

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

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

ITA No.2336/Del/2019
(Assessment Year: 2015-16)

With

ITA No.117/Del/2019
(Assessment Year: 2016-17)

Sh. Digvijay Singh, C/o- Advocate Anil Kukreti, Advocate, Johar Complex, Tilak Road, Post.-Rishikesh District-Dehradun	Vs.	DCIT, Central Circle, Dehradun
PAN -ADWPS5825Q		
(Appellant)		(Respondent)

Appellant By	Sh. K.K. Juneja, CA Sh. Anil Kukreti, Advocate
Respondent by	Sh. N.S. Jangpangi, CIT(DR)
Date of Hearing	23.06.2023
Date of Pronouncement	28.06.2023

ORDER

These two appeals by the assessee are against separate orders dated 28.01.2019 and 22.10.2018 passed by leaned Commissioner

of Income Tax (Appeals)-IV [hereinafter referred to as 'CIT(A)'], Kanpur, pertaining to assessment years 2015-16 and 2016-17 respectively.

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AY: 2015-16

2. The only effective issue to be decided in this appeal is as to whether the learned CIT(A) was justified in confirming the addition made by learned Assessing Officer in the sum of Rs.1 crore as unexplained investments made by the payment in cash to Sh. Jagat Bhushan Batra in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. A search and seizure operation was carried out under section 132 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in the Doon Valley Distillers/Breweries group of cases on 18.03.2016. One Shri Rameshwar Havelia Kuanwala, Dehradun, was belonging to Doon Valley group, was also searched, wherein certain papers relating to assessee were found. After recording satisfaction, a notice under

section 153C of the Act was issued to the assessee on 16.11.2017. The assessee in response to the said notice filed his return electronically on 15.12.2017 showing total income of Rs.3,99,590/- and agricultural income of Rs.3,91,526/-. Since the assessee had originally filed its return of income on 31.03.2016 declaring total income of Rs.4,09,592/- (which was higher than the income disclosed in the 153C return), the learned AO considered the said income as the income of the assessee and proceeded to make further addition thereon.

4. The documents related to the assessee which were found in the course of search action of Sh. Rameshwar Havelia are as under:

- a. Agreement to sale dated 04.12.2014 entered by the assessee with Sh. Jagat Bhushan Batra for purchase of land consisting of 6520.33 Sq. meter, which is equivalent to 867 Bighas at the rate of Rs.50,000/- per bigha, totaling to Rs. 4,33,50,000/- (hereinafter referred as "A")
- b. A partnership deed dated 05.12.2014 executed between the assessee and Sh. Rameshwar Havelia, having 50% share each. (hereinafter referred to as 'B')

5. With regard to the document referred in 'A' above, the assessee agreed to pay Rs. 2 crores to Sh. Jagat Bhushan Batra in the following manner:

- a. Cheque no. 049097 -Rs.50,00,000/-
- b. Cheque no.049098 - Rs.50,00,000-
- c. Cash - Rs.1,00,00,000-

6. The aforesaid two cheques were issued from Miyanwal, Kisan Sewa Sahkari Samiti by the assessee.

7. With regard to payment of Rs. 1 crore in cash, the assessee did not have sufficient cash with him and accordingly on 05.12.2014, he entered into a partnership deed with Sh. Rameshwar Havelia, pursuant to which, Sh. Rameshwar Havelia made cash payment of Rs.1 crore to Sh. Jagat Bhushan Batra on behalf of the assessee. Later, the assessee came to know that Sh. Jagat Bhushan Batra has already sold the land to a third party and accordingly canceled the agreement of sale dated 04.12.2014. Pursuant to this cancellation, the assessee confronted Sh. Jagat Bhushan Batra and sought for refund of the cheque money paid in the sum of Rs.1 crores (Rs. 50 lakhs + Rs. 50 lakhs). By that time,

since the cheques were not presented in the Bank by Sh. Jagat Bhushan Batra, it was returned to the assessee. These facts were presented before the learned AO by the assessee in the search proceedings under section 153C of the Act. The learned AO, however, did not agree to the contentions of the assessee and proceeded to make two separate additions as unexplained investments made by the assessee in land as under:

- a. Rs. 1 crore representing two cheques payments of Rs. 50 lakhs each to Sh. Jagat Bhushan Batra.
- b. Rs. 1 crore representing cash payment to Sh. Jagat Bhushan Batra.

5. The learned CIT(A) deleted the cheque portion of Rs. 1 crore as it was not presented in the bank for encashment by the seller of the property, i.e., Jagat Bhushan Batra.

6. With regard to cash payment of Rs. 1 crore to Sh. Jagat Bhushan Batra, the learned CIT(A) confirmed the addition in the hands of the assessee by holding that the assessee could not specifically explain the source of making payment to Sh. Jagat

Bhushan Batra in cash. The order of learned CIT(A) was passed on 28.01.2019.

7. We find that the learned AR had placed on record a copy of the assessment order framed in the hands of Sh. Rameshwar Havelia under section 153A(1)(b) read with section 143(3) of the Act, dated 28.12.2018 for assessment year 2015-16 by DCIT, Central, Circle, Dehradun (who is the same officer assessing the assessee also), wherein, in para 7 of the said order, the Assessing Officer of Sh. Rameshwar Havelia had categorically stated that it is Sh. Rameshwar Havelia, who had made cash payment of Rs. 1 crore to Sh. Jagat Bhushan Batra. Hence, the receipt of money in cash by the assessee from Sh. Rameshwar Havelia is proved beyond doubt by the orders of the Income Tax Department itself. Hence, the source for making payment to Sh. Jagat Bhushan Batra of Rs. 1 crore in cash stands clearly proved and explained. Hence, in our considered opinion, there cannot be any unexplained investment made by the assessee in the sum of Rs. 1 crore in the facts and circumstances of the instant case.

8. Since the search assessment order of Sh. Rameshwar Havelia for assessment year 2015-16 could not be placed on record by the assessee before the learned CIT(A) as it was obtained by him after passing of order of learned CIT(A), this fact could not be addressed by the assessee before the learned CIT(A). In any case, these are only orders of the Income Tax Department, which clearly shows a divergent stand taken by the very same Assessing Officer for the very same assessment year for two different assesseees on the very same transaction. Hence, we direct the learned AO to delete the addition made in the sum of Rs. 1 crore paid in cash to Sh. Jagat Bhushan Batra.

9. Since the relief is granted to the assessee on merits, the other legal grounds raised by the assessee need not be gone into and they are left open. Accordingly, the grounds raised by the assessee are allowed.

10. In the result, the appeal of the assessee is allowed.

ITA No. 117/DDN/2019
AY: 2016-17

11. The only issue to be decided is as to whether the CIT(A) was justified in confirming the denial of deduction on account of cost of

acquisition and expenses incurred in connection with transfer of property while computing short term capital gains in the facts and circumstances of the instant case.

12. We have heard the rival submissions and perused the materials on record. The assessee filed his return of income for assessment year 2016-17 on 31.03.2017 declaring total income of Rs. 23,38,840/-. The assessee offered capital gains in respect of transfer of immovable property in the return of income after reducing the cost of acquisition, including stamp duty and registration charges and various expenses incurred in connection with transfer, from sale consideration. The AO did not dispute the sale consideration reported by the assessee.

13. We find that the learned AO denied the deduction on account of registration charges paid in the sum of Rs.34,730/- to Stamp Authority at the time of purchase of property. This, in our considered opinion, is not correct in view of the fact that the assessee had produced the purchase deed of immovable property before the learned AO and this sum of Rs.34,730/- is duly reflected thereon as paid by him for the purpose of registering the property in

his name. It is not the case of the revenue that the source for making the said payment is not explained by the assessee. Hence, this sum of Rs. 34,730/- becomes part of cost of acquisition of the assessee eligible for deduction while computing capital gains.

14. The assessee had incurred mutation fees of Rs.1,200/-, which in our considered opinion, is the part of cost of acquisition incurred in connection with transfer of property. Accordingly, the same is eligible for deduction while computing capital gains.

15. The assessee has paid legal counsel fees for drafting of registered deeds amounting to Rs.5,100/-, which is a direct expenditure incurred in connection with transfer of property. Accordingly, the same is eligible for deduction while computing the capital gains.

16. The assessee has incurred a sum of Rs.599/- for performing Puja of the land. This has got nothing to do with the property and cannot be construed as an expenses incurred in connection with the transfer of the property. Hence, it is not eligible for deduction while computing capital gains.

17. The assessee has paid a sum of Rs.1,001/- to Sh. Pradip Joshi (Pandit) for performing puja on the said land. This has got nothing to do with the property and cannot be construed as expenses incurred in connection with transfer of the property. Accordingly, it is not eligible for deduction while computing capital gains.

18. The assessee has paid a sum of Rs.1,77,590/- to a civil contractor, Sh. Sandip Kumar from whom the work of demarcation and construction of partition for three plots sold was carried out. In this regard, we find that the assessee had purchased land consisting of 508.55 sq. meters and had demarcated the land into three plots and finally sold these plots to three different persons as under:

<i>Date of Sale</i>	<i>Name of Buyer</i>	<i>Area</i>	<i>Amount</i>
<i>31.12.2015</i>	<i>Smt. Mamta Pathak</i>	<i>111.52</i>	<i>5,78,000/-</i>
<i>15.12.2015</i>	<i>Smt. Vinita Gosain</i>	<i>276.57</i>	<i>14,32,000/-</i>
<i>15.01.2016</i>	<i>Smt. Kalawati Pandey</i>	<i>120.46</i>	<i>10,60,500/-</i>
	<i>Total</i>	<i>508.55</i>	<i>30,70,500/-</i>

19. For the purpose of aforesaid partition of land into different plots, the assessee has engaged the services of civil contractor, Sh.

Sandip Kumar. We find that the assessee has also placed evidence on record in the form of letter of confirmation dated 21.05.2018 from Sh. Sandeep Kumar, civil contractor confirming the fact of rendering the demarcation and partition services to the assessee at the final cost of Rs.1,77,590/- and also confirming the fact that the entire payments were received by him on different dates from time to time in cash. He further confirmed that he was also paid commission of Rs.40,200/- for sale of two plots in three installments by the assessee. The said confirmation also include the copy of Income Tax Returns together with computation of income of Sh. Sandeep Kumar evidencing the fact of disclosing the amounts received from assessee as income of Sh. Sandip Kumar. These documents are enclosed in pages 22 to 24 of the paper-book. Accordingly, we hold that a sum of Rs.1,77,590/- paid by the assessee to Sh. Sandeep Kumar towards demarcation of land would be construed as cost of improvement eligible for deduction while computing capital gains. Further, the commission payment in the sum of Rs.40,200/- to Sh. Sandeep Kumar for sale of two plots is to

be construed as expenses incurred in connection with transfer and eligible for deduction while computing capital gains.

20. With regard to payment of Rs.21,200/- as commission to Smt. Rajni Aswal for sale of third plot, we find that the assessee has placed on record the confirmation from Rajni Aswal together with her income tax return and computation of total income evidencing the fact of offering the commission income in her hands. These documents are enclosed in pages 25 to 27 of the paper-book. We hold that this commission payment of Rs.21,200/- is to be construed as expenses incurred in connection with transfer of land and accordingly eligible for deduction while computing capital gains.

21. In view of the aforesaid discussions, out of the total disallowance made by the learned AO in the sum of Rs.2,81,620/- while computing capital gains, Rs.1,600/- (Rs.599 + Rs.1,001) should be disallowed and remaining amounts should be allowed as deduction while computing capital gains.

22. Since, substantial relief has been granted to the assessee on merits, various other issues raised by the assessee on legal grounds

need not be gone into and they are left open. Accordingly, the grounds raised by the assessee are partly allowed.

23. In the result, appeal of the assessee for assessment year 2016-17 is partly allowed.

24. To sum up, appeal for assessment year 2015-16 is allowed and appeal for assessment year 2016-17 is partly allowed.

Order pronounced in Open Court on 28th June, 2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 28/06/2023

RK/Sr.PS

Copy forwarded to:

- Appellant
- Respondent
- CIT
- CIT(Appeals)
- DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI
(Dehradun Circuit Bench, Dehradun)