

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH : NAGPUR

[THROUGH VIRTUAL HEARING
AT INCOME TAX APPELLATE TRIBUNAL ; PUNE BENCHES; PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

I.T.A.No.273/NAG./2018
Assessment Year 2006-2007

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| M/s. Vidarbha Springs Pvt. Ltd., Plot No.K-11, 5 Star Industrial Area, MIDC Butiboki, Nagpur - 440 108 Maharashtra. PAN AABCV8591R | vs. | The Income Tax Officer, Ward – 6 (1), Aayakar Bhavan, Telangkhedi Road, Civil Lines, Nagpur. Maharashtra. |
| (Appellant) | | (Respondent) |

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| For Assessee : | Shri Abhay Agrawal, Advocate |
| For Revenue : | Shri Kailash Kanojiya, Sr. DR |

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| Date of Hearing : | 01.09.2023 |
| Date of Pronouncement : | 28.09.2023 |

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2006-2007, arises against the CIT(A)-4, Nagpur's Order No.CIT(A)-4/ 249/13-14, dated 31.01.2017, involving proceedings u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance that both the lower authorities have erred in law and on facts in adding the alleged undisclosed income of Rs.30 lakhs, we note that the CIT(A)'s corresponding detailed discussion to this effect reads as under :

2.0 The facts of the case are as follows:-

2.1 The original assessment in this case was completed consequent to a search and seizure operation u/s 153A r.w.s. 143(3) of the I.T. Act, 1961 on 31.12.2008. In the course of original assessment, the AO has made an addition of Rs. 30 lakhs invested with one Shri Vilas Harde. The order of the AO was confirmed by Commissioner of Income tax (Appeals). However, the appellant went in appeal before the ITAT.

2.2 The Hon'ble ITAT, Nagpur Bench, Nagpur vide ITA No. 45 to 47/Nag/2009 dtd. 26.06.2011 has set aside the order of the AO with the following comments:

"In this context, we find that the proposition canvassed by the learned counsel is apt and cannot be disputed. So, however, in the present case there is a material which has been referred to by the authorities below. It is also to be appreciated that the said material cannot be merely brushed aside since it has not been seized from an altogether stranger, but from the director of the assessee company. It is also correct that the said document may not pertain to the business of the assessee, so however, it does refer to the assessee company and certain purported investments. In the given circumstances, in our view, before adjudicating on the relevance of the said document, the contents of the document are required to be established after a due process of verification and enquiries, and no such step appears to have been taken by the Assessing Officer. For example, there is no reference to the stand of Shri Vilas Harde with regard to the impugned document; the same is relevant because the said document has been found from his possession. Therefore, considering the totality of facts and circumstances, we deem it fit and proper to set aside the order of the Commissioner of Income tax (Appeals) and direct the Assessing Officer to pass an order afresh on this aspect keeping in mind the aforesaid discussion. The Assessing Officer shall confront the assessee with the material in his possession and after considering the submissions of the assessee, he shall pass an order afresh in accordance with law. Thus, on this Ground assessee partly succeeds."

2.2 In pursuance of the order of Hon'ble ITAT reassessment u/s 153A r.w.s. 143(3)/254 dtd. 14.03.2013 was completed, whereby the AO made an addition of Rs. 30 lakhs to the income of the appellant. The AO noted that during the course of search at the residence of Shri Vilas Harde, one of the directors and shareholder of the company, one receipt book was found stating the details of cash received by Shri Vilas Harde amounting to Rs. 30 lakhs for the sale of shops, flats/bunglows. The AO has noted that Shri Vilas Harde has not explained the

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source of this money inspite of various opportunities granted, for reasons stated in detail in the Assessment order.

2.3 The AO has come to the conclusion that the said amount of Rs. 30 lakhs was received by Shri Vilas Harde from the M/s Vidarbha Springs Pvt. Ltd., in cash for sale of shops/plot/flats/bunglows in the month of April, 2005. The said amount of money is not disclosed in the books of accounts of M/s Vidarbha Springs Pvt. Ltd. Accordingly, the AO has come to the conclusion that this cash amounting to Rs. 30 lakhs is assessee's company undisclosed income earned during the year and added the same to the income of the appellant.

3.0 Aggrieved by the order of the AO, the appellant has filed this appeal with the following **grounds of appeal**:

- 1) On the facts and in the circumstances of the case, learned AO erred in making addition of Rs. 30,00,000/- as undisclosed income.
- 2) Any other ground of appeal that may be raised at the time of hearing of appeal.

4.0 Moreover, there is a delay in filing this appeal. The appellant has filed application for condonation of delay while filing the appeal. Considering the reasons given the delay in filing appeal is condoned.

5.0 * During the course of appellate proceeding, the appellant has made submission in support of his grounds of appeal stating that no such investment was made by Shri Vilas Harde. In order to decide the issue, the assessment record of Shri Vilas Harde were requested and perused for A.Y. 2006-07. The case of Shri Vilas Harde was decided by Hon'ble ITAT, Nagpur Bench, Nagpur vide ITA No. 203/Nag/2012 vide order dtd. 30.06.2015. The Hon'ble Tribunal has dealt with the issue in the following manner:-

"We have heard both the counsel and perused the records. Learned D.R. submitted that the addition was made based upon document found during the search at the residence of the assessee. He submitted that the assessee is a partner in M/s Maharaja Developers. Learned D.R. submitted that is well known phenomena that on money transactions take place in real estate business. He submitted

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that it was the money which was received by the assessee on behalf of Maharaja Developers. The assessee has clearly accepted during the search regarding the veracity of these receipts. These receipts were not reflected in the books of Maharaja Developers. Hence the learned D.R. submitted that in view of these circumstances it is a clear presumption that this on-money portion of real estate business was received by the assessee on behalf of Maharaja Developers. The assessee had not accounted for these moneys in the books of Maharaja Developers. Hence it is clear that the assessee himself has become richer by this amount. Hence the learned D.R. submitted that the Assessing Officer is correct in adding the amount in the hands of the assessee.

Per contra learned counsel of the assessee submitted that these additions were made on the basis of receipt books found at the residence of the assessee which belong to Maharaja Developers. Learned Counsel further submitted that assessment order of Maharaja Developers was passed by the same Assessing Officer wherein various additions had been made in respect of undisclosed receipts by the firm. Learned counsel further submitted that the assessee personally is not engaged in activity of earning of income from sale of flats or construction activity. Learned counsel further submitted that in a remand report Assessing Officer has not found any of the submissions made before the CIT(Appeals).

Upon careful consideration we note that it is undisputed that the above sub of Rs. 30,00,000/- and Rs. 10,000/- emerged as receipt by the assessee from the receipt books of Maharaja Developers found at his residence. These receipts unambiguously showed that the assessee has received a sum of Rs. 30,00,000/- and Rs. 10,000/- with respect to the projects that were being undertaken by Maharaja Developers of which assessee was a partner. The law in this regard is very clear that in a partnership firm a partner can bind the firm by any activity done on behalf of the firm. In this case the assessee has received a sum of Rs. 30,00,000/- and Rs. 10,000/- on behalf of the firm M/s Maharaja Developers with regard to projects undertaken by

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the firm. That the assessee is not individually engaged in real estate business cannot be said to be a ground that the receipt book of the firm found at his residence was bogus. As a matter of fact, no evidence has been led by the assessee to prove that the receipt book of Maharaja Developers which showed cash of Rs. 30,00,000/- and Rs. 10,000/- was bogus. What the assessee and learned CIT(Appeals) are proposing is that this addition can be made only in the books of Maharaja Developers. We find that when the assessee as a partner of the firm received some amount on behalf of the firm and does not account for the same in the firm, it cannot be said that the assessee has not become richer by that amount. In this view of the matter, the sum of Rs. 30,00,000/- and Rs. 10,000/- in the hands of the assessee are perfectly justified. Hence we set aside the order of the learned CIT(Appeals) on this issue and restore that of the Assessing Officer. Case law referred by the learned counsel of the assessee is not at all applicable in the facts and circumstances of this case. Here it is found that money was received by the assessee on behalf of the firm and was not accounted by him in the firm."

5.1 A perusal of the order of Hon'ble ITAT in case of Shri Vilas Harde shows that the Hon'ble Tribunal was of the opinion that the entries made in the seized documents were genuine entries and unambiguously showed that Shri Vilas Harde had received a sum of Rs. 30 lakhs from M/s Vidarbha Springs Pvt. Ltd. on behalf of M/s Maharaja Developers with regard to projects undertaken by the firm. Hon'ble Tribunal has held that no evidence has been led by Shri Vilas Harde to prove that the receipt book showing receipt of cash of Rs. 30 lakhs was bogus. The Tribunal has come to the conclusion that the addition of sum of Rs. 30 lakhs in the hands of Shri Vilas Harde is perfectly justified. A perusal of these fact clearly shows that the Hon'ble Tribunal was of the opinion that the seized documents on basis of which the additions were made were indeed genuine and the sum of Rs. 30 lakhs was paid by M/s Vidarbha Springs Pvt. Ltd. to Shri Vilas Harde as stated by the AO in the assessment order and this amount is not reflected in the books of accounts of the appellant. Therefore, the AO is perfectly justified in holding that this amount of Rs. 30 lakhs has been given by the appellant to Shri Vilas Harde was out of its unaccounted income.

5.2 Considering these facts, the additions made by the AO are confirmed and the grounds of appeal are hereby dismissed.

3. Suffice to say, it has come on record with the able assistance coming from both the sides that this is an instance of a search action dated 07.11.2006 carried out by the department u/sec.132 of the Act. And that the departmental authorities had come across the relevant seized material representing a book marked as “Annexure B-1 to 6” [pages 1 to 17] during this search indicating assessee’s cash payments of Rs.30 lakhs for acquiring plot/flat/shop, as the case may be, involving four instances of Rs.10 lakhs, Rs.5 lakhs and Rs.7.5 lakhs [twice], respectively made to the another searched person Shri Vilas Harde. This made the learned lower authorities to treat the sum total of the foregoing four instances to the tune of Rs.30 lakhs as assessee’s undisclosed income. It is in this backdrop that the things are crystal clear before us that the impugned addition is indeed based in seized material only carrying presumption of correctness u/sec.292C of the Act.

4. Faced with the situation, the assessee’s case before us is that the department has failed to prove the clinching nexus that Shri Vilas Harde herein is assessee’s director or share holder, as the case may be and, therefore, the impugned addition deserves to be deleted. Learned counsel next invited our attention to the tribunal’s first round order dated 26.06.2011 setting aside the matter to the Assessing Officer in very terms. We are afraid that even if it is accepted that the

learned lower authorities have failed to prove assessee's nexus with Shri Vilas Harde, we are of the considered view that such a lapse would not invalidate the impugned addition itself which is based on seized incriminating material only. We reiterate that this tribunal's another coordinate bench's order in Shri Vilas Harde's case (supra) has already examined the entire facts and circumstances in concluding that the said cash entries of Rs.30 lakhs indeed involved cash payments by assessee only. We find no merit in assessee's instant technical arguments in these facts and circumstances. The impugned addition stand confirmed therefore. Ordered accordingly.

5. This assessee's appeal is dismissed.

Order pronounced in the open Court on 28.09.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th September, 2023

VBP/-
Copy to

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| 1. | The applicant |
| 2. | The respondent |
| 3. | The CIT(A)-2, Nagpur. |
| 4. | The PCIT concerned |
| 5. | D.R. ITAT, Nagpur Bench, Nagpur. |
| 6. | Guard File. |

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.

| S.No. | Details | Date | |
|-------|---|------------|-------|
| 1 | Draft dictated on | 25.09.2023 | Sr.PS |
| 2 | Draft placed before author | 26.09.2023 | Sr.PS |
| 3 | Draft proposed & placed before the Author | .09.2023 | J.M. |
| 4 | Draft discussed/approved by Second Member | .09.2023 | A.M. |
| 5 | Approved Draft comes to the Sr. PS/PS | .09.2023 | Sr.PS |
| 6 | Kept for pronouncement on | .09.2023 | Sr.PS |
| 7 | Date of uploading of Order | .09.2023 | Sr.PS |
| 8 | File sent to Bench Clerk | .09.2023 | Sr.PS |
| 9 | Date on which the file goes to the Head Clerk | | |
| 10 | Date on which file goes to the A.R. | | |
| 11 | Date of Dispatch of order | | |