

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 197/Asr/2023
Assessment Year: 2018-19**

M/s Worldwide Fortune Homes, Excellent Towers, Dreamland Park Road, Kathua (J & K). [PAN:-AABFW8456F] (Appellant)	Vs.	Dy. Commissioner of Income tax, Central Circle, Jammu. (Respondent)
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Appellant by	Sh. Joginder Singh, CA
Respondent by	Sh. Rajiv Wadhera, Sr.DR.

Date of Hearing	24.07.2023
Date of Pronouncement	03.08.2023

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income-tax (Appeals)-5, Ludhiana, (in brevity 'the CIT (A)') order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2018-19. The impugned order was emanated from the order of the Id. ACIT, Central Circle, Jammu, (in brevity the Id. AO) order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds:

“1. That the Ld. CIT, (A)-5, Ludhiana passed order Under section 250(6) of the Income tax Act, 1961 merely on assumptions, without appreciating the factual, legal and statutory position of the Law and facts of the case.

2. (a) That on the facts and circumstances of the case, the Ld. CIT(A) has erred in confirming the addition by invoking the provisions of section 69A of the Act whereas the Ld.AO has made the addition on account of capital gain

(b) That on the facts and circumstances of the case, the Ld. CIT(A) has confirmed the addition without appreciating the facts that the transactions of sale of land does not pertain to the assessee firm as the sale deed took place between the Dr. Dushant Kumar and Shri Kirti Bhushan. The assessee firm has facilitated the said transaction as a real estate commission agent.

3. The appellant craves leave to add, amend, alter or otherwise raise any other ground

of appeal.”

3. Brief facts as culled out from the records are that the survey was conducted U/s 133A in assessee's premises. The department found two transactions the assessee received the amount of Rs.10 lacs from Dr. Vikas Goldy against sales of property including Rs.3 lac received from Mr. Kirti. The Id. AR for the assessee during assessment primarily denied the transaction of the

assessee. But finally, the assessee firm accepted the transactions and claimed that the said transaction is capital gain earned in respect of sale of shop made to be Dr. Vikas Goldy. As per the ld. AO, the assessee was avoiding to disclose the transaction amount to Rs 10 lakh. Therefore, the ld. AO considering and relying on the section 292C of the Act had calculated the capital gain without considering cost of acquisition on amount to Rs.10 lac and tax was levied @ 20% on the income of capital gain. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) rejected the calculation of the assessing authority and added back entire amount u/s 69A with the total income of the assessee. So, the rate of tax was changed on assessed income and the ld. CIT(A) entirely changed the view of the ld. AO which was already framed in assessment order. Being aggrieved assessee filed an appeal before us

4. The ld. DR vehemently argued and fully relied on the order of the revenue authorities.

5. We heard the rival submission and considered the documents available in the record. By way of schedule, we consider the order of the revenue authorities. The assessment order page 3 the relevant paragraph is reproduced as below:

“Therefore, in view of above provisions the onus is on the assessee to explain the contents of the documents found from his premises. The explanation of the assessee that these are some rough dated

jottings and this does not mean that these are cash or genuine transactions, cannot be taken as true and correct unless otherwise proved by the assessee which he has failed to do. In this regard it is seen that the document is properly showing amount of transaction, first name of person from whom received, purpose of transaction. , This statement of affairs recorded on the said document clearly shows financial transaction carried out by the assessee aggregating to Rs 13,00,000/-.[Rs.10,00,000/+Rs 3.00 000/] It was for the assessee to explain the nature of financial transactions recorded on the said document as every financial transaction would be in the personal knowledge of the assessee which he is avoiding to disclose. Since the assessee has not given any details of transaction despite the narration on the impounded document shows 'sale of shop', therefore, the undersigned is unable to determine the cost of acquisition of the shop and the Rs. 10,00,000/ is adopted as the full value of consideration. Accordingly the income on account of capital gains is worked out as under-

Full value of consideration = Rs. 10,00,000/

Cost of acquisition = Nil

Capital gains income = Rs. 10,00,000/

In response the counsels of the assessee have failed to furnish any reply/explanation in this regard and accordingly it was explained to them that provisions of section 45 read with 292C of the Act are attracted in this case and accordingly an addition of Rs. 10,00,000/ is made to the income of the assessee under the head capital gains

u/s 45 of the Act for the above said assessment year. Further the assessee has under reported its income in consequence to misreporting thereof, therefore, necessary penalty proceedings u/s 270A/274 are initiated separately in this case for the assessment year under reference.”

5.1 In the appeal order page 14 the relevant paragraph is reproduced as below:

“The provisions of Section 292C make it very clear that the impounded document belongs to the assessee and the contents of the document are true. Subsequent denial of a transaction which is clearly made out from the impounded document cannot be taken as ground for providing any relief to the assessee.

The Hon'ble Supreme Court in the case of CIT vs. Smt. P. K. Noorjahan reported at [1999] 237 ITR 570 has held that if, the assessee's explanation regarding the source of investment is not found to be satisfactory, the AO has the discretion to treat such investment as assessee's income.

Further, the Hon'ble High Court of Madras in the case of Thiru S. Shyam Kumar vs. ACIT reported at [2018] 99 taxmann.com 39 has held as under:

“Unexplained investment (On-money payment) - A search was conducted in business premises of assessee wherein certain loose slips were recovered, which showed several entries pertaining to cash and cheque transactions in respect of

purchase of a property - Assessee accepted in his statement that slip represented on-money payment made for purchase of property in question - Later on, assessee retracted from his statement and claimed that loose slips were only dumb slips - Tribunal however, rejected claim of assessee and confirmed addition - Whether since nothings in loose slips were clear, retraction made by assessee after period of two years was rightly rejected as an afterthought - Held, yes - Whether thus, impugned order could not be interfered - Held, yes”

From the above judgments, it is clear that once there is adequate documentary proof available showing the payment of on-money, the assessee cannot be allowed to go scot free with respect to alleged unaccounted cash transactions.

The Hon'ble High Court of Punjab & Haryana in the case of Vikrant Dutt Chaudhary vs. CIT, Panchkula reported at [2017] 88 taxmann.com 727 (Punjab & Haryana) has held as under:

“Photostat copies of documents, in absence of their original constitute material in hands of Assessing Officer if they are relevant for purpose of assessment and if they are not successfully rebutted by assessee”

In view of the above facts and stated legal position, the addition made by the AO is treated as deemed income u/s 69A on account of unaccounted transactions mentioned in the impounded document and penalty is also initiated u/s 270A for under reporting of income.”

5.2. In both the orders the nature of the calculation of tax and nature of addition is different. The assessing authority has considered the amount Rs. 10 lakh as capital gain but not cost of acquisition during time of assessment proceeding in the reason lack of documents. The Id. CIT(A) had converted the income assessed U/s 45 to section 69A. The appellate authority can change the view of assessing authority. The Id. CIT (A) can decide the appeal by passing a written order, after hearing the appellant, by which the orders of the Id. AO can be confirmed, modified or annulled, which may have the effect of reduction, deletion or enhancement of the quantum of demand raised by the Id. AO. The grievance of the assessee is that without giving a reasonable opportunity to the assessee the Id. CIT(A) had converted the income U/s 45 to the deemed income u/s 69A for unaccounted transaction. The Id. AR submitted a sale deed which is duly executed on 29.11.2017 in favour of Sh. Dushyant Kumar made by Sh. Kirti before the bench. We accept this document and have taken in the record with approval of the Id. DR. The assessee has narrated a different fact in Appeal Ground No. 2(b). But in appeal proceeding the assessee was unable to substantiate the fact. We find that the Id. CIT(A) had made the observation without giving a reasonable opportunity to the assessee. We are, therefore, of the opinion that interest of justice would be sub served if the impugned order is set aside and the matters are remitted back to the Id. CIT(A) for consideration thereof afresh. We are not expressing any views on the merits of the case so as

to limit the appellate procedure before the Id. CIT(A). Needless to say, the assessee should get a reasonable opportunity of hearing for setting aside proceedings.

6. In the result, appeal of the assessee **ITA No. 197/ASR/2023** is allowed for statistical purposes.

Order pronounced in the open court on 03.08.2023

Sd/-

Sd/-

(Dr. M. L. Meena)
Accountant Member

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order