

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA RAGHUNATH KAMBLE, JUDICIAL MEMBER
&
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 354/Ahd/2023
(निर्धारण वर्ष / Assessment Years : 2010-11)

Chintu Realties Pvt. Ltd. A 211, Shivalik Corporate Park, 132 Ring Road, Satellite, Ahmedabad, Gujarat 380015	बनाम/ Vs.	The Income Tax Officer Ward – 1(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCC2430Q		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Ms. Prithu Parimal, Advocate & Mr. Rajan Patel, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri J L Bhatia, Sr. DR

Date of Hearing	18/04/2024
Date of Pronouncement	03/05/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 16.03.2023 for the Assessment Year 2010-11.

2. This is the second round of appeal before the Tribunal. The assessment in this case for A.Y. 2010-11 was completed u/s.143(3) of the Act on 30th March, 2013 at total income of Rs.3,61,48,250/-. In the course of assessment, an addition of Rs.99,67,260/- was made on account of

unexplained investment in purchase of immovable properties. Another addition of Rs.2,52,37,140/- was also made on account of unexplained income from sale of properties.

3. The assessee had filed appeal before the Id. CIT(A) and the CIT(A) after considering the submissions of the assessee as well as the remand report of the A.O. had deleted the addition.

4. The department had preferred appeal before the ITAT, which was decided vide ITA No. 1744/Ahd/2015, dated 11.07.2019 and the matter was restored to the file of Id. CIT(A) for fresh adjudication. In the second round of appeal, the Id. CIT(A) has confirmed the additions for the reason that the assessee did not file explanation/supporting documentation as per the direction of Id. ITAT and the source of fund was not explained. It is against this order that the assessee is in the present appeal.

5. The assessee has taken following grounds of appeal:

“1. The Commissioner (Appeals) was not correct on the facts, in circumstances and in law in confirming the assessment of sum of Rs.3,52,04,400/- (Rs.99,67,260/- unexplained investment plus Rs 2,52,37,140/- unexplained income) which was reported by the Ld. Assessing Officer in remand report dt.09.03.2015 followed by the Ld Commissioner (Appeals) in order dt. 23.03.2015 that transactions in respect of additions made, were recorded in books of accounts.

2. The Commissioner (Appeals) was not correct on the facts and in law in confirming the assessment of sum of Rs.3,52,04,400/-(Rs.99,67,260/- plus Rs.2,52,37,140/-) which was reported by the Ld. Assessing Officer in remand report dt. 09.03.2015 that transactions in respect of additions made, were recorded in books of accounts hence was deleted by the Ld CIT(A) vide order u/s 250 dt. 23.03.2015, without appreciating and discussing the findings of Ld CIT(A) in order u/s 250 dt 23.03.2015.

3. The Commissioner (Appeals) was not correct on the facts and in law in confirming the assessment of the sum of Rs. 3,52,04,400/- (Rs. 99,67,260/- plus Rs.2,52,37,140/-) which was reported by the Ld. Assessing Officer in remand report dt. 09.03.2015 that transactions in respect of additions made, were recorded in books

of accounts which was deleted by the Ld CIT(A) vide order dt. 23-03-2015, without considering, discussing the submission(s) as well as evidences furnished by the appellant

4. *The Ld CIT(Appeal) has erred in overlooking and in summarily rejecting the various documents, evidences placed in paper book during the proceedings. The books of account, ledger accounts sale deeds, etc produced on three dates viz.3.7.2014, 30.12.2013 and 20.3.2015 before Ld CIT (Appeals)-1, Ahmedabad and submission dt. 13.2.2023 furnished while accepting the lopsided and factually incorrect version of the Ld Assessing Officer as mentioned in his assessment order.*

5. *Without prejudice in any view of the matter and alternatively, the investment/income /transactions which has been well explained satisfactorily and recorded in books of accounts, ought not be added as unexplained investment and unexplained income to the total income.*

6. *The Ld Commissioner (Appeal) failed to consider the documents in terms of purchase deed and sale deed of land and offices as stock in trade. Transactions are well reflected in the books of account in the Financial year supported by the bank statements and deeds.*

7. *The Ld. Commissioner (Appeals) was not correct to understand the nature of business as the assessee is required to transact for land and stock in trade for the purpose of its real estate developer business.*

8. *The ld Commissioner (Appeal) has erred in law and on facts in not passing the speaking order u/s 250 rws 254 as per section 250(6) of the Act.*

9. *That on the facts, law and circumstances of the case, the learned Commissioner (Appeal) was not justified in confirming the additions made on account of unexplained investment (Rs. 99,67,260/-) and unexplained income (Rs.2,52,37,140/-) of the Income Tax Act, 1961. Additions confirmed vide order u/s 250 rws 254 dt 16-03-2023 are arbitrary, illegal and contrary to letter and spirit of section 250(6) of the Income Tax Act, 1961. Therefore order passed, to be set aside and the addition confirmed to be deleted*

10. *The observation on page No.1 Para No.1 fourth line that "The appeal of the assessee to CIT(A), Ahmedabad against the order was dismissed vide order of the CIT(A) on 23rd March,2015." is not correct. In fact, the appeal of the assessee was allowed by the Ld Commissioner (Appeals)-1. Ahmedabad vide No.CIT(A)-VI/Wd 1(3)/165/2013-14 Now-69/CIT(A)-1. Thus, the observation of Ld CIT (A) is not correct.*

11. *The conclusive finding mentioned in para 5.5 of the order that "Accordingly, the appeal of the Ld A.O is allowed." This phrase is not understandable as in the appeal before CIT(A) the decision can be either assessee's appeal allowed or dismissed. There cannot be Ld AO's appeal, hence not correct.*

12. *That on the facts, law and circumstances of the case, the learned Assessing Officer was not justified in charging the interests U/s 234A, U/s 234B and U/s 234C, the same may be deleted."*

6. The Id. AR appearing for the assessee submitted that the Id. CIT(A) has passed order dated 16.03.2023 without allowing sufficient opportunity to the assessee and also without considering the explanation and documents as filed in the course of appeal proceeding. It was explained that in response to notice dated 07.02.2023 of the Id. CIT(A), a compliance was made on the e-proceeding portal of the department, which has not been considered by the Id. CIT(A). He, therefore, requested that the matter may be set aside to the file of the Id. CIT(A) for fresh adjudication after considering the submissions of the assessee.

7. The Id. DR had no objection to set aside the matter to the file of the Id. CIT(A).

8. We have carefully considered the submissions of the two parties and the materials brought on record. In the first round of appeal, the matter was set aside to the file of the Id. CIT(A) with the following directions:

“8. We have carefully considered the rival submissions. We find substance of the plea of the Revenue. The CIT(A) has not spelt out as to how he was satisfied with explanations offered by the assessee, if any, with reference to the transactions of purchase and sale of property as reflected in AIR and source thereof. The order of the CIT(A) is thus to be regarded as cryptic in the sense that it is silent on issue of source or nature of transactions pertinent for adjudication of the issue. We, thus, set aside the order of the CIT(A) and restore the matter back to the file of the CIT(A) for fresh adjudication in accordance with law after granting reasonable opportunity to AO for appreciation of evidence in support of AIR transactions in question. Needless to say the CIT(A) shall grant reasonable opportunity to the assessee to explain and support the transaction with documentary evidences. It shall be open to the CIT(A) to make such enquiry or cause to make such enquiry as may be considered appropriate to ascertain the nature and source of the transactions in question.”

9. The original order of the Id. CIT(A) was found to be cryptic on the issue of source or the nature of transactions. Therefore, the matter was set aside to the file of the Id. CIT(A) for fresh adjudication, after allowing

reasonable opportunity to the AO as well as to the assessee to explain the transactions with documentary evidences. It is found that set aside order passed by the Id. CIT(A) is equally cryptic and the matter has not been examined on merits at all. The finding of the Id. CIT(A) is found to be as under:

“5.1 I have gone through the assessment order, CIT(A) order and ITAT directions while setting aside the appeal.

5.2 In view of the Hon'ble ITAT Order, the directions were given that the case should be adjudicated considering the explanation for transaction appearing in AIR and source thereof. However, the appellant has not explained the source out of which the transaction appearing in AIR are entered into.

5.3 The appellant was issued multiple notices. However, it submitted the documents before erstwhile CIT(A) and submissions filed before Ld. AO. It did not file the explanation/supporting documentation as per Hon'ble ITAT findings to explain the sources of funds.

5.4 In view of the above, I am of considerate the view that the addition carried by the Ld. AO should sustained.

5.5 Accordingly, the appeal of the Ld. AO is allowed.”

10. It is found that the assessee was allowed opportunities on 05.03.2022, 09.01.2023 and on 07/02/2023. The assessee has brought on record a copy of e-Proceedings Response Acknowledgement in respect of notice dated 07.02.2023 of the CIT(A). As per submissions made by the assessee on 13.02.2023 not only certain submissions were made before the Id. CIT(A) but also a request was made to admit the additional evidences under Rule 46A. There is also mention of third party evidences from Sub-Registrar. It is found that Id. CIT(A) has not acknowledged and taken into account the response made by the assessee on the e-proceeding portal on 13.02.2023. The matter is, therefore, once again set aside and restored to the file of the Id. CIT(A) to consider the response of the assessee made on the e-proceeding portal and thereafter to pass a speaking order. The Id. CIT(A) may once

again grant a reasonable opportunity of being heard to the assessee and to explain and support the transactions with documentary evidences. As already directed earlier, the CIT(A) is free to make or cause enquiry in the matter as deemed fit, to ascertain the nature and source of transactions, involved in this appeal.

11. In the result, appeal preferred by the assessee is allowed for statistical purposes.

This Order pronounced on 03/05/2024

Sd/-
(SUCHITRA RAGHUNATH KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 03/05/2024

S. K. SINHA

True Copy

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. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad