

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH :: NAGPUR

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER &
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
(Through virtual hearing)

ITA No.381/NAG/2013
(A.Y. 2007-08)

Rakesh Ashok Selarka, Krishnakunj, 179, Queta Colony, Nagpur. PAN: ABNPS 8472 N	vs	ITO, Ward-4(4), Nagpur.
Appellant		Respondent

ITA No.382/NAG/2013
(A.Y. 2007-08)

Ashok Amichand Selarka, Krishnakunj, 179, Queta Colony, Nagpur. PAN: ABLPS 5338 R	vs	ITO, Ward-4(4), Nagpur.
Appellant		Respondent

ITA No.407/NAG/2013
(A.Y. 2007-08)

Vikesh Chaturbhuj Agrawal, 23, Shradha, Ring Road, Nagpur. PAN: ABJPA 9338 H	vs	ITO, Ward-4(1), Nagpur.
Appellant		Respondent

Assessee by	:	Shri Sanjay Thakar, Adv. (ITA No.381 & 382/NAG/2013) Shri Nilesh Sindhwani, CA (ITA No.407/NAG/2013)
Revenue by	:	Shri Amol Khairnar, Addl.CIT-DR (ITA No.381 & 382/NAG/2013) Smt. Rashmi Mathur, DR (ITA No.407/NAG/2013)
Date of hearing	:	18/07/2023
Date of pronouncement	:	03/08/2023

O R D E R

Per INTURI RAMA RAO, AM:

These are the appeals filed by the different assesseees against the separate orders of Commissioner of Income-Tax (Appeals)-II, Nagpur dated 18/07/2013, 18/07/2013 & 07/08/2023 respectively, all for the A.Y.2007-08.

2. Since the identical facts and issues involved in these three appeals, we proceed to dispose of by way of this common order. For the sake of clarity and convenience, facts relevant in appeal bearing ITA No.381/NAG/2013 are stated herein.

3. Briefly stated the facts of the case are that the assessee is an individual deriving income from other sources. The return of income for the A.Y. 2007-08 was filed on 31/03/2008 declaring a total income of Rs. 2,54,940/-. The said return was processed u/sec. 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'Act') on 14/07/2008. Subsequently, the Assessing Officer (AO) based on the information given by the sellers of the land, from whom, assessee has purchased the agricultural land during the previous year relevant to the assessment year under consideration that the assessee had paid consideration over and above the consideration stated in the sale deed at the time of purchase of agricultural land, issued notice u/sec. 148 on 03/03/2011. In response to the notice, assessee had not filed any return of income, however, on 16/11/2011 assessee filed a letter

stating that return of income filed u/sec. 139(1) on 31/03/2008 be treated as return filed in response to the notice u/sec. 148. During the course of assessment proceedings, the AO had furnished the statements of the vendors wherein they have stated to have received on money consideration over and above the sale consideration mentioned in the sale deed. It was noticed by the AO that during the previous year relevant to the assessment year, the assessee jointly purchased the agricultural land along with his father Shri Ashok Selarka and one Mr. Vikesh Agrawal from Shri Bhaurao B. Ganjurde and Shri Lobhaji Chimote & Others. It was stated that assessee had purchased the land from Shri Bhaurao B. Ganjurde for apparent sale consideration of Rs. 12.00 lac & 7.50 lac, however, the sellers had stated that they have received on money consideration over and above the sale consideration mentioned in the sale deed of Rs. 42.50 lacs which was deposited in the bank account. Out of this consideration, share of the assessee was worked out to Rs.10,62,500/- being 25%. Similarly, the assessee was also purchased land from Shri Labhaji Chimote & Others situated at Kh. No.15 for which assessee's sale consideration stated in the sale deed was Rs. 12.10 lac. The statement of Shri Deoraoji Chimote, who was one of the vendors, had been recorded u/sec. 131 on 23/12/2010. In his statement, he had stated that he had received cash of Rs. 55.00 lac over and above the sale consideration mentioned in the sale deed, in which 1/3rd of sale consideration worked out to Rs.18,33,333/-. The AO alleged that

assessee had paid consideration of Rs.18,33,333/- over and above the sale consideration mentioned in the sale deed being 1/3rd of share of land. When this information was confronted with the assessee vide letter dated 05/12/2011, there was no response from the assessee. Finally, a show-cause notice was issued on 22/12/2011. In reply to the show-cause notice, assessee had denied having paid on money consideration over and above the sale consideration mentioned in the sale deed. However, the AO disbelieved the explanation of the assessee in view of the circumstances mentioned by him vide para 5.2 of the assessment order and the entire amount of Rs. 28,95,833/- was brought to tax as unexplained income in the hands of assessee.

4. Being aggrieved by the order of the AO, the assessee filed an appeal before the Id.CIT(A). During the course of appellate proceedings, the Id. CIT(A) had given opportunity to cross-examine the vendors of the land, who have stated that there was an agreement in respect of on money consideration in cash over and above the sale consideration mentioned in the sale deed and also confirmed that they had received on money consideration in cash from the purchasers of land, but the assessee could not discharge to disprove the statements given by the vendors. Under these circumstances, the Id. CIT(A) confirmed the action of the AO in bringing the tax of on money consideration of Rs. 2,93,500/-.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us in the present appeal.

6. The contention of the assessee is three fold; i.e., (i) the assessment order passed by the AO is bad in law as no notice u/sec. 143(2) was issued; (ii) the Id. CIT(A) ought to have made assessment in the status of AoP and not in the individual hands of the assessee; and (iii) the Id. CIT(A) ought not to confirm on money consideration in absence of corroborative evidence.

7. On the other hand, Id. Sr.DR submitted that the order of the Id.CIT(A) is very well reasoned, based on the appreciation of evidence on record, requiring no interference by this Tribunal.

8. We had heard the rival submissions and perused the material on record.

8.1 The first ground of appeal challenges the validity of the assessment order on the ground that no notice u/sec. 143(2) was issued by the AO. The contention of the assessee is contrary to the material on record in mere perusal of the assessment order, it would be clear that the AO had issued notices u/sec. 143(2) and 142(1) and the assessee had also responded and participated in the assessment proceedings. Therefore, the contention of the assessee is devoid of any merit and is hereby dismissed.

8.2 The second ground of appeal raised by the assessee is that the assessment should not have been made in the individual hands of the assessee, but in AoP status. The assessee had not brought any

material to show that the transaction of purchase of property was done in AoP status. On the other hand, the material on record clearly indicates that the properties were purchased jointly along with two other persons, namely Shri Ashok Selarka and Shri Vikesh Agrawal with a definite share in the property, which clearly indicates that there was no intention on the part of the assessee and other two parties to purchase the property in the capacity of an AoP. Thus, the findings of the Id. CIT(A) are very well reasoned and this ground of appeal has no merits. Accordingly, dismissed.

8.3. The third ground of appeal challenges the addition of Rs.2,93,500/- solely on the basis of the statement given by the vendors of the property from whom the assessee has purchased the land jointly with other two parties. During the course of assessment proceedings, the assessee had denied having paid on money consideration over and above the consideration mentioned in the sale deed. During the course of appellate proceedings before the Id. CIT(A), the Id. CIT(A) had directed the AO to afford an opportunity to cross examine the vendors. The AO in the remand proceedings offered the assessee an opportunity to cross examine the vendors, but the assessee could not disprove the statements made by the vendors and also could not deny the existence of agreement for on money consideration over and above the consideration mentioned in sale deed. Under these circumstances, we are of the considered opinion

that there was a conclusive evidence to show that the assessee had paid on money consideration cash at the time of purchase of agricultural land and the assessee could not offer any explanation as to the source of on money consideration paid. In these circumstances, the AO was justified in making the addition in the hands of the assessee. Therefore, this ground of appeal raised by the assessee is dismissed.

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9. The facts of these appeals are similar to the facts of ITA No.381/NAG/2013. Therefore, our findings in ITA No.381/NAG/2013 shall apply *mutatis mutandis* to these appeals also.

10. In the result, appeal of the assessee stands dismissed.

Order pronounced in open Court on 03rd August, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Dated : 03rd August, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
5. The DR, ITAT, Nagpur Bench, Nagpur.
6. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.