

आयकर अपीलीय अधिकरण न्यायपीठ नागपूर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL, NAGPUR

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.400 & 401/NAG/2017
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

Ashok Madhorao Ikhar,
324, A, Bhaorao Nagar,
Bhandara Road, Wardhaman Nagar,
Nagpur – 440008

PAN : AANPI7875G

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 4(2), Nagpur

.....प्रत्यर्थी / Respondent

Assessee by : Shri Dr. Milind Bhusari
Revenue by : Shri Amol Khairnar

सुनवाई की तारीख / Date of Hearing : 20-07-2023
घोषणा की तारीख / Date of Pronouncement : 09-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These two appeals filed by the assessee against the common order dated 29-09-2017 passed by the Commissioner of Income Tax (Appeals)-1, Nagpur [‘CIT(A)’] for assessment years 2007-08 and 2008-09.

2. Since, the issues raised in both the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we

proceed to hear both the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 400/NAG/2017 for A.Y. 2007-08.

4. The sole ground raised by the assessee challenging the action of CIT(A) in confirming the addition made by the AO on account of commission income in the facts and circumstances of the case.

5. Brief facts relating to the issue on hand are that the assessee is an individual derives income from commission and agriculture. According to the AO, no return of income filed by the assessee for A.Y. 2007-08, but however, received commission on sale of property to Shri Ramesh Santani and Smt. Mahima Demble. A notice u/s. 148 was issued to the assessee and in response to which the assessee filed return of income declaring a total income of Rs.2,08,899/- and agricultural income at Rs.2,27,503/-. Notices u/s. 142(1) and 143(2) of the Act received. During the course of said proceedings, the assessee was asked to produce various details i.e. copy of bank statement, proof of prepaid taxes, proof of deductions, computation of income, balance sheet concerning both the assessment years as on 31-03-2006 and 31-03-2007, respectively.

6. It was explained that Shri Yogesh S. Vaidya and Shri Rajesh S. Vaidya have sold a property situated at Survey No. 165/2, Mouza-Hudkeshwar, Nagpur admeasuring 1.11 Hecter to Shri Ramesh Santani and Smt. Mahima Demble. According to the AO, the assessee had acted as a consenter in the sale deed dated 07-03-2009 and received Rs.8,00,000/- on 08-03-2007, Rs.3,00,000/- on 21-06-2007 and Rs.3,00,000/- on 21-

06-2007 vide cheques. It was explained by the assessee that he received only commission for A.Y. 2007-08 for Rs.3,00,000/- and remaining Rs.11,00,000/- paid to Shri Yogesh Shankarrao Vaidya and Shri Rajesh Shankarrao Vaidya equally. The AO asked proof of said payments to above said two persons. The reply of the assessee which was reproduced at page No. 3 of the assessment order and according to AO many opportunities have been given to the assessee to produce the said two persons but the assessee failed to produce the same. In the absence of verification of the statement of the assessee about the payment to the said two persons, the AO added Rs.6,00,000/- (Rs.8,00,000/- - Rs.2,00,000/-) to the total income of the assessee.

7. Aggrieved by the such order of AO in making the addition on account of commission, the assessee filed an appeal before the CIT(A), wherein, vide additional ground furnished the copies of receipt of amount endorsed by the seller Shri Yogesh Vaidya and Shri Rajesh Vaidya. Since, the said evidence was not there before the AO, the CIT(A) sought remand report. We note that the remand report is reproduced from pages 12 to 23 of the impugned order. Considering the said remand report, the CIT(A) confirmed the view of AO in finding the affidavit filed by the assessee is self serving and not supported by any proof, signatures on kachha receipts were not tallied with the signature of sale deed dated 07-03-2009 and failure of the assessee to produce the said two persons for examination. By holding so, the CIT(A) upheld the order of AO which are as under for ready reference :

“5.0 Appellant's submissions along with assessment order and records have been considered carefully. The undisputed fact remains that as per sale deed dated 07.03.2009, property has been sold by Shri Yogesh Vaidya and Shri Rajesh Vaidya to Shri Ramesh Santani & Smt. Mahima Demble for Rs. 56,00,000/- whereby the appellant has acted as consentor along with Shri Nathu s/o Godiji Vaidya & Shri Pankaj Gabhane. As per said deed, purchasers have paid the full consideration of the said property, through consentors, by cheques on various occasions. On the dates mentioned by the AO in case of the appellant i.e. 08.03.2007 & 21.06.2007, total payment

