

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

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos.898 & 899/PUN/2022
निर्धारण वर्ष / Assessment Years : 2017-18 & 2016-17

Bharat M. Jain,
C101/102, S. No. 707,
AFP No. 411/1, Kumar Business Court,
Mukund Nagar, Gultekdi, Pune – 411037

PAN : AAPPJ8869B

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
Central Circle – 2(3), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.900 & 901/PUN/2022
निर्धारण वर्ष / Assessment Years : 2017-18 & 2016-17

Mahaveer M. Jain,
C101/102, 411 Mukund Nagar,
Business Court, Gultekdi,
Pune – 411037

PAN : AAPPJ8868A

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
Central Circle – 2(3), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.902 & 903/PUN/2022
निर्धारण वर्ष / Assessment Years : 2017-18 & 2016-17

Anand T. Jain,
 585/91, Akash Darshan Society,
 Jaywant Apartment, Gultekdi,
 Pune – 411037

PAN : AFTPJ3981K

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
 Central Circle – 2(3), Pune

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.904 & 905/PUN/2022
निर्धारण वर्ष / Assessment Years : 2017-18 & 2016-17

Chirag G. Jain,
 Flat No. 12/559, B2, Arihant Garden,
 Maharshinagar, Gultekdi,
 Pune – 411037

PAN : ALMPJ2379N

.....अपीलार्थी / Appellant

बनाम / V/s.

Asst. Commissioner of Income Tax,
 Central Circle – 2(3), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Rahul Kaul
 Revenue by : Shri J.P. Chandrakar

सुनवाई की तारीख / Date of Hearing : 14-07-2023
 घोषणा की तारीख / Date of Pronouncement : 05-10-2023

आदेश / ORDER

PER BENCH :

All these appeals by the different assessees against the common order dated 29-09-2022 passed by the Commissioner of Income Tax (Appeals)-12, Pune ['CIT(A)'] for above mentioned assessment years.

2. Since, the issues raised in all the appeals are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to hear all the appeals together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up appeal in ITA No. 898/PUN/2022 for A.Y. 2017-18.

4. The assessee raised four grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the addition made by the AO by relying on the order passed by the Income Tax Settlement Commission in the case of unrelated third party in the facts and circumstances of the case.

5. A search and seizure action u/s. 132 of the Act was carried out in the Yuvraj Dhamale Group of cases on 26-09-2017. In continuation with the same, a search and seizure was also conducted at the residential premises of Shri Pravin Gawali who is said to be one of the Directors in M/s. Wellbuild Merchants Pvt. Ltd. According to the AO, certain loose papers were found and seized vide Sr. No. 36, 37 and 38 of Bundle No. 55, containing the names of investors etc. The AO reproduced such seized loose papers in the assessment order at pages 3 to 5. Further, taking into

account the statement of Shri Yuvraj Dhamale u/s. 132(4) of the Act, who alleged to have admitted that the entries mentioned in the said loose papers containing the details of investments stating that the investment amount contains by cheque and cash. Further, he referred to details of cash by way of a chart which is at page 7 of the assessment order received from investors and held the interest was paid to investors in cash. Further, the AO referred to joint verification report submitted by the respondent-revenue to Income Tax Settlement Commission stating that the said Shri Yuvraj Dhamale paid interest to investors of Rs.7.80 crores and the AO was of the opinion that when the Income Tax Settlement Commission accepted the payment of interest to the investors in cash, the same should be treated as cash income in the hands of the assessee which is at page 9 of the assessment order. Accordingly, considering the order of Income Tax Settlement Commission, the AO determined the total investments for the assessee's group and determined interest to an extent of Rs.48,05,000/- in the hands of the assessee as income from other sources. The CIT(A) confirmed the same.

6. Heard both the parties and perused the material available on record. On an examination of the alleged seized loose papers at pages 3, 4 and 5 of the assessment order discloses names of investors, investment amount, interest and total amount. According to the AO, the said loose papers were seized from the residential premises of Shri Pravin Gawali stated to be Director in M/s. Wellbuild Merchants Pvt. Ltd. and trusted person Shri Yuvraj Dhamale. The said Shri Yuvraj Dhamale stated to have been admitted by narrating the details as names of investors, investment they made, accrued interest and total outstanding. The AO referred to the said statement at para 5.3 of the assessment order, wherein, answer to Q. 30, he was stated that the investment amount contains both cheque and cash

component. Further, flats have been allotted against their investments and returned cash components to some of the investors. As it appears from the assessment order that the said Shri Yuvraj Dhamale stated to have been admitted that against the investments made by the investors flats have been allotted and the said investment contains both cheque and cash components. Further, he stated returned cash components which is mentioned in various notepads and diaries seized. It clearly shows that there was no statement regarding payment of interest in cash to the investors by Shri Yuvraj Dhamale. He only stated investment amount contains both cheque and cash component and returned cash component to some investors due to delay in project, without mentioning anything that the returned of cash towards interest payment as alleged by the AO.

7. Further, vide para 5.7 of the assessment order, it is noted that Shri Yuvraj Dhamale stated that the entire amount of investment as mentioned in pages 36 to 38 of Bundle No. 55 received by cheque. Further, it was stated the neither any amount has been received in cash nor repaid in cash. However, the interest on this amount has been paid in cash. The Income Tax Settlement Commission found no clarity in the said two contradictory statements of Shri Yuvraj Dhamale and ordered joint verification from the respondent-revenue. The said joint verification report by a tabular form is reproduced at page 9 of the assessment order shows the breakup of alleged cash expenditure allowed by the Income Tax Settlement Commission at Rs.7.80 crores in the hands of Shri Yuvraj Dhamale. We note that the said copy of breakup of cash expenditure was not seized material, in fact, which was prepared during the course of proceedings before the Income Tax Settlement Commission, whereby, it shows the AO determined the alleged payment of interest in cash in the hands of assessee by relying on the third party proceedings, wherein, the

assessee has no role or participation. Further, it shows the AO determined the alleged payment of interest in cash not based on the seized material, but taking into account the submission of Shri Yuvraj Dhamale third party proceedings before another authority. As discussed above, the Income Tax Settlement Commission did not give any credence to the statement of Shri Yuvraj Dhamale and ordered joint verification regarding the confusion created by the said Shri Yuvraj Dhamale about the alleged receipt of investments and payment of interest in cash which clearly establishes that the said Shri Yuvraj Dhamale shifted his stand in the statement made u/s. 132(4) of the Act during the course of search proceedings by stating that he received entire investment through cheque and cash as mentioned in the seized documents at pages 36 to 38. Therefore, there was no clarity in the statement recorded u/s. 132(4) of the Act and the submissions made before the Income Tax Settlement Commission which are contrary, therefore, in our opinion, the alleged cash expenditure allowed by the Income Tax Settlement Commission on which the AO determined the Income Tax in the hands of the assessee is not justified.

8. The ld. AR referred to para 5.8 of the assessment order and argued that the alleged payment against Sr. No. 13 to 17 shows only to Anand Jain and nowhere the names of other assesseees mentioned in the said chart. He submits that according to the statement of Shri Yuvraj Dhamale that the said Anand Jain represents other assesseees but the said Anand Jain is not directly related to other assesseees nor any business activity together. He argued that the statement as made before the Income Tax Settlement Commission cannot be used to fixe liabilities on other assesseees without there being any material evidence. The said statements of payments were made for his own convenience to get benefit before the Income Tax Settlement Commission. On a careful examination of the

scanned copy of breakup of cash expenditure allowed by the Income Tax Settlement Commission, we find not a seized document, but prepared post search proceedings. The ld. DR admits the same. The name against Sr. No. 13 to 17 shows one name i.e. Anand Jain and payments stated to have been paid on five occasions i.e. on 15-08-2015, 08-06-2016, 15-08-2016, 15-08-2016 and 06-10-2016 for a sum of Rs.20,00,000/-, Rs.25,00,000/-, 50,00,000/-, Rs.60,00,000/- and Rs.20,00,000/-, respectively. Further, we do not find any evidence showing the said cash payments under the head interest to the said Anand Jain except on 08-06-2016, 15-08-2016 and 16-10-2016 for Rs.25,00,000/-, 50,00,000/- and Rs.20,00,000/-, respectively. According to the AO the said payments covering the said three dates were given to Anand Jain is established under Page No. 74 of Bundle No. 14, Page No. 9 of Bundle No. 11, Page No. 98 of Bundle No. 1, Page No. 149 of Bundle No. 1 and Page No. 14 of Bundle No. 5 which are reproduced at pages 11,13, 14, 15 and 15 of the assessment order.

9. Let us examine the said alleged seized documents of Page No. 74 of Bundle No. 14 as relied on by the AO, which shows cash received, given to Raj sir and give to Anand Jain. The said entries on alleged Page No. 74 of Bundle No. 14 suggest no date and purpose of the payment stated to have been given to Anand Jain.

10. Page No. 9 of Bundle No. 11, shows two transactions under Anand Jain Group, one is RTGS to Sheetal Jain on 22-07-2015 and another transaction by narration Rs.20,00,000/- cash received to Anand Jain by Rohit dated 12-08-2015 here to, we find no description i.e. the nature of transaction and purpose of transaction on 12-08-2015.

11. Page No. 98 of Bundle No. 1 relating to cash given to Anand Jain to an extent of Rs.25,00,000/- at page 14 of the assessment order, shows cash given to Raj Sir, cash withdrawn Cosmos Bank and Union Bank for Rs.10,00,000/- and 15,00,000/-, respectively, totaling to Rs.25,00,000/-. According to the AO, the cash withdrawn from the said two banks, were given to Anand Jain on 08-06-2016 which is reflected at Sr. No. 14 of scanned copy of breakup of cash expenditure at page 9 of the assessment order. Admittedly, except a finding by the AO that the cash withdrawn from the said two banks were given to Anand Jain on 08-06-2016, but nowhere, the nature and purpose of transaction is visible from the said alleged documents. Further, on an examination of the tabular chart at page 16 of the assessment order shows that the cash given to Anand Jain of Rs.25,00,000/- as loan repayment, but however, the contention of the AO that the said payments were made towards interest as stated by Shri Yuvraj Dhamale before the Income Tax Settlement Commission is contrary to the entries made in the said chart.

12. Further, Page No. 149 of Bundle No. 1, shows many transactions on the said expenditure etc. It is noted that an amount of Rs.20,00,000/- against the name of Anand Jain on 06-10-2016. Further, there is no purpose and the nature of transaction is visible from the said seized documents.

13. Coming to Page 14 of Bundle No. 5 at page 17 of the assessment order, we note that an amount of Rs.50,00,000/- against the name of Anand Jain (Sumeet Mandot and Chirag Jain). The said seized documents show many transactions with several parties. The contention of the AO is that Anand Jain received Rs.50,00,000/- as his name is reflected in the said documents suggesting receipt of Rs.50,00,000/-, we find that the

entries cannot be relied upon as there was no nature and purpose of the said transaction.

14. Having examined the alleged seized loose documents Page No. 74 of Bundle No. 14, Page No. 9 of Bundle No. 11, Page No. 98 of Bundle No. 1, Page No. 149 of Bundle No. 1 and Page No. 14 of Bundle No. 5 in the aforementioned paragraphs, we find that the said alleged seized documents were found and seized from a third party, which were relied on by the AO for making additions in the hands of the assessee taking into consideration the alleged entries. As discussed above, there was no purpose or transaction mentioned against the said entries to make additions adversely in the hands of the assessee. A mere entry in the seized documents which were found from the third party does not constitute a conclusive proof to make addition in the hands of the assessee. The AO nowhere discussed or referred evidences showing that the said payments were made in cash towards interest which clearly shows that there was no independent enquiry made by the AO to prove the entries against the assessee. We find no opportunity of cross-examination was given to the assessee. The AO made additions in the hands of the assessee only on the basis of alleged entries in the seized documents and also on the relief of allowance of cash expenditure granted by the authority. For that matter, the AO mainly relied on the seized material of certain loose papers at Sr. No. 36, 37 and 38 of Bundle No. 55 to arrive receipt of interest by the assessee against which the Pr. CIT u/s. 245D(2B) and Rule 9 of Income Tax Settlement Commission Procedure Rule, 1997 reported the claim of interest payment is not verifiable in the absence of mentioned of its payment and also in the absence of conformity of nature of funds before the Income Tax Settlement Commission which finds support to the arguments of the ld. AR in contending why the assessee would accept cash under the head interest

when investment are made through cheque. Therefore, the above referred seized loose papers are not credible material showing direct nexus leading to make addition in the hands of the assessee.

15. As discussed above, as it was also argued by the ld.AR, the assessments made in the hands of the assessee regarding alleged payment of interest in cash was based on the seized documents found during the course of search basing on which Shri Yuvraj Dhamale claimed interest expenditure in Income Tax Settlement Commission. We find the AO considering the proceedings before the Income Tax Settlement Commission made addition in the hands of the assessee on account of interest payment in cash. In view of the same, we directed the ld. DR to furnish a copy of order of the Income Tax Settlement Commission regarding M/s. Wellbuild Merchants Pvt. Ltd. of the Damale Group. Ld. DR furnished the same which is on record by way of covering letter dated 15/01/2021. On an examination of the same, we note that the said Damale Group representing 04 applicants filed applications u/sec. 245C before the ITSC. In turn, the ITSC sought reports from PCIT as required u/sec. 245D (2B) of the Act and also under Rule 9 of the Income Tax Settlement Commission Procedure Rule 1997. Since the AO mainly relied on the case of M/s. Wellbuild Merchants Pvt. Ltd., we shall examine mainly the case of M/s. Wellbuild Merchants Pvt. Ltd. On perusal of the statement of CIT-DR representing Pr. CIT before the Income Tax Settlement Commission is at page No. 23 of the said order argued taking reference to Question No. 68 of the said Shri Yuvraj Dhamale that the cash expenses out of which already claimed and allowed at the time of search action were claimed on estimation basis without any supporting evidence or documents. He submitted the claim of cash expenses is a pure imaginary figure without any basis and argued to reject the claim in the case of M/s. Wellbuild Merchants Pvt. Ltd., which is

evident from para A(i) at page 23,24 & 25 of the said order. Further, taking reference to seized documents pages 36 to 38 of bundle 55 concerning the assessee before us as referred by the AO in his order, we note that the CIT -DR argued that the applicant furnished a common reply regarding evidences of cash receipts in seized documents pages 36 to 38 of bundle 55 stating that entry pertain to cash loan/ repayment. Further, he vehemently argued that the claim of interest payment of Rs. 7,80,00,000/- out of Rs. 8,00,62,029/- is not verifiable in the absence of mention of its payment and also in absence of conformity of nature of funds which is evident from para 5A(ii) of Page No. 25 of Income Tax Settlement Commission order. However, the assessee therein got relief of Rs.7,80,00,000/- towards business expenditure. Therefore, in our opinion, that the information by way of a seized loose papers in the case of third party cannot be said to be tangible material without a further enquiry falling which the addition made in the hands of the assessee fails and, is not justified. Thus, the order of CIT(A) in confirming the order of AO is not maintainable and set aside. Thus, the grounds raised by the assessee are allowed.

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

ITA Nos. 899 to 905/PUN/2022

17. We find that the facts in ITA Nos. 899 to 905/PUN/2022 are identical to ITA No. 898/PUN/2022 except the variance in amount. We find the issues raised in this appeal are similar and identical facts and also arising out of the same search concerning Shri Yuvraj Dhamale group, and also the additions made in this appeal concerning the grounds raised were added by the AO, taking into consideration third party proceedings before

the Income Tax Settlement Commission. Therefore, the view taken by us in ITA No. 898/PUN/2022 for A.Y. 2017-18 in allowing the assessee's grounds by holding the additions confirmed by the CIT(A) is not justified, is equally applicable to the grounds raised in this appeal also. Therefore, the findings given by us while deciding the appeal of assessee in ITA No. 898/PUN/2022 would *mutatis mutandis* apply to ITA Nos. 899 to 905/PUN/2022, as well. Accordingly, the appeals of assessees are allowed.

18. To sum up, all the appeals of the assessees are allowed.

Order pronounced in the open court on 05th October, 2023.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

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

पुणे / Pune; दिनांक / Dated : 05th October, 2023.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT, Central, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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