

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI I.C. SUDHIR AND SHRI O.P. KANT

ITA No. 902/Del/2015
Assessment Year: 2006-07

Subhash Khattar,
B-66, Naraina Ind. Area,
Phase-II, New Delhi.
(PAN: AAFFK3807R)
(Appellant)

vs.

ACIT,
Central Circle-18,
New Delhi.

(Respondent)

Assessee by: Shri U.K. Shukla, Adv.
Department by: Shri B.K. Singh, CIT(DR)

Date of hearing : 06 .04.2016
Date of pronouncement: 30 :06.2016

ORDER

PER I.C. SUDHIR: JUDICIAL MEMBER

The assessee has questioned first appellate order on several grounds mainly involving the issues; (i) as to whether Learned CIT(Appeals) was justified in upholding the validity of jurisdiction of the Assessing Officer assumed under sec. 153A and (ii) the addition of Rs.3,21,000 made on account of unexplained source of investment in cash in a project on the basis of material found during the search at the premises of Aerens group.

2. Heard and considered the arguments advanced by the parties in view of orders of the authorities below, material available on record and the decisions relied upon.

3. The relevant facts are that search & seizure operation was conducted on 17.8.2011 in Aerens group of cases and similar operation was also conducted at the premises of the assessee on 10.2.2012. In response to notice issued under sec. 153A of the Act, the assessee furnished return of income at Rs.20,41,814 which comprised of income from salary, house property, business and profession, capital gain and other sources. In the assessment framed, the Assessing Officer made an addition of Rs.3,21,00,000 as undisclosed investment in the Indrapuram Habitat Centre as during the course of search proceedings in the premises of Aerens group, a hard disc was found and seized marked as Annexure A-32 wherein details of sales status of Indrapuram Habitat Centre were found showing the name of assessee at Sr. No. 32. The said hard disc was in by the name of the file as "DP Correction Sheet-xls". In the detail given against the name of the assessee, total sale consideration of the property was shown at Rs.6,21,00,000 consisting payment through cheque at Rs.3,00,00,900 and Rs.3,21,00,000 in cash. The dispute is regarding payment in cash, denied by the assessee. The authorities below did not agree with the explanation submitted by the assessee and the Learned CIT(Appeals) has sustained the addition. This action of the Learned CIT(Appeals) has been questioned before the ITAT.

4. Reiterating the submissions made before the authorities below, the Learned AR submitted that no incriminating material was found during the course of search at the premises of the assessee and merely on the basis of hard disc found at the premises of the third party, the Assessing Officer has wrongly made huge addition of Rs.3,21,00,000 in the assessment framed under sec. 153A of the Income-tax Act, 1961, without giving opportunity to the assessee to cross-examine the said party. There is no evidence on record to establish by the department that the assessee had made the alleged investment of Rs.3,21,00,000 in cash. It is also incorrect to say on the part of the authorities below that during the course of search proceedings at the premises of the assessee, the assessee had admitted having made cash payment of Rs.3,21,00,000. It is also incorrect on the part of the Learned CIT(Appeals) to say that during post search proceedings vide letter dated 21.2.2012, the authorized representative admitted having made the said cash payment. The assessee on the other hand since beginning has been thoroughly denying alleged cash payment. In his statement recorded on 10.2.2012, the assessee had denied the alleged investment and again vide letter dated 02.03.2012 has confirmed cheque payment only. The Learned CIT(Appeals) has also erred in holding that Rs.100 stamp paper of

agreement dated 10.10.2005 had been tempered with and erased with fluid to mention date as 10.10.2005 that too without cross verifying with the assessee or giving any opportunity to the assessee to explain. The Learned CIT(Appeals) has also erred in holding that there is discrepancy in number and dates of cheques of Rs.3,00,00,000 given by the assessee to the builder without cross verifying with the assessee or giving any opportunity to the assessee to explain. The Learned AR submitted that the Learned CIT(Appeals) is also not correct in saying that memorandum of understanding (MOU) dated 20.9.2005 was after thought story, weaved at appellate proceedings whereas the documents and facts were brought on record during the assessment proceedings itself. He submitted that the Assessing Officer also drawn an inference about the alleged payment of cash by the assessee as a person Mr. I.E. Soomar shown in the seized material had admitted investment in cash by him and had paid tax thereon, without giving any opportunity to the assessee to cross examine him. He further submitted that in the said seized material, no where it was written that when the alleged cash amount has been paid by the assessee. Thus, the seized sheet is a dump document. The Assessing Officer had also not allowed the assessee to cross examine the person from whose possession the material relied upon was seized and used against the assessee. The Learned AR submitted further

that there is no evidence in corroboration of the alleged cash investment of Rs.3,21,00,000 made by the assessee in the project Indrapuram Habitant Centre. Since no incriminating material was found at the premises of the assessee and no assessment was pending on the date of search, hence no assessment can be framed under sec. 153A of the Act against the assessee and the assessment, if any, on the basis of material found at the premises of the person searched can be framed against the assessee only under sec. 153C of the Act.

5. The Learned AR submitted that in the present case, original assessment was completed under sec. 143(3) of the Act on the total income of Rs.20,41,810 vide order dated 13.11.2007 and thus no assessment was pending on the date of search i.e. 10.02.2012 at the premises of the assessee.

The Learned AR placed reliance on the following decisions:

- i) Sanjay Agarwal vs. DCIT (2014) – 47 Taxmann.com 210 (Del.);
- ii) Parivar Properties Pvt. Ltd. Vs. DCIT – 41 Taxmann.com 485 (Del);
- iii) Atul Barut Vs. DCIT – 44 Taxmann.com 167 (Mum.);
- iv) CIT vs. Kabul Chawla – ITA No. 707, 709 & 713 of 2014 – judgment dated 08.08.2015 (Del.);
- v) CIT vs. Prem Prakash Nagpal (2013) – Taxmann.com 353

(Del.);

vi) CIT vs. Alpha Impex Pvt. Ltd. – 45 Taxmann.com 2015 (Bom);

vii) CIT vs. S.M. Aggarwal – 293 ITR 43 (Del.); etc.

6. The Learned CIT(DR) on the other hand tried to justify the orders of the authorities below. He submitted that vide letter dated 21.2.2012, the authorized representative of the assessee has admitted before the Investigation Wing that the alleged investment was made. He submitted that most of the other investors in Aerens Group had admitted the cash payment made to the group. One of such investors Shri I.E.Soomar, whose name was also appearing along with assessee in the hard disc found from the premises of Aerens Group during the search, had admitted the cash investment of Rs.6.64 crores being made in the said project and he paid the taxes on the same. In the said hard disc, the name of the assessee is appearing at Sr. No. 32 with the details of the property, its rate, sales consideration and the details of the payment through cheque and cash. Again, vide letter dated 2.3.2012, the assessee has admitted the payment of Rs.3,00,00,000 vide cheque dated 20.9.2005 to Aerens Group. The assessee thus cannot be allowed to rely upon the details found in the hard disc at the premises of Aerens Group in part only.

7. The Learned AR rejoined with the submission that the said letter dated 21.2.2012 written on behalf of the assessee only says that to buy peace of mind the assessee is ready to admit the payment to Aerens Group to the extent reflected in the books of account. It does not mean that the assessee had offered any admission regarding the alleged cash payment. He submitted further that again in the letter dated 02.03.2012 which is written on subsequent date the assessee has reiterated that he had paid amount of Rs. 3 crores vide cheque dated 20.9.2005 to the Aerens Group. He submitted further that no sale deed has been executed or registered till date and hence as per the practice prevailed in the market of property dealings, cash amount, if any, out of the agreed amount of consideration is paid during the course of registration only.

8. Considering the above submissions, we find that the Learned CIT(Appeals) has upheld the addition in question mainly on the basis of (i) the details written on the hard disc found during the course of search from the premises Aerens Group, wherein payment through cheque and cash have been mentioned against the name of assessee at Sr. No.32; Shri I.E.Soomar appearing at Sr. No. 39 of the said hard disc had admitted the cash investment of Rs.6.64 crores being made in the said project and had paid the taxes on the same; (iii) the said hard disc cannot be relied upon in part as the

assessee has admitted the payment through cheque but denied the cash payment shown therein etc. In our view, a huge addition of Rs.3,21,00,000 cannot be made in a casual manner without having corroborative evidence in support. It is a prevailing practice in the dealings of immoveable properties that cash amount, if any, out of the agreed consideration is paid during the course of execution/registration of the sale deed and admittedly in the present case no sale deed or other mode of transfer has been effected. Merely because name of the assessee is appearing in the said hard disc and amongst other investors are investor Shri I.E. Soomar appearing in the said hard disc has admitted payment of cash amount, cannot be a basis for arriving at a definite conclusion, in absence of corroborative evidence in support, that the assessee had also paid the amount of Rs.3,21,00,000 in cash. The Hon'ble jurisdictional High Court of Delhi in the case of CIT vs. Prem Prakash Nagpal (supra) wherein Assessing Officer had made certain additions under sec. 69 of the Act on the basis of the documents found during search at a place of third party which indicated that assessee had purchased a plot by paying consideration in cash, it was held by the Hon'ble High Court that the Assessing Officer could not prove by evidence that said documents belonged to the assessee and that any on money transaction had taken place. The documents at the best only showed tentative/projected

purchase consideration held the Hon'ble High Court. Again, in the case of CIT vs. Alpha Impact Pvt. Ltd. (supra), the Hon'ble Bombay High Court has been pleased to hold that addition to assessee's income in respect of additional sales consideration received in sale of land merely on the basis of Email recovered during the course of search action at the premises of another person and there being no independent material available supporting such additions, was not justified. Besides, we also find substance in the contention of the Learned AR that assessment under sec. 153A of the Act in absence of incriminating material found during the course of search at the premises of the assessee and in absence of abatement of assessment on the date of search, cannot be made in the present case as per the above cited decisions including the decision of Hon'ble jurisdictional Delhi High Court in the case of CIT vs. Kabul Chawla (supra). Under the circumstances, we are of the view that the Assessing Officer was not justified in assuming jurisdiction under section 153A and authorities below were also not justified in making and sustaining the addition in question merely on the basis of a hard disc found during the course of search at the premises of Aerens Group without any corroborative evidence in support. We thus hold that the assessee/appellant succeeds on both the above issues i.e. on validity of

assumption of jurisdiction under sec. 153A and the addition in question. The grounds involving the above issues are accordingly allowed.

9. In result, appeal is allowed.

Order pronounced in the open court on 30 .06.2016

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Dated: 30 /06/2016
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR

	Date
Draft dictated directly on computer	30.06.2016
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Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	