

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member**

**Ms. Astha Chandra, Judicial member**

**ITA No. 903/Del/2019 : Asstt. Year: 2008-09**

Rosemary Properties Pvt. Ltd., C/o Mr. Pranshu Goel, CA, 5A/3A, Ansari Road, Darya Ganj, New Delhi-110002	Vs	Income Tax Officer, Ward-21(4), New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AADCR0371F</b>		

**Assessee by : Sh. C. S. Anand, CA**

**Revenue by : Ms. Monika Dhami, CIT-DR**

**Date of Hearing: 29.08.2023**

**Date of Pronouncement: 27.09.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by assessee against the order of Id. CIT(A)-20, New Delhi dated 10.12.2018.

2. Following grounds have been raised by the assessee:

*"1. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) erred in confirming the addition made by the Ld. ITO ('Ld. AO), amounting to Rs. 36,63,25,000/-.*

*2. That the impugned order and the order passed by the td. AO violates the principles of natural justice, equity and fair play as the same was passed on presumptions, surmises, vitiated facts and without considering the complete facts placed on record.*

*3. That on the facts and circumstances of the case, the addition made by the Ld. AO as sustained by the*

*Hon'ble CIT(A) is bad in law as there is no basis for the computation of the addition amounting to Rs. 36,63,25,000/-.*

*4. That on the facts and circumstances of the case and in law, the addition made by the Ld. AO and as sustained by the Hon'ble CIT(A) is bad in law as Hon'ble CIT(A) and Ld. AO erred in not giving any finding as to how and under which provision of the law, the amount of Rs. 36,63,25,000/- is treated as income of the appellant.*

*5. That on the facts and circumstances of the case and in law, Hon'ble CIT(A) has grossly erred in not considering and giving any credence to the order of the Hon'ble CIT(A)-36, New Delhi for the AY 2007-08, in assessee's own case on the similar issue."*

3. The return of income was filed by the assessee company on 30.03.2009, declaring income of Rs. Nil. The same was processed u/s 143(1) on 21.08.2008 of the Act at the returned income. Subsequently, based on the information received from DDIT(Inv.)-1, Jaipur that a TEP in the case of M/s Signature Consortium prop. M/s Ajay Yadav, 32-B, Civil Lines Jaipur, the case of the assessee was reopened u/s 148 of the Income Tax Act, 1961. It was alleged that the assessee, M/s Rosemary Properties P. Ltd, is one of the parties involved in the said transaction mentioned in the TEP as seller of the property.

4. The information contains photo copy of MOU dated 22.02.2007, between compliance (M/s Ajay Yadav) and M/s Garima Buildcon P. Ltd. through its director Sh. Mukesh Gupta s/o Lt. Shri Roshan Lai Gupta, R/o d-39, Jyoti Marg, Bapu Nagar, Jaipur on behalf of (1) M/s Rosemary Properties P. Ltd., 2/Chattarpur, Mehrauli, New Delhi and (2) Sh. Dheeraj Pahwa

S/o Sh. R. C. Pahwa, P-1/25B, DLF City, Phase-11, Gurgaon, Haryana four purchasing 360 bigha.

5. Based on the above MOU, the Assessing Officer alleged that the total sale consideration of 360 Bigha land was,

310 Bighas X 20,50,000	= Rs.63,55,00,000
50 Bighas X 22,55,000	= Rs.11,25,50,000
Total for 360 Bighas	= Rs.74,80,50,000

6. The AO held that out of this amount of Rs.74,80,50,00/- a sum of Rs. 1,41,00,000/- have been received by both sellers in F.Y. 2006-07 and Rs. 70,50,000/-being 50% share of the assessee company has been assessed for the A.Y. 2007-08. As the balance amount of 50% share of Rs. 73,26,50,000/- was to be received by the assessee company in the F.Y. 2007-08 and its share of Rs.36,63,25,000/, the AO treated the amount "as received" and added to the total income.

7. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the order of the AO.

8. Subsequently, the assessee filed appeal before the Tribunal.

9. During the hearing before us, the Id. AR argued based on the submissions filed before the Id. CIT(A).

10. It was submitted that the assessee had acquired land measuring 22.68 Bigha only in the FY 2005-06 at village Kolila Sanga, Behror, Rajsthan for total sum of Rs 1,70,71,000/- which is duly reflected in the audited balance sheet as on

31.03.2006 and that the MOU dated 22.02.2007 is not signed by the Appellant and also the Appellant has not authorized anyone to sign such MOU on their behalf. Moreover, no such money has been received by the company from buyer of the land. It was submitted that the issue of purchase of property which has not taken place was settled through settlement deed on 18.04.2011 and settlement deed dated 17.10.2012 as confirmed by the Sh. Ajay Yadav before the AO. More than that, it is very important to note that the entire land agreed to be transferred by this MOU was never owned by the appellant company. There is nothing on record to prove the ownership of the entire land. Only a part of land was owned by the company. The said land of 22.25 Bhigas continued to be held/ owned by the company upto 24.08.2012 and the same was sold to the extent of 20.85 Bhigas for Rs.3,90,00,000/- and profit thereon of Rs.2,36,76,549/- was declared in the books for A.Y. 2013-14 and was shown in the Income Tax Return.

11. Against these arguments, the Id. DR relied on the order of the Id. CIT(A), the salient points of which are as under:

- The MOU dated 22.02.2007 was signed on behalf of the appellant and duly attested by the notary public, Jaipur which implies that the document is legally valid. The assessee himself has accepted that he has received the amount of Rs. 36,00,000/- as advance from Sh. Ajay Yadav which was paid in cheque which concurs the MOU where it specifies the details of the advance payments received by the first party i.e. Rosemary Properties Pvt. Ltd. It is not possible for any third person to enter into an agreement on behalf of any company without its knowledge and

consent. The Notary Public must have attested the document only after verifying the authority of the signatories to sign the MOU on behalf of the parties/ Companies including the assessee company.

- It is not possible that the appellant company will stay quiet after knowing the fact that there is a MOU in its name and not take action if it is not entered by the company. The appellant company suo motto did not take any action for a long time. The appellant could have filed FIR for forgery against the parties involved which the appellant preferred not to do.
- It is to be understood whether there is any evidence of link between Garima Buildcon Pvt. Ltd., whose director signed the MOU on behalf of the appellant with Ajay Yadav. It is pertinent to note that as per the MOU dated 22.02.2007 payments were already made totaling Rs. 30,00,000/- as advance payment for the Sale of the land by Sh. Ajay Yadav to Garima Buildcon Pvt. Ltd. through cheque. The appellant admitted that he has received the cheque and had entered the same in its balance sheet. As per the reply received from Sh. Ajay Yadav to notice w.r.t. Section 133(6) of the Act, dated 19/03/2015 he has admitted of advance payments made to both M/s Rosemary Properties and M/s Garima Buildcon and as well as Sh. Dheeraj Pahawa, all the three parties in connection with the impugned MOU further substantiating the validity of the MOU. As per the information received from DDIT (inv.)-I, Jaipur, Sh. Ajay Yadav in the statements recorded on oath on 18.03.2014 in connection with the said TEP,

admitted that the MOU dated 22.02.2007 is related to him and his concern M/s Signature Consortium.

- During the assessment proceedings Sh. Ajay Yadav produced settlement deeds dated 18.04.2011 and 17.10.2012. On perusal of the sale deeds, the AO found that these deeds were not attested by the Notary Public/Further, it has been informed that no such settlement deeds were filed before the DDIT (Inv.)-I, Jaipur during investigation proceedings and therefore the authenticity of these deeds were not reliable and have no evidentiary value whereas the MOU dated 22.02.2007 was signed and attested by the notary public in the presence of two independent witnesses.
- It is further learnt that the appellant group company have floated many other companies with common directors to deal with land acquisition and sale. Though, this fact has not been investigated by DDIT (Inv.)-I, Jaipur or the AO, denial of possession of land should be verified from this angle too.

12. Heard the arguments of both the parties and perused the material available on record.

13. We are unable to accept with the findings of the authorities below which are contrary to the facts on record. The assessee has received Rs.36,00,000/- from Sh. Dheeraj Pawa who is a partner of Sh. Ajay Yadav. These amounts have been duly reflected in the balance sheet as advances. The assessee owned only 22.25 Bighas which was purchased in the year

2005-06 out of which 20.85 Bhigas has been sold in F.Y. 2012-13. The department has not inquired when the alleged purchase of 360 Bhigas took place by the assessee which was inturn sold to Garima Buildtec Pvt. Ltd. as mentioned in the MOU. The AO has sent letters to Tehshildar but did not evoke any response. Similarly, even during the remand proceedings also, the AO could not bring the factum of purchase and sale of the said 360 Bhigas. The assessment has been made in a hasty manner and without bringing complete fact on record to ascertain the truth of MOU dated 22.02.2007 which is the vary backbone of addition of Rs.36,73,25,000/-. The revenue absolutely failed to bring any *iota* of evidence to prove that the sale of 360 Bhigas has indeed took place and the assessee received monies fully or even in part pertaining to these transactions. The entire addition has been made based on the MOU to which the assessee has not been a party. There was no evidence of any receipt of money by the assessee nor transfer of any land purportedly owned by the assessee company. Hence, we hold that the addition made by the AO cannot be sustained. Since, the assessee has got relief on merits any adjudication on additional grounds taken up by the assessee would be academic only and hence, we refrain to do so.

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

Order Pronounced in the Open Court on 27/09/2023.

Sd/-

**(Astha Chandra)**  
**Judicial Member**

**Dated: 27/09/2023**

\*Subodh Kumar, Sr. PS\*  
Copy forwarded to:

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**