

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH : "DB" NEW DELHI ]**

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**I.T.A. No. 3400/Del/2015 (A.Y 2008-09)**

Shri Puran Singh Verma, C/o. Hemant Arora & Co., C.As.; 1, Tyagi Road, Dehradun – 248 001.  <b>PAN No. AAIPV5562C</b>	Vs.	DCIT, Central Circle, Dehradun.
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**AND**

**I.T.A. No. 3401/Del/2015 (A.Y 2009-10)**

Shri Puran Singh Verma, C/o. Hemant Arora & Co., C.As.; 1, Tyagi Road, Dehradun – 248 001.  <b>PAN No. AAIPV5562C</b>  <b>(APPELLANT)</b>	Vs.	DCIT, Central Circle, Dehradun.  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Shri Jitan Nagpal, C. A.; &amp; Ms. Pallavi, C. A.;</b>
<b>Department by</b>	<b>Shri N.S. Jangpangi, [CIT] - D. R.;</b>

<b>Date of Hearing</b>	<b>14.12.2022</b>
<b>Date of Pronouncement</b>	<b>31.01.2023</b>

**ORDER****PER YOGESH KUMAR U.S., JM**

These two appeals are filed by the assessee against two separate orders of the ld. Commissioner of Income Tax (Appeals), Dehradun [hereinafter referred to CIT (Appeals) both dated 26.03.2015 for assessment years 2008-09 and 2009-10.

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

*“The following grounds of appeal are without prejudice to each other:*

*That in the facts and circumstances of the case and in law:*

1. *The order dated 26.03.2015 [‘the impugned order] passed under section 250(6) of the Income Tax Act, 1961 [the ‘Act] by the Ld. Commissioner of income Tax (Appeals), Dehradun [the ‘Ld. CIT(A) , is erroneous, based on surmises and conjectures, illegal, without jurisdiction and hence, bad in law.*

2. *The ld. CIT (A) has erred law and on facts in upholding the value/rate of Rs.5.75 lakhs per bigha as actual consideration received by the Appellant on the sale of their land to Madhu Gupta, inter alia, because:*

2.1 *It is not the case of the assessee that the agreement to sell dated 14.10.2007 either did not belong to him, or the contents thereof were not true or did not bear his signature and therefore the*

*ld. CIT (A) erred in arriving at a conclusion that the appellant failed to rebut the presumption created under section 292C.*

*2.2 there was a clear finding of fact recorded by the Ld. AO in the assessment order that the agreement to sell dated 14.10.2007 did not materialize which has either been totally ignored or not appreciated by the Ld. CIT(A).*

*2.3 that the Ld. CIT(A) has erred in not appreciating the fact that there was no nexus between the agreement to sale dated 14.10.2007 and the eventual sale deeds entered into between the Appellant and the ultimate buyers.*

*.4. that the Ld. CIT (A) has clearly erred in not appreciating the fact that the Appellant was made to enter into an agreement to sell dated 14.10.2007 under certain false facts and with false identities and in certain circumstances which are all part of record and neither the Ld. CIT(A) nor the Ld. AO made any attempt to investigate and ascertain correct facts by way of examination of the parties/intermediary with whom agreement was entered into by the appellant.*

*2.5 that the Ld. CIT (A) and the ld. AO has further failed to investigate whether the purported sale price stated in agreement to sell was actually the market price of the lands sold by the appellant.*

*3. Without prejudice that the Ld. CIT (A) has erred in law and on facts in confirming the addition by applying value/rate of Rs.5.75 lacs per bigha as sale consideration for other parties by invoking provisions of sec. 292C, even though there were no documents/agreements recovered during search as existing between the appellant and such third parties.”*

**ITA No. 3400/Del/2015 (A.Y 2008-09)**

3. Brief facts of the case are that, a search u/s 132 of the Income Tax Act, 1962 ("Act" for short) was initiated and took place in the business and residential premises of the assessee on 14/07/2010 in the Mahadev Builders and Properties group of cases. A notice u/s 153C of the Act was issued to the assessee on 05/03/2013 for the Assessment Year 2008-09. In response to the notice u/s 153C of the Act, the assessee submitted return of income declaring income of Rs. 35,62,689/-. Notice u/s 143(2) of the Act and the questionnaire along with notice u/s 142(1) of the Act were also issued. In response to the notices, the representative of the assessee appeared in the assessment proceedings. An assessment order came to be passed on 28/03/2013 u/s 153C read with Sec. 143(3) of the Act by assessing the income of the assessee at Rs.61,01,355/-. While making the above addition, the Ld. A.O. has observed as under:-

