

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.8785/Del/2019
Assessment Year: 2014-15

Akansha Jain,
C-2/277, Yamuna Vihar,
Delhi -110 053.

Vs. ITO,
Ward-57(3),
New Delhi.

PAN: AKKPJ6488R

(Appellant)

(Respondent)

Assessee by	:	Shri Salil Agarwal, Advocate & Shri Shailesh Gupta, Advocate
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	16.02.2023
Date of Pronouncement	:	23.02.2023

ORDER

PER C.M. GARG, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 12.07.2019 of the CIT(A)-37, New Delhi, relating to Assessment Year 2014-15.

2. The grounds of appeal taken by the assessee read as under:-

"1. The Ld CIT(A) has erred in confirming the addition of Rs.85,00,000/- on account of alleged deemed income u/s 69B of the Income Tax Act, 1961.

2 That the Ld. AO as well as Ld CIT(A) had made the addition without considering the submissions as well as evidences furnished by the appellant.

3 That the Ld. AO and Ld CIT(A) has erred in law as well as on facts in not providing the statement as well as cross examination of Sh Satvir

Singh on which Ld AO and Ld CIT(A) has relied for making addition of Rs. 85,00,000/- on account of alleged deemed income u/s 69B of the Income Tax Act, 1961.

4 That the Ld. AO and Ld CIT(A) has erred in law as well as on facts in ignoring the fact that the circle rate of the land is much lower than the purchase price amounting Rs.15,00,000/- and also ignored the fact that the title of the land is not clear.

5 The addition of Rs. 85,00,000/- made by the Ld AO as well as Ld CIT(A) is erroneous and arbitrary and, therefore , the addition made is liable to be deleted.

6 That the Appellant craves to add, amend, alter, vary and/or withdraw or rescind all or any of the ground of appeal on or before the final hearing."

3. Apropos the sole issue of the assessee, the Id. Counsel of the assessee submitted that the AO has proceeded to make addition in the hands of the assessee only on the strength of documents seized and statement recorded during the search operation on Shri Satvir Singh at his residence at A-153, Neb Sarai, New Delhi. The Id. Counsel submitted that these documents were never confronted to the assessee and addition based on such documents cannot be held as valid and sustainable. The Id. Counsel submitted that the assessee, at the time of purchase of property, was only 22 years old and shown income from sale of paintings, tuition income and interest income only and she has no other source of income which can be regarded as undisclosed source of income for making addition in the hands of the assessee u/s 69B of the Act or under any other provisions of the Act. The Id. Counsel submitted that the assessee had purchased a plot admeasuring 250 sq. yards only against the consideration of Rs.15 lakh which was paid through banking channel and no other amount has been paid to the seller. Drawing our attention to paper book page 34, the Id. Counsel submitted that as per Notification dated 14.03.2008 of Government of

NCT of Delhi, the market value per acre as per minimum indicative price was Rs.53 lakh and for the river bed land between forward bunds the market value per acre as per minimum indicative price was only Rs.17,60,000/- whereas the assessee had purchased a plot consisting of 250 sq. yards land only against a consideration of Rs.15 lakh which is much higher than the minimum indicative price notified by the Government. Therefore, no addition is called for in the hands of the assessee on the basis of sham documents and its treatment was recorded on the back of the assessee. Therefore, the same may kindly be deleted. The Id. Counsel has placed reliance on various judgements including the judgement of the Hon'ble Supreme Court in the case of **Andaman Timber Industries vs. Commissioner of Central Excise, 62 taxmann.com 3** and the judgement of the Hon'ble jurisdictional High Court of Delhi in the case of **CIT vs. Rajesh Kumar, 306 ITR 27 (Del)**.

4. Replying to the above, the Id. Sr. DR strongly supported the orders of the authorities below and submitted that there were documents in the hands of the AO while making addition u/s 69B of the Act wherein the searched person Shri Satvir Singh admitted before the search team that he had received Rs.85 lakh in cash and Rs.15 lakh through cheque from the assessee, therefore, the addition made by the AO and confirmed by the Id.CIT(A) may kindly be upheld.

5. On careful consideration of the above rival submissions, first of all, we note some glaring facts discernible from the material available on record as listed below:

- (i) The assessee is a 22 year old girl earning income from sale of paintings, tuition income and interest income;

(ii) The assessee purchased a plot consisting of 250 sq. yards and as per the documents placed at pages 8-13 of the assessee's paper book viz., agreement to sell, the consideration of Rs.15 lakh has been shown as paid by the assessee and received by the seller through banking channel on 18.04.2013 and 26.04.2013 and the seller acknowledged the receipt of the said amounts totaling to Rs.15 lakh from the assessee.

6. The Id. CIT(A) noted that the assessee was asked to produce Shri Satvir Singh for examination, but, she failed to do so. In our considered opinion, it was the duty of the AO to call Shri Satvir Singh to support his allegation and stand before making addition in the hands of the assessee. The assessee cannot be compelled or expected to produce Shri Satvir Singh to show his innocence until and unless the documents seized and the statement recorded of Shri Satvir Singh is confronted to the assessee. It is a normal principle of tax jurisprudence that the burden to prove the allegation is on the shoulder of the AO by way of adequate and sufficient adverse material against the assessee and until and unless such burden is discharged, the assessee cannot be expected to rebut the same.

7. In our considered opinion, from the orders of the authorities below, it is clearly discernible that neither the AO nor the Id.CIT(A) ever confronted the documents and statement of Shri Satvir Singh to the assessee during the proceedings before the authorities below and the AO has nothing in his hand to show that the assessee had paid Rs.85 lakh in cash to the seller of the plot. It is also pertinent to mention here that as per notification of Government of NCT Delhi, the minimum indicative price per acre is very less and it is also not the case of the AO that the assessee had purchased the plot at lesser value than the stamp valuation. In the case of CIT vs. Rajesh

Kumar (supra), the Hon'ble jurisdictional High Court held that since the material collected by the Revenue behind the back of the assessee was used against him without disclosing that material to him or giving any opportunity to him to cross-examine the person whose statement had been used by the Revenue against the assessee, then, the addition made in violation of principles of natural justice was rightly deleted by the Tribunal. Respectfully following the said proposition we allow the sole grievance of the assessee and the AO is directed to delete the addition.

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

Order pronounced in the open court on 23.02.2023.

Sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Dated: 23rd February, 2023.

dk

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

Asstt. Registrar, ITAT, New Delhi