

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

आयकर अपील सं./ITA No.315/SRT/2022

Assessment Year: (2016-17)
(Physical Hearing)

The ACIT, Central Circle-3, Surat.	Vs.	Ankul Anurag Agarwal, A-2, 903, Salasar Palance-1, Near: Vastugram Vesu, Surat- 395007.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AESPA7850E		
(Assessee)		(Respondent)

Assessee by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Rasesh Shah, CA
Date of Hearing	10/05/2023
Date of Pronouncement	26/06/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeals filed by the Revenue, pertaining to Assessment Year (AY) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the ld. CIT(A)”] in Appeal No. CIT(A), Surat-4/10445/2018-19, dated 26.08.2022 which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

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 ld. CIT(A) has erred in restricting the addition of Rs. 1,91,00,000/- made on account of unexplained cash payments in purchase of Flat No. C-302, Florence, Vesu, Surat to Rs.2,11,000/- even though the addition was made on the basis of incriminating documents found and seized during the course of search proceedings under Sec. 132 of the Act from the seller of the property M/s. Pararn Properties.

(2) On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition of Rs. 1,91,00,000/- made on account of unexplained cash payments in purchase of Flat No. C-302, Florence, Vesu, Surat to Rs.2,11,000/- without appreciating the fact that the incriminating document has been found from the premise of the seller party i.e. M/s. Param Properties during the course of search proceedings clearly shows that the assessee has made unexplained cash payments in the said property.

(3) On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition of Rs. 1,91,00,000/- made on account of unexplained cash payments in purchase of Flat No. C-302, Florence, Vesu, Surat to Rs.2,11,000/- without appreciating the fact that seized documents were corroborated by identifying the name and contact number of the assessee from the contact details of mobile phone of one of the partners Agam Vadechha and subsequently identity confirmed by the service provider of mobile number.

(4) On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in restricting the addition on the ground that the A.O. has not allowed the cross examination of the person from whom the incriminating documents was found and seized, ignoring the incriminating evidences on record and without affording an opportunity of cross examination in the appellate proceedings.

(5) Without prejudice to ground No. 1, 2, 3 & 4, the ld. CIT(A) has nowhere given the proper basis of arriving at 1% being brokerage income in respect of transaction value of the property.

(6) In addition, and in alternate to grounds No. 1 to 5, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the additions made by the Assessing Officer ignoring the principles of "Human Probability Test" i.e. preponderance of probabilities which is applicable for Income Tax proceedings.

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

(8) 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. All the above grounds of appeal raised by the Revenue is interlinked and mixed therefore we shall adjudicate these grounds together. Succinct facts qua the issue are that assessee before us is an individual and had filed his return of income for assessment year (A.Y.) 2016-17 on 12.11.2016, declaring total income at Rs.4,43,600/-. 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. As per assessing officer these seized documents contain entries pertaining to and information contained therein related to assessee. The assessing officer was of the view that as per the seized documents unaccounted payments of Rs.1,91,00,000/- was made by the assessee, which remains untaxed. The assessing officer (assessing officer), during the scrutiny proceedings, observed that during the course of search in the premises of M/s Param Properties, certain incriminating documents and other evidences relating to the assessee were found, in which the assessee has made the payments as per Annexure BS-1 page No. 1, 2, 7 and 62 which are reproduced on page 2 and 3 of the assessment order by the assessing officer. The said payments are towards booking /purchase of flat no. C-302, Florence project at Vesu, Surat. The assessee was identified by the partners of the M/s Param Properties and was stated to be the sub-broker who operates from City Light Area and having a mobile number of 9898499922 and M/s Param Properties had carried resale deal with the assessee. On the basis of this information found during the course of search, the assessing officer made addition to the tune of Rs.1,91,00,000/-.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has partly deleted the addition made by the Assessing Officer. The ld CIT(A) held that assessee was involved in the transaction of sale of the said flat in the capacity of the broker, therefore, the investment in the flat cannot be taxed in the hands of the assessee and therefore, the addition was restricted to 1% brokerage on the transaction.

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

6. Learned DR for the Revenue, argued that Ld.CIT(A) was erred in holding that the assessee was involved in the transaction of sale of the said flat in the capacity of the broker, the same is also not acceptable, as during the assessment proceedings, neither the assessee, nor the said firm i.e. M/s Param Properties has ever stated that the transactions are related to brokerage in the said firm. Hence, it is nothing but an afterthought to escape from the legitimate tax liability.

7. Shri Rasesh Shah, Learned Counsel for the assessee, pleaded that assessee was a sub-broker of M/s Pram Properties and had undertaken certain resale transactions. It was further submitted by Id Counsel that the addition made by the assessing officer of Rs.1.91 Crore was incorrect as the same figures were added twice and the cumulative amount was added. The Id Counsel also argued that property was not registered in the name of the assessee, hence no addition should be made in the hand of the assessee. This way, Id Counsel defended the order passed by Id CIT(A).

8. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee. We note that Ld. Counsel submitted the following documents and evidences before the Bench:

- (i) Acknowledgement of return of income along with computation of total income of AY.2016-17 (vide paper book page nos.8 to 11).
- (ii) Notice issued under section 143(2) by Assessing Officer (vide paper book page nos.12 to 15)
- (iii) Notice issued under section 142(1) by Assessing Officer (vide paper book page nos.16 to 17)
- (iv) Letter filed before Assessing Officer in response to query asked by the assessing officer (vide paper book page no.18)

- (v) Notice issued under section 142(1) by Assessing Officer (vide paper book page nos.19 to 20)
- (vi) Letter filed before Assessing Officer (vide paper book page no.21)
- (vii) Page number 1, 2, 7 and 62 of Annexure BS-1 – seized from the premises of firm Param Properties (vide paper book page nos.22 to 25)
- (viii) Sale Deed of the Flat No.C-302, Florence, Vesu, Surat (vide paper book page nos.26 to 47)
- (ix) Submission filed by M/s. Param Properties before ITO (Investigation Wing), Surat (vide paper book page nos.48 to 56)
- (x) Acknowledgment of return of income along with computation of total income of AY.2017-18 (vide paper book page nos.57 to 59)

9. Before us, Id Counsel submitted that assessee was a sub-broker of M/s Pram Properties and had undertaken certain resale transactions. Before the assessing officer, the assessee had not accepted that he was having any transactions with M/s Param Properties. However, during the Appellate Proceedings, this aspect has been accepted. It was further submitted that the addition made by the assessing officer of Rs.1.91 Crore was incorrect as the same figures were added twice and the actual amount paid for the flat in question is only Rs.71 lacs in cash and the total consideration of the fiat is Rs.2,10,97,280/- (1,39,97,280 cheque + 71,00,000 cash). The assessee has explained during the appellate proceedings that on the basis of the seized material that there are only three cash transactions as noted in the cash summary maintained by M/s Param Properties which was updated on weekly basis and the figures in the earlier week were added to the amount collected in that particular week and cumulative amount was written. The assessing officer added such cumulative total and made an

addition of Rs.1,91,00,000/-. However, actually M/s Param Properties has received token of Rs.71 lacs (date of token is not available in the incriminating material), Rs. 19 lacs on 01.06.2015 and Rs.41 lacs on 05.06.2015 as clearly stated on seized pg no.7 of Annexure BS-1, totaling to Rs.71,00,000/- in cash. The assessing officer took Rs.41 lacs from page no.1 and Rs.19 lacs from page no.2 and Rs.60 lacs from page no.62 and Rs.71 lacs from page no.7. Actually, the total of Rs.41 lacs and Rs.19 lacs (Rs.60 lacs) is reflecting on page no.62. And the total of Rs.60 lacs and Rs.11 lacs of token (Rs.71 lacs) appears on page no.7. In each of the page the bifurcation of the amounts, shown is given which proves that the above inference is correct. Therefore, the actual payment in cash through the assessee is Rs.71 lacs and not Rs. 1,91,00,000/- as taken by the assessing officer.

10. It was also submitted during the appellate proceedings that the assessing officer has failed to make any inquiry relating to the property C-302, Florence, Vesu, Surat and no opportunity of cross examination of the partners of Param Properties was given. The assessing officer has mentioned in the assessment order that the assessee was not identified by the partners of Param Properties and only on the basis of assessee's mobile number given by one of the partner of Param Properties, the assessee's whereabouts were found. Hence, the assessee submitted before Id CIT(A) that the paper found was a dumb document and the same could not be relied upon. The assessee also relied on the decision of the Jurisdictional High Court in the case of CIT vs. Maulik Kumar Shah 307 ITR 137. The assessee also produced the copy of sale deed executed by the builder of Florence of flat No.C-302 to Mr. Sneh Vmay Saraf. This sale deed is dated 04.08.2015, which is before the date of Search. This proves that the assessee was not the purchaser of the flat. The details of cash transactions

of the assessee which were found in the premises of M/s Param Properties were in the capacity of a broker.

11. Therefore, Id CIT(A) observed that assessee's name was found against the particular flat, also proved that the assessee acted as the broker. Once it is proved that the assessee has not purchased the concerned flat no.C-302, Florence, Vesu, Surat the investment made for the said flat as per the seized material cannot be taxed in the hands of the assessee. But the assessee's name and mobile number against the particular transaction found in the records maintained with M/s Param Properties proves that the assessee was involved in the transaction of sale of the said flat in the capacity of the broker. The denial by Param properties and the assessee before the assessing officer is self-serving. Therefore, the investment in the flat cannot be taxed in the hands of the assessee and the addition could be restricted to 1% brokerage on the transaction as the assessee was the sub-broker as confirmed by the partner of Mr. Param Properties and M/s Param Properties has already offered 1% commission on this transaction before the Settlement Commission. Accordingly, out of the addition of Rs.1,91,00,000/-, an amount of Rs.2,11,000/- was sustained by Id CIT(A), (being 1% of the total value of the flat of Rs.2,11,00,000/- (Rs.1.4 Crore by cheque and Rs.0.71 Crore by cash) as addition towards brokerage and the balance amount of Rs.1,88,89,000/- (Rs.1,91,00,000- Rs.2,11,000) was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that there is no infirmity in the conclusion reached by Id CIT(A). That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

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

Order is pronounced on 26/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूरत /Surat

दिनांक/ Date: 26/06/2023

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat