

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.1509/Del/2018
(ASSESSMENT YEAR 2012-13)**

M/s. Maple Destinations and Dreambuild Pvt. Ltd. Farm No. 3E, Dera Mandi Bandh Road, Mandi. Village Tehsil Hauzkas, Mehrauli, New Delhi PAN : AAHCM2850J	Vs.	Deputy Commissioner of Income Tax, Circle -16(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. K. Sampath, Sh. Raj Kumar, Adv. & Sh. Vishal Sahgal, CA
Respondent by	Sh. Subhra Jyoti Chakraborty, CIT DR

Date of Hearing	16/01/2024
Date of Pronouncement	21/03/2024

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax(Appeals)-6, Delhi ["Ld. CIT", for short], dated 27/12/2017 for the Assessment Year 2012-13.

2. Grounds of the assessee are as under:-

“1. That in the facts and circumstances of the case the Learned Commissioner of Income Tax (Appeals) is not justified in upholding the reopening of the case under section 147 read with section 148 of the Income Tax Act, 1961. Fact of the matter is that the reopening of the case is absolutely bad in law and as such not sustainable.

2. That in the facts and circumstances of the case the Learned Commissioner of Income Tax (Appeals) is not justified in upholding the estimation of the cost of acquisition of the property at Dera Mandi, new Delhi at Rs. 28,49,38,823 and thereby upholding the addition of Rs. 27,29,38,823 made to the taxable income of the appellant under section 69 of the Income Tax Act, 1961. Fact of the matter is that the property under consideration had been purchased for a sum of Rs. 1,20,00,000/- and as such the estimation of the cost of acquisition at Rs. 28,49,38,823/- is absolutely bad in law and facts.

3. That the orders of the Learned Commissioner of Income Tax (Appeals) is bad in law and facts.”

3. Brief facts of the case are that, an information was received from Assistant Director of Income Tax, Faridabad, vide letter dated 18/03/2015, that during the survey proceedings on the Lingaya Group on 30/06/2014, it was discovered that a Farm House was purchased by M/s. Maple Destinations and Dream build (P) Ltd. in Dera Mandi locality of New Delhi, from Sh. Picheswar Gadde and

Smt. Sunita Gadde in the F.Y. 2011-12. It was further discovered that the sale deed was registered at Rs. 1.2 Crores at the circle rate, but cash component of Rs. 5.41 Crores was also paid over and above the registered value of Rs. 1.2 Crores. Furthermore, it was also found by the A.O. that the assessee has also received payments aggregating to Rs. 3.2 crores during AY 2012-13 from Sh. Vakamulla Chandrashekhar, who acted on behalf of the assessee in the said transaction and therefore, even the source of payment of Rs. 1.2 crores to Sh. Picheswar Gadde and Smt. Sunita Gadde may not be genuine.

4. Based on the material available on record, a detailed reason recorded and a notice u/s 148 was issued to the assessee on 23/11/2015. The assessee filed return of income in response to the notice u/s 148 of the Act. The assessee has not filed any objection to the notice u/s 148 and the reason recorded. The Assessee filed writ Petition before the Hon'ble High Court with a prayer to quash the notice issued u/s 148 of the Act on the ground that no communication of reasons for issuance of notice u/s 148 of the Act was dispatched to the Assessee. The Hon'ble Delhi High in writ

petition No. (C) 12154/2015 and CM No. 32267-32268/2015 found that the copy of the reasons for initiating the proceedings u/s 147 of the IT Act, 1961 has already been dispatched to assessee, therefore, the Assessee withdrawn the said Writ Petition. The Assessee has been issued with show cause notice on 16/12/2016 and the Assessee filed the reply on 21/12/2016 and 23/12/2016. After considering the replies of the Assessee and the material available on record, the assessment order came to be passed by the A.O. on 30/12/2016 by estimating the cost of acquisition of the property at Dehra Mandai, New Delhi at Rs. 28,49,38,823/- by making an addition of Rs. 27,29,38, 823/- to the taxable income of the Assessee u/s 69 of the Act.

5. Aggrieved by the assessment order dated 30/12/2016, the Assessee preferred an appeal before the CIT(A). The Ld. CIT(A) vide order dated 27/12/2017, dismissed the Appeal filed by the Assessee. As against the assessment order, the Assessee preferred the present Appeal on the Grounds mentioned above.

6. Ground No.1 of the assessee is against upholding the reopening of the case under section 147 read with section 148 of the Act. The Ld. Counsel for the assessee submitted that Ld. CIT(A) was not justified in upholding the reopening of the case u/s 147 r.w.s 148 of the Income Tax Act, 1961 ('Act' for short) as the reopening of the case is absolutely bad in law.

7. Per contra the Ld. Departmental Representative submitted that the A.O. initiated reassessment proceedings based on the information received from Investigation Wing that the Assessee was involved in making cash payment, the reasons recorded by the A.O. also indicates the amount in nature of cash payment and persons with whom transaction taken place the reassessment proceedings initiated with a certain information having sufficient and relevant material,543 therefore, the same cannot be found fault with. The Ld. DR relying on the findings of the Lower Authorities sought for dismissal of the Ground No. 1.

8. We have heard the parties perused the material available on record. In the present case, Assessing Officer initiated reassessment proceedings on the information that, during the survey proceedings on Lingya Group it was discovered that farm house was purchased by M/s Maple Destinations and Dream build (P) Ltd. in Dera Mandi locality of New Delhi from Sh. Picheswar Gadde and Smt. Sunita Gadde in the F.Y.2011-12. It was further discovered that the sale deed was registered at Rs.1.2 Crores i.e. at the circle rate and the Ld. A.O. observed that the a cash component of Rs.5.41 Crores was paid over and above the registered value of Rs.1.2 Crores and also observed by the A.O. that the assessee had also received payments aggregating to Rs.3.2 Crores during A.Y.2012-12 from Sh. Vakamulla Chandrashekhar, who acted on behalf of the assessee in the said transaction, A.O. was of the opinion that, even the source of payment of Rs.1.2 Crores to Sh. Picheswar Gadde and Smt. Sunita Gadde may not be genuine. Based on the material available on record reasons were recorded and notice u/s 148 was issued on 23/11/2015 which was duly served on the Assessee.

9. The Assessee has not filed any objection to the notice u/s 148 of the Act and the reason recorded. It is also observed that the Assessee filed writ Petition before the Hon'ble High Court requesting to quash the notice u/s 148 of the Act on the ground that no communication of reasons for issuance of notice u/s 148 of the Act was dispatched to the Assessee. The Hon'ble Delhi High in writ petition No. (C) 12154/2015 and CM No. 32267-32268/2015 found that the copy of the reasons for initiating the proceedings u/s 147 of the IT Act, 1961 has already been dispatched to assessee, therefore, the Assessee withdrawn the said Writ Petition.

10. Further, the reasons recorded by the Assessing Officer clearly indicate the amount and nature of cash payments and persons with whom transactions taken place, moreover, details of information given by DIT (Investigation) had also been mentioned. In other words, the contents of the letter of the DIT (Inv.) had also been mentioned. Thus, information on basis of which Assessing Officer had initiated proceedings under section 147 of the Act was certain and it could be construed to be sufficient and relevant material on

basis of which a reasonable person could have formed a belief that income had escaped assessment. Thus, there was reason to believe that income of the assessee company to the extent of Rs. 6.61 Crores had escaped assessment on account of failure on the part of the assessee to disclose fully and truly all the material facts/particulars of its income necessary for its assessment. Therefore, the reassessment proceedings initiated by the Assessing Officer were within jurisdiction and valid in the eyes of law in as much as reasons recorded by the Assessing Officer satisfied the requirement of section 147 of the Act. The decisions relied upon by the AR are on a different footings and the same are not applicable to the present case. It is well settled law that, for an assessment to be re-opened what is required that the AO should have reason to believe that the income of assessee had escaped assessment and the said belief should be an honest and reasonable person based on reasonable grounds. The correctness of the materials/reason to believe is not a matter to be looked into at the initial state. Therefore, we find no merit in the ground No.1 of the assessee. Accordingly, Ground No.1 of the assessee is dismissed.

11. The Ld. Counsel for the assessee addressing on the Ground No. 2 submitted that the lower authorities have not justified in making the addition and upholding the addition based on the estimation of the cost of acquisition of the property at Dera Mandi, New Delhi at Rs.28,49,38,823/- and thereby upholding the addition of Rs.27,29,38,823/- made to the taxable income of the assessee u/s 69 of the Act. Further submitted that, the property under consideration had been purchased for a sum of Rs.1,20,00,000/- and as such the estimation of the cost of acquisition at Rs.28,49,38,823/- is absolutely bad in law and facts and the property has been acquired at the circle rate with the approval of SDM, the addition has been made without any supporting material and AO has completely relied on the statement recorded of Sh. Picheswar Gadde, Sh. Rakesh Sejwal, Sh. V. Chandrashekhar and CA Neha Kukreja, wherein all the statements were recorded behind the Assessee and all above persons have retracted their statements, which will not constitute any valid evidence in the eyes of law. Further submitted that, the A.O. denied the permission for cross-

examination of the persons on whose statements the entire belief of escapement of income rested. Therefore, submitted that failure of the authorities below to grant opportunity of cross examining the witnesses vitiates the reassessment as invalid. The value of property has been enhanced by the A.O. ignoring the sale deed which has been registered for the circle rate, the addition has been made based on the presumptions in the absence of any material or plausible evidence, thus, the Ld. Counsel sought for deletion of the addition sustained by the Ld. CIT(A).

12. Per contra, the Ld. DR submitted that, in a short span of one year the rate of the property was increased many folds. The rate of 1 Bishwa in 2011-12 was Rs.3,69,274/-, whereas it increased to Rs.15,91,837/- per Bishwa in 2013. Therefore, the amount of Rs.6.61 Crore at least has been paid by the assessee to Sh. Picheswar Gadde as per his admitted statements. Thus, the Ld. DR relying on the findings and conclusions of the Ld. CIT(A), sought of dismissal of the Ground No.2 of the assessee.

13. We have heard both the parties and perused the materials available on record. It is found by the A.O. that a farm house was purchased by M/s Maple Destinations and Dreambuild (P) Ltd. in Dera Mandi locality of New Delhi from Sh. Picheswar Gadde and Smt. Sunita Gadde in the F.Y.2011-12. The sale deed was registered at Rs.1.2 Crores i.e. at the circle rate. The Ld. A.O. observed that the cash component of Rs.5.41 Crores was paid over and above the registered value of Rs.1.2 Crores. Further, it was also observed by the A.O. that the assessee had also received payments aggregating to Rs.3.2 Crores during A.Y.2012-12 from Sh. Vakamulla Chandrashekhar, who acted on behalf of the assessee in the said transaction. A.O. was of the opinion that, even the source of payment of Rs.1.2 Crores to Sh. Picheswar Gadde and Smt. Sunita Gadde may not be genuine. The Ld. A.O. made the addition of Rs.27,29,38,823/- u/s 69 of the Act on following conclusions:-

Payment of on money and quantum of One Money:

On the basis of discussion made as above in para 7, Issue 1 and Issue 4 it is established beyond doubt that assessee company has made payment of on money of Rs. 27,29,38,823/- for purchasing the property situated at Dera Mandi, New Delhi.

Supply of material and cross examination

On the basis of discussion made as above in para 7, Issue 2 and taking into account the peculiar fact in this case that assessee company has requested for an opportunity to cross-examine one of closed aid to the director of the assessee company and a person from whom assessee has purchased the property and not defining the reasons & basis for cross-examination and legal position with reference to cross-examination as discussed above, the request of assessee is not valid.

Retraction from Statements

Taking into consideration of the facts as discussed above in para 7 issue no. 3 and a bald denial of a statement recorded on oath and corroborated with other statements and material does not hold any water in the eyes of law, the retraction letters filed by Sh. V. Chandrashekhar and Sh. Picheswar Gadde does not hold any merits.

Who is the ultimate beneficiary:

As discussed in para 7 issue no 5, that since the property is owned and used by M/s Maple Destinations and Dreambuild Pvt. Ltd, hence there is no confusion to establish this fact that ultimate beneficiary is M/s Maple Destinations and Dreambuild Pvt. Ltd. Therefore, the on money of Rs. 27,29,38,823/- shall be taxed in the hands of assessee company.

14. The above said addition has been confirmed by the Ld. CIT(A). It is not in dispute that the sale transaction mentioned in the registered sale deed are as per the circle rate with the approval of the SDM and there is no document on record relied by the AO for

making the addition. The AO while recording his belief for the escapement of income of the assessee, had heavily banked on the statement recorded on oath of Sh. Picheswar Gadde, Sh. Rakesh Sejwal, Sh. V. Chandrashekshar and CA Neha Kukreja. All the above persons have retracted their statements wherein they have stated that the 'statement have been recorded under duress'. The statement recorded under duress and the retracted statement cannot be admissible piece of evidence/statement for the purpose of making addition. One such retracted statement of Sh. V. Chandrashekhar is reproduced as under:-

“Your officials have queried me regarding the purchase of farm land located at 3E Dera Mandi New Delhi measuring 1.90 acres by Shri Vikramaditya, Director of Mis Mapple Destinations and Dream Build Private Ltd, from Shri Picheswar Gadde. I fainy stated the facts that I had only identified the farm land and signed as a witness during the registration of the said property and I have no other connection with the said transaction. I have also informed you that the buyer and seller had completed the sale and got the land registered for Rs. 1.20 crore (one hundred and twenty lakhs of Rupees) with the Registrar of Lands, Delhi. But you have forced me to sign certain sheets of

paper to the effect that the above farm land was sold by Shri Picheswar Gadde to M/s Maple Destinations and Dream Build Private Ltd, at a cost of Rs. 6.51 crore and not at Rs. 1.20 crore. At your insistence and coercion I have signed the statement to that effect which do not reflect the correct factual position.

During the course of survey you showed me some copies of statements in your possession, purportedly given by Shri Picheswar Gadde. You asked me to accept that I was aware of a sale transaction of Rs. 6.51 crore (Rupees Six hundred and fifty one lakhs) between the buyer and seller of the said property. This denied then and I deny it now. I do not recognise any writing of that of the buyer or seller as recorded by you in the statement you had obtained from me. I also deny that I had in any way assisted the buyer in the purchase of this land except for having identified it and having stood as a witness for the registration of the property.

I submit that as the statements were obtained from me by putting me under duress, coercion and threat of dire consequences to my business it would not have any legal validity and would not bind me in any manner.

Further I was under tremendous stress and in a disturbed state of mind due to the survey which went on till the next day morning / evening. I was queried throughout night by

your officials and was not allowed to sleep. The statement taken from me under such stressful situation, naturally do/would not reflect the correct state of affairs. Therefore, I request to furnish a copy of all the statements taken from me under which will help me to explain in detail the correct factual position on the various queries posted by you and your officials."

15. Further, the retracted statement of Sh. Picheswar Gadde is also placed at page 58 of the Paper Book and retracted statement of Rakesh Sejwal, and CA Neha Kukreja are placed at pages 56 and 57 of the Paper Book. It is well settled law that the addition cannot be made solely on the basis of retracted statement. For the said proposition, we rely on the decisions rendered in the case of Gajjam Chinna Yellappa & Ors. vs. ITO [2015] 370 ITR 671 (T & AP).

16. During the assessment proceedings, the assessee through his Representative sought for cross examination of the persons on whose statement the entire belief of escarpment of income rested. The request of the assessee for cross examination has been turned on the ground that the 'assessee has requested for cross examination of one closest to the Director of the assessee company

and a person from whom assessee has purchased the property. Since, both the persons were closely known to assessee request made by the assessee to cross examine those persons stand only for longer on assessment proceedings'. Further, the AO observed that 'the purpose of cross examination has not been disclosed by the assessee and without disclosing the reasons and basis of the cross examination and as the purpose of cross examination, the request of assessee for cross examination is rejected'. In our considered opinion, the reasons for rejecting the cross examination is erroneous and when the assessee requests for cross examination of a witness, the AO cannot reject the same and make the addition relying on untested/unchallenged statement made by any person, which is against to the principles of natural justice. It is held by the Hon'ble Supreme Court in the case of *Andman Timber Industries vs. CIT*, 281 ITR 214, that the failure of authorities to grant of cross examination of the witness will vitiates assessment. Further, the statement recorded under duress at the untimely hours do not constitute any valid evidence in the eyes of law as held by the Allahabad High court in the case of *CIT Vs. Radha Kishan Goel*

(2005) 278 ITR 454 and the Gujarat High court in *Kailashben Manharlal Chokshi Vs. CIT* (2010) 328 ITR 411).

17. In the present case, the addition has been made by the AO ignoring the documentary evidence in the form of registered sale deed which being a best evidence for finding the actual sale value and in the absence of any other material to show the transactions involved in cash outside the sale consideration mentioned in the sale deed and in the absence of any corroborative documentary or credible oral evidence, the AO should not have made addition. The said view of ours is fortified by the decisions of Apex Court in *CIT Vs. Motors & General Stores Pvt. Ltd.* (1967) 66 ITR 692 (SC) and those in *CIT Vs. K. C. Agnes* (2003) 262 ITR 354 (Ker) and *Paramjit singh Vs. ITO* (2010) 323 ITR 588 (P &H).

18. The addition has been made not based on any document or material which could suggest that cash was earned by the assessee from any source or that any under handed cash payment was involved in the sale of transaction. Further considering the fact that the entire addition made by the AO based on the statements of the

witnesses which have been retracted thereafter and no opportunity of cross examination was granted by the AO and in the absence of any corroborative material on record, the AO could not have made any addition and the Ld. CIT(A) should have deleted the addition. Thus, in our considered opinion the Ld. CIT(A) committed error in upholding the addition made by the AO. Thus, we find merit in the ground No.2 of the assessee, accordingly, we delete the addition made by the A.O. by allowing Ground No. 2 of the Assessee.

19. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in open Court on 21st March, 2024.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated: 21/03/2024

P.K/R.N, Sr. PS

Copy forwarded to:

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

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI

