

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.7061//Del/2019  
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 14 (2), vs. Deepak Bherwani,  
New Delhi. L-108-109, Lanpat Nagar-II,  
New Delhi – 110 002.  
**(PAN : ADWPB3131G)**

**CO No.154/Del/2019  
(in ITA No.7061//Del/2019)  
(ASSESSMENT YEAR : 2011-12)**

Deepak Bherwani, vs. ACIT, Circle 14 (2),  
L-108-109, Lanpat Nagar-II, New Delhi.  
New Delhi – 110 002.  
**(PAN : ADWPB3131G)**

**ITA No.7060//Del/2019  
(ASSESSMENT YEAR : 2011-12)**

ACIT, Circle 14 (2), vs. Smt. Lajwanti Bherwani,  
New Delhi. L-II/109, Lanpat Nagar,  
New Delhi – 110 002.  
**(PAN : AAFPB5742F)**

**CO No.153/Del/2019  
(in ITA No.7060//Del/2019)  
(ASSESSMENT YEAR : 2011-12)**

Smt. Lajwanti Bherwani, vs. ACIT, Circle 14 (2),  
L-108-109, Lanpat Nagar-II, New Delhi.  
New Delhi – 110 002.  
**(PAN : AAFPB5742F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri K.R. Manjani, Advocate  
Shri Tarun Aswani, Advocate  
REVENUE BY : Shri T. James Singson, CIT DR

Date of Hearing : 21.09.2023  
Date of Order : 26.09.2023

### **ORDER**

#### **PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

These are appeals by the Revenue and cross objections by the assessee against the respective orders of Id. CIT (A).

2. Since the issues are common and the appeals & cross objections were heard together, we are disposing off these appeals and cross objections by this common order.

3. For the sake of reference, we are referring to the facts and figures in the case of Deepak Bherwani. The only ground taken by the Revenue read as under:-

“That on the facts and circumstances of the case & in law, the Id. CIT (A) erred in deleting the addition of Rs.1,72,76,403/- made u/s 69C of the Income Tax Act, 1961.”

4. In this case, proceedings under section 153C of the Income-tax Act, 1961 (for short 'the Act') was initiated on the basis of information received from Assessing Officer of certain parties regarding search conducted on 04.09.2013 on the HN Safal Group. AO noted that during the course of search, documents pertaining to assessee were found. As per these details, assessee had paid on money of Rs.3,45,52,805/- to

Adicorp Deal SG Project for the purpose of purchasing of shop/office during FY 2010-11. AO noted that it was also provided that assessee had paid Rs.3,71,16,000/- in cheque for the same property. AO further noted that on perusal of sale deed dated 20.12.2011, it was seen that assessee had purchased property from Adicorp Deal SG Project at a price of Rs.3,17,16,000/- during FY 2010-11. Assessee was asked to give his submissions regarding on money paid. In absence of any response from the assessee, AO noted that property was jointly purchased by Deepak Bherwani and Smt. Lajwanti Bherwani. AO noted that as the assessee is joint owner of the purchased property, 50% of the amount paid as cash i.e. Rs.1,72,76,403/- was added to the income of the assessee u/s 69C of the Income-tax Act, 1961 (for short 'the Act').

5. Upon assessee's appeal, Id. CIT (A) elaborately considered the issue and held as under :-

“6.1 I have gone through the assessment order, submissions of the appellant and the documents submitted as well as satisfaction note and the report of AO etc.

6.2 The appellant has raised various grounds of appeal, disputing the initiation of proceedings u/s 153C of the Act and on the merits of the addition. Ground no. 1 and 8 are general in nature and hence no separate findings required. In ground nos. 2 to 4 the appellant challenged the proceedings u/s 153C of the Act. Ground no. 5 relates to the merits of addition. It is found expedient to first discuss and adjudicate ground no. 5, which is towards merits of the addition.

7. The appellant vehemently argued against the addition of Rs. 1,72,76,403/- being 50% of the "on money" alleged to have been paid for the purchase of property from the group of Safal Reality Pvt. Ltd. in whose case a search was conducted and some documents were found in a file, kept in the computer system.

7.1 The appellant stated, as reproduced earlier that the property has been purchased by cheque, which was made during 13.12.2011 to 01.01.2012, which relates to the AY 2012-13, whereas this addition on cash payment is made in the AY 2011-12, which is the current assessment year. Therefore, it is argued that cash payment, prior to the purchase is not proved nor it is a practice in the trade.

7.2 It is also stated that there is no evidence, nor any booking receipts nor any statement recorded by any person to substantiate that there has been a payment of on money to the builder. The addition has been made on the basis of the information received from the DCIT, Central Circle- 1(4), Ahmedabad. As per the said information (exhibit I of the intimation), during the course of search in the HN Safal Group of cases on 04.09.2013, hard disc was seized from their premises. In this hard disc, excel sheet namely Mondeal2.xlsx was found having certain soft data of Mondeal Business Park scheme of Adicorp Deal SG Project which contained the names of various customers etc. with the details of plot/shop no. and payment details through cheque and cash. The date of payment is decoded for 28.01.2012, however taking the date of booking it is mentioned by the AO of Safal Group that the cash transaction in the case of Ashok H. Bharwani relates to 09.08.2010, with the name of purchaser as Mr. Deepak Bherwani and Mrs. Lajwanti Bherwani. Since in the said sheet Rs. 3,45,52,805/- was stated to have been mentioned as "on money" paid in cash for the purchase of property, therefore addition has been made treating 50% of the said amount as unexplained investment u/s 69C of the Act.

7.3 It is observed from the said excel sheet that actual date of booking has been mentioned as 09 Aug-00. This was decoded by AO as 09.08.2010. However the basis for this decoding is not free of doubts as it is more of a guess work and not based

on any reference documents or statement by the custodian of these documents.

7.4 Further, it is a fact that appellant has purchased the property, jointly with Smt. Lajwanti Bherwani for Rs.3,71,16,000/-. The property has been duly registered and the payments have been made through banking channels between 13.12.2011 to 01.01.2012, which falls during the assessment year 2012-13. Therefore, to assume that this payment of cash on money has been made in advance of 1 year is not substantially justified nor as per the trade practice and no proof has been brought on record.

7.5 No other documents or details have been brought on record by the AO to substantiate that the amount of alleged "on money" has been paid in cash. There is no receipts by the appellant nor any document to show that the appellant has actually paid this amount to the Safal Group in cash. There is no statement recorded nor any further proof has been made available with regard to the computer file, based on which this addition has been made to show the on money payment by appellant. It is true that the name of appellant is mentioned in the said sheet as the name of purchaser however the name of party is mentioned as Mr. Ashok H Bharwani. Further, name mentioned in the computer file is not substantiated through any corroborative document to prove beyond doubt that this payment has been actually made by the appellant in cash. It is settled law that appellant cannot be held responsible or liable to be taxed on the basis of somebody else's documents which is not further supported by any proof.

7.6 This addition is made only on the basis of the mentioned computer file, which is the record of the searched companies and mentioning the cash receipts in its documents, alleged to be paid by appellant. It is not conclusive proof as this payment is neither confirmed by the appellant nor confirmed to have been received by the searched companies from the appellant. Therefore, only on the basis of these documents, it is not conclusively proved that appellant has given on money of Rs.1,72,76,403/- towards purchase of property.

7.7 Moreover, the appellant purchased the property, duly registered as per the prevailing circle rate and there is no allegation with regard to the under valuation of property. Therefore, it is not substantiated that this alleged "on money" has been actually paid by the appellant in cash, nor established through the documents on record.

7.8 Therefore, the addition made is not found tenable and accordingly directed to be deleted. Appellant gets relief on the entire addition made.”

6. Against the above order, Revenue is in appeal before us and the assessee has filed cross objections which are supportive of ld. CIT (A)'s order.

7. We note that in this case, the addition of on-money has been made on the basis of excel sheet found from the search on the Safal group. Ld. CIT (A) has given a finding that from the dates mentioned by the AO, the transaction happened in 2012-13, however the on-money payment has been made in advance of one year which is not substantially justified and not as per trade practice. Furthermore, no other document or details has been referred by the AO. No other material is found from the assessee also. In these circumstances, on-money transaction in this case is not proved. It is also not the case that any valuation of the property was done by the Revenue to prove that value of the property was more than the value reflected in the registration document. Ld.CIT(A) has given a correct finding that AO has not brought on record any cogent document to sustain the on-money in the case of the assessee. Hence, we do not find

any infirmity in the well-reasoned order of the Id. CIT (A) and the same is accordingly affirmed.

8. Since we have already upheld the order of the Id. CIT (A), the cross objections being supportive of Id. CIT (A)'s order have become infructuous, hence the same are dismissed as infructuous.

9. Our above order applies *mutatis mutandis* in the case of Smt. Lajwanti Bherwani.

10. In the result, both the Revenue's appeals are dismissed and both the cross objections filed by the assessee are dismissed as infructuous.

**Order pronounced in the open court on this 26<sup>th</sup> day of September, 2023.**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 26<sup>th</sup> day of September, 2023  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**