

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.56/Asr/2015
Assessment Year: 2007-08**

Dy. Commissioner of Income Tax, Central Circle-,Jammu. (Appellant)	Vs.	M/s ShivamLeisures, Pvt. Ltd. 71/4, Trikuta Nagar, Jammu. [PAN: AAKCS6470] (Respondent)
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Appellant by	Sh. HitendraBhauraojiNinawe, CIT. DR
Respondent by	Sh. P.N. Arora, Adv.

Date of Hearing	23.02.2023
Date of Pronouncement	15.03.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-1,Ludhiana,[in brevity the ‘CIT (A)’],date of order 12.11.2014for A.Y. 2007-08.The impugned order was emanated from the order of the Id. DCIT, Central Circle, Jammu, (in brevity the AO) order passed u/s 153A/143(3) of the Act date of order 31.12.2013.

The revenue has taken the following grounds:

- “1. *Whether on the facts and circumstances of the case the decision of Ld. CIT (A) is correct in deleting the addition of Rs. 3,40,00,000/-made on account of unexplained investment in the purchase of property.*
2. *Whether on the facts and circumstances of the case the decision of Ld. CIT (A) is correct in ignoring the documentary evidence found at the time of search.*
3. *Whether on the facts and circumstances of the case the decision of Ld. CIT (A) is correct in relying upon the self seeking additional evidence produced by the assessee to controvert the documentary evidence found at the time of search.*
4. *In view of detailed facts discussed in the asstt. order and grounds of appeal at Sr. No. 1 to 3 above whether order of CIT(A) deleting the addition of Rs. 3,40,00,000/- by ignoring the documentary evidence found at the time of search is perverse.*
5. *The Appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.*
6. *It is prayed that the order of Ld. CIT(A) be set aside and that of the A.O. be restored on merits.”*

2. Brief fact of the case is that the assessee is aggrieved against the order of the Assessing Officer making an addition of Rs. 3,40,00,000/- under section 69 of the Act. The search u/s 132 of the Act was conducted in the case of the assessee on 07.04.2011 and consequently assessment proceeding was initiated by issue of

notice under section 153A. The ld. AO has brought on record the fact that the assessee had purchased a piece of land measuring 18 kanal at Amritsar on 23.11.2006 for an amount of Rs.1,13,00,000/- and another piece of land measuring 16 kanal 1 maria at Amritsar on 05.12.2006 for a sum of Rs.50,00,000/-. The ld. AO has referred to certain documents found and seized during the course of search operation at the office of M/s Shivam group, Jangpura, New-Delhi, according to which the assessee had entered into an agreement for purchase of said lands at much higher price than finally recorded in the registered deeds. The ld. AO has referred to seized document No. DNB-I/A-3/ page 35-40 which is an agreement dated 01.05.2006 for a total sum of Rs. 3.19 crores for which an advance of Rs.32 lacs had also been paid by M/s Shivam Estates. The ld. AO on the basis of this agreement to sell concluded that assessee had paid unaccounted purchase consideration of Rs.2.06 crores. Further the ld. AO has referred to seized document No.DNB-I/A-3/page 29-34 dated 01.05.2006 for purchase of 16 Kanal 1 Marlas by the assessee for a total sum of Rs.1.84 crore for which an advance of Rs.26.90 lacs had also been paid. The ld. AO on this basis concluded that assessee had paid unaccounted purchase consideration of Rs.1.34 crores. The ld. AO confronted the said documents to the assessee in response to which explanation was submitted by the assessee wherein it was contended that original agreements made for the purchase of above land contained specific clause that sellers were supposed to

obtain permissions and approvals from the authorities including Airport authorities which they failed to obtain and hence the agreements were cancelled and properties were purchased at reduced prices. The Id. AO after considering assessee's reply did not accept the same on the ground that there was documentary evidence of sale consideration at much higher price and registration at lower price could not be accepted leading to addition of Rs.3,40,00,000/-. Aggrieved assessee filed appeal before the Id. CIT(A). The addition was dismissed. Being dissatisfied the revenue filed appeal before us.

3. The Id. Counsel for assessee vehemently argued and submitted the written submission which is kept in the record. First, the Id. counsel invited our attention in the Id. CIT(A)'s order, the relevant paragraph 18 of the said order is extracted as below:-

“18. It is seen that the Assessing Officer after confronting the impugned seized copies of agreement to sell which on the face of it had been cancelled proceeded to make the impugned addition without discussing in detail the factors or developments after signing of the agreement which led to cancellation thereof. The appellant, during the course of assessment proceedings, had brought on record the impugned agreements to sell entered into by M/s Shivam Estates a sister concern of appellant and because of non-fulfilment of certain crucial clauses, the same were cancelled leading to refund of the

amount advanced to the extent of Rs.33 lacs. The Assessing Officer instead of examining the appellant's contention in this regard which was evidence by the cancellation of agreement itself in the same Financial year proceeded to merely rely upon the other terms of said agreement to sell and presumed the sale consideration at Rs.1.42 crore per acre. The said agreement to sell at clause 'h' recorded the following:

"That the property agreed to be sold is situated in the vicinity of Raja Sansi Airport and there are certain restrictions with regard to raising of construction in the land agreed to be sold. The first party shall seek permission from the Airport authorities for raising construction upto permissible height and preferably this permission shall be obtained prior to the date fixed for execution of the sale deed. The parties agree that in case the Airport Authorities refuse to grant the permission to raise construction over the land in question and such refusal is received before 30.09.2006, then the present agreement to sell shall be deemed to have been cancelled and the 1st Party shall be liable to refund the earnest money or any other sums which the 1st party may have received from second party."

19. The appellant in support of this claim before the Assessing Officer also filed two affidavits from the impugned sellers in the said agreement to sell confirming the cancellation of the agreement, refund of certain amounts in consequence thereof and the reasons for cancellation of agreement being inability on the part of the sellers to organize the requisite crucial permissions to make the impugned land

fit for commercial development to the fullest extent. The amounts of advance in consequence to agreement to sell had been paid by M/s Shivam Estates and were refunded to the extent of Rs.33 lacs by seller to M/s Shivam Estates which forms part of M/s Shivam Estates books of accounts for Financial Year 2006-07 and the Assessing Officer has not been able to contradict this fact during appellate proceedings in his comments in the remand report. The following events need to be analyzed sequentially in order to understand the reasons for renegotiation of the impugned land at much lesser rate as compared to the rate recorded in the agreement to sell with M/s Shivam Estate.

4. The Id. Sr. DR vehemently argued and fully relied on the order of the Id. AO. The relevant paragraphs 3 to 5 of the AO's order are extracted as below:-

"03. As per seized documents No. DNB-I/A-3/page 35-40 found at the above office an agreement dated 01.05.2006 for the purchase of 18 kanals of land was made by M/s. Shivam Estates for a total sum of Rs. 3.19 Crores @ Rs. 1.42 crore per acre and an advance of Rs. 32 lacs was also paid which has been adjusted against the total sale price of the property registered in the name of the assessee. Thus it is apparent that the property has been purchased by making a payment of Rs. 2.06 crores over and above the registered price and this amount is not recorded in the books of accounts.

04. As per seized documents No. DNB-I/A-3/page 29-34 found at the above office an agreement dated 01.05.2006 for the purchase of 16 kanals 1 maria of land was made by M/s. Shivam Estates for a total

sum of Rs. 1.84 Crore @ Rs. 1.42 crore per acre and an advance of Rs. 26.90 lacs was also paid which has been adjusted against the total sale price of the property registered in the name of the assessee. Thus it is apparent that the property has been purchased by making a payment of Rs. 1.34 crore over and above the registered price and this amount is not recorded in the books of accounts.

05. Vide this office letter dated 25.11.2013 the assessee was asked to explain why the difference as above be not treated as the unaccounted investment u/s 69 of the I.T. Act. In response to the above, the assessee filed a reply on 30.12.2013 in which it is contended that as per the original agreements made for the purchase of the above lands the owners were supposed to obtain permissions and approvals from the authorities including Airport authorities before 30.09.2006, which they failed to obtain and hence the deals were renegotiated and registered in the name of the assessee at the prices mentioned above.”

5. We heard the rival submission and considered the documents available in the record. The assessee had purchased the piece of land measuring 18 kanal at Amritsar on 23.11.2006 for an amount of Rs.1,13,00,000/- and another piece of land measuring 16 kanal 1 marla at Amritsar on 05.12.2006 a sum of Rs. 50 lacs. The grievance of the Id. AO was that the value was reduced during registration of the property. There is a huge difference in between agreement to sale and the registration of the property. The difference amount was taken as unexplained

investment and added back the amount u/s 69 amount of Rs.3,40,00,000/-. After the agreement the dispute is occurred in acquisition of land and accordingly further bargain was taken place. The affidavit was filed in evidence for reduction of the value of the property and both the affidavits are annexed in **APB pages 18 to 25**.

The relevant paragraph of the affidavit is annexed as below:

“7. That we had intimated to M/s Shivam Estate vide letter dated 01/11/2006 that we were unable to get the necessary permissions & approvals from concerned authority circumstances beyond our control and further offered to sell this land in agriculture category at market circle rates prevailing in the area at that time.

8. That this deal had been cancelled mutually and agreement to sell dated 01.05.2006 had become null & void. Further, we had returned a sum of Rs.5.00 Lacs in cash to M/s Shivam Estates and balance Rs. 26.94 Lacs could not be returned due to non availability of the fund with us in view of the fact that amount was spent by us in the process of obtaining the necessary permissions.

I solemnly verify that the facts stated above are true and nothing material has been concealed.”

6. The fact that the assessee clearly mentioned that this agreement was rejected, and the assessee further made a separate deal about the property and paid the value as decided during the registration. Copy of the ITR audited balance sheet as proof of payment is annexed, **APB pages 48 to 51**. The issue was already dealt before the DCIT and the submission is annexed in **APB 32 to 36**.

7. We find that there is a reasonable explanation about the assessee for reduction of the value of the property as prior agreement to sale. We are not intervening in the order of the Id. CIT(A). Accordingly, the appeal of the revenue is dismissed.

8. In the result, the appeal of the revenue bearing **ITA No. 56/Asr/2015** is dismissed.

Order pronounced in the open court on 15.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order