

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'ए', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1124/Ahd/2017
Assessment Year : 2010-11

Smt. Lilaben Rameshbhai Savaliya Legal Heir of Rameshbhai N.Savaliya 12, Paritosh Bungalows Satellite Ahmedabad - 380 015 PAN: ABJPS 1312 D	Vs	The Dy.CIT Central Circle-1(1) Ahmedabad
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Sanjay R. Shah, AR
Revenue by :		Ms. Saumya Pandey Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 22/02/2024
घोषणा की तारीख /Date of Pronouncement: 17/04/2024

आदेश/O R D E R

PER MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

This appeal is filed by the Assessee against the order dated 18/01/2017 passed by the Commissioner of Income-tax (Appeals)-11, Ahmedabad [hereinafter referred to as "CIT(A)" in short] for Assessment Year (AY) 2010-11.

2. Grounds of appeal are as under:

1. *The Learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in law and on facts of the case in confirming the addition made by the*

Assessing Officer in respect of unexplained investment in purchase of land at Hathijan amounting to Rs.79,36,580/-.

2. The Learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in law and on facts of the case in confirming the disallowance made by the Assessing Officer of Rs.1,06,204/- claimed as expenditure incurred relating to agricultural income.

3. The Learned Commissioner of Income Tax, (Appeals)-11, Ahmedabad has erred in law and on facts of the case in confirming the disallowance made by the Assessing Officer of Rs.2,01,668/- claimed as deduction for expenditure as shown in the profit and loss account."

3. The assessee filed return of income on 28/09/2020 declaring income of Rs.68,490/-. The assessee also declared agricultural income to the tune of Rs.2,65,510/-. The same was processed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short). During the course of survey proceedings, the case of Shri Paresh Hiralal Modi conducted at his office who was covered during the course of search of survey conducted in the cases of Amrapali Group on 26/10/2012, a loose-paper file inventorized as 'Annexure A-2' (Page Nos.1 to 77) was found and impounded. The said file was related to pieces of land in various survey numbers admeasuring total area of 23272 sq.metres situated at Hathijan Village of Daskroi Taluka of Sub-District Ahmedabad (Narol) of Ahmedabad District . Page Nos.16 to 41 of 'Annexure A-2' contains registered Banakhat No.3178/2010 dated 26/03/2010 of the land mentioned above between (i) Shri Rameshbhai Nagjibhai Savaliya and (ii) Shri Kanubhai Dhulabhai Patel (buyer) and (i) Shri Rajesh Ramanlal, (ii) Jashuben w/o. Hasmukhbhai Atmaram and others (seller) of Hathijan Village of Daskroi Taluka of Ahmedabad. According to the said Banakhat dated 26/03/2010, the sale consideration of the said land Rs.1,01,45,000/-. Page Nos.43 to 67 of the 'Annexure A-2'

contains Draft Memorandum of Understanding related to same land. According to this Memorandum of Understanding (MOU), sale consideration of the said land is Rs.5,29,10,533/- at the rate of Rs.1,901/- per sq.yd. According to the said MOU, part payment of Rs.1,32,27,633/- (25% of total consideration) was already done by First Party to Second Party. Remaining amount of Rs.3,96,82,809/- to be paid in three equal installments of Rs.1,32,27,633/-. Thus, the assessee along with Shri Kanubhai Dhulabhai Patel paid Rs.5,29,10,533/- to the sellers of the land. The source of such payment was not known and not reflected in the return of income. The assessee was having 60% share in the land. Therefore, considering that the undisclosed amount of Rs.3,17,46,320/- has escaped assessment as per the observation of the Assessing Officer and, therefore, the case was reopened. Accordingly, notice u/s.148 of the Act was issued on 27/11/2014 and served upon the assessee. The assessee filed letter dated 15/12/2014 informing that he has filed his return on 13/12/2014 with reference to notice u/s.148 of the Act. The assessee along with this letter also filed, a copy of the return of income in which the assessee has declared the same returned income of Rs.68,490/- as shown in the original return of income filed by him on 28/09/490/-. Subsequently, notices u/s.143(2) of the Act and u/s.142(1) of the Act were issued to the assessee on 22/12/2014 which were duly served upon the assessee.

3.1. After taking cognizance of the assessee, responses as well as the objections against reopening the assessment, the Assessing Officer disposed of the objection. The Assessing Officer made addition of Rs.79,36,580/- on account of unexplained investment in purchase of land u/s.69 of the Act.

The Assessing Officer also made disallowance on account of unexplained expenditure on agricultural income to the extent of Rs.1,06,204/- and disallowance on account of non-business expenditure amounting to Rs.2,01,668/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld.AR submitted that search proceedings in cases of Amrapali Group conducted on 26/10/2012. Survey proceedings in case of Shri Paresh Hiralal Modi and loose-paper file was found and impounded. The said file was related to pieces of land in various survey numbers at Hathijan Village. Draft Memorandum of Understanding related to pieces of land at Hathijan Village was found. Accordingly, the sale consideration of the said land is mentioned at Rs.5,29,10,533/-. As per said draft MOU, the part payment of Rs.1,32,27,633/- (25% of total consideration) was already made. Remaining amount of Rs.3,96,82,899/- to be paid in three equal installments of Rs.1,32,27,633/-. Registered Banakhat No.3178/2010 dated 26/03/2010 of the same land was made between (i) Shri Rameshbhai Nagjibhai Savaliya and (ii) Shri Kanubhai Dhulabhai Patel (buyer) and (i) Shri Rajesh Ramanlal, (ii) Jasuben, W/o. Hasmukhbhai Atmaram and others. According to said Banakhat dated 26/03/2010, sale consideration is of Rs.1,01,45,900/-. The assessee, along with the joint-purchaser (Shri Kanubhai D.Patel), had on the basis of Banakhat rights held by them in respect of the said land, joined as a confirming parties in two separate sale-deeds executed in respect of final sale of this land as under:

(i)	Registered Sale Deed No.336/2011 dated 15/06/2011 for sale consideration of	Rs.68,40,000/-
(ii)	Registered Sale Deed No.7774/2011 dated 20/06/2011 for sale consideration of	Rs.33,08,900/-
Total sale consideration		Rs.1,01,48,900/-

5.1. Accordingly, on final sale to the thirty party, the assessee and the joint-purchaser (Shri Kanubhai D. Patel) has received back the amount paid by them against Banakhat registered at No.3178/2010 dated 26/03/2010. Survey proceedings has been conducted in case of Shri Paresh Hiralal Modi, who is not known to the assessee. The draft of Memorandum of Understanding (MOU) found during the course of survey proceedings cannot be considered as final document for sale of land as the draft itself contains many corrections and instructions to be carried out before preparing final document. Even the statement of Shri Paresh Hiralal Modi taken at the time of survey as well as the papers found and impounded cannot have any evidentiary value as relating to survey proceedings in case of third party. The Ld.Counsel for the assessee relied upon the following decisions:

(i)	C IT vs. S.Khader Khan Son	(2013) 352 ITR 480 (SC)
(ii)	Principal CIT vs. Saumya Construction P.Ltd.	(2016) 387 ITR 529 (Guj.)
(iii)	DCIT (Asst.) vs. Prarthana Construction Pvt.Ltd.	(Tax appeal No.79 of 2000 dated 25/03/2011 (High Court of Gujarat)
(iv)	Kishanchand Chelaram vs. CIT	(1980) 125 ITR 713 (SC)

5.2. The Id.Counsel for the assessee further submitted that during the course of survey, in the statement recorded from Shri Paresh Hiralal Modi, the said person stated that work of documentation of land purchased by

Thakkar Group of Kerala and Rupal Villages is done by his office and related files are at his office as work for title clearance has not been completed. The said person also submitted that Shri Yashwantbhai Thakkar left these files and Shri Paresh Hiralal Modi did not have the knowledge about some files of Amrapali Group. The said person also submitted that keys of the cupboard from which files are found remains with Shri Maish Dodia, person of Shri Yashwantbhai Thakkar and Shri Hiralal Modi has no more information about each and every file found from that cupboard and only Shri Yashwantbhai Thakkar can say everything in this regard. The Ld.Counsel for the assessee submitted that the addition was made by the Assessing Officer on the basis of draft of Memorandum of Understanding found from the cupboard of Shri Hiralal Modi during the course of survey proceedings conducted as a consequence to search proceedings carried out in Amrapali Group. As such, reopening of the case and additions made in case of the assessee are not sustainable. The Ld.Counsel for the assessee also relied upon the following decisions:

(i)	Kishanchand Chelaram Vs. CIT	(1980) 125 ITR 713 (SC)
(ii)	Prtakash Chand Nehta Vs. CIT	(2008) 301 ITR 134 (MP)
(iii)	Bakulbhai Ramanlal Patel Vs. ITO	(2011) 56 DTR 212 (Guj)
(iv)	Shankerlal Nagji & Co & Others Vs. ITO	(2010) 322 ITR 90 (Guj)

6. As regards Ground No.2 related to disallowance of expenditure on agricultural income, the Ld.Counsel for the assessee submitted that the CIT(A) totally ignored that the assessee was incurring these expenditures in the earlier assessment year as well and, therefore, the Assessing Officer should have allowed these agricultural expenses.

7. As regards Ground No.3, the Ld.AR submitted that the assessee is not pressing this ground.

8. The Ld.DR submitted that the document found on third party and the final registered documents are on the similar terms and, therefore, the same cannot be treated as done document, but are very much incriminating documents. The Ld.DR further submitted that the notings on page No.42 of 'Annexure A-2' clearly reveals that the assessee was part of the said MOU and the transaction has taken in that manner itself. The Ld.DR relied upon the assessment order and the order of the CIT(A).

9. As regards Ground No.2, the Ld.DR submitted that the assessee has not explained as to how these expenses on agricultural income has incurred.

10. We have heard both the parties and perused all the relevant material available on record. From the perusal of 'Annexure A-2' documents as well as the statement of Shri Paresh Hiralal Modi gives the picture that the MOU was at the drafting stage and was not final and, in fact, the Assessing Officer at no point of time, demonstrated that the amount mentioned in MOU was the actual amount paid by the seller to the buyer, either from the seller's account or from the buyer's account (from respective parties' bank statements). The document found on the third party's premises and which were not finalized in the eyes of law cannot be assumed that the same have been acted upon by the parties mentioned therein. In fact, in this case, the parties were not fully mentioned or incorporated as an entire document, but was kept blank in certain clauses. Therefore, this document cannot be the sole criteria for making the addition in consonance with the statement of

Shri Paresh Hiralal Modi. Thus, the Assessing Officer as well as the CIT(A) were not justified in making this addition. Thus, ground No.1 is allowed.

11. As regards Ground No.2, the CIT(A) has given a categorical finding that the assessee did not furnish any evidence about the expenses incurred for estimating the agricultural income and from the perusal of the documents of the agricultural land, there is no mention of any crop or any produce for which the assessee should have incurred in that expenses. Hence, Ground No.2 is dismissed.

12. As regards Ground No.3 is concerned, the same is not pressed, hence dismissed as such.

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

Order pronounced in the Court on 17th April, 2024 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 17/04/2024

टी.सी.नायर, व.नि.स./T.C. NAIR, SJ. PS

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)-11, 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