

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “ C ” BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No:2273/Ahd/2018
Assessment Year: 2013-14**

Shri Jagdishchandra Kantilal Trivedi B/4, Ojas Apartment Nehrunagar Char Rasta Ambawadi, Ahmedabad PAN: AAMPT 0184 A	Vs	The Income Tax Officer Ward-5(2)(3) Ahmedabad
--	----	--

**Revenue Represented: Shri Ashok Kumar, Suthar, Sr.DR
Assessee Represented: Shri Hardik Vora, AR**

Date of hearing : 16-01-2024
Date of pronouncement : 14-02-2024

आदेश/ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Assessee as against the appellate order dated 08/08/2018 passed by the Commissioner of Income Tax (Appeals)-5, Ahmedabad arising out of assessment order dated 28/03/2016 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) relating to the Assessment Year (AY) 2013-14.

2. The brief facts of the are that the assessee is an individual and working as a LIC Agent. For the AY 2013-14, assessee filed his return of income on 14/03/2014 declaring total income at Rs.2,54,220/-. The return was selected for scrutiny assessment. The assessee along with three others; namely, Shri Bhavesh Chinubhai Jani, Shri Paras Chinubhai Jani and Shri Nanjibhai

:2:

Galsingbhai Baria purchased four pieces of agricultural land as follows:

<i>Land Survey No.</i>	<i>Document Regn.No.</i>	<i>Date of Registration</i>	<i>Total consideration</i>	<i>Stamp Duty paid</i>
<i>38/4, Memar, Bavla</i>	<i>392/2013</i>	<i>1/02/2013</i>	<i>44,04,000</i>	<i>2,16,000</i>
<i>38/1</i>	<i>390/2013</i>	<i>11/02/2013</i>	<i>52,32,000</i>	<i>2,56,500</i>
<i>38/2</i>	<i>391/2013</i>	<i>11/02/2013</i>	<i>52,47,000</i>	<i>2,57,500</i>
<i>38/3</i>	<i>389/2013</i>	<i>11/02/2013</i>	<i>1,30,95,000</i>	<i>6,42,000</i>
		<i>Grand Total</i>	<i>2,79,78,000</i>	<i>13,72,000</i>

3. The assessee claimed that the above land were purchased on behalf of M/s.Ruchi Nirman Pvt.Ltd. and the consideration for purchase of land was made by the said company. However, the Assessing Officer found from the sale-deeds there is no mention about the name of Ruchi Nirman in the registered documents. Therefore, called for explanation from the assessee, the source of investments made in the above land along with supporting evidences. The assessee replied again the same reason that investment was made by the Ruchi Nirman Pvt.Ltd. Therefore, the Assessing Officer held that the assessee could explain source of Rs.8 Lakhs only as against the total consideration of Rs.2,79,78,000/- and thereby determined 1/4th share of Rs.72,77,390/- as an unexplained investment of the assessee from undisclosed sources and assessed u/s.56(2)(vii) of the Act, and also made disallowance of expenditure of Rs.70,229/-.

4. Aggrieved against the assessment order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) after hearing in detail

:3:

and also calling for a Remand Report from the Assessing Officer and Rejoinder from the assessee and also in the absence of any further details confirmed the addition made by the Assessing Officer by observing as under:

“3.8. Facts of the case, submission of the appellant and remand report from the AO are considered. After verification of additional evidence of the appellant it is found that, said part of bank statements reflects only payment of Rs. 8,00,000/- by clearance of four cheques of Rs. 2,00,000/- each and appellant has not furnished any evidences regarding payment of balance amount. Appellant has evasive in furnishing the details and explanation of source of investment. As per point (20) of the deeds it is clearly mentioned even if the name of the buyers are not changed in the revenue records, the sellers cannot claim any ownership in the land. The ownership of the land is lying with the appellant and other persons from the date of registration of the deed on 11.02.2013. At point (19) of the deeds, it is mentioned that the sellers have not entered into any banakhat with any other party (including Ruchi Nirman Pvt. Ltd.), which shows that the trust has sold the land directly to the appellant and three others and the name of Ruchi Nirman is not mentioned anywhere in the documents. As per point (14) of the registered deeds, the title of the lands clear and saleable. Therefore, the contention of the appellant that the payment is subject to title clearance of the land is not correct. Therefore, claim of the assessee that the payments mentioned in the deeds were subject to conditions of title clearance and changes of use of the lands are baseless and not supported by evidences. The appellant has not furnished any details to show that it has made any effort to change the name of owners in revenue records. It is also found that the said company M/s. Ruchi Nirman Pvt. Ltd. has not accounted in his books of account. The appellant had however failed to substantiate the source and genuineness of the purchase consideration by the so called company. Therefore, it remained a fact that for date of execution of the deed on 11.02.2013 the appellant is the legal owner of the land and the same is also in possession of the appellant and other three person and provisions of section 56(2)(vii) of the Act are clearly attracted in the case as appellant has received a property, the value of which exceeds Rs.50000/-, without payment of consideration or the payments made is exceeds less than the stamp duty value of the property.

3.9. Facts of the case and submissions are considered. During the course of assessment proceedings as well as appellate proceedings,

:4:

the appellant has not substantiated its claim. Considering the above facts, I am of the view that the A.O.is justified in making the addition and accordingly, the same is confirmed. Thus the Ground No.1 of appeal is dismissed.”

5. Aggrieved against the same, the assessee is in appeal before us by raising following Grounds of Appeal:

1.	<i>On the facts and circumstances of the cases as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs. 72,77,390/- as unexplained investment made by the Appellant.</i>	<u>Tax effect</u> 29,83,730/-
2.	<i>On the facts and circumstances of the cases as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming addition of Rs.72,77,390/- u/s 56(2)(vii) even though the said section is not applicable for the year under consideration.</i>	<u>Tax effect</u> N.A.
3.	<i>On the facts and circumstances of the cases as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred in confirming disallowance of expenses of Rs.70,229/- being 50% of total expenses incurred by the appellant towards commission income.</i>	<u>Tax effect</u> 28,794/-
4.	<i>Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.</i>	<u>Tax effect</u> N.A.

5. At the outset, Ld.Counsel Mr. Hardik Vora appearing for the assessee submitted that he is not pressing ground No.3. Thus, ground No.3 is dismissed as not pressed.

6. **Regarding Ground Nos.1 & 2:** The Ld.counsel for the assessee submitted that the other co-owners; namely, S/Shri Nanjibhai

:5:

Galsinhbhai Bariya and Paras Chinubhai Jani for the very same assessment year regular assessment order u/s.143(3) of the Act dated 22/01/2016 were completed by ITO Ward-7 (2)(3) Ahmedabad and by the DCIT, Circle-3(1)(2), Ahmedabad vide assessment order dated 08/01/2016 respectively. Wherein in the case of Shri Nanjibhai Galsinhbhai Bariya, the Assessing Officer accepted the returned income and completed the assessment without making any addition. In the case of Shri Paras Chinubhai Jani, the DCIT made addition u/s.50C of the Act relating to purchase of the Bungalow by the assessee and another land in Survey No.921 of Prantij and assessed 1/3rd share income as the income of the assessee. Whereas in the present case, the Assessing Officer made 1/4th share as the undisclosed income of the assessee, which is legally not correct and requested to set aside the same to the file of Assessing Officer for verification and passing a fresh order on merits of the case.

7. Per Contra, the Ld.Sr.DR Shri Ashok Kumar Suthar appearing for the Revenue submitted that the assessment orders passed in the case of other two assesseees could not have been attained a finality, there may be proceedings for reopening of assessment u/s.147 of the Act or revision proceedings u/s.263 of the Act could have been initiated against the above co-owners. Therefore, the sought time of 15 days to verify the details. The above appeal hearing was concluded on 16/01/2024 by giving 15 days' time to the Ld.DR to verify the above details. However, the office of the Ld.Sr.DR vide letter dated 30/01/2024 stated that the information could not be collected from the concerned Assessing Officers and requested for

:6:

further time. We do not find any valid ground in granting further time to the Revenue. The assessee has produced before us copies of the assessment order passed in the case of Shri Nanjibhai Galsinhbhai Bariya and Shri Paras Chinubhai Jani. In none of the cases, the entire addition is made as unexplained income in the hands of the respective assesseees. Therefore, to have harmonial consistency of assessments in the case of the co-owners; namely, the assessee hereinabove, the assessment made by the Assessing Officer is hereby set aside with a direction to pass fresh assessment order in accordance with law by providing further opportunity of being heard to the assessee. Needless to say, the assessee should co-operate by producing all required details before the Jurisdictional Assessing Officer for passing fresh assessment order.

8. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on	14-02-2024
--	-------------------

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad : Dated 14/02/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

:7:

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-5, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad