

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No.871/PUN/2022

निर्धारण वर्ष / Assessment Year : 2011-12

Nandkumar Jaramal Wadhwa Krishna Sales, Shop No.116 C Wing, B.R. Jindal Super Market, M.G. Road, Jalna - 431203 PAN: ABXPW0846L	Vs.	ACIT, Jalna Circle, Jalna
Appellant		Respondent

Assessee by Shri Nikhil Pathak
Revenue by Shri Rajesh Gawali

Date of hearing 02-11-2023
Date of pronouncement 02-11-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 06.10.2022 passed by the CIT(A) in National Faceless Appeal Centre (NFAC), Delhi in relation to assessment year 2011-12.

2. The first ground, challenging initiation of re-assessment proceedings, was not pressed by the ld. AR. The same is, therefore, dismissed as not pressed.

3. The only issue raised through the other grounds is against the confirmation of addition of Rs.18,50,000/- made

u/s 69 of the Income-tax Act, 1961 (hereinafter also called 'the Act') on account of unexplained investment made in purchase of plot No.14 from Mahalaxmi Properties & Developers (hereinafter also called 'Mahalaxmi').

4. Pithily put, the factual matrix of the case is that the assessee did not furnish his return u/s 139 of the Act. Notice u/s 148 was issued. In response, the assessee furnished return declaring total income at Rs.2,73,590/-. The Assessing Officer (AO) observed that a Survey action u/s 133A was carried out in the case of Mahalaxmi on 13.03.2015, during the course of which various books of account, diaries and documents, were found and impounded. On the basis of impounded materials, Mahalaxmi admitted and disclosed additional income of Rs.8.74 crore. Later on, Mahalaxmi filed settlement application before the Settlement Commission declaring additional income of Rs.8.55 crore, which was further enhanced by Rs.2 crore by the Settlement Commission. The impounded documents divulged that the assessee purchased a plot of land bearing No.14 having an area of 3434

sq.ft. from Mahalaxmi and paid on-money. The registered sale deed was executed between Mahalaxmi and the assessee and Shri Gitesh Manoharlal Wadhwa as purchasers on 28.04.2014 declaring two payments each of Rs.6,86,800/- made by cheque on 07.12.2012 towards consideration for the plot. The AO observed that the documents impounded from Mahalaxmi clearly showed that the assessee and another equal co-owner paid on-money of Rs.37 lakh in the year, comprising of Rs.1.00 lakh paid on 22.05.2010, Rs. 5.00 lakh paid on 30.05.2010 and Rs. 31.00 lakh paid on 01.06.2010. The assessee tendered some explanation rebutting the material found from Mahalaxmi, which did not find favour with the AO. The assessee was allowed to inspect the books impounded u/s 133A from the premises of Mahalaxmi. After taking note of the necessary material and evidence, the AO held that on-money of Rs.37 lakh was paid by the assessee and Shri Gitesh Manoharlal Wadhwa against the purchase of plot No.14. Considering the fact that the assessee and Shri Gitesh Manoharlal Wadhwa were equal co-owners of the property,

the AO made an addition of Rs.18,50,000/- (one half of Rs.37.00 lakh) in the hands of assessee and remaining in the case of Shri Gitesh Manoharlal Wadhwa. On a pointed query, the Id. AR submitted that the appeal of Shri Gitesh Manoharlal Wadhwa is still pending with the concerned CIT(A). The assessee remained unsuccessful before the Id. CIT(A), which has brought him before the Tribunal.

5. I have heard the rival contentions and perused the relevant material on record. It is found as an admitted position that Survey action 133A at the premises of Mahalaxmi divulged that they sold plots to various persons accepting on-money. In fact, separate books were maintained for recording on-money transactions. All banking transactions were recorded in regular books of account. Separate on-money books had both Cash book as well as Ledger. The AO has scanned the Ledger account of the assessee in such on-money ledger of Mahalaxmi, at page 5 of the assessment order indicating the receipt, *inter alia*, of cash of Rs.37 lakh during the year under consideration. This page bears the name of

assessee 'Nandu Wadhwa' and also 'Plot No.14'. In addition, another name of Naresh Jethalia is also written on this Ledger account which has been struck out. The ld. AR submitted that the corresponding on-money business Cash book pages had the name of Naresh Jethalia and hence these recordings had no relation with the assessee. In support of this point of view, he placed on record a copy of on-money business Cash book maintained by Mahalaxmi for the corresponding three dates, which record the date of transaction, amount of transaction, plot number and name of Naresh Jethalia. It was submitted that on-money was received from Naresh Jethalia and the assessee could not be saddled with the addition u/s 69 on this score.

6. It is found as a factual position that the three on-money cash pages record the name of Naresh Jethalia. However, Plot No.14 has also been mentioned on these three pages. The on-money Ledger account, as reproduced on page 5 of the assessment order, firstly, records the name of the assessee, namely, Nandu Wadhwa and then the name of Naresh Jethalia,

which was later on struck out. The AO has opined that it is the assessee who entered into the transaction with Mahalaxmi through Naresh Jethalia as a mediator. The very fact that the name of Naresh Jethalia is written in on-money cash book against the plot under-purchase by the assessee and also on the on-money Ledger account along with that of the assessee, which was struck out, clearly evidences that he was involved in the transaction on behalf of the assessee. All other particulars of the property including the number and area are matching. It is also undisputed that the ultimate beneficiary of the plot is the assessee as the transaction was concluded by registered sale deed having the name of the assessee as purchaser of the same plot. Mahalaxmi clearly admitted during the course of Survey u/s 133A that they received on-money from the sale of various properties which fact was corroborated by the on-money Cash book and Ledger maintained for recording details of receipt of such cash with the name of the assessee as a buyer against the plot no. 14. Mahalaxmi not only admitted the receipt of such on-money

but also offered total income of Rs.8.74 crore on that score during the course of Survey, which was eventually settled with the Settlement Commission at a total income of Rs.10.55 crore. The impounded material at pages 13 and 7, as recorded on page 4 of the assessment order, has tabulation. Against plot No.14, name of plot owner given is Nandu Wadhwa, area of 3434 and then rate, total amount, amount received and due amount. There is no dispute that the assessee eventually purchased plot No.14 and the registered sale deed was accordingly executed on 28.03.2014. The assessee paid to Mahalaxmi by means of two cheques, totalling Rs.13,73,600/- on 07.12.2012, which fact is also properly recorded in the regular books of account. Sequence of the transaction, which, therefore, emerges is that the assessee entered into agreement for purchase of plot No.14 from Mahalaxmi; paid on-money of Rs.37 lakh through three cash transactions entered in financial year 2010-11 relevant to the assessment year under consideration; paid another cash of Rs.77,400/- on 19.01.2012 which is not relevant for the year under consideration. Then

the assessee paid Rs.13.73 lakh by means of two cheques in the year 2012 and finally the sale deed was executed in favour of assessee on 28.03.2014. It is an open and shut case of the assessee paying on-money to Mahalaxmi.

7. It is borne out from the assessment order that some other plot purchasers, who had paid on-money to Mahalaxmi during such period as transpired from the impounded documents found during the course of survey, disclosed the payment of such on-money in Income Declaration Scheme, 2016 (IDS). This fact has been recorded on page 9 of the assessment order.

8. There is no loose end in the entire transaction of the assessee having paid on-money, which was received by Mahalaxmi and also admitted for taxation. In my considered opinion, the authorities below were fully justified in making and confirming the addition u/s 69 on account of such on-money paid in cash to Mahalaxmi during the year under consideration.

9. The ld. AR made a without prejudice submission to the effect that the addition, if at all, could have been made in the

succeeding year when sale deed was registered. This contention is sans merit because section 69 provides that where the assessee has made investments in the financial year immediately preceding the assessment year and these are not recorded in the books of account and further no/unsatisfactory explanation is offered about the nature and source of investments, etc., the value of investments is deemed to be the income of the assessee of such financial year. In other words, section 69 is attracted in the year of making unrecorded investments and not when connecting transaction gets completed later on. The point of incidence of addition is making of the unrecorded investment.

10. As the assessee and Shri Gitesh Manoharlal Wadhwa paid total on-money of Rs.37 lakh in the year under consideration for purchase of plot No.14 which was neither recorded in the books of account for the year nor any satisfactory explanation was given, the addition is correctly called for in the year of payment, which is the year under consideration.

11. To sum up, it is held that the authorities below were perfectly justified in making the addition amounting to Rs.18.50 lakh u/s 69 of the Act towards on-money paid by the assessee in the year under consideration.

12. In the result, appeal is dismissed.

Order pronounced in the Open Court on 02nd November, 2023.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 02nd November, 2023
GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	02-11-2023	Sr.PS
2.	Draft placed before author	02-11-2023	Sr.PS
3.	Draft proposed & placed before the second member	-	JM
4.	Draft discussed/approved by Second Member.	-	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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