of Rs. 24,00,000/- (08.03.2007) & Rs. 17,00,000/-(21.06.2007) been stated to be made. Out of this, amount of Rs.8,00,000/- (vide cheque No. 483320 dated 08.03.2007 & Rs. 6,00,000/- (vide cheque No. 122477 & 122478 dated 21.06.2007 for Rs.3,00,000/- each) been found made in the appellant's bank account. During the course of assessment, appeal as well as remand proceedings, the appellant vehemently argued that each of the three consenter has received commission of Rs. 3,00,000/- each only on this sale transaction. Later on, the appellant has also alleged that, in fact, total amount of Rs. 65,31,2501- been received by the seller as against sum of RS. 56,00,000/- mentioned in the sale deed. Also that amounts received by the consenter, in excess of commission, has been given back to the sellers. It is pertinent to note that even in remand proceedings, the appellant has failed to produce any of the concerned person i.e. either the seller or consenter in support of his contentions. In fact, even the addresses given by the appellant's are not found to be correct. The appellant submissions stating that it is the duty of the AO to trace these sellers/consenters are found devoid of merits altogether. Appellant's further submissions that no addition u/s 68 can be made solely on the basis of entries in bank account as they do not represent his books of accounts also carry no force. The primary onus lies on the appellant to prove the nature and source of credits found made in his bank account. The appellant has claimed that out of Rs. 14,00,000/- found credited in his bank account through cheques, sum of Rs.11,00,000/- been given to the sellers and that too in cash. However, no evidence or confirmation been filed at any stage of the proceedings in support thereof. In fact, the appellant has been mentioning varying amounts for sale deed, amounts received by two sellers and amounts purported to have been given back by the consenters to the sellers. It has been held by Hon'ble Apex Court in case of *Vijay Kumar Talwar vs CIT* (2011) 330 ITR 1 & of *Sumati Dayal vs CIT* (1995) 214 ITR 801 that if a sum is found credited in appellant's accounts and if the explanation of the appellant about source and nature hereof is not found satisfactory, then addition u/s. 68 is justified. The appellant has not been able to correlate his submissions with transactions involved. Also one cannot ignore the fact that none of the sellers or consenter been produced by the appellant. In fact, even their correct and complete addresses also not been furnished by the appellant to enable the AO to make verification of appellant's contentions. No evidence been furnished by the appellant, despite being given various opportunities at all stage of proceedings, to rebut the presumption drawn against him u/s 68 by producing concerned parties.

5.1 After perusal of entire material on records & in my considered view, AO is found justified in making the impugned addition in the appellant's hands. Accordingly, addition of Rs.6,00,000/- for AY 2007-08 and of Rs.5,00,000/- for AY 2008-09 is found sustainable and, hereby, confirmed."

8. On perusal of the above finding of the CIT(A), we note that the contention of the assessee from day one was that he received amount to an extent of Rs.14,00,000/- vide three cheques out of which he received Rs.3,00,000/- for year under consideration as commission and remaining

Rs.11,00,000/- paid to the above said sellers i.e. Shri Yogesh Vaidya and Shri Rajesh Vaidya equally through banking channel. The AO, as it is evident from the assessment order, the AO asked the assessed to produce the said two persons for verification and confirmation, but however, the assessee could not produce. According to the assessee that he has offered explanation in respect of deposit as found by the AO in his bank account and the burden lies on the AO to summon the said persons for verification. As it evident from the assessment order the AO deputed his Inspector to issue summons u/s. 131 of the Act, but however, the said summons could not be served for want of correct address as it evident from page 5 of the assessment order. Further, before the CIT(A) an affidavit and also copy of receipt containing alleged signatures of the said two persons for filed as additional evidences against which the CIT(A) sought remand report from the AO. As discussed above in the remand report the AO doubted the signatures as verified from kachha receipts as well as signatures on sale deed dated 07-03-2009. Further, the CIT(A) was of the opinion, no steps were taken to produce the said persons at least in the remand proceedings before the AO and the assessee failed to bring on record in support of his claim that an amount of Rs.6,00,000/- being the addition made in the year under consideration out of Rs.11,00,000/- was paid to Shri Yogesh Vaidya and Shri Rajesh Vaidya, but not his income by way of commission. Therefore, no explanation to the satisfaction of both the authorities below were furnished even before this Tribunal and we find no infirmity in the order of CIT(A) as recorded in para Nos. 5 and 5.1 of the impugned order, hence, it is justified. Thus, the sole ground raised by the assessee fails and is dismissed.

9. In the result, the appeal of assessee is dismissed.

ITA No. 401/NAG/2017, A.Y. 2008-09

10. We find that the facts in ITA No. 401/NAG/2017 are identical to ITA No. 400/NAG/2017, except the variance in amount. Since, the facts in ITA No. 401/NAG/2017 are similar to ITA No. 400/NAG/2017, the findings given by us while deciding the appeal of assessee in ITA No. 400/NAG/2017 would *mutatis mutandis* apply to ITA No. 401/NAG/2017, as well. Accordingly, the appeal of assessee is dismissed.

11. To sum up, both the appeals of assessee are dismissed.

Order pronounced in the open court on 09th August, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 09th August, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur
4. The Pr. CIT-I, Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपूर,
/ DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune