

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN CIRCUIT BENCH, DEHRADUN**

**BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 1856, 1857 & 1858/Del/2018
Assessment Years: 2012-13, 2013-14 & 2014-15**

DCIT, Central Circle,
Dehradun.

Versus Kamal Ghansala,
566/6, Bell Road,
Clement Town, Dehradun.
PAN: ADDPG0244N
(Respondent)

(Appellant)

Assessee by : Sh. Virendra kalra, CA
Revenue by : Sh. N.S. Jangpangi, CIT/DR

Date of hearing : 20.06.2023
Date of pronouncement: 23.06.2023

ORDER

Captioned appeals by the Revenue arise out of a consolidated order dated 21.12.2017 of learned Commissioner of Income-tax (Appeals)-IV, Kanpur pertaining to the assessment years 2012-13, 2013-14 and 2014-15.

ITA No. 1856/Del/2018 (A.Y. 2012-13):

2. In ground No. 1 to 3, the Revenue has challenged deletion of addition of Rs.1,80,98,276/- made on account of difference in the

valuation of property declared by the assessee and as determined by the Departmental Valuation Officer (DVO).

3. Briefly, the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his return of income on 29.09.2012 declaring income of Rs.3,12,37,010/- in addition to agricultural income of Rs.4,91,230/-. Subsequently, a search and seizure operation was conducted in case of the assessee on 29.11.2013. Pursuant to such search and seizure operation, proceeding under section 153A of the Act was initiated against the assessee. In course of assessment proceedings, the Assessing Officer noticed that as per audited balance sheet appended to the return of income, in the year under consideration, the assessee has purchased a property at Nainital for a declared consideration of Rs.1,22,77,040/-. Whereas, as per valuation of the property done by the bank found in course of search and seizure operation, the value of property has been determine at Rs.3,03,75,316/-. Thus, there was difference in the value of property to the extent of Rs.1,80,98,276/-. Based on the above facts, the Assessing Officer called upon the assessee to explain why the difference in value should not be treated

as income of the assessee under section 69 of the Act. Though, the assessee furnished reply objecting to the proposed addition, however, rejecting assessee's explanation, the Assessing Officer added back the amount of Rs.1,80,98,276/- to the income of the assessee. The assessee contested the aforesaid addition before learned Commissioner (Appeals). Being convinced with the submissions of the assessee, learned Commissioner (Appeals) deleted the addition.

4. We have considered rival submissions and perused materials on record. From the facts discussed by learned first appellate authority, it is observed that while the assessee has declared the cost of investment in the property at Rs.1,22,77,040/-, the DVO has also determined the value of the property almost matching the value declared by the assessee. Whereas, the Assessing Officer has made the addition purely based on a document seized from the assessee, wherein, the bank has valued the property at Rs.3.03 crores. However, there is no scientific basis for such valuation. Thus, in our view, when the value shown by the assessee and as determined by the DVO are, more or less, identical, there is no reason to discard the

valuation done by the DVO and adopt the value determined by the bank, basis of which is unknown. Further, the finding of fact recorded by learned first appellate authority that the difference between the value determined by DVO and as declared by the assessee works out to a negligible amount of 2.87%, remains uncontroverted before us. Revenue has not brought on record any material to disturb such finding of the first appellate authority. In view of the aforesaid, we do not find any reason to interfere with the decision of learned first appellate authority. These grounds are dismissed.

5. In ground No.4, Revenue has challenged deletion of addition of Rs.7,50,000/-, being unsecured loan received by the assessee during the year.

6. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee had received unsecured loan aggregating to Rs.1.24 crores from eight persons. Noticing this, he called upon the assessee to prove genuineness of such loan transactions. In response to the query raised, the assessee furnished necessary details in respect of loan transactions. After verifying the details, the Assessing Officer

was of the view that the loan transactions are not genuine. Accordingly, he added back the entire amount of Rs.1.24 crores to the income of the assessee. The assessee contested the aforesaid addition before learned Commissioner (Appeals). After considering the submissions made by the assessee and the evidences furnished, learned Commissioner (Appeals) granted partial relief to the assessee by sustaining addition to the extent of Rs.50,00,000/-.

7. We have considered rival submissions and perused materials on record. In the present appeal, as could be seen from the grounds raised, the Revenue is contesting the deletion of addition of Rs.7,50,000/-, being unsecured loan from one Shri Reshant. It is observed from the discussions made by learned first appellate authority that the assessee has furnished confirmation, copy of Income-tax return, computation of income and bank account of the creditor. He has also furnished ledger account and his own bank account to demonstrate that the loan was repaid in assessment year 2014-15. Thus, as could be seen from the aforesaid finding of fact recorded by learned first appellate authority, the assessee has discharged its burden of proving the loan transaction. Whereas,

nothing has been brought on record by the Revenue to disturb the finding of fact recorded by learned first appellate authority. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) by dismissing the ground raised. In the result, appeal is dismissed.

ITA No. 1857/Del/2018 (A.Y. 2013-14):

8. In ground No. 1 to 3, Revenue has challenged deletion of addition of Rs.27,38,000/- made by the Assessing Officer on account of difference in valuation of property as declared by the assessee and as determined by the DVO. The issue raised in these grounds is identical to the issue raised in ground No. 1 to 3 of ITA No. 1856/Del/2018 decided by us in earlier part of the order. Thus, our decision therein will apply *mutatis mutandis* to these grounds as well. Accordingly, grounds are dismissed.

9. In ground No. 4, Revenue has challenged deletion of addition of Rs.2.00 crores, being unsecured loan received from Shri Rajeev Jain and Smt. Shailbala Jain.

10. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, the assessee has received unsecured loan from four persons aggregating to Rs.2.10 crores. After examining the details called from the assessee, the Assessing Officer was of the view that the genuineness of the loan transactions could not be proved by the assessee. Accordingly, he added back the amount of Rs.2.10 crores to the income of the assessee. The assessee contested the addition before learned first appellate authority. Being convinced with the submissions of the assessee and evidences furnished, learned Commissioner (Appeals) deleted the addition.

11. We have considered rival submissions and perused materials on record. As could be seen, in the present appeal, Revenue is contesting deletion of addition of Rs.2.00 crores, being unsecured loan taken from Shri Rajeev Jain and Smt. Shailbala Jain. From the facts on record, it is observed, in pursuance to an agreement of sale in respect of a property at Dehradun, the assessee had received advance of Rs.2.00 crores from Shri Rajeev Jain and Smt. Shailbala Jain. As per the terms of the agreement, total sale consideration to be

received by the assessee was to the tune of Rs.4.00 crores, out of which, the assessee received Rs.2.00 crores. However, the sale transaction could not fructify and ultimately, has to be cancelled. On cancellation of agreement to sale, the assessee has also returned back the amount of Rs.2.00 crores to Shri Rajeev Jain and Smt. Shailbala Jain. Both, the receipt of Rs.2.00 crores and repayment of the said amount on cancellation of agreement to sale have been duly reflected in the respective bank accounts of the assessee and Shri Rajeev Jain and Smt. Shailbala Jain. Thus, the facts and material brought on record very clearly demonstrate that the amount of Rs.2.00 crores was received by the assessee as advance towards sale of property from two persons and on cancellation of agreement to sale, it has been repaid. No contrary material or evidence has been brought on record by the Revenue to controvert the aforesaid factual position. In fact, on verifying the bank account placed on the paper book, we are convinced with the submissions of learned counsel for the assessee that the amount received towards advance for sale of a property has subsequently been repaid back on cancellation of the proposed sale transaction. In that view of the matter, we do not find

any valid reason to interfere with the decision of learned Commissioner (Appeals). Ground is dismissed.

12. Other grounds raised by the Revenue, being general grounds, do not require adjudication.

ITA No. 1858/Del/2018 (A.Y. 2014-15):

13. The only effective ground raised by the Revenue relates to deletion of addition of Rs.2.75 crores made to the income of the assessee on account of voluntary surrender of income at the time of search and seizure operation.

14. Briefly, the facts are, in course of assessment proceedings, the Assessing Officer noticed that in course of search and seizure operation, a statement u/s. 132(4) of the Act was recorded from the assessee, wherein, the assessee declared additional income of Rs.2.75 crore and also offered to pay advance tax of Rs.84,94,500/- through post dated cheques. Even, in course of post search proceedings, the assessee made declaration to offer the amounts surrendered in the statement u/s. 132(4) of the Act as income for the assessment year 2014-15. However, in the return of income filed, the

assessee did not offer the amount to tax. Considering the above, the Assessing Officer added back the amount of Rs.2.75 crores to the income of the assessee. The assessee contested aforesaid addition before learned first appellate authority. Being convinced with the submissions of the assessee, learned Commissioner (Appeals) deleted the addition.

15. We have considered rival submissions and perused materials on record. A reading of the assessment order reveals that presuming that the assessee has offered the additional income of Rs.2.75 crores in assessment year 2014-15, the Assessing Officer made the addition. However, the facts on record speak something else. As could be seen from the statement recorded from the assessee in course of search and seizure proceedings, a copy of which is placed in paper book, the assessee had never stated that the entire amount of Rs.2.75 crores would be offered in assessment year 2014-15. The assessee has clearly stated that the amount will be offered as additional income not only for the assessment year 2014-15, but to cover any leakages or discrepancies found or that may be noticed during the course of search held on 21.11.2013. Further, in an

affidavit filed before the Joint Director of Income Tax (Investigation), Dehradun in course of post search proceedings, the assessee reiterated its earlier stand and stated that the additional income offered is not only by the assessee but other concerns managed by the assessee and for discharge of tax liability in any year, in which, the revenue leakage may be found in course of search and seizure proceedings. Thus, the allegation of the Assessing Officer that the assessee has offered the amount of Rs.2.75 crores in the impugned assessment year is unfounded. From the factual finding of learned first appellate authority, it is further evident that the assessee has followed up his declaration of additional income at the time of search and seizure proceedings by disclosing additional income of Rs.1,41,50,000/- in assessment years 2008-09 to 2013-14 and has further surrendered an amount of Rs.1,77,47,000/- as income for the assessment year 2008-09 to 2013-14 in course of proceedings before the first appellate authority. Thus, effectively, the assessee has offered additional income of Rs.2,78,97,000/- in assessment years 2008-09 to 2013-14. The aforesaid factual finding recorded by learned first appellate authority remains uncontroverted before us. In

view of the aforesaid, we do not find any valid reason to interfere with the decision of learned first appellate authority. Accordingly, we dismiss this ground.

16. Other grounds raised by the Revenue, being general in nature, do not require specific adjudication. Appeal is dismissed.

17. To sum up, all the appeals are dismissed.

Order pronounced in the open court on 23/06/2023.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
VICE-PRESIDENT

Dated: 23.06.2023

*aks/-