

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.196/SRT/2020

Assessment Year: (2016-17)

(Physical Court Hearing)

The ACIT, Central Circle-3, Surat.	Vs.	Abhishek Ramniklal Shah, 4/E, Anjan Shalaka Apartments, Opp. Lal Bungalow, Parle Point, Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ASNPS2066B		
(Appellant)		(Respondent)
Appellant by	Shri Vinod Kumar, Sr. DR	
Respondent by	Shri Rasesh Shah, CA	
Date of Hearing	03/02/2023	
Date of Pronouncement	18/04/2023	

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to the Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the Id. CIT(A)”], in Appeal No. CIT(A)-4/10463/2018-19, dated 24.02.2020 which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 07.12.2018.

2. Grounds of appeal raised by the Revenue are as follows:

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs.2,35,00,000/- & of Rs.36,43,710/- made on account of unexplained cash payment and on account of unexplained cash receipts respectively without appreciating the fact that the seized documents as mentioned at page no. 3 of the assessment order clearly shows the transaction of the assessee with the third party in a detailed description.

2. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding the above documents as dumb documents, without appreciating the decision of the Hon'ble Supreme Court in the case of Chuharmal Vs CIT (172 ITR 230) wherein it has been held that the inference of ownership is rested upon the circumstantial evidence. In this case there is direct evidence as mentioned at para no. 3 of the assessment order.

3. It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the AO may be restored to the above extent.

4. The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. Succinctly, the factual panorama of the case is that assessee before us is an Individual and had filed his return of income for A.Y. 2016-17 on 09.12.2016 declaring total income at Rs.4,59,500/-. Thereafter, a search action u/s 132 of the Act was carried out on 04.09.2015 in the case of M/s Param Properties of Surat. During the course of search action, several incriminating documents and evidences were seized from the premises of M/s Param Properties which contain entries pertaining to and information contained therein related to assessee. Consequent to the said search-action, notices u/s 153C of the Act were issued to the assessee for various assessment years and the case of the assessee. Notice u/s 143(2) of the Act vide No. ITBA/AST/S/143(2)/2017-18/1006565883(1) dated 26.09.2017 was issued which was duly served upon the assessee. Thereafter, notice u/s 142(1) of the Act along with questionnaire was issued to the assessee and same was also duly served. In response to aforesaid notices under section 143(2) of the Act, assessee Shri Abhishek Ramaniklal Shah has submitted certain documents along with written submission dated 29.12.2017. During the year the assessee has earning interest on loan and advances and he is also partner of M/s Lipica Enterprises. One of the core evidences in this case is that the documents and evidences seized during the course of search in the case of M/s Param properties contained several entries of the assessee Shri Abhishek Shah, written as Abhishek /ABK which were in the nature of loan transactions also cash receipts from sale of flats and cash payments for booking / purchase of flats in the projects Florence undertaken by Enn Enn Corp. Ltd. and Jolly Residency undertaken by M/s. Ghelaani Builders. The transactions related to Shri Abhishek R Shah assessee, as featuring the documents and evidences seized from the premises of M/s Param properties are as follows:

<i>ABHISHEK SHAH/ABK</i>	
<i>Payments by Abhishek Shah/ABK</i>	

F.Y.2015-16					Receipts by Abhishek Shah/ABK				
Date	Amount	Narration	Annx	Pg-	Date	Amount	Narration	Annx	Pg
06.06.15	700000	For interest	BS-1	1	23.07.15	1500000	JR C/202	BS-2	36
08.06.15	1300000	Int account	BS-1	4	01.09.15	72360	JR D/1002 314 72 360/ JR D/1003 Maintenance	BS-2	27A
04.08.15	314000	JR-C 202	BS-2	29	07.08.15	2000000	Int. A/c. Bal. given return capital paid	BS-2	29A
07.04.15	2993000	FRN F/1101 Cash	BS-1	49	08.08.15	71350	Int. Vatav A/c. 2000 interest given	BS-2	29A
30.04.15	1500000	FRN F-1101 Cash	BS-1	60	-	-	-	-	-
08.05.15	1300000	FRN F/1101	BS-1	60	-	-	-	-	-
08.06.15	3200000	FRN F/1101	BS-1	62	-	-	-	-	-
08.06.15	2000000	Int A/c. 2% Int Rahul	BS-1	61	-	-	-	-	-
08.06.15	2000000	On interest	BS-1	8	-	-	-	-	-
08.06.15	3200000	FRN 1101 F	BS-1	7	-	-	-	-	-
23.04.15	3000000	3% 30 days interest. FRN F-1101 ABK	BS-1	54	-	-	-	-	-
-	1993000	FRN F 1101	BS-1	21	-	-	-	-	-

TOTAL	23500000					3643710			
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4. In this regard, the assessee was asked to explain the above stated documents / evidences. However, the assessee has simply stated that he had never any transaction either of payment made to or receipt received from M/s Param Properties. The sanctity and correctness of the aforesaid cash book of the assessee firm stands established, on the grounds that (i) no claim regarding any of the entries in their seized documents to be incorrect has been made by the said firm, (ii) entries of cheques in the cash book clearly corresponds to the entries in the bank statements of the corresponding parties, (iii) perfect match of several entries

in pocket diaries acknowledged by various parties with the corresponding entry in the said cash book, (iv) owning up of many entries in the seized cash book by third parties attended in response to summons and admittance that the entries in the cash book M/s Param Properties do correspond to the transactions made by them and (v) nothing has been put forth by the partners of Param Properties at any time, even in the form of arrangement, till date, implying that there are incorrect entries in the said cash book. Thus, sanctity and correctness of the cash book of the assessee firm seized during the search action crystal clearly stands established. On being asked several times during the course of search and the post search proceedings, Abhishek / ABK was not identified by the partners of M/s Param Properties. The mobile No. of Abhishek/ABK was traced out from the i-phone contacts of Shri Agam Vadecha, which is also a part of the seized documents. Enquiries with the mobile service provider revealed that the actual name of the party is Shri Abhishek Ramniklal Shah. Further enquiries revealed that Shri Abhishek Ramniklal Shah hold PAN ASNPS2066B. Further, enquiries revealed that Shri Abhishek Ramniklal Shah is a resident of 4-E, Anjan Shalaka Tower, Near Lal Bungalow, Opp: V.T. Chokshi College, Athwalines Surat and is assessed to tax with the ITO Ward 1(3)(1), Surat. Thus on perusal of the same, it was ascertained that Abhishek / ABK stands for Shri Abhishek Ramniklal Shah. Further, the above detail gets strengthened by this fact that back up of i-phone of Shri Agam Vadecha, one of the partners of M/s Param Properties, was taken during the course of search proceedings, under section 132 of the Act. This number is not only featuring in the contact list but also featuring in the call log list as under which shows that assessee was in regular touch with the partners of Param Properties. Thus, it is correctly ascertained that the transaction reflect in seized documents in the name of Abhishek/ABK are of assessee Shri Abhishek Ramniklal Shah.

5. In view of the facts, the assessing officer held that to tax the amount reflecting in the seized documents, in hands of the assessee on substantive basis, which is based on a sound footing is proper, therefore, assessing officer made

addition of Rs.2,35,00,000/- on account of unexplained cash payments and Rs.36,43,710/- on account of unexplained cash receipts.

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the assessing officer. The Id CIT(A) held that the document relied upon for making these additions by assessing officer were not found at the premises of the assessee but found at the premises of the 3rd party. The document so found, is not in the hand writing of the assessee and it is not signed by the assessee. Moreover, the person from whose premises these documents were found has not identified the assessee as the person involved with these transactions. In these circumstances, the documents found from 3rd party premises are nothing but dumb document as far as the assessee is concerned. The presumption u/s 292(c) of the Act is against the person from whose premises, the document were found and seized and not against the 3rd party. Based on these facts, the Id CIT(A) deleted the addition.

7. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

8. Learned DR for the Revenue submitted that one of the core evidences in this case is that the documents and evidences seized during the course of search in the case of M/s Param properties contained several entries of the assessee, Shri Abhishek Shah, written as Abhishek /ABK which were in the nature of loan transactions also cash receipts from sale of flats and cash payments for booking / purchase of flats in the projects Florence undertaken by Enn Enn Corp. ltd. and Jolly Residency undertaken by M/s. Ghelaani Builders. In this regard, the assessee was asked to explain the documents / evidences. However, the assessee has simply stated that he had never any transaction either of payment made to or receipt received from M/s. Param Properties. On being asked several times during the course of search and the post search proceedings, Abhishek / ABK was not identified by the partners of M/s. Param Properties. The mobile No. of Abhishek / ABK was traced out from the i-phone contacts of Shri Agam Vadecha, which is also a part of the seized documents. Enquiries with the mobile service provider

revealed that the actual name of the party is Shri Abhishek Ramniklal Shah. Further enquiries revealed that Shri Abhishek Ramniklal Shah hold PAN ASNPS2066B. Further enquiries revealed that Shri Abhishek Ramniklal Shah is a resident of 4-E, Anjan Shalaka Tower, Near Lal Bungalow, Opp: V.T. Chokshi College. Athwanes Surat. Thus on perusal of the same, it was ascertained that Abhishek / ABK stands for Shri Abhishek Ramniklal Shah. Further, the above detail gets strengthen by this fact that back up of i-phone of Shri Agam Vadecha, one of the partners of M/s Param Properties, was taken during the course of search proceedings u/s.132 of the Act. Based on these facts and circumstances, ld DR contended that addition made by the assessing officer should be sustained.

9. On the other hand, Shri Rasesh Shah, Learned Counsel for the assessee begins by pointing out that the documents were found from the 3rd party premises, these are not in the hand writing of the assessee and these are not signed by the assessee and moreover the party from whom documents were found, did not identify, the name of the assessee, hence the AO was not justified in relating these documents to the assessee. The complete name of the assessee is also not written on these papers and there are other names also written on these papers. These facts clearly shows that these documents are dumb documents as far as the assessee is concerned and relying upon these documents for making additions in the hands of the assessee is not justified, therefore, ld CIT(A) has rightly deleted the addition, therefore order of ld CIT(A) may be upheld.

10. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the ld. CIT(A) and other material brought on record. Though facts have been discussed in detail in the foregoing paragraphs, however in the succinct manner, the relevant facts and background are reiterated in order to appreciate the controversy and the issue for adjudication. We note that first ground of appeal is against the addition of Rs.2.35 Crs made by the AO considering unexplained cash payment and additions of Rs.36,43,710/- as unexplained cash receipts. A search

u/s 132 of the Act was conducted upon M/s Param Properties of Surat on 04.09.2015. During the course of search some documents in the form of cash book were found at the premises of M/s Param Enterprise, in which entries written as "Abhishek/ABK" which were in the nature of loan transactions and cash receipts from sale of flats and cash payments for booking/purchase of flats in the project undertaken by ENN ENN Corp. Ltd. and Jolly residency undertaken M/s Ghelani Builders. The AO's stated that these documents are true and genuine as these were written in the hand writing of partner of M/s Param Properties and these were not denied by the partner of M/s Param Properties. The AO further stated that "Abhishek/ABK" was not identified by Shri Agam Vadecha, partner of M/s Param Properties; however on making enquiries from mobile service provider and data from the mobile of Agam Vadecha, it is found that "Abhishek/ABK" is Shri Abhishek Ramniklal Shah, i.e. the assessee. The AO also stated that assessee and Mr. Agam Vadecha partner of M/s Param Properties were in regular touch as per the backup of i-phone of Shri Agam Vadecha. The AO further stated that the transactions mentioned in these paper found during the course of search at the premises of M/s Psram Properties are not reflected in the books of the assessee, hence these remain unexplained and therefore additions were made.

11. On merit, the Id CIT(A) noted that the first contention of the assessee is that the cross examination of Shri Agam Vadecha partner of M/s Param Properties was not allowed in spite of specific request made. However on going through the assessment order, there is no mention of any statement of Shri Agam Vadecha Partner of M/s Param Properties which has been used against the assessee. Rather it is mentioned in the Assessment order that Shri Agam Vadecha has not identified the person written on this paper "Abhishek/ABK". From the assessment order, it is found that there is no statement against the assessee relied upon for making the additions, the contention of the cross-examination does not found acceptable hence, this contention is dismissed. The assessee further contended that in the seized material, which has been relied upon for making addition, the entries noted are in the name of ABK, Abhishek Jain, Abhi Tulsian

and Rahul Jain. Thus, these entries or transactions do not belong to the assessee. The assessee further stated that on being asked to Shri Agam Vadecha partner of M/s Param Properties, he did not mentioned written as "Abhishek/ABk". Therefore relating to the name written on these papers to the assessee has no basis. The assessee further stated that the document relied upon for making these additions were not found at the premises of the assessee but found at the premises of the 3rd party, it is not in the hand writing of the assessee and it is not signed by the assessee. Moreover, the person from whose premises these documents were found has not identified the assessee as the person involved with these transactions. In these circumstances, the assessee contended that the documents found from 3rd party premises are nothing but dumb document as far as the assessee is concerned. The presumption u/s 292(c) of the Act is against the person from whose premises, the document are found and seized and not against the 3rd party. The assessee cited case laws of honourable **Supreme Court in the case of Common cause Vs. UOI [20171 394 ITR 220 (SO** to support this contention. The assessee also cited case laws of **Hon'ble Supreme Court in the case of CBI vs. V.C Shukla in support** of this contention. The assessee also cited **case laws CIT vs. Lavanya Land Pvt. Ltd. [20171 397 ITR 246 of Bombav High Court** in which it has been held that there is no direct evidence whatsoever to allege that money changed hands between the two parties. In absence of any material to show that huge cash was transferred from one side to another. Additions cannot be sustained.

12. During the appellate proceedings, the assessee also cited case laws of **Swaminaravan Avenue v. Asstt. CIT 2016 Taxpub (DT) 3304 (Ahd-Trib) by Hon'ble ITAT. Ahemdabad**, in which it has been held that additions made without framing any material on record with certainty and conviction that there was unexplained investment, the addition cannot be sustained. The assessee also stated that the Backup of i-phone of Shri Agam Vadecha was taken and the AO has related on the basis of telephone number stored in the mobile phone of Shri Agam Vadecha to the assessee but in the backup also, there is no SMS or telephone conversation about any transactions with the M/s Param Properties. In

the case of **CIT XI V. Anil Khandelwal ITA 247/2015 & ITA 248/2015 (Delhi High court)** has held that additions based on inference drawn from documents seized from 3rd party is not valid. The assessee further stated that there is no cheque entry written on this papers which match with any of the bank account of the assessee, therefore inference drawn by the AO are not justified. The assessee stated that the mere call between two persons cannot be made basis for making the additions in the hands of the assessee. The assessee is engaged in the business of real estate and he is known to Shri Agam Vadecha does not mean that the transactions written on these papers relate to the assessee.

13. The Id CIT(A) observed that it is undisputed fact that the documents relied upon for making additions were found at the premise of M/s Param Properties i.e. 3rd party and not at the premises of the assessee. It is further undisputed fact that these documents are not in the hand writing of the assessee and not signed by the assessee. These documents were found from the premises of M/s Param Properties and on specific question by the authorized officer to identify the name of the person written on this paper, Shri Agam Vadecha partner of M/s Param Properties did not identify that the name written as Abhishek/ABK is the assessee. In such circumstances that the documents were found from the 3rd party premises, these are not in the hand writing of the assessee and these are not signed by the assessee and moreover the party from whom documents were found, did not identify, the name of the assessee, the AO is not justified in relating these documents or the transactions written on these documents to the assessee. The complete name of the assessee is also not written on these papers and there are other names also written on these papers. Thus, Id CIT(A) noted that these facts clearly shows that these documents are dumb documents as far as the assessee is concerned and relying upon these documents for making additions in the hands of the assessee is not justified. The assessee's case is covered on this issue by the binding judgments of Hon'ble Supreme Court t in the case of **CBI vs. V.C Shukla and common & Common cause Vs. UOI** as cited above. Thus, the additions made by the AO are not found sustainable and deserved to be deleted. Moreover the AO stated that in the backup of i-phone taken from mobile phone of

Shri Agam Vadecha, Phone Number of the assessee were in his mobile. Storing of assessee's telephone number in other person's phone cannot be made the basis for making additions particularly, even after taking backup of the i-phone, no sms/communication was found which remotely indicate that the assessee had transactions with the Param Properties, as written in these documents. The AO's contention that some of the entries written as cheque match with the books of accounts maintained by the assessee but this observation is of general nature and might be true in some other cases, but in the assessee's case, there is no Cheque entry tallying with any of the bank account of the assessee and there is no such reference in the assessment order by the AO. Keeping in view the above factual and legal discussion, the Id CIT(A) deleted the additions. We have gone through the above findings of Id CIT(A) and observed that there is no infirmity in the conclusion reached by Id CIT(A). The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A) and dismiss the appeal of the Revenue.

14. In the result, appeal filed by Revenue is dismissed.

Order is pronounced on 18/04/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सुरत /Surat

दिनांक/ Date: 18/04/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat