013, meaning thereby, the investments should have been made earlier to may 2013. In that case the impugned alleged investment could not be assessed in assessment year 2015-2016. However the learned CIT(A) did not accept the contentions of the assessee, He observed that the loose paper has been titled as "income and expenditure account" and it has been prepared till 30/6/2014. Accordingly, the Ld CIT(A) held that the transactions should be considered as having been entered on the day the above said his statement was prepared. Accordingly he confirmed the addition made by the AO.

4. We heard the parties and perused the record. The learned CIT (A) has extracted the entries found in page No. 134 of the loose papers as under:-

ARVIND SINGH

CAPITAL				RETURNED AMOUNT			
Date	Cheque	Cash	Total	Date	Cash	Cheque	Total
		8675000	86,75,000	FD		5000000	5000000
				27.5.13		1000000	1000000
						270000	270000
			----- 86,75,000 =====				----- 6270000 =====

A perusal of the above said entries would show that the Rs.86.75 lakhs has been received from the assessee and the same is not dated. The above said investment has been repaid to the extent of Rs.62.70 lakhs. Of the 3 repayments, one item is dated as 27.5.2013.

5. The assessee, first contended that the loose papers should not be given credence without corroborating the same with the any other material in this regard. In support of this proposition, the learned AR placed his reliance on the decision rendered by coordinate bench in the case of Layer exports private limited (ITA no. 2985/Mum/2011 and others)(2017)(88 taxmann.com 620)(Mum), wherein it was held as under:-

“33. In entirety of the matter, we are of the view that an addition in assessments carried out pursuant to search action u/s 132 of the Act has to be related to cogent and positive materials found during search which prove conclusively that the assessee has either earned an income or made an investment which has not been recorded in his regular books of account or that his case is covered under any of the deeming provisions contained in sections 68, 69, 69A to 69D of the Act. However, additions cannot be sustained merely on the basis of rough noting made on few loose sheets of papers unless the AO brings on record some independent and corroborative materials to prove irrefutably that the said noting reveal either unaccounted income or unaccounted investment or unaccounted expenditure of the assessee. As discussed above, in the instant case, assessments for the impugned years have been completed u/s 153A of the Act which relates to assessment in case of search or requisition. The prerequisite condition for application of Sec. 153A of the Act is a search conducted under section 132 of the Act or any requisition made under section 132A of the Act to unearth hidden income or property. Thus, the

very purpose/ essence of search conducted u/s 132 of the Act is to unearth hidden income or property or get hold of books of account or documents which has not been or will not be otherwise produced by the assessee in regular course on issue of summons or notice. In the assessee's case, as stated above, the purported search action did not lead to discovery of any unaccounted money, bullion, jewellery or other valuable article or thing. Further, no books of account revealing any undisclosed transactions of the assessee were found during the course of search. The entire assessment order revolves around scribbling in loose sheets of papers seized from premises of another person in course of search action on such other person. It is a fact that the said rough loose sheets of papers scribbled by some anonymous person and seized in course of search of another person cannot be termed as 'documents' having any evidentiary value within the meaning of section 132 or section 132A of the Act. Thus, the entire assessment u/s 153A of the Act in case of the assessee rests on shaky and incorrect foundation and thus deserves to be quashed.”

Hence the primary contention of the assessee is that the taxation authorities should not have placed reliance on these loose papers for making addition. In the alternative, it was contended that the impugned transactions did not take place in the financial year relevant to the assessment year 2015-2016 and hence the AO could not have made addition in assessment year 2015-2016.

6. We heard Ld D.R and he supported the order passed by Ld CIT(A).

7. Having heard rival contentions, we find merit with the contentions of the learned AR with regard to the period of investment. The page No. 134 of the loose paper, extracted above, contains entries with regard to the receipt of funds as well as repayment of funds from/to the assessee. One of the repayments is dated as 27. 5. 2013. Since the repayment has been made in May 2013, it is natural that the funds would have been received from the assessee earlier to May, 2013. This is for the reason that the question of repayment shall arise only if any money has been received earlier to that date. In view of the above facts, in the facts of the present case, it cannot be held that the investment of ₹ 86.15 lakhs has been made by the assessee during the financial year relevant to the assessment year 2015-16. Hence

there is no scope for making addition in the assessment year under consideration. The learned CIT(A) has taken the view that the statements have been prepared on 30.6.2014 and hence investment should be considered as having been made on the date. The date "30.6.2014" only signifies the position of accounts as on that date and it does not state the date of receipt of funds. There should not be any dispute that the assessment of unexplained investments is required to be made in the year in which the said investment is found to have been made. Hence, in our view, the above said opinion expressed by learned CIT(A) is not correct. Accordingly, in the facts and circumstances of the case, we are of the view the impugned addition of ₹ 86.75 lakhs is liable to be deleted on this reasoning alone.

8. The Ld A.R has also contended that the impugned loose papers are dumb documents and no credence should be given to it. The ratio laid down in the case of Layer exports (supra) is that the loose sheets should be corroborated with other evidences. We notice that the tax authorities have not taken any steps to corroborate the entries made in the loose sheets with any other documents/books of accounts. In fact, the repayment made on 27.5.2013 is by way of cheque. All cheque transactions shall be routed through bank, meaning thereby, the trail of funds could be ascertained. There cannot be a case of receipt of unaccounted funds by way of cash and repayment of the same by way of cheque. Thus there is no clarity in the entries made in the loose documents, in which case, they cannot be relied upon, unless the AO has brought any other material on record to prove those entries. Hence, on this count also, the impugned addition cannot be sustained.

9. Accordingly, we set aside the order passed by learned CIT (A) on this issue and direct AO to delete the impugned addition of Rs.86.75 lakhs.

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

Pronounced in the open court on 4.1.2023

Sd/-
(KAVITHA RAJAGOPAL)
Judicial Member

Sd/-
(B.R. BASAKARAN)
Accountant Member

Mumbai; Dated : 04/01/2023

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