

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: H: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND

DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1257/Del/2022
Assessment Year: 2009-10

The JCIT (OSD), Circle-29, New Delhi 110002	vs.	Ajay Sharma, A-91,C.R Park, New Delhi 110019 PAN AJXPS 1788 H
(Appellant)		(Respondent)

For Revenue:	Shri Amit Katoch, CIT(DR)
For Assessee :	Ms. Sonal Wadhera, Adv.

Date of Hearing :	19.07.2023
Date of Pronouncement :	22.09.2023

ORDER

PER CHANDRA MOHAN GARG, J.M.

This appeal has been filed against the order of NFAC, New Delhi dated 11.10.2021 for A.Y. 2009-10.

2. The grounds have been raised by the revenue are as follows:-

(i) *That, in facts and circumstances of the case, Ld. CIT(A) erred in deleting addition the assessee of Rs. 1,95 crore made on account of unexplained investment u/s. 69 of the Income Tax Act, 1961.*

(ii) *That, in facts and circumstances of the case, Ld. CIT(A) ignored the fact that the assessee only in his individual capacity who has made the cash payment of Rs. 1.95 crore.*

(iii) *That, in facts and circumstances of the case, Ld. CIT(A) erred in not appreciating the documents whereby cash and cheque payment simultaneously undertaken.*

3. The Id. Senior DR, supporting the assessment order submitted that the Assessing Officer was right and quite correct in making addition in the hands of assessee by observing that the contents and text of collaboration agreement seized during search and seizure operation is same and every word of both the agreements were identical. The Id. Senior DR also submitted that the receipt of payments made through cheques

furnished by Ms/ Yamuna Builders P Ltd. and seized during course of search were also same which clearly proved that the assessee has made cash payment of Rs. 1.95 crores to M/s. Yamuna Builders P Ltd. during the year under consideration. Hence the Assessing Officer was right in making addition in the hands of assessee treating the same as unexplained investment u/s. 69 of the I.T Act 1961 (for short the 'Act'). The Id. Senior DR submitted that the Id. CIT(A) has granted relief to the assessee without any basis and justified reason therefore the impugned first appellate order may kindly be set aside by restoring that of the Assessing Officer.

4. Replying to the above, the Id. AR, supporting the first appellate order submitted that the conclusion drawn by the Assessing Officer for making addition u/s. 69 of the Act in the hands of assessee was not only perverse but contrary to the factual position emerging from the glaring documentary evidence submitted by the assessee before the Assessing Officer, which was considered and appreciated by the Id. CIT(A) in the right prospective therefore the first appellate order may kindly be upheld by dismissing the grounds of revenue.

5. The Id. AR also submitted that the assessee never entered into any agreement with M/s Yamuna Builders P Ltd. and thus there was no question in making cash payment by the assessee to the said entity. The Id. AR vehemently pointed out that since there was agreement between Shalu Construction P Ltd. and M/s Yamuna Builders P Ltd. the Assessing Officer was entitled and empowered to make meaningful investigation from the said two parties and assessee was never in the picture under said agreement. The Id. AR drawing our attention towards relevant paras of first appellate order submitted that the assessee although had signed the agreement on behalf of M/s. Shalu Construction P Ltd. held with M/s. Yamuna Builders P Ltd. but if the Assessing Officer has any grievance regarding such agreement the inquiry or investigation was required to be made with said two entities and not from the assessee as the assessee did not signed agreement in the personal or individual capacity therefore the assessee cannot be held liable personally for any fault in the transaction. The Id. AR also submitted that under the glaring facts and circumstances of the case, even if it is presumed that there was some additional payment to the owner M/s. Yamuna Builders P. Ltd. then also adverse inference could be drawn against the company that it was paid by the company whose behalf the assessee signed the agreement. The Id. AR lastly submitted that no addition under section 69 or any other provisions of the act could have been made in the hands of assessee on the allegation of cash on payment as per facts and circumstances of the case as the assessee did not entered into any agreement in the personal or individual capacity with any entity and he

was signing the agreement on behalf of M/s. Shalu Construction only. The Id.AR prayed that the appeal of the revenue may kindly be dismissed.

6. On careful consideration of above submissions first of all, we find it necessary, proper and appropriate to reproduce relevant part of first appellate order for the sake of completeness, which is as follows:- 4.3 to 4.3.2

The objection raised by the assessee was disposed of vide letter dated 2-6-2016 rejecting the assessee's objection and thereby proceeding with the reassessment."

UNQUOTE

4.3 I have also seen submission filed subsequently on 12.7.2018, 14.12.2018, /28.12.2018, 19.8.2020 and 18.9.2020. From a reading of reason recorded for reopening, it is seen that the information received by the Assessing Officer from ACIT, Central Circle, who in turn had received the said information from the Investigation Wing pertained to receipt of Rs. 1.95 crore in cash (and Rs.5 lakhs by cheque) from Yamuna Builders Pvt. Ltd. (Yamuna Builders, in short). The reason recorded had been objected to by assessee. It was stated by assessee that it never had any kind of dealing with Yamuna Builders on his own. On examination of record furnished (supposedly received by the A from ACIT, Central Circle), apparently, the assessee received Rs. 1.95 crore in cash and Rs.5 lakhs in cheque from Yamuna Builders. However, in the assessment order, the AO mentioned that the assessee entered into collaboration agreement with Yamuna Builders for construction of building on a plot of land owned by the latter. At page 3 of assessment order, the AO mentioned that assessee paid (Rs. 1,00,000 + 57,00,000 + 5,00,000) or Rs.63,00,000/-in cheque and Rs. 1.95 crore in cash. It is therefore seen that the amount stated to have been received by assessee from Yamuna Builders in reason recorded u/s 147 from got converted into amount paid by assessee in assessment order. The AO further went on to say that the collaboration agreement furnished by assessee in course of assessment proceeding was similar, word for word with the one seized in course of search. Now, it is contention of assessee that he had never entered into any business deal with Yamuna Builders in his individual capacity. M/s. Shalu Construction (P) Ltd in which he was a shareholder entered into an agreement with Yamuna Builders for construction of house in a plot owned by the latter. He had signed the collaboration agreement with Yamuna Builders in his capacity as Director of Shalu Construction (P) Ltd. In course of appeal proceeding, copy of collaboration agreement dated 27.01.2099 between M/s. Yamuna Builders and Ms. Shalu Construction (P) Ltd. which was also filed before the AO was submitted. It may be recalled that according to the 40, the collaboration agreement filed by assessee in course of assessment proceeding was identical to the one detected in course of search. On perusal of the document, (it is very deal that the, agreement was entered into between M/s Yamuna Builders and NUS-Shalu construction (P)Ltd. The present assessee had signed the agreement on behalf M/s Shalu Construction only. Details of verifiable payments which the AO Stated to have been paid by assessee, were in fact paid by the company as are evident from the agreement."In course of assessment as well as in appeal proceedings, assessee had filed details of payments made to Yamuna Builders as well as copy of ledger account of Ms. Yamuna Builders in the books of Shalu

Construction. If the agreement was entered into by the company and the payments were made by it, I fail to understand how the A proceeded on with the matter in case of assessee.

4.3.1 Had the collaboration agreement been entered into by assessee and had there been circumstantial evidences regarding payment of cash over and above the sum stated in the agreement document, the A could have proceeded against assessee. In this case, initial information received was relating to assessee receiving money from Yamuna Builders When the assessment proceeding progressed; assessee became the giver instead of recipient. Over and above that, the agreement was not entered into by assessee in his individual capacity. Under the circumstances, even if there was additional payment to the land owner, an inference could be drawn that it was paid by the company on whose behalf the assessee signed the agreement.

4.3.2 In the assessment order, the AO had pointed out some reasons as below to believe that there was cash payment of Rs. 1.95 crore.

1. The contents/text of collaboration agreement furnished by the AR of the assessee and seized during the course of search are same ie each and every word of both the agreement are same.

1. As per the trend in the prevailing market if a person makes an collaboration agreement with the builder for construction of building on the plot of land owned by the person, he provides one floor to the builder and builder in lieu of this floor construct the whole building i.e. parking along with 4 floor including ground floor and also pay some money in the form of cheque or cash. But in the cash of the assessee, the owner of the plot acquired only ground floor except, some space of parking which is totally reverse of the existing market trend which prove there was cash transaction between both the parties.

1. Receipts of the payments made through cheques furnished by Ms Yamuna Builders Put. Ltd, and seized during the course of search are same. This proves that receipt of payment in cash in al so genuine

1. Receipts of payment of SI2 Oh include as transaction of Rs. 1.95 Cr. and Rs.5 lac-vide cheque No, 88399p dated 09 02.2009. The payment of Rs.5 lac is also reflected on page. 76 of appraisal report received from ACIT, Central Girdle-26, New Delhi. From this it is proved the assessee has also received cash payment of Rs.1.95 Cr in cash.

But as stated earlier, since the agreement was between Shalu Construction (P) Ltd and M/s. Yamuna Builders, meaningful investigation could have been made in the hands of the those two parties only.

In view of the above discussion, the addition of Rs. 1.95 crore cannot be sustained.

Ground Nos. 1 to 4 are allowed.

7. On careful consideration of above rival submissions and perusal of the paper book filed by the respondent assessee spread over 76 pages, at the very outset, from the assessment order we note that the Assessing Officer made addition in the hands of assessee u/s. 69 of the Act by observing that the contents and taxed of collaboration agreement furnished by the assessee and found and seized during the course search and seizure operation was similar and identical. The Assessing Officer also noted that the payment of Rs. 5 lakh through cheque was reflected at page no 79 of appraisal report received from ACIT Central Circle 26 New Delhi and the receipts of payment through cheques is also in confirmatory with the material found during the course of search. The Assessing Officer lastly concluded that from the said factual position it is established that the assessee has made a cash payment of Rs. 1.95 crore to M/s. Yamuna Builders P Ltd. during the year under consideration and treated the same as unexplained investment of assessee and made addition u/s. 69 of the Act.

8. From relevant part of first appellate order we note that the Id. CIT(A) considered totality of facts and circumstances and the documentary evidence filed by the assessee. The Id. CIT(A) noted that the Assessing Officer mentioned that the assessee entered into collaboration agreement with M/s. Yamuna Builders P Ltd. for construction of building on a plot of land owned by said builder. The Id. CIT(A) also noted that the Assessing Officer also mentioned that the assessee had paid Rs. 63 lakh through three cheques and Rs. 1.95 crores in cash in the reasons recorded for initiation of reassessment proceedings u/s. 147 of the Act and made addition of Rs. 1.95 crores treating the same as unexplained investment u/s. 69 of the Act.

9. The Id. First appellate authority thereafter dealt with the observations and allegations of the Assessing Officer keeping in view explanation and documentary evidence submitted by the assessee and held that the assessee was a share holder in the M/s. Shalu Construction P. Ltd. and he signed the collaboration agreement on 27.01.2009 on behalf of said company with M/s. Yamuna Builders P Ltd. The Id. CIT(A) further observed that the said agreement was entered between said two companies and the assessee merely signed the same on behalf of M/s. Shalu Construction P. Ltd. and not in the personal or individual capacity. The Id. CIT(A) thereafter rightly concluded that had the collaboration agreement been entered into by assessee in the personal capacity and had their being circumstantial evidences regarding payment of cash over and above the some stated in the agreement document, the Assessing Officer could have proceeded against the assessee. The Id. CIT(A) rightly expressed his displeasure that if the agreement was entered into by the company and the payments were made by it then he has failed to understand how the Assessing Officer proceeded on with the matter in the case of assessee.

10. On the basis of foregoing discussion we reach to a logical conclusion that the Id. CIT(A) was quite correct and justified in deleting the addition by holding that since the agreement was between M/s. Shalu Construction P Ltd. and M/s Yamuna Builders P Ltd. therefore the meaningful investigation could have been made in the hands of said two companies/parties only and not in the hands of present assessee in his personal or individual capacity. We are unable to see any ambiguity perversity or any other valid reason to interfere with the findings recorded by the Id. CIT(A) while granting relief to the assessee and hence we uphold the same. Accordingly, grounds of revenue are dismissed.

11. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 22.09.2023.

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Dated: 22nd September, 2023.

NV/-

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

// By Order //

Asstt. Registrar, ITAT, New Delhi