

IN THE INCOME TAX APPELLATE TRIBUNAL  
CIRCUIT BENCH : VARANASI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.88/ALLD/2016  
Assessment Year: 2009-10

Ashutosh Mishra,  
3/144, Vinay Khand,  
Gomti Nagar,  
Lucknow – 226 010.

Vs Assessing Officer,  
Circle-3,  
Varanasi.

PAN: ADGPM1827Q

(Appellant)

(Respondent)

Assessee by	:	Shri Ashish Bansal, Advocate
Revenue by	:	Shri A.K. Singh, Sr. DR
Date of Hearing	:	25.09.2023
Date of Pronouncement	:	26.09.2023

ORDER

PER B.R. BASKARAN, AM:

The assessee has filed this appeal challenging the order dated 05.02.2016 passed by the Id.CIT(A), Varanasi and it relates to assessment year 2009-10. The assessee is aggrieved by the decision of the Id.CIT(A) in confirming the addition of Rs.90 lakhs made by the AO.

2. Facts relating to the above-said issue are discussed in brief. The AO reopened the assessment of the year under consideration on receiving an

information that the assessee has paid Rs.90 lakhs to a person named Shri Kalu Hasan, Dhanpura for purchase of one property. Before the AO, the assessee appeared once and sought adjournment . Thereafter, the assessee did not appear and was seeking adjournment from time to time. The assessee also did not furnish any explanation with regard to the above-said alleged payment of Rs.90 lakhs. Hence, the AO completed the assessment to the best of his judgement u/s 144 of the Act and assessed the above-said sum of Rs.90 lakhs as income of the assessee u/s 69A of the Act.

3. Before the Id.CIT(A), the assessee appeared and submitted that he did not make any payment to Shri Kalu Hasan. The submissions made by the assessee before the Id.CIT(A) are extracted below:-

*“2.3 That, the assessee had based on a verbal agreement with said Kalu Hassan, handed over to him, a passport size photograph of his along with his ID proof and address proof, to prepare an agreement of sale which both parties had decided to enter into for one of the lands of which Kalu Hassan was an owner. However, the deal did not go through and the documents were not received back by the assessee from Kalu Hassan.*

*2.4 That, the assessee has come in possession of an agreement to sale dated 16.10.2008 which is prima facie a forged document containing the photograph of assessee, alleging him to be the buyer and second party in the agreement. Even the signature on the said document is a forgery and does not belong to the assessee. A copy of said document is enclosed herewith for your kind perusal and verification.*

*2.5 That, the assessee, to prove his innocence has procured sale agreement dated 18.10.2008 for the property bearing Khata No.24 Khasra No.246/4, Rakbai 0.0780 hec. And Khasra No.246/3 Rakbai 0.0780 hec. These are one of the same properties which are mentioned in*

*the forged agreement to sale. A copy of said sale deed is enclosed herewith for your kind perusal and verification. From the perusal of sale document it is evident that the property has been sold by Kalu Hassan to M/s Patanjali Ayurved Limited on 18.10.2008. It proves the assessee is contention that the agreement to sale is forged as the ownership of the property has gone to a third party immediately after the date of forged agreement to sale.*

*2.6 That, the assessee, to prove his innocence has procured a copy of SBI savings bank statement account No.32860 of Kalu Hassan for the relevant period wherein the said person has made a cash deposit of Rs.1,00,00,000.00 (Rupees one Crore) on 20.10.2008 consequent to the date of sale of property on 18.10.2008. A copy of said bank statement is enclosed herewith for your kind perusal and verification.”*

4. Accordingly, the assessee contended that the addition made by the AO is liable to be deleted. The Id.CIT(A) did not accept the explanations of the assessee and, accordingly, confirmed the addition made by the AO.

5. We have heard the parties and perused the record. We notice that the AO has made the addition of Rs.90 lakhs on the basis of information available with the AO. Since the information was not provided to the assessee, the co-ordinate Bench had directed the AO to produce the assessment record on several occasions, namely, vide order passed on 25<sup>th</sup> May 2022, 6<sup>th</sup> July, 2022, 24<sup>th</sup> August, 2022, 25<sup>th</sup> August, 2022, 3<sup>rd</sup> November, 2022 and 12<sup>th</sup> January, 2023. However, till date the assessment record has not been produced. Today also the Ld D.R submitted that the AO has not sent the assessment record. It is the case of the assessee that the AO did not supply the information which formed the basis of making of impugned addition of Rs.90 lakhs. The Id. DR also submitted that he has also written several

letters to the AO, but, the AO has not responded. Under these set of facts, we have no other option, but, to proceed to dispose of the appeal on the basis of information available on record.

6. It is the submission of the assessee that the property against which the assessee is alleged to have paid the advance amount of Rs.90 lakhs has been sold by Shri Kalu Hassan to some other party on 18.10.2008. It is the submission of the ld. AR that the last amount alleged to have been paid by the assessee to Shri Kalu Hassan was on 16.10.2008. Accordingly, it is the contention of the ld. AR that, had the assessee really paid the amount on 16.10.2008, Shri Kalu Hassan could not have transferred the property to a third party on 18.10.2008. It is the submission of the assessee that Shri Kalu Hassan has prepared a bogus “Agreement to sale” in the name of the assessee which the assessee was not aware. The Ld A.R submitted that the purpose for which the said bogus document was prepared was also not known to the assessee. We notice that the AO has not taken any step to find out the veracity of the agreement by examining Shri Kalu Hassan. Under these set of facts, we tend to agree with the assessee. This is so, since Shri Kalu Hassan has transferred the property on 18.10.2008 which could not have been possible if the assessee had paid the advance to him. Accordingly, we are of the view that the AO has made the impugned addition on the basis of surmises and conjectures and without establishing proper facts. Accordingly, we are of the view

that this addition is liable to be deleted. Accordingly, we set aside the order passed by the Id.CIT(A) on this issue and direct the AO to delete the addition.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26.09.2023.

Sd/-

(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Dated: 26<sup>th</sup> September, 2023

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

Asstt. Registrar