

आयकर अपीलीय अधिकरण न्यायपीठ नागपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH : : NAGPUR

(THROUGH VIRTUAL HEARING)

BEFORE S.S.GODARA, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No's.02, 476 & 477/NAG/2016
निर्धारण वर्ष / Assessment Years : 2011-12, 2012-13 & 2013-14

The Dy.Commissioner of Income Tax, Circle-1, Nagpur.	Vs	M/s.Unique Realities Builders & Developers, Shop No.4, Golden Palace Complex, WHV Road, Near Sudama Talkies, Dharampeth, Nagpur – 440010. PAN: AAPMF 1863 Q
Appellant/ Revenue		Respondent / Assessee

Assessee by	Smt. Veena Agarwal – AR
Revenue by	Shri Kailash Kanojiya – DR
Date of hearing	17/11/2022
Date of pronouncement	25/01/2023

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

These three appeals filed by the Revenue against the separate orders of ld.CIT(A)-I, Nagpur dated 26.10.2015, 28.06.2016(for two A.Y's) emanating from the order of the Assessing Officer(AO) passed under section 143(3) of the Income Tax Act, 1961 dated 20.03.2014, 27.03.2015 & 17.03.2016, for A.Y. 2011-12, 2012-13 and 2013-14 respectively. These three appeals were heard together and decided by common order as the issue involved is same in all

three appeals. Therefore, for the sake of convenience we take the appeal for A.Y.2012-13 as lead case. The Revenue for A.Y. 2012-13 has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law, the Ld.CIT(Appeals) has erred in deleting the addition of Rs.3,98,54,310/- on account of unexplained expenditure made by the Assessing Officer u/s.69C of the I.T.Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld.CIT(Appeals) has erred in estimating the net profit @8% of gross receipts of Rs.11,26,66,169/- by brushing aside the evidence of unexplained expenditure as above as per the impounded documents.

3. Any other ground which may be raised during hearing with the permission of the Hon'ble ITAT.”

2. **Brief facts:** The assessee is a partnership firm. It filed Return of Income for AY 2012-13 on 30/09/2012 showing total income of Rs.13,43,930/-.

2.1 In this case, survey u/s.133A of the Act was conducted by Income tax department on 25/07/2013 in the business premises of the assessee. During the survey the ITO impounded the books which were inventoried as Annexure A from 1-6 documents/books and Annexure B from 1-28 books/documents. During the survey statement of Mr.Chandrakant Patle, Partner of assessee, was recorded. In the statement, Mr.Patle offered additional income of Rs.3 crores. The relevant question and answer are reproduced here as

under :

“Q.5 During the course of survey proceedings you had voluntarily offered additional income of Rs.,3,00,00,000/- (Rupees three crores only) in different A.Ys. Kindly confirm your offer. Alto state the A.Yrs in which you have offered the additional income.

Ans.: Yes, I confirm that our firm has offered additional income of Rs. 3,00,00,000/- (Rupees three crores only). The same is offered in the following

<i>F.Y.</i>	<i>A.Y.</i>	<i>Amount (Rs.)</i>
<i>2010-11</i>	<i>2011-12</i>	<i>Rs. 10 lakhs</i>
<i>2011-12</i>	<i>2012-13</i>	<i>Rs. 15 lakhs</i>
<i>2012-13</i>	<i>2013-14</i>	<i>Rs. 250 lakhs</i>
<i>2013-14</i>	<i>2014-15</i>	<i>Rs. 25 lakhs</i>
<u><i>TOTAL</i></u>		<u><i>Rs. 300 lakhs</i></u>

I am furnishing you a separate letter to this effect offering the additional income of Rs. Three crores.”

2.2 The Assessing Officer(AO), ITO, Ward-1(4) passed assessment order for AY 2012-13 after giving opportunity to the assessee. The AO has referred to impounded documents number A-1 and A-6 in the assessment order for AY 2012-13. AO had asked the assessee regarding the cash payments made for purchasing land as appearing in the impounded documents referred by AO in the notice. The Assessee denied any such cash payments, assessee also filed affidavit of Govind Realities and Mr.Yemsanwar, who denied any cash payments received by them from assessee for purchase of land by assessee from them. The AO concluded in the assessment order based on the impounded documents A-1 and A-6, that assessee had paid cash Rs.3,98,54,310/- for purchase of land mentioned in the

documents. AO rejected the submission of the assessee and affidavits on the ground that the impounded pages referred by the AO shows cash payments and cheque payments, the cheques payments matches with the bank statement of the assessee, hence AO held that the cash payments appearing on those pages are also true. Accordingly, the AO made addition u/s.69C of Rs.3,98,54,310/-. AO also made disallowance u/s.40A(3) of Rs.1,55,806/-.

2.3 Aggrieved by the order of the AO, the assessee filed appeal before the Commissioner of Income Tax (Appeals). Before, the Id.CIT(A), the assessee, without prejudiced to the submission made before AO, pleaded that the source of the cash payments can be explained from the impounded documents itself. The Assessee submitted before the Ld.CIT(A) that assessee had received cash from sale of plots which was utilized for purchase of plots. The assessee submitted before the Ld.CIT(A) that assessee purchases land , then converts it into plots and sales. The assessee submitted that all these facts emerge from the impounded documents. The assessee submitted before the Ld.CIT(A), which has been reproduced by the Id.CIT(A) in para 6.7, that assessee had received Rs.4,86,33,651/- in cash over and above the cheque amounts mentioned in the agreements ,from sale of land during the year and the said cash had been utilized for purchase of land referred by the AO. The

Ld.CIT(A) accepted the contention of the assessee , rejected the books and estimated the profit at the rate of 8% on total of sale as shown by assessee in the P&L account plus the unaccounted cash sale of Rs.4,86,33,651/-. (64032516 + 48633653 = 11,26,66,169/-). The Ld.CIT(A) arrived at Rs.90,13,293/- (8% of 11,26,66,169/-) as total income of the assessee. Ld.CIT(A) confirmed the addition made u/s 40A(3).

3. Aggrieved by the order of the Ld.CIT(A) the revenue has filed appeal before this tribunal. No cross appeal has been filed by the assessee.

Submission of Ld.AR:

4. Ld. AR submitted that the AO had merely considered the annexure A1 and A6 but had not considered the annexure B documents. Ld. AR submitted that assessee had made cash payments for purchase of land but assessee had also received the cash payments from sale of land. All these facts emerge from the impounded documents if all the documents are considered. Ld.AR submitted copy of documents number B-4 page 44 and 66 to demonstrate that these two pages shows cash receipt on various dates for sale of Plot No.89,94,60. The ld.AR submitted that these two pages have been submitted to demonstrate that assessee had received cash on sale of plot. The ld.AR also submitted on sample basis copies of some more papers. The said cash was utilized for purchases

of land. The Ld.AR submitted that there are voluminous documents in Annexure B which has not been considered by the AO at all. Therefore, ld.AR pleaded that the order of the ld.CIT(A) may be upheld.

Submission of LD.DR:

5. The Ld.DR relied on the order of the AO. The Ld. DR submitted that the additions are based on the impounded documents appearing in Annexure A. This document shows both cheque payments as well as cash payments. The document has to be read in totality. Since, the cheque payments have been accepted by the assessee, the cash payments appearing on the same pages are presumed to be correct. Ld.DR relied on section 292C of the Act. Ld.DR also invited our attention to the statement recorded during the survey and during the assessment proceedings of the partner. The partner had voluntarily declared the additional income. Ld.DR also submitted that the Ld.CIT(A) had not called for remand report for AY 2012-13,2013-14 from the AO before considering the submission of the assessee regarding receipt of cash.

Decision and Discussion:

6. We have heard both the parties and perused the records. It is fact that there are cash payments appearing in Annexure A1, A6 which have been reproduced by the AO in the assessment order. However, the assessee has claimed that AO has not considered the

annexure B of the impounded documents.As it appears from the order of CIT(A), that Ld.CIT(A) has not verified the annexure B of his own and merely relied on the submission of the assessee. It is seen from the CIT(A)'s order that no remand report was called for from the AO for AY 2012-13 and 2013-14.

7 During the hearing before us, we asked the Ld.AR to show us the cash book for the relevant period. However, the Ld.AR submitted that she had not brought the cash book for the hearing but it is available with the assessee.

7.1 We have gone through the statement recorded during the survey, the partner of the assessee had declared Rs.3 crores as additional income for various years as under :

FY 2010-11	Rs.10 lacs
FY 2011-12	Rs.15 lacs
FY 2012-13	Rs.250 lacs
FY 2013-14	Rs.25 lacs

7.2 The partner of the assessee had admitted cash payments during the survey. The relevant part of the statement is as under:

“Q3. From the books of a/cs impounded during the survey it is seen that your firm has paid huge cash for purchases of plots. Kindly explain.

Ans.: the firm has made some cash payments to the different sellers of the land. The same was paid as was necessitated by the urgent demands of the vendors. Further, it is submitted that some of the

vendors are purely agriculturalists and they even do not have bank a/cs. Also it is submitted here that our major business is carried out on Sundays and holidays, hence some of the payments which are made in cash are made on Sundays and holidays.”

7.3 It is also a fact that no documentary evidence has been submitted by the assessee before ITAT, Id.CIT(A), to demonstrate that assessee has retracted his statement.

7.4 In these facts and circumstances of the case, since the CIT(A) has not offered opportunity to the AO while accepting the submission of the assessee for receipt of cash, also the AO has not discussed anything about the documents impounded in annexure B, it shows that both authorities have failed in their responsibilities. Even the assessee had not bothered to explain source of cash during Assessment Proceedings & during Survey Proceedings. As per the Survey Manual published by the CBDT, at the time of Survey, the authorities have to draw a tentative trading account based on the documents found. There is no discussion of such Tentative trading account drawn at the time of survey. No specific questions have been asked to the partners of the assessee or employee of the assessee to explain each and every document impounded during the survey. The Id.CIT(A) have coterminous power but even he has not discussed all relevant documents. None has discussed about the Cash Book. Even before us the AR or the DR has not shown all the documents. The

appeal was filed in the year 2016 but till date neither the revenue nor the assessee has filed paper book containing all the relevant documents. The assessee in his submission made before us has merely submitted few papers as sample. One cannot arrive at conclusion based on the sample papers. The aim of the assessment is to arrive at the correct taxable income of the assessee. The appeal was filed in 2016 hence it falls in the category of old appeals. Therefore, on the facts and circumstances of this case, we set aside the order of the AO qua the addition of Rs.3,98,54,310/- made u/s.69C, to the file of the AO for de-novo adjudication. AO shall take into consideration all impounded documents and all relevant facts, documents. AO shall conduct necessary enquiries if deem fit. The AO shall provide opportunity to the assessee and the Assessee shall submit explanation with the first opportunity. Therefore, the grounds of appeal raised by the revenue are allowed for statistical purpose as discussed above.

7.5 In the result, appeal of the Revenue in ITA No.476/PUN/2016 is allowed for statistical purpose.

ITA No.477/NAG/2016 for AY 2013-14 :

8. The appeal for AY 2013-14 was heard with appeal for AY 2012-13 discussed above. In AY 2013-14, AO has discussed the impounded documents and arrived at the conclusion that assessee

had made cash payments of Rs.1,90,34,000/- but made addition of Rs.2.50 crores as the partner of the assessee had made the declaration of Rs.2.50 crores for the year under consideration.

8.1 The Ld.CIT(A) estimated the income at 8% as has been done for AY 2012-13.

9. Since, facts of the year 2013-14 are identical to facts of AY 2012-13, the survey is same, we set aside the order of the AO for AY 2013-14 for the elaborate reasons discussed above for AY 2012-13 to the file of the AO for de-novo adjudication. AO shall provide opportunity to the assessee. Accordingly, the grounds of appeal raised by Revenue for AY 2013-14 are allowed for statistical purpose.

ITA No.02/NAG/2016 for AY 2011-12 :

10. The appeal for AY 2011-12 was heard with appeal for AY 2012-12 and 2013-14. The additions made by the AO in all these three years are based on the impounded documents impounded during the Survey and Statement recorded during the survey which was conducted on 25/07/2013. For AY 2011-12, the AO has made additions of Rs.2,72,88,763/- u/s.69C and Rs.5,80,228 u/s.40A(3). We have given elaborate reason while setting aside the order for AY 2012-13 to the file of the AO for de-nova adjudication. Since all

these additions were based on the impounded documents impounded during survey on 25/07/2013, in the interest of justice and for consistency, we set aside the order of the AO for AY 2011-12 with reference to addition of Rs.2,72,88,63/- made u/s.69C of the Act by the AO to the file of the AO for de-novo adjudication. The AO shall provide opportunity to the assessee. Thus, the grounds of appeal raised by the Revenue for AY 2011-12 are allowed for statistical purpose.

11. To sum up, all three appeals of the Revenue are allowed for statistical purpose.

Order pronounced in the open Court on 25th January, 2023.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 25th Jan, 2023/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर बेंच,
नागपुर/ DR, ITAT, Bench, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.