

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

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1416/Del/2021  
Assessment Year: 2016-17

Babu Ram Sharma,  
T-3/203, Parsvnath Presitge-2,  
Sector 93A,  
Noida,  
Uttar Pradesh.

Vs. DCIT,  
Central Circle,  
Ghaziabad.

PAN: ACEPS7978M

(Appellant)

(Respondent)

Assessee by	:	Shri Neelkanth Khandelwal, Advocate
Revenue by	:	Shri P. Praveen Sidharth, CIT,DR
Date of Hearing	:	18.01.2023
Date of Pronouncement	:	03.03.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 26.08.2021 of the CIT (A), Kanpur-4, relating to AY 2016-17.

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

"1. That on the facts of the case and in law and under the circumstances, the Commissioner of Income Tax (appeal)-4, Kanpur erred in confirming the addition of Rs. 25,00,000/- out of the total addition of Rs. 50,00,000/- made to the income of the appellant while no unaccounted cash was ever deposited by the appellant. The certified copy of the ledger account received from the company had been ignored altogether. The addition as confirmed by Commissioner of income Tax

*(appeal)-4, Kanpur in the hands of appellant is unjustified, unwarranted and bad in law.*

*2. That on the facts of the case and in law and under the circumstances, the Commissioner of Income Tax (appeal)-4, Kanpur erred in confirming the action of the assessing officer to make addition without applying judicious mind and making proper enquiries.*

*3. That on the facts of the case and in law and under the circumstances, the Commissioner of Income Tax (Appeal) failed to appreciate the documentary evidence available on record in fair and judicious manner thereby went wrong to confirm the addition of Rs. 25,00,000/- to the income of the appellant and the same is unjustified, unwarranted and bad in the eyes of law.*

*4. That the appellant craves, leave to modify/amend or add any one or more grounds."*

3. The Id. Assessee's representative submitted that the Id.CIT(A) has erred in confirming the addition of Rs.25 lakhs out of total addition of Rs.50,00,000/- to the income of the assessee while no unaccounted cash was ever invested by the assessee. The Id. AR vehemently pointed out that the addition made by the AO and confirmed by CIT (A) is unjustified, unwarranted and bad in law and, therefore, the same may kindly be deleted. The Id. AR also submitted that from the evidences furnished by the assessee, it is very clear that the source of Rs.25 lakh as invested in the property under consideration is well explained and he granted relief to the assessee, but, regarding the remaining part of Rs.25 lakh, he upheld the addition by wrongly observing that it is possible that the same had been used in investment in the property under consideration. The Id. AR submitted that the assessee only invested Rs.25 lakh through banking channel with the Gul Properties Private Ltd. along with his granddaughter Ms Vasudha Sharma as joint purchaser/owner and no further addition is called for in this regard. The Id. AR submitted that the order of the AO has been based on the alleged photocopy of the Memorandum of Understanding (MOU) found

during the course of search despite the fact that it was not accepted and signed by one of the co-owners and the original MOU was never found and seized. The Id. AR further submitted that there is no adverse or positive material in the hands of the AO for making such baseless addition made on the footing of surmises and conjectures, therefore, the same may kindly be set aside and deleted.

3.1 The Id. AR also drew our attention to copies of the letter dated 12.07.2018 written by the assessee to the builder M/s Gul Properties Pvt. Ltd., stating that he does not want to purchase any property/flat from the company and requested to refund the amount of Rs.25 lakh out of which Rs.12 lakh in his own name and Rs.13 lakh in the name of Vasudha Sharma. He also drew our attention to letter of the builder M/s Gul Properties Pvt. Ltd. dated 21<sup>st</sup> August, 2018 wherein the builder has accepted the request letter of the assessee and refunded an amount of Rs.25 lakh in the form of two cheques: one of Rs.12 lakh in the name of the assessee Shri Babu Ram Sharma and the second of Rs.13 lakh in the name of his granddaughter Ms Vasudha Sharma. The Id. Counsel submitted that in view of these documents, it is amply clear that the alleged copy of MoU was never acted upon and the assessee paid Rs.25 lakh against the booking of flat which was refunded by the builder through banking channel. Therefore, no other addition of Rs.25 lakh or any other amount is warranted in the hands of the assessee.

4. Replying to the above, the Id. CIT-DR supported the orders of the authorities below and submitted that the copy of the MoU found during the course of search and seizure operation revealed payment of Rs.50 lakhs by the assessee to the builder, therefore, the addition was rightly made in the hands of the assessee.

5. On careful consideration of the rival submissions, we are of the view that the AO made an addition of Rs.50 lakh u/s 69 of the Act in the hands of the assessee. The assessee carried the matter before the Id.CIT(A) and he granted part relief to the assessee confirming the remaining amount of Rs.25 lakh in the hands of the assessee. From the relevant part of the assessment order as well as the first appellate order, except copy of MoU, we are unable to see any other documentary evidence to show that the assessee along with her granddaughter Ms Vasudha Sharma invested Rs.50 lakh with the builder and only shown Rs.25 lakh banking transactions to the Department. For making addition u/s 69, it is the duty of the AO to establish by way of cogent and sustainable evidence that the assessee has invested his unaccounted money/income in purchase of property and, in the present case, the allegation of the AO based on copy of MoU cannot be held as sustainable and acceptable in absence of any other positive adverse material against the assessee establishing the factum of investment of Rs.50 lakh including alleged unaccounted investment of Rs.25 lakh in purchase of property.

5.1 *Per contra*, the assessee has successfully demonstrated that he only invested Rs.25 lakh with the builder M/s Gul Properties Pvt. Ltd. through banking channel and by way of a letter dated 12.07.2018 he requested the builder to refund the entire amount cancelling the booking. From the letter of the builder dated 21.08.2018, it is also clear that the builder has refunded the amount by issuing two cheques through banking channel in the name of the assessee and his granddaughter totaling to Rs.25 lakh. Therefore, we are unable to agree with the allegations made by the AO in the assessment order which were only based on doubts without any sound basis, hence,

we also decline to agree with the observations of the Id.CIT(A) while confirming the baseless addition. The grounds raised by the assessee are allowed and the AO is directed to delete the addition.

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

Order pronounced in the open court on 03<sup>rd</sup> March, 2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 03<sup>rd</sup> March, 2023.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi