

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
Ms. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No.3146/DEL/2019
[Assessment Year: 2006-07]**

Income Tax Officer, Ward-31(4), Room No.1209, 12 th Floor, Civic Centre, Minto Road, New Delhi-110002	Vs	Smt. Damini Wadhwa, 27, Western Avenue, Lance W-22, Sainik Farms, New Delhi-110062
		PAN-AABPW1928N
Revenue		Assessee

Revenue by	Sh. Vipul Kashyap, Sr. DR
Assessee by	Sh. Y.K. Kapoor, Adv.

Date of Hearing	17.01.2023
Date of Pronouncement	02.02.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of Id. CIT (Appeals)-15, New Delhi, dated 25.01.2019 for the Assessment Year 2006-07.

2. The grounds of appeal read as under:-

1. *Whether the Ld.CIT(A) is correct in deleting the addition on account of undisclosed capital gain without appreciating the fact that during search operation conducted by DRI, Mumbai, excel sheet was found from the possession of Zaver Cyprus Dadlani, wherein it was categorically mentioned that sale proceeds of the property sold were also in cash and not recorded in the sale deeds.*

2. *Whether the Ld.CIT(A) is correct in deleting the addition on account of undisclosed capital gain without appreciating the fact that both M/s Saturn Advisory Services Pvt. Ltd. and*

M/s Merino Realtors Pvt. Ltd. were purchasers, whereas the assessee is seller, therefore the decision in the case of purchasers could not be applied in the case of seller.

3. The Ld.CIT(A) erred in not appreciating the fact the seized documents have an evidentiary value. From the seized documents it is seen that amount stated therein to be paid by DD/Cheque exactly matches the amount mentioned in the Registered Deed which further emphasizes that the cash transactions mentioned in the seized documents took place and should therefore be taken to be part of sale consideration for computation of.”

3. Brief facts of the case are that the Assessing Officer noted that assessment was reopened in this case on the basis of information received from Investigation Wing of the Directorate of Income Tax that the assessee had sold her share in land situated Maidan Garhi for Rs.1,54,43,000/- (Rs.36 lakh through cheque and Rs.1,18,43,000/- through cash). Hence, capital gain arising on such transfer has escaped. On query in this regard, the assessee admitted to have received only Rs.36 lakh through cheque and denied any cash through cash payment. However, the AO was not satisfied with. The AO referred to some electronic storage devices recovered from the residential premises of Ms. Zaver Cyrus Dadina. He further referred to perusal of Excel Sheets enclosed along with ITO (Inv.) letter, in which a sum of Rs.1,18,43,000/- in cash and Rs.36 lakh as cheque. Further, the AO receipt information that the assessee has sold property to M/s Saturn Advisory Pvt. Ltd. for a total consideration of Rs.45,38,000/- (Rs.14,50,000/- through DD and Rs.30,88,000/- in cash). He noted that the assessee has declared only DD amount however cash deposit has not declared. The AO proceeded to add this amount to assessee's income.

4. Against this order, the assessee appealed before the Ld. CIT(A).
5. After reproducing the submission of the assessee in a short order, the Ld. CIT(A) deleted the addition by noting that in appellate proceedings, both additions in the hands of the other parties have been deleted. In this regard, the order of the Ld. CIT(A) may be read as under:-

*“4. **DECISION:** The contention of the Appellant has been considered and the order of AO has also been perused. It is seen that this case belongs to the group cases of Col. Mahavir Singh Dagar and Sh. Shukhbir Singh Dagar for the same AY 2006-07. In both these group cases, the appellate Orders have already been passed on 14.09.2018 by my predecessor in appeals NOs. 111/16-17/CIT (A)-15 and 110/16-17/CIT (A)- 15 respectively. In the appellate orders of these group cases, after detailed discussion in the forgoing paras of the orders, it has been held in para 11.12 that the capital gains on the sale of land is to be calculated on the basis of sale consideration mentioned in the sale deed. Since, this case is also part of the same group, it will not be fruitful and worthwhile to repeat the same line of argument here again, therefore, by respectfully following the orders of my predecessor in the group cases of Col. Mahavir Singh Dagar and Sh. Shukhbir Singh Dagar for the same AY 2006-07, the AO is directed to rework the capital gain only on the basis of sale consideration mentioned in the sale deed.”*

6. Against this order, the Revenue is in appeal before us.
7. We have heard both the parties and perused the records. The Id. DR has relied upon the order of the AO and submitted that the addition have been made after discovery of incriminating material. Hence, he pleaded that the additions made by the AO should be upheld.

8. Per Contra, the Ld. Counsel for the assessee referred to the order of the Ld. CIT(A) and submitted that in other parties case, both additions have been deleted. Hence, he submitted that the order of the Ld. CIT(A) needs to be upheld. He further submitted that in the case of one of the parties M/s Saturn Advisory Services Pvt. Ltd. the ITAT Mumbai in ITA No.802/Mum/2015, AY 2006-07, vide order dated 12.09.2017 has deleted the same addition, which in present case, the AO has also made additions in the case of the assessee. The ITAT has held as under:-

“2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee purchase a property at Delhi, did not start any business activity and was also not having any other source of income. The assessee acquired loan of Rs.40 lakhs from Strategic Group Trust for purchase of this property worth of Rs.39,25,000/-. The assessee declared loss of Rs.7276/- in its return, which was processed u/s 143(1) of the Act. There was no scrutiny assessment in the present assessment year. The Ld. Assessing Officer received information from DRI, Mumbai, with respect to demand draft/cash transaction for purchase of the said property vide letter dated 15/03/2013. Search was carried out at the residential premises of M/s Zaver Cyrus Dadina, Nitco’s Dy. Manager (Accounts), wherein, a hard disc and a pen drive were recovered. In the hard disc, there were details of purchase and purchase of property /payments in Maidan Gadi (Popularly known Sanik Farm) in Delhi. As per the information, certain portion of cash was transacted along with demand draft for purchase of the property. The Ld. Assessing Officer, on the basis of the information, reopened the assessment and made the addition.

2.2. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the factual matrix was considered and ultimately the addition made by the Assessing Officer was not found sustainable, resultantly deleted, which is under challenge before this Tribunal.

2.3. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, it seems that the whole addition was made by the Assessing Officer on the basis of information received from the investigation wing and was purely based upon presumption, because, no documentary evidence was brought on record substantiating that any cash was transacted in the purchase. The information received by the Assessing Officer was expected to be corroborated with evidence. It is an established law that the conditions of taxability or the presumption of on money transaction has to be proved by the Revenue and the burden so lies upon the Department was never discharged. In such a situation the ratio laid down by Hon'ble Apex Court in K.P. Verghese vs Income Tax Officer clearly supports the case of the assessee.”

9. Thereafter, the ITAT referred several case laws and finally concluded as under:-

“2.9. Totality of facts, if kept in juxtaposition, with the facts and the ratio laid down in the aforesaid cases are analyzed, the Ld. Assessing Officer is asking the assessee to prove the negative which is not permitted and the whole assessee of the Department is based upon the presumption that the assessee could not explain that no cash was transacted in the sale consideration. It is also noted that the Ld. Commissioner of Income Tax (Appeal) has duly analyzed the statement of Shri Atul Sud, Ms. Zaver Cyrus Dadina, Dy. Manager (Accounts) of NITCO, from whose premises the hard disc was found and seized and Shri Atul Sud admitted to have purchase the land from the concerned two parties on a consideration of Rs.39 to 40 lakhs and payments was made by demand draft he has nowhere admitted/tendered that any cash payments was made. Likewise, Ms. Zaver Cyrus Dadina has specifically tendered that she had no role to play either to issue cheque or cash. In reply to question no.12, whether any cash payment was made, she specifically denied of any transaction. A commission u/s 131(1)(d) of the Act was issued and the assessee was not able to provide any details/information/confirmation in this regard. Totality of

facts clearly indicates that the Ld. Assessing Officer could not collect any evidence to substantiate that in fact any cash was transacted for purchase of property. The case of the assessee is further fortified by the facts that the demand drafts issued for purchase of property were reflected in the documents, no statement was recorded by DRI either of Ms. Zaver Cyrus Dadina or of any other person during the course of search in respect of the details contained in the hard disc. Even, the information received from the investigation wing was never corroborated with any evidence, statement that any cash changed hands for the transaction. When the Ld. Assessing Officer recorded the statement of Shri Atul Sud, Director of the assessee company, though he admitted the transaction to be made through demand draft but he never tendered that any cash was transacted. Ms. Zaver Cyrus Dadina completely expressed or ignorance with regard to details of land dealings as has been alleged. The efforts of Assessing Officer to record the statement of Miss Damini Vadhwā, and Miss Reeta Bhatia also could not provide any information leading to the addition. The seized material/print out was not in the handwriting of the assessee and even there is no material to suggest that the seized material was maintained either by the assessee or it's of or employees. Even the statement of Rajaratanam was discarded by the Ld. Commissioner of Income Tax (Appeal) as the floor price, fixed by the authorities, for such property was found much lower than the value. Considering the factual matrix and the judicial pronouncements, discussed hereinabove, we find no infirmity in the conclusion of the Ld. First Appellate Authority. Our view is further fortified by the fact that the concerned data was even not found from the premises of the assessee and further the assessee has not started any substantial business activity and for acquisition of the land to inter corporate loan of Rs.40 lakh from Strategic Capital Corporation. Thus, the presumption of the Ld. Assessing Officer for making the addition on presumptive basis was rightly deleted by the Ld. Commissioner of Income Tax (Appeal). Thus, addition cannot be made on the basis of presumption, which cannot be sustained in law. Even otherwise, presumption cannot take the shape of the evidence however strong it may be unless and until such presumption or statement, if any, is corroborated with material evidence. The ratio laid down in Dr. Anita Sahai vs DIT 266 ITR 597 (All.), Dheerajlal Girdharilal vs DCIT 26 ITR 734 (SC), CIT vs

Calcutta Discount Co. Ltd. 91 ITR 8(SC), CIT vs Raman & Co. 67 ITR 11 (SC), Modi Creations Pvt. Ltd. vs Income Tax Officer (2011) 13 taxman.com 114(Del.), CIT vs Shree Rama Multitech Ltd. (2013) 34 taxman.com 32 (Guj.) and CIT vs Devine Leasing and Finance Ltd. 158 taxman 440 (Del.) supports our view. Thus, we affirm the stand of the First Appellate Authority, resulting into dismissal of the impugned grounds, raised by the Revenue.”

10. Referred to the above, the ld. Counsel for the assessee pleaded that since in the present case also except Investigation report, there is no cogent material, the additions deserves to be deleted.

11. We have carefully considered the submissions and perused the records. First of all, we note that the Ld. CIT(A) has passed very short and laconic order. He has only mentioned about the CIT(A)'s order in purchasers case without discussing any detail thereof and deleted the addition. These orders of Ld. CIT(A) of other parties were never before the AO. Ld. Counsel for the assessee has furnished one of the purchaser's order, wherein, ITAT has deleted the addition on the ground that no corroborative material has been found. We note that we do not have benefit of the AO's order in the case of those sellers. In the present case, the AO has mentioned incriminating material referred in Investigation Wing report. In these circumstances, in our considered opinion these additional materials were never before the AO. We note that interest of justice demands that the matter may be remitted back to the file of the AO. The AO shall examine the case with reference to the additional material in the shape of appellate orders in purchaser's case and thereafter decide as per law.

12. In the result, this appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on 02nd February, 2023.

Sd/-
[ASTHA CHANDRA]
JUDICIAL MEMBER

Delhi; Dated: 02.02.2023.

Shekhar,

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi