

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No. 943/Del/2021
(Assessment Year: 2018-19)**

DCIT,
Central Circle-06,
New Delhi

(Appellant)

PAN: AADCJ9920E

Vs. JadyN Realtors Pvt. Ltd,
Ave Miriam Pirni Nagao
Salcete Vena, South Goa,
Panaji, Goa

(Respondent)

Assessee by :
Revenue by :

Shri S. K. Tulsian, Adv
Mr. Waseem Arshad, CIT DR

Date of Hearing 29/01/2024
Date of pronouncement 10/04/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.943/Del/2021 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-30, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10471/2019-20 dated 09.02.2021 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 31.12.2019 by the Assessing Officer, ACIT, Central Circle-6, New Delhi (hereinafter referred to as 'Id. AO').

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition of Rs 1,54,00,000/- towards unexplained investment in property in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. The assessee company, incorporated on 30.05.2017, carries on the business of a builder and developer. A search and seizure action u/s 132 of the Act and survey action u/s.133A of the Act was carried out at various premises in case of the assessee group on 31.01.2018. The return of income for the Asst Year 2018-19 was filed by the assessee company u/s 139(1) of the Act on 22.09.2018 declaring loss of Rs 45,030/-. During the course of scrutiny assessment proceedings, the Id. AO issued notice u/s 142(1) of the Act by drawing specific reference to the impounded document Annexure -A/RF, RF&RV/04, with respect to the query raised regarding alleged "Unaccounted investment in the property 'Gorbhat', Goa". The assessee executed a Memorandum of Understanding (MOU) on 15.06.2017 for purchase of property situated at Arpora, Bardez, Goa with sellers viz. Shri. Jose Monteiro and Smt. Marina Monteiro for a consideration of Rs.5,14,00,000/- subject to fulfillment of condition of obtaining Conversion Sanad prior to the execution of Deed of Sale. It was agreed further that the seller should inform the buyer (i.e. assessee herein) within one month from the date of execution of the MOU whether it will be possible for them to obtain the Conversion Sanad within a period of six months since obtaining the same was an expensive and time consuming process, as otherwise, the MOU as entered into shall stand cancelled. As a confirmation of purchase, in this regard, the seller demanded demand draft of Rs.5.14 crores as the whole process of obtaining Conversion Sanad is time consuming and expensive.

4. However, subsequently, when the seller intimated their inability to secure the Conversion Sanad as conditioned in the MOU dated 15.06.2017 within the specified period, another MOU was entered on 23.07.2017 for cancelation of the earlier MOU dated 15.06.2017, due to non-fulfillment of the condition stipulated therein and the demand draft of Rs.5.14 crores

taken earlier by the seller as a guarantee was returned back to the assessee.

5. Thereafter, on 25.07.2017, the final Sale Deed was executed for the purchase of the impugned property admeasuring 4097 mtrs. at the rate of Rs.8,800/- per sq. mtrs and the sale price of Rs.3,60,53,600/- was renegotiated taking into consideration the fact that the seller refused to obtain the Conversion Sanad. It is pertinent to note that thje said sale consideration of Rs 3,60,53,600/- was at par with the stamp duty value of the above-said property at the time of execution of sale deed. Further the Id. AO referred the matter to Id. Departmental Valuation Officer (DVO) who did not give his report before the date of completion of assessment proceedings. The Id. DVO however furnished his report on 11.03.2020 valuing the subject mentioned property at Rs 3,32,76,000/-, which is less than the sale consideration of Rs 3,60,53,600/- of the assessee as per the registered sale deed.

6. The Id. AO by doubting the actual sale consideration of Rs 3,60,53,600/- based on the cancelled MOU dated 15.06.2017 and without bringing any other material on record and also ignoring the primary fact that the sale consideration reported by the assessee is at par with the stamp duty value determined u/s 50C of the Act proceeded to complete the assessment u/s 143(3) of the Act on 31.12.2019 wherein a sum of Rs 1,54,00,000/- being the difference between the original MOU dated 15.6.2017 and the actual registered sale deed $[5,14,00,000 (-) 3,60,53,600 = 1,53,46,400$ rounded off to Rs 1,54,00,000/-] on account of unexplained investment in the subject mentioned property.

7. After the completion of assessment on 31.12.2019, the report of the Id. DVO was received on 11.03.2020 who had valued the subject mentioned property at Rs 3,32,76,000/-. Admittedly, this value is lesser

than the actual sale consideration reported by the assessee in the registered sale deed at Rs 3,60,53,600/-. The Id. CIT(A) appreciated the entire contentions of the assessee and granted relief to the assessee.

8. Before us, the Id. DR argued that the assessee company was incorporated on 30.05.2017 ; original MOU for purchase of property was entered into on 15.6.2017 wherein the value of Rs 5,14,00,000/- was agreed upon subject to the seller obtaining Conversion Sanad prior to execution of sale deed and that the time of only one month was given to the Seller to come back to the assessee as to whether he would be able to obtain the Conversion Sanad or not. Accordingly, the assessee had cancelled the MOU vide cancellation deed dated 23.07.2017 and got back refund of Rs 5.14 crores paid to the seller. The Id. DR argued that the time given by the assessee in the MOU to the seller for obtaining Conversion Sanad was very less and impracticable for any party to respond. Further after executing the registered sale deed in favour of the assessee for Rs 3.60 crores, the assessee itself spent Rs 34,95,266/- and took one year time to obtain the Conversion Sanad. Hence he argued that the entire arrangement made by the assessee originally and the cancellation deed is pure sham transaction. He argued that the pre-condition for consideration of Rs 5.14 crores prescribed in the original MOU was impossible to perform for the seller. Mr Amit Kumar Mahoto signs the cancellation deed and his presence in the entire transaction was not explained by the assessee in the instant case. Hence he argued that there was absolutely no basis for the assessee buying the subject mentioned property at a price of Rs 3.60 crores when originally he had agreed to buy the same for Rs 5.14 crores in MOU subject to certain conditions. Hence he argued that the addition of Rs 1.54 crores had been rightly made by the Id. AO and prayed for reversal of the order of the Id. CIT(A).

9. We find that the original MOU dated 15.06.2017; Cancellation Deed and Registered Sale Deed were part of the documents found and seized during the course of search on 31.01.2018. If there was any suspicion for the Id. AO on the purchase consideration of the property, the Id. AO could have very well made cross verification with the seller of the property. No such verification whatsoever was even resorted to be made by the Id. AO in the instant case. The Original MOU dated 15.06.2017 fixed the consideration at Rs 5.14 crores was subject to seller discharging his part of the obligation of obtaining Conversion Sanad. The said MOU also specifically included a clause that the seller had to revert to the buyer (i.e. assessee herein) within one month of the MOU dated 15.06.2017 , as to whether he would be able to obtain the Conversion Sanad for the assessee or not. In the instant case, within one month, the seller had reverted to the buyer that he would not be able to obtain the Conversion Sanad and accordingly as originally agreed, the MOU was duly cancelled and cancellation deed was duly entered into between the parties. There is absolutely no illegality involved in the entire transaction. Further there is absolutely no evidence to prove that there was any on money payment made by the assessee for purchase of the subject mentioned property even after conducting search in the premises of the assessee. The role of Mr Amit Kumar Mahoto was not even questioned by the Id. AO during the course of assessment proceedings and hence there was no need for the assessee to explain the same to him. Either way, that was not even the case of the Id. AO and not even the basis for making an addition in the hands of the assessee. The Id. AR argued that the Id. DR is trying to make out a new case before this Tribunal which is not even the case of the Id. AO. We are in agreement with this contention of the Id. AR. The Id. AR argued before us that the buyer after registering the property in its favour, was able to obtain Conversion Sanad by spending lesser amount within

one year. This only shows that the assessee is more influential and capable of getting things done with the competent authorities which was not the case with the original seller as per the MOU dated 15.06.2017 which ultimately lead to the cancellation of the said MOU. This is a plausible explanation given by the Id. AR and the same deserves to be accepted. The Id. DR stated that Mr Jagat Kishore Chaurasia had made disclosure before the Hon'ble Income Tax Settlement Commission that he had generated unaccounted cash income and utilized the same for investment in various hotels and properties, which also includes the subject mentioned property. The Id. AR vehemently rebutted this fact by stating that the disclosure made by Shri Jagat Kishore Chaurasia did not include any sum disclosed qua this property at all. This was requested to be considered as a statement made from the Bar and moreover he argued that as per Rule 16 of Income Tax Settlement Commission (ITSC) Rules, the application before the Settlement Commission is confidential and the same cannot be used in assessment proceedings. We do not deem it fit to get into this controversy raised by the Id. DR qua the disclosure before the ITSC in view of the fact that there is nothing on record to suggest that the old MOU dated 15.06.2017 was acted upon by the parties and hence making an addition of Rs 1.54 crores on the basis of consideration figure mentioned in old MOU dated 15.06.2017 (which stood subsequently cancelled and forming part of seized documents) in the hands of the assessee is without any basis, without any weight of evidence and is not sustainable in the eyes of law. Further it is pertinent to note that the Id. DVO had even submitted a valuation report, though belatedly on 11.03.2020, wherein the subject mentioned property has been valued only at Rs 3,32,76,000/-, whereas the sale consideration reported by the assessee is at Rs 3,60,53,600/-. Atleast on seeing the DVO's report, the

revenue should not have even preferred any appeal before this Tribunal in the instant case.

10. We find that the Id. CIT(A) had duly appreciated the contentions of the assessee and deleted the addition by observing as under:-

"8.6. In the assessment order, the AO has mentioned that Shri Jagat Kishore Chaurasia along with his family members and group companies had filed an application in Hon'ble ITSC on 03/12/2019 where they had offered additional income from the source of undisclosed income earned through unaccounted sales and others. In view of the same, the AO has inferred that Shri Jagat Kishore Chaurasia had been generating unaccounted cash income and further investing such income in various hotels or properties and that as per the AO it was concluded that the said property bought by the assessee M/s. Jadyn Realtors Pvt Ltd. was one of such investment made by Sh. Jagat Kishore Chaurasia. The said inference drawn by the AO is based on presumptions and is without any material evidence on record.

8.7. The AO made reference to the DVO u/s.142A of the Income Tax Act on 26/12/2019 and the assessment order was passed on 31/12/2019. The DVO submitted the Valuation Report on 11/03/2020. As per the said report the value of property is Rs.3,32,76,000/- which is less than the sale consideration of the property as per sale deed executed on 25/07/2017. The stamp duty value of the property at the time of execution of sale deed was Rs.3,60,53,600/- (3,34,13,600+ 26,40,000) which is equal to the sale consideration of the property.

8.8. From the facts of the case, it is clear that the appellant has not acted upon the MOU executed on 15/06/2017 and therefore it was not binding on any of the parties therein. However, ignoring the above facts, the AO has concluded on the basis of the impounded MOU, related deed of cancellation, that the above difference of Rs. 1.54 crores was an unexplained investment in underlying property and added back to the income of the assessee u/s.69 of I.T.Act, 1961. The entire addition has been based on the basis of the information contained in the MOU which had been cancelled and not acted upon.

8.9. The addition has been made based on the inference drawn from the difference in the amounts of the said property from the impounded M.O.U.s dated 23/07/2017 and 26/07/2017 related to the deed of cancellation and

the sale deed respectively. As discussed above, during the course of search and survey operations on the appellant group no evidence was found to implicate that the appellant had paid any sum of money over and above the amount disclosed in the registered sale deed dated 26/07/2017 of the above property at Rs.3.60 crores. In view of the above facts and the case laws relied upon by the appellant, it is held that the AO has made the addition of Rs.1,54,00,000/- u/s.69 of Income Tax Act, 1961 without any basis and justification and the same is directed to be deleted. As such, appellant gets relief on this ground."

11. In view of the aforesaid observations, we have no hesitation to delete the addition made in the sum of Rs 1.54 crores on account of alleged unexplained investment in property. Accordingly, the grounds raised by the revenue are dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 10/04/2024.

-Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 10/04/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi