

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

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

आयकर अपील सं. / ITA No.446/PUN/2022
निर्धारण वर्ष / Assessment Year : 2009-10

Asstt. Commissioner of Income Tax,
Central Circle, Kolhapur

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Vijaykumar Rajaram Shah,
1148, E Sykes Extension,
Kolhapur – 416001

PAN : ADNPS2394F

.....प्रत्यर्थी / Respondent

IT(SS)A No.21/PUN/2022
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Vijaykumar Rajaram Shah,
1148, E Sykes Extension,
Kolhapur – 416001

PAN : ADNPS2394F

.....अपीलार्थी / Appellant

बनाम / V/s.

Asstt. Commissioner of Income Tax,
Central Circle, Kolhapur

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.N. Puranikh
Revenue by : Shri Ajay Kumar Kesari

सुनवाई की तारीख / Date of Hearing : 10-08-2023
घोषणा की तारीख / Date of Pronouncement : 22-08-2023

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

These two appeals by the Revenue and assessee against the common order dated 16-03-2022 passed by the Commissioner of Income Tax (Appeals)-11, Pune [‘CIT(A)’] for assessment year 2009-10.

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 of Revenue in ITA No. 446/PUN/2022 for A.Y. 2009-10.

4. The Revenue raised four grounds of appeal which emanates into sole issue challenging the action of CIT(A) in deleting the addition of Rs.1,88,28,183/- made by the AO on account of cash payments for purchase of lands on protective basis in the facts and circumstances of the case.

5. Brief facts relating to the case are that the assessee is an individual filed return of income declaring a total income of Rs.35,26,640/-. The AO completed the assessment u/s. 143(3) r.w.s. 153A(b) of the Act inter alia making addition under unexplained investment of Rs.16,20,000/- on substantive basis and Rs.1,88,28,183/- on protective basis vide its order dated 26-02-2023. The CIT(A) confirmed the addition of Rs.16,20,000/- on substantive basis and deleted Rs.1,88,28,183/- made on account of

protective basis. Having aggrieved by the order of CIT(A), Revenue is before us.

6. Heard both the parties and perused the material available on record. We note that a search operation was conducted in the cases of Laxmi Civil Engineering Services Pvt. Ltd., Kolhapur and group of cases on 15-06-2010 u/s. 132 of the Act. The assessee is the Director of Laxmi Civil Engineering Services Pvt. Ltd. According to the AO, during the course of said search two loose papers at Sr. No. 18 and 21 of bundle No. 2 seized from the assessee's residence. The said loose papers indicate transactions in respect of purchase of certain lands.

7. We note that the alleged notings on page No. 18 of the seized loose papers regarding the cost of acquisition of agricultural land at Rs.86,74,487/- and page No. 21 is with regard to Rs.1,62,60,100/-. The AO opined these two figures of amounts are far more than the cost shown in the relevant sale deeds.

8. Considering the alleged notings in the seized loose sheets and from inquiries by the DDIT(Inv.), the AO opined that M/s. India Global Agro & Realty and the assessee are the main persons behind the transactions and have financed the on-moneys in cash, over and above consideration mentioned in the sale deeds. The AO proceeded to tax the difference between the amount found in the above said alleged seized loose papers and the sale deeds in the hands of M/s. India Global Agro & Realty and its partners on substantive basis as unexplained investment.

9. During the course of assessment proceedings, the AO examined loose paper No. 18 relating to purchase of 4.30 acres of land with registered sale deed. The AO observed on perusal of the sale deed, Shri Vijay Motmal Shah purchased 1.12 acres from Shri Anandrao Dnyanoba Mohite and also purchased another agricultural land admeasuring 7.05 hectares along with three partners of M/s. India Global Agro & Reality. It is replied that M/s. India Global Agro & Reality purchased agricultural land at Gat No. 156 in the joint name of four partners. As per the seized loose paper No. 21 Shri Shivaji Pandurang Mane sold agricultural land at Gat No. 1230 and 1234 of Kasba Karveer Rankala, Kolhapur admeasuring 38.05 gunthas for sale consideration of Rs.35,00,000/-.

10. The AO confronted the above said alleged loose sheets No. 18 and 21 to the assessee and held the reply of the assessee was vague. His statement recorded on 12-01-2011 is reproduced from pages 9 to 11 of the assessment order.

11. We note that in response to Q. No. 3 the assessee replied that handwriting of the said alleged loose sheets does not belong to him. It was stated that the said these two loose papers must have left by the broker in his house and explained his inability to explain about the various amounts and names mentioned on the said loose sheets.

12. We note that in response to Q. No. 4 he stated has inability to recollect the name of the broker who had kept the said alleged loose sheets in his house.

13. Further, in response to Q. No. 5 he stated that he does not know the names of persons written on page No. 21 except the name of India Global and Rajesh Gun.

14. Further, in response to Q. No. 6 he stated that he does not know the name of Vijay Shah and do not know who he is. Further, he stated I am not that Vijay Shah.

15. On an examination of the relevant portion of statement which are reproduced in the impugned order, we find that the AO was of the opinion the name mentioned in the alleged notings on seized loose papers as Vijay Shah is the assessee, wherein, to suggestion given in the search proceedings during the course of recording statement, the assessee clearly denied that the name reflected in the alleged seized loose papers is not he and does not know who he was. If that is the case the burden lies on the AO for further inquiries in summoning the purchasers relating to agricultural land said to have been reflected in the alleged loose papers, but however, no such effort has been put in by the AO, but however, proceeded arbitrarily making addition in the hands of the assessee on protective basis.

16. Further, we note that in response to Q. No. 7 the assessee clearly replied asserting that he is not Vijay Shah Saheb as reflected in the alleged loose sheet and requested verify from the registered documents. As discussed above, no inquiry was made by the AO in this regard in verifying whether the assessee is a party to the said acquisition of agricultural land by obtaining copies from registering authority. Therefore, in the absence of such verification to find out whether any transaction relating to purchase

of such agricultural lands were caused effected or not, we are unable to subscribe the view of the AO against the assessee as the name Vijay Shah Saheb reflected in the seized loose sheets is the assessee. The CIT(A) discussed the said issue with reference to assessment order and the submissions made thereon by the assessee deleted the addition made by the AO on protective basis by holding there was no material which could suggest the assessee paid Rs.1,88,28,183/-, in our opinion, is justified. Therefore, we find no infirmity in the order of CIT(A) in deleting the addition made by the AO on account of unexplained investment on protective basis. Thus, grounds raised by the assessee fails and are dismissed.

17. In the result, the appeal of Revenue is dismissed.

IT(SS)A No. 21/PUN/2022, A.Y. 2009-10 (Assessee's Appeal)

18. Ground No. 1 raised by the assessee challenging the action of CIT(A) in restricting the addition to an extent of Rs.24,000/- on account of unexplained investment.

19. We note that the AO asked the assessee to explain the amount of figures reflected in the loose paper 1 to 14 seized during the course of search. It was explained that the assessee purchased agricultural lands for a sum of Rs.3,00,930/- and the amount of Rs.44,125/- was available withdrawals from M/s. Ameet Trading Corporation and loan from R.M. Doshi to an extent of Rs.24,000/- and Rs.19,000/-, respectively and savings to an extent of Rs.1,125/-. The AO held that there was no evidence to show that the aforesaid amounts were available for purchase of property and accordingly, added an amount of Rs.44,125/- to the total

income of the assessee. The CIT(A) deleted an amount of Rs.20,125/- and confirmed Rs.24,000/- which is reproduced hereunder for ready reference:

“19.2 As regards to the loan of Rs.19,000/-, the appellant has submitted that, confirmation of loan of Rs.19,000/- raised from Shri Rajendra M. Doshi was filed before the AO, as mentioned in Para 8.1 of the assessment order however, the AO chose to ignore the same. A perusal of this confirmation suggests that Mr. R.M. Doshi having PAN No. AAYPD2584Q has given loan of Rs.19,000/- to the appellant. Mr. Doshi has also confirmed that the said amount is reflected in the balance sheet of Doshi Associates, of which he is a proprietor. The AO has not pointed out any defect in this confirmation and rejected the submission of the appellant without giving any reason. In view of these facts, it is held that source of investment of Rs.19,000/- stands explained. The balance amount of Rs.1,125/- is said to be invested out of savings. Considering the quantum of this amount, there is no reason not to accept, this explanation of the appellant. Accordingly, out of the addition of Rs.44,125/-, an amount of Rs.24,000/- is upheld and the balance of Rs.20,125/- is directed to be deleted. The ground no. 5 raised by the appellant is partly allowed.”

20. On an examination of the above finding of CIT(A), it is noted the view of AO is confirmed as the name of Shri Vijay Motmal Shah and the assessee are one of the same, wherein, while dealing the Revenue's appeal in ITA No. 446/PUN/2022 in the aforementioned paragraphs, we opined that the AO did not inquire whether the name of Shri Vijay Motmal Shah as reflected in the sale deed is the assessee or not, having no inquiry to that extent, we dismissed grounds raised by the Revenue in this regard. Therefore, the view taken by us is applicable to the issue raised in ground No. 1 in this appeal also, resultantly, the addition made by the AO and confirmed by the CIT(A) to an extent of Rs.24,000/- on account of unexplained investment in the hands of the assessee is not justified. Thus, ground No. 1 raised by the assessee is allowed.

21. Ground No. 2 raised by the assessee challenging the action of CIT(A) in making addition of Rs.16,20,000/- on account of unexplained investment.

22. According to the AO, the assessee has made total cash payments of Rs.16,20,000/- as per the seized loose paper Nos. 18 and 21. The AO added the said amount in the absence of satisfactory explanation. The CIT(A) confirmed the same which is reproduced hereunder for ready reference :

“9. I have considered the facts of the case and the submissions made by the appellant. In brief two papers were seized from the residence of the appellant during the search carried out on the appellant. The contents of these papers have been reproduced earlier in this order. On the basis of Sale deeds obtained during investigation, the AO reached to a conclusion that the page no. 18 contains the details of purchase of land at Vadipir. Also, it was found by him that the page no. 21 contains the details of land at Rankala. This factual finding of the AO has not been challenged by the appellant. The AO further held that the purchase cost mentioned in these two seized papers is higher than the purchase amount shown in the corresponding sale deeds. The AO also found that though the land was purchased in the names of partners of M/s. India Global Agro and Realty and other persons but Shri Vijay Shah, appellant assessee was also a party to said transaction and made certain cash payments. Accordingly, an amount of Rs.16,20,000/- was added on substantive basis in the hands of the appellant and in order to protect the interest of revenue, an amount of Rs.1,88,28,183/- was added on protective basis in the hands of the appellant.”

23. On perusal of the above finding of CIT(A) it is noted the view of AO is confirmed as the name of Shri Vijay Motmal Shah and the assessee are one of the same, wherein, while dealing the Revenue's appeal in ITA No. 446/PUN/2022 in the aforementioned paragraphs, we opined that the AO did not inquire whether the name of Shri Vijay Motmal Shah as reflected in the sale deed is the assessee or not, having no inquiry to that extent, we dismissed grounds raised by the Revenue in this regard. Therefore, the view taken by us is applicable to the issue raised in ground No. 2 in this appeal also, resultantly, the addition made by the AO and confirmed by the CIT(A) to an extent of Rs.16,20,000/- on account of unexplained investment in the hands of the assessee is not justified. Thus, ground No. 2 raised by the assessee is allowed.

24. In view of our decision in ground Nos. 1 and 2, ground No. 3 raised by the assessee becomes infructuous.

25. In ground No. 4 the assessee has assailed charging of interest u/s. 234A, 234B and 234C of the Act. The charging of interest u/s. 234A, 234B and 234C is consequential. Accordingly, ground No. 4 raised by the assessee is dismissed.

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

27. To sum up, the appeal of Revenue is dismissed and the appeal of assessee is allowed.

Order pronounced in the open court on 22nd August, 2023.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 22nd 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)-11, Pune.
4. The Pr. CIT (Central), Pune.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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