*"3.0. During the course of search document Annexure LP-1 pgs 5,- 10,132-137, and annexure LP-3 were found and seized pertaining to advances received for kandli land and copies of purchases deeds for various plots of kandli land by Sh.Aditya Verma, Sh.Chottey Lal Verma and the assessee. Also another document page no. 132-137 of annexure LP-3 between assessee , Sh.Aditya Verma , Sh.Chottey Lai Verma , first party, Sh.Harinder Kumar s/o Sh.Om Prakash r/o 3/24 Ravidnra puri, dehradun ,second party and Smt.Madhu Sharma d/o Sh.R.L.Sharma C-1/426, New Vasant Kunj , New Delhi third party . first party agreed to sale land to third party @ Rs.6,75,000/~per bigha out of which @ 5,75,000/- per bigha will be*

*paid to first party and @ Rs.1,00,000/- per bigha will be paid to second party for agreement .The property proposed to be sold is khasra plot no.308,309,310,314,315,316,317,321,338 and 314 area 32.43 bigha situated in mauza bilaspur, kandli ,dehradun. Vide questionnaire dated T" 5/3/2013 the assessee was asked to furnish an explanation with respect to the above transactions and how same have been accounted in his returns of income. The assessee submitted his reply that the above stated sale agreement was cancelled and part kandli land was sold to other party on which short term capital gain earned has been surrendered in the return filed u/s 153A.He has disclosed total sale consideration of Rs.3,28,000/- on sale of khasra no. 317 i.e. 1/3 rd share during the year under assessment and remaining share has been surrendered by aditya verma and chottey lal verma in their returns of income. This means that total sale consideration of Rs.9,84,000/- has been declared as per the registered sale deed by them for khasra no.17 which is approximately 4 bighas i.e @ Rs.2,50,000/- per bigha whereas per the seized sale agreement above the price fixed was Rs.5,75,000/- per bigha as Rs.1,00,000/- was the share of property dealer .Though the above sale agreement may not have materialized but it shows that the sale price that the kandli lands could fetch as per the prevailing market rates was higher than the amount declared by assessee as per the sale deed . Moreover the assessee has not furnished any evidence with respect to reasons for the fall in the value of land from the date of agreement till the date of sale .This only means that the assessee had received excess amount over and above the registered sale amount which has not been*

*declared by him in his return of income. Therefore on the basis of the rate of Rs.5,75,000/- per bigha the sale amount of the khasra no.317 for 4 bighas comes at Rs.23,00,000 and the difference in the amount already declared and actual sale price is Rs.13,16,000/-. The share of assessee being one third, an amount of Rs.4,38,666/- is added to his income and besides the amount of Rs.3,28,000/- already surrendered. Penalty u/s 271(l)(c ) of the I.T. Act, 1961 is also initiated furnishing of inaccurate particulars of income and concealment.*

*(Addition: Rs. 7,66,666/-)*

*3.1 Information was passed by the ACIT (Central), Meerut on the basis of a document found and seized during the course of search u/s 132 of the i.T.Act,1961 from the premises of M/s prateek Resorts and builders Pvt. Ltd in the case of assessee regarding a sale transaction executed by him through power of attorney builder Sh.Harish Raturi. As per the copy of sale deed dated 2/7/2007 provided by the assessee , the sale was executed between M/s G.M.S.Builders and developers, 111/2,rajpur road, dehradun through director Sh.Govind Petwal and 14 parties through POA Sh.Harish Raturi. As per this agreement, seller no.9 i.e. the assessee had purchased the land 246 khasra ,mauza dhoran khaas from Sh.Durga Verma .The assessee received two payments of Rs.29 lakhs vide cheque no.018307 dated 11/4/07 and Rs.21 lakhs vide cheque no 018303 dated 10/4/07. When the assessee was asked to explain above transaction , he surrendered an amount of Rs.29 lakhs as said consideration. However for Rs.21 lakhs he stated the same not to be received by him but Sh.Durga Verma. The contention*

*of assessee is found to be not acceptable because it is clearly mentioned in the sale deed that the above land has been sold by the assessee only. He had purchased it from Sh.Durga verma which has been confirmed by Sh.Durga verma . Therefore in view of the above facts the amount of Rs.50,00,000/- is added as undisclosed income of the assessee . And since he had taken exemption u/s 54 with respect to the purchase of above land from Durga verma but sold the land before the completion of statutory time as given in the provisions of section 54, the entire amount of Rs.50 lakhs is liable for taxation. Penalty u/s 271(l)(c) of the I.T.Act,1961 is also initiated for furnishing of inaccurate particulars of income and concealment.*

*(Addition: Rs. 50,00,000/-)".*

4. As against the assessment order dated 28/03/2013, the assessee preferred an appeal before the CIT(A), the Ld.CIT(A) vide order dated 26/03/2015 dismissed the appeal by upholding the addition made by the Ld. A.O.
5. Aggrieved by the order of the Ld.CIT(A) dated 26/03/2015, the assessee has preferred the present appeal on the grounds mentioned above.
6. We have heard the parties perused the material available on record and gave our thoughtful consideration.
7. Ground No. 1 is general in nature which requires no adjudication. The Ground No.2 and its sub grounds are regarding upholding the value/rate of Rs. 5.75 lakhs per bigha as actual consideration received by the Assessee on the sale of the land to Madhu Gupta. The Ld. Counsel for the assessee while addressing the Ground No. 2 and its sub ground, submitted that the Ld.CIT(A) has erred in law and on facts in upholding the value/rate of Rs.

5.75 lacs per bigha as actual consideration received by the assessee on the sale of their land to Madhu Gupta inter-alia because it is not the case of the assessee that agreement the sale dated 14/10/2007 either did not belong to him or contends thereof were not true or did not bear signature. Therefore, submitted that the Ld.CIT(A) committed an error by observing that the assessee failed to rebut the presumption created u/s 292C of the Act. More so, when there is a clear finding of fact recorded by the A.O. that agreement to sale dated 14/10/20107 did not materialized and erroneously not appreciating the fact that there was no nexus between agreement to sale dated 14/10/2007 and eventual sale deed entered into between assessee and multiple buyers. The Ld. Counsel for the assessee has also submitted that the Ld. A.O. has failed to investigate whether the purported sale price stated in the agreement to sale was actual the market price of the land sold to the appellant or not. Therefore submitted that, the order of the CIT(A) requires interference. The Ld. Counsel further submitted that the assessee has refunded the advance amount and the said fact has been admitted by the recipient and an affidavit has been filed to that effect. Ld. Counsel for the assessee has also taken us through the synopsis and paper book filed by the assessee and prayed for allowing the Appeal.

8. Per contra, the Ld. DR submitted that the agreement to sale is signed document and there is no written document to show that the Tripartite agreement to sell has been cancelled and the assessee has not rebutted the presumption u/s 292C of the Act. Therefore, by relying on the Orders of the lower authorities prayed for dismissal of the Appeal.

9. We have heard the parties perused the material available on record and gave our thoughtful consideration.

10. During the search conducted u/s 132 of the Act on the business premises residential premises of the assessee dated 14/07/2010 in Mahadev Builders and Promoters Group cases, a tripartite agreement to sale dated 14/10/2017 has been found which was entered into jointly with Shri. Chhotey Lal Verma, Shri. Aditya Verma and Shri. Puran Singh Verma along with Smt. Madhu Sharma (Purchaser). As per the tripartite agreement, the assessee along with two others being the joint owners, agreed to sell 32.43 bigha of their land situated in Mauza Vilaspur Village Khandli, on the outskirts of Dehradun at 6.75 lakhs per bigha and received a total sum of Rs. 30 lakhs in following manners:-

<i>Date of receipt</i>	<i>Amount (Rs.)</i>	<i>Mode</i>
---	1,00,000	Cash
14.08.2007	1,00,000	Cheque
11.10.2007	2,00,000	Cheque No. 203906
11.10.2007	2,00,000	Cheque No. 203908
11.10.2007	1,00,000	Cheque No. 203907
14.10.2007	23,00,000	Cash

11. It is the specific case of the assessee that the land of 32.43 Bigha situated at Mauza Bilaspur, Village, Khandli was purchased jointly for Rs. 41.51 lakhs i.e. at Rs.1.17 lakh per bigha from one Mr. Harinder Kumar in the year 2006. The copy of the sale deeds are produced at page No. 1 to 115 of Paper Book-II. After the purchase of the said land, the assessee and other joint owners have realized that the land is encircled by the lands owned by

Harinder Kumar himself. Further, the tripartite agreement to sell dated 14-10-2007 entered into between Shri. Chhotey Lal Verma, Shri. Aditya Verma and Shri. Puran Singh Verma along with Smt. Madhu Sharma (Purchaser) did not go through and the same was cancelled within one month of entering the said tripartite agreement and as per the cancellation of tripartite agreement, it was agreed that the assessee along with joint owners would refund Rs. 25 lakhs and the balance of Rs. 5 lacs was retained as advanced sale consideration of the small portion of the said land to Smt. Madhu Gupta who has impersonated as Madhu Sharma. The details of the refund made by the assessee along with other two joint owners on various dates as under:-

<i>Date</i>	<i>Amount (Rs.)</i>	<i>Mode</i>
<i>30/11/2007</i>	<i>23,00,000</i>	<i>Cash</i>
<i>05/12/2007</i>	<i>1,00,000</i>	<i>Cash</i>
<i>10/01/2008</i>	<i>1,00,000</i>	<i>Cash</i>

12. It is the contention of the Assessee that the said Ms. Madhu Gupta has impersonated herself as Madhu Sharma has induced to accept her offer as per tripartite agreement and after the cancellation of the said Tripartite Agreement to sell, the assessee along with the joint owners have sold a part of the land i.e. Khasra No. 317 constituting area of 4 bighas approximately to Smt. Madhu Gupta and the capital gain on the said sale was offered to tax u/s 50C and the due sale consideration was Rs. 9,84,000/- (i.e Rs. 2,50,000/- per bigha approximately) to substantiate the same a copy of the sale deed for the Khasra No. 317 has been placed by the assessee at Page No. 121-133 of paper book- II. Further, the assessee along with other joint owners have executed sale deed to various parties from 2007 to 2011 in respect of 25 bighas out of total extent of 32 bighas and produced before the Lower Authorities.

13. The Ld. CIT(A), while negating the contention of the Assessee that 'the Tripartite agreement has been cancelled and the advance sale consideration has been refunded to Smt. Madhu Shrama' observed that 'even though the Assessee claimed that the agreement to sell was cancelled, there is no evidence that the advance money received was ever refunded to the other party' and ultimately dismissed the Appeal filed by the Assessee. However, before us, the assessee has submitted that Ms. Madhu Gupta has impersonated herself as Madhu Sharma and entered into Tripartite Agreement to Sell and upon the cancellation of tripartite agreement dated 14/10/2007, the assessee along with other joint owners have refunded the amounts and the balance remaining amount of Rs. 5 lacs was adjusted against the sale deed executed subsequently in favour of Smt. Madhu Gupta. The said facts have been admitted by the said Madhu Gupta on oath in an affidavit and the affidavit sworn by Smt. Madhu Guptha dated 14/03/2019 is reproduced hereunder:-

**AFFIDAVIT**

I Madhu Gupta, W/o Shri Sanjeev Gupta R/o 9/1 Anand Vihar, Jakhn Dehradun do hereby solemnly affirm and state on oath as under:

1. That I alongwith my husband Shri Sanjeev Gupta, was interested in acquiring/ aggregating land at Village Kandli, District Dehradun.
2. That in the month of September, 2007, we were approached by Sh. Harinder Kumar S/o Sh. Om Prakash R/o 3/24 Ravinder Pun, Dehradun wherein he offered to broker a deal for acquisition of land at Village Kandli, District Dehradun jointly owned by Sh. Chotley Lal Verma, Sh. Puran Singh Verma and Sh. Aditya Verma ("Sellers") aggregating to about 32.43 bighas of land.
3. That the land owned by the Sellers was encroached by the lands owned by Harinder Kumar and his family members.
4. That accordingly an Agreement to sell dated 14/10/2007 was executed with the Sellers by me for purchasing land in Kandli Dist. Dehradun where Sh. Harinder Kumar was also a party to such Agreement and was to receive a consideration of Rs. 1 lacs per bigha for giving a right to passage to the land of the Sellers as his land encroached the land owned by the Sellers.
5. That in such Agreement to sell, I gave my maiden name as Madhu Shama D/o R. L. Sharma R/o C-142B, New Vasant Kunj, New Delhi.
6. That due to certain disputes with regard to high consideration as demanded by the Sellers when compared to lower prevailing market prices of such land, the Agreement to sell dated 14/10/2007 could not materialize and the following amounts paid under the Agreement were refunded to me by the Sellers as per details given below:

Date	Mode	Amount (Rs.)	Remarks
05.12.2007	Cash	1,00,000	Advance amount paid earlier refunded
10.01.2008	Cash	1,00,000	Advance amount paid earlier refunded
30.11.2007	Cash	23,00,000	Advance amount paid earlier refunded



*Handwritten signature*

7. That upon cancellation of Agreement to sell dated 14/10/2007 and refund of the above amounts, the balance remaining amount of Rs. 5,00,000 as paid under the Agreement to sell dated 14/10/2007, were adjusted against the following Sale deed as executed by me with the Sellers during FY 2008-09 and for consideration amounts as stated in such Sale deed as per market prices as prevailing at the relevant time.

Date of agreement	Khata No.	Sale consideration (Rs.)	Amount adjusted (Rs.)
07.08.2008	336	5,35,000	5,00,000

Details of amount adjusted -

- Rs. 1,00,000 vide cheque no. 203908 dated 11.10.2007 drawn on Allahabad Bank, Dehradun
- Rs. 2,00,000 vide cheque no. 203906 dated 11.10.2007 drawn on Allahabad Bank, Dehradun
- Rs. 2,00,000 vide cheque no. 203907 dated 11.10.2007 drawn on Allahabad Bank, Dehradun

DEPONENT

**VERIFICATION**

That the facts mentioned in para 1 to 7 above are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

Verified and signed at Dehradun on this 14<sup>th</sup> day of March, 2019.



DEPONENT  
This affidavit was affirmed by me by *[Signature]* who is *[Signature]* at Dehradun on *[Signature]*

14. By considering the contents of the Affidavit sworn by Smt. Madhu Gupta, wherein the deponent has stated that she has received back the advance Sale consideration which was the subject matter of the Tripartite Agreement dated 14-10-2007 and also considering the fact that the Sale has not been materialized as per the tripartite Agreement to sell dated 14-10-2007 and only a portion of the land has been purchased by the Madhu Gupta, and out of total extent of 32 bighas 25 bighas of land have been sold other than Madhu Gupta, in view of the discussion made in the above paragraphs and considering the facts and circumstances of the case, we find no reason to make addition/sustain in the hands of the assessee. Thus, addition made by the A.O. which was sustained by the Ld.CIT(A) is hereby deleted. Accordingly, grounds of appeal of the assessee are allowed. Accordingly, we allow the Ground No. 2 and its sub Grounds.

15. In the result, appeal in ITA No. 3400/DDN/2015 (A.Y 2008-09) filed by the assessee is allowed.

**ITA No. 3401/DDN/2015 (A.Y 2009-10)**

16. In the instant appeal, the assessee raised similar grounds that of ITA No. 3400/DDN/2015. The Ld. A.O. has made the similar additions in respect of the land sold by the Assessee along with the joint owners during the Financial Year 2008-09 relevant to AY 2009-10. Since the facts and circumstances of the present Appeal and that of ITA No. 3400/DDN/2015 are one and the same and since we have already dealt with the issue in detail and deleted the addition in ITA No. 3400/DDN/2015, by following the consistency, for the reasons mentioned thereon, the addition made by the A.O. which was sustained by the CIT(A) for the AY- 2009-10 is also deleted by allowing the grounds of Appeal No. 2 and its sub grounds of the Assessee in ITA No. ITA No. 3401/DDN/2015.

17. In the result, appeal filed by the assessee in 3401/DDN/2015 (A.Y 2009-10) is allowed.

19. In the result, Appeal filed by the assessee in ITA No. 3401/DDN/2015 is allowed.

**Order pronounced in the Open Court on :31<sup>st</sup> January, 2023**

**Sd/-  
(B. R. R. KUMAR)  
ACCOUNTANT MEMBER**

**Sd/-  
(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

Dated : 31 /01/2023

*\*R.N\**

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI