IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.01/PUN/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Uday Jawahar Kotnis, 601 A Building, Waterfront, Kalyani Nagar, Pune- 411001. PAN : ABTPK0141N	Vs.	ITO, Ward-13(2), Pune.
Appellant		Respondent

Assessee by	:	Shri V. L. Jain
Revenue by	:	Shri Sourabh Nayak
Date of hearing	:	29.05.2024
Date of pronouncement	:	10.07.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 22.11.2023 passed by LD CIT(A)/NFAC, Delhi for the assessment year 2017-18.

2. The appellant has raised the following grounds of appeal :-

> *"1. The learned AO has erred on facts and in law in making an addition of Rs.1,75,00,000/- as commission under the head income from other sources.*
>
> *2. The appellant craves leave to amend or alter any of the grounds of appeal or add to the same, if deemed necessary.*

3. The facts, in brief, are that the assessee is an individual and filed his return of income for the assessment year 2017-18 on 04.08.2017 declaring taxable income of Rs.14,05,860/-. The case was selected for limited scrutiny under CASS for the following issue :-

> ***"Deduction/ Exemption from Capital Gains, Investment in immovable property & deduction against income from other sources***."

4. During the course of assessment proceedings, statutory notice was issued to the assessee & in reply assessee furnished necessary information & documents. After considering the reply of the assessee & in the absence of evidences in support of claim of deduction of Rs.1,75,00,000/- made by the assessee against the income of Rs.1,75,00,000/- shown under the head "income from other sources", the Assessing Officer completed the assessment on a total income of Rs.1,89,05,860/- by observing as under :-

> *"3. On careful perusal of the submission & all the supporting documentary evidence furnished by the assessee, it is noticed that:*
>
> *1. the assessee received amount of Rs.1,75,00,000/- on execution of the sale-deed as consenting party. As stated, he received the amount for removing the litigation regarding reservation on the land etc.*
>
> *2. the possession of the land was handed over to the purchaser,*

3. transfer of property was effected as per section 2(27) of the IT Act as well as 53A of the Transfer of Properties Act, 1882,

4. as per the plea of the assessee that since the transfer of land was not materialized, the amount is liable to paid to the owner or the purchaser; had it been the case, the assessee should not have kept the amount with him even after 3 years of the cancellation of the transaction. Thus, it has obvious that the said amount is the income of the assessee upon which TDS was made,

5. in the ITR too it has been disclosed as income from other source i.e. commission received,

6. the assessee has claimed the entire amount as expenses; however has not furnished any evidence in support of the expenditure so incurred; in short it is a kind of future liability.

4. In view of the above, it is evident that the assessee earned income to the tune of Rs. 1,75,00,000/- by way of commission & has been disclosed under the head income from other sources. The same is considered for assessment. Penal proceedings u/s 270A(9)(a) are initiated separately for misreporting of income."

5 Subject to the findings & discussion made here above based on record, the total income as assessed is computed as follows:

Computation of Assessed Income

Income as per Return	*14,05,860*
Add Income from other source	*1,75,00,000*
Assessed Total Income (rounded off) (Rs.)	*1,89,05,860*

6. Assessed u/s 143(3) of the IT Act; credit to the pre-paid taxes is given after due verification. Interest is charged u/s 234A, 234B, 234C & 234D wherever applicable. Issued notice of demand u/s 156; and also issued DN u/s 156 accordingly; issued notice u/s 274 rws 270A of the Act for misreporting of income."

5. In first appeal against the above assessment order, Ld. CIT(A)/NFAC, dismissed the appeal of the assessee by observing as under :-

"6.1 I have gone through the submissions of the appellant and it is found that the appellant has received Rs. 1,75,00,000/- on execution of sale deed as consenting party. He was expected to render certain services of removing the EWS reservation. The possession of the land was also handed over to the purchaser. The contention of the appellant that the said amount is refundable to the purchasers as the transaction has not materialized cannot be accepted for the reason that after the receipt of the amount 6 years have elapsed and inspite of that the appellant has not refunded the said amount. Even there has been a police complaint and a court case filed but inspite of that the appellant has not refunded the amount received. Therefore, the AO is right in holding that the appellant should have refunded the amount when the transaction did not materialize or the appellant could not render the desired service specified in the sale deed. On verification of the facts of the case, it is seen that the appellant does not have the intention of refunding the amount received as consenting party. If the appellant gets the relief at this stage, the amount received by the appellant of Rs. 1,75,00,000/- would go untaxed as the transaction in question would not be captured either on TDS portal or the information from sub-registrar etc. In this case the correct option for the appellant would have been to refund the amount to the purchasers and make the claim accordingly which perhaps would garner some merit in the appellant's case. As the appellant has received the said amount and as the appellant has not refunded the same inspite of passage of 6 years from the date of receipt and even though according to him the transaction has not materialized, which shows that the appellant has no intention to refund and hence, the said amount is taxable as income from other sources. As the appellant has not produced any details of the expenses incurred for removing the EWS reservation and hence the action of the AO in taxing the entire amount of receipt as income from other sources is upheld. The judicial pronouncement referred by the appellant are relating to receipt of additional consideration to the owners after fulfillment of certain conditions and hence in which year the said consideration is taxable was the issue before the tribunal. But in the instant case the appellant is not the owner and the amount actually received only has been brought to tax and Rs. 3,00,00,000/- was receivable as per the sale deed was not taxed by the AO as the same was not received by the appellant. Hence, the ratio of the decisions referred by the appellant are not applicable to the facts of the appellant's case. Accordingly, the addition made by the AO of Rs. 1,75,00,000/- u/s 56 of the Act is upheld and the Ground No. 1 is dismissed.

7. Ground No. 2 is general and hence not adjudicated."

6. Being aggrieved with the above first appellate order dated 22-11-2023 passed by Ld. CIT(A)/NFAC, the assessee is in 2nd appeal before this Tribunal.

7. LD AR submitted before us that the assessee Uday Jawahar Kotnis entered into an agreement / Haami Patra on 06-01-2014 with Smt. Radhabai Vitthalrao Kawade & Gaurav Vitthalrao Kawade to purchase their property for a consideration of Rs.7,00,00,000/-. But the assessee did not purchase the property & the agreement / Haami Patra got cancelled on 20-02-2015 & the advance amount was refunded to the assessee. This cancellation deed clearly says that henceforth there will be no right of the assessee on the impugned property. Thereafter Ghodawat Manere Developers LLP entered into an agreement with Smt. Radhabai Vitthalrao Kawade & Gaurav Vitthalrao Kawade to purchase their property. It is also submitted that the assessee namely Uday Jawahar Kotnis was also made a party to this sale transaction as consentor, although he does not have any rights in the property, but he was entrusted with the work of lifting of EWS reservation from the sold property. The sale deed was executed & registered on 17-05-2016. It was duly mentioned in the registered sale deed that

out of total consideration of Rs.13,75,00,000/-, Rs.4,75,00,000/- were agreed to be paid to the assessee being consenting party which was scheduled to be paid in instalment by the purchaser, after assessing the status of the file of EWS reservation. It was further submitted by the counsel of the assessee that EWS reservation lifting work was not completed in full therefore out of total consent money of Rs.4,75,00,000/- an amount of Rs.1,75,00,000/- only was paid to the assessee by the purchaser & the balance amount of Rs.3,00,00,000/- was not paid to the assessee, but was kept in a joint FD in the name of assessee & the purchaser. It was also informed that TDS on whole of the consent money was deposited on the PAN number of the assessee. It was also contended before the bench that the sale deed was executed on 17-05-2016 & peaceful possession of the property was handed over to the purchaser, but after a period of nearly 3 years i.e. on 03-05-2019 an order was passed by District Superintendent Land Records, Pune with regard to the impugned property, restoring the names of earlier owners in place of Radha Bai Vitthalrao Kawade & Gaurav Vitthalrao Kawade, who happens to be the transferor of the impugned property of which the assessee was the consentor.

Due to this fact the names of the purchaser could not be mutated in the impugned property & the purchasers were forced to file a civil suit on 18-08-2019 against the assessee being consentor & the sellers. It was the contention of the counsel of the assessee that due to the civil suit filed by the purchaser the assessee might be asked by the court to refund the amount of Rs.1,75,00,000/- already received by him.

8. With regard to the query of Rs.1,75,00,000/- income shown & similar amount claimed as expenses, under the head "income from other sources", it was submitted by the counsel of the assessee that there was no income accrued to the assessee hence the same is not taxable to the assessee, but to have a proper disclosure of transaction with the income tax department, assessee took a stand to disclose the amount under the head income from other sources and equal amount also deducted from the same as no amount to be offered for taxation, hence there is a Deduction against income from other sources reflecting in income tax return. Intention to have the disclosure of the transaction and not to conceal the transaction from Income Tax department, LD counsel of the assessee requested to consider the fact that although the

sales deed got registered on 17-05-2016 & peaceful possession was handed over to the purchaser, but nearly after 3 years a civil suit is being filed on 18-08-2019, due to which the transaction is under dispute and may get cancelled, hence then no profit or gain which arises from the alleged transfer of capital asset could be brought to tax under section 45 r.w.s. 48 of the Act & therefore the AO was not correct in assessing the income of Rs.1,75,00,000/- in the hands of the assessee. It was also informed by the counsel of the assessee that the assessee has also filed a complaint in the year 2019, against the purchaser of the property, for withdrawing the amount of Rs.3,00,00,000/- kept in joint FD, without informing the assessee. It was further clarified before the bench that being consentor in the sale deed, the assessee was to receive Rs.4,75,00,000/- & out of which only Rs.1,75,00,000/- were received during the period under consideration, the same can be treated as an advance & whenever the court will decide the matter, the income will be disclosed in the return of income & the due tax will also be deposited. Apart from paper-book, computation of income of the assessee, for the year under consideration, was also produced before the bench. It was specifically submitted before

the bench that the credit of TDS of Rs.1,75,000/- was not claimed by the assessee & therefore related income of Rs.1,75,00,000/- received by him should also not be taxed during the period under consideration.

9. LD counsel further relied on the ratio laid down by Hon'ble Apex Court in CIT vs. Balbir Singh Maini, [2017] 398 ITR 531 (SC) that where the transaction has not materialized, then no profit or gain which arises from the alleged transfer of capital asset could be brought to tax under section 45 r.w.s. 48 of the Act. LD counsel of the assessee also placed reliance on the decision passed by a coordinate bench of this Tribunal in the case of Rohan Projects vs. Dy. Commissioner of Income Tax in ITA No.306/PUN/2015. In support of all the above contentions raised, two paper-books containing 147 pages were also furnished before the bench. In the light of these submissions, LD counsel of the assessee requested to delete the addition of Rs.1,75,00,000/- under the head "income from other sources" made by the AO & confirmed by LD CIT(A)NFAC.

10. On the other hand LD DR vehemently supported the order passed by the Assessing Officer & confirmed by LD CIT(A)NFAC

& therefore requested before the bench to confirm the concurrent findings & dismiss the appeal of the assessee.

11. We have heard LD counsels from both the sides & perused the material available on record. The only solitary question raised by the assessee for our consideration is that whether the AO was justified in making the addition of Rs.1,75,00,000/- to the income of the assessee or not. In this regard we find that the assessee entered into an agreement (Haami Patra) with Radhabai Vitthalrao Kawade & her son Gaurav Vitthalrao Kawade to purchase their property for a consideration of Rs.7,00,00,000/-. But the assessee did not purchase the property. The Agreement (Haami Patra) was therefore got cancelled on 20-02-2015. This cancellation deed clearly says that henceforth there will be no right of the assessee on the impugned property. Therefore we find that any question of capital gain on the sale of above property in the hands of the assessee does not arise. We further find that the impugned property was already under litigation as two civil suits 225/2016 by Anush Goyal & 985/2016 by Vishal Gupta were filed for specific performance against Smt. Radha Vitthalrao Kawade & Gaurav Vitthalrao Kawade. Another case filed by Kawade Land Park

Housing Co-operative Society regarding ownership of the impugned property was also pending since 2016. It is important to mention here that the assessee being the consentor & the sellers, both were known to this fact of pending litigations but they concealed this fact from the purchaser i.e. Ghodawat Manere Developers & by concealing this fact sold the property. Ignorant from all these pending litigations Ghodawat Manere Developers LLP purchased the property from Radhabai Vitthalrao Kawade & Gaurav Vitthalrao Kawade wherein the assessee also became consentor for removing the EWS reservation on the property, within 2 months from the date of sale, for which he was promised to get Rs.4,75,00,000/-. The payment of Rs.4,75,00,000/- was scheduled to be paid in instalment after assessing the status of the file of EWS reservation. The above sale deed was registered on 17-05-2016 & peaceful possession of the property was handed over to the purchaser. As the EWS reservation lifting work was not completed the assessee was only paid Rs.1,75,00,000/- & remaining Rs.3,00,00,000/- were deposited in Joint FD in the name of one of the purchaser & assessee. The purchaser paid the amount without deducting statutory TDS of Rs.4,75,000/- @ 1% on

Rs.4,75,00,000/-, therefore, the assessee himself paid Rs.4,75,000/- to the purchaser as a reimbursement towards payment of TDS. The TDS credit of Rs.4,75,000/- was duly appearing for the period under consideration on the PAN number of the assessee. We find that in the computation of income assessee himself has shown Rs.1,75,00,000/- as income for coordination and settlement under the head "income from other sources". The assessee thereafter claimed deduction of Rs.1,75,00,000/- u/s 57 of the IT Act, as coordination & settlement expenses. During the course of assessment proceedings it was found by the AO that the assessee has claimed the entire income of Rs.1,75,00,000/- as deduction towards expenses but no evidence was furnished in support of the expenditure so incurred/claimed. Therefore, the Assessing Officer in the absence of any evidence in support of expenses incurred, denied the claim of such expenses which resulted in income of Rs.1,75,00,000/- under the head "income from other sources". From the above facts it emerges clearly that it was not the Assessing Officer who made the addition of Rs.1,75,00,000/- as income under the head "income from other sources", but it was the assessee himself who voluntarily declared such an income in his

return of income. It is also apparent that in the absence of any evidence in support of the expenses incurred, the assessing officer only disallowed the deduction claimed by the assessee towards expenses claimed in the name of coordination and settlement expenses. Further from the perusal of computation of income, which was furnished before the bench & copy of income tax return filed in the paper book (page no.15 of paper book no.1), it was discovered, that the assessee has claimed the credit of TDS of Rs.1,75,000/-. Although, before the AO, before LD CIT(A)/NFAC & even before the bench it was the contention of the counsel of the assessee, that the credit of TDS was not claimed. On further verifying copy of income tax return filed in the paper book, it is found that total TDS of Rs.4,75,000/- [@ 1% on Rs.4,75,00,000/-) was deposited by the purchaser on the PAN number of the assessee, but the assessee has claimed TDS of only Rs.1,75,000/- which was related to the receipt of Rs.1,75,00,000/- for the relevant period and the TDS of Rs.3,00,000/- which was related to the balance consideration of Rs.3,00,00,000/- was not claimed & deferred to next year to be claimed in future, because it was not received during the relevant period and even till today is not

received by the assessee. Therefore, it can be inferred that to the extent of income received by the assessee TDS was claimed, but the income which was not received, the TDS was not claimed. In the instant case the TDS of Rs.4,75,000/- was deducted @ 1% on Rs.4,75,00,000/-. But the assessee has only received Rs.1,75,00,000/- therefore TDS of only Rs.1,75,000/- was rightly claimed by the assessee & Rs.3,00,00,000/- was not received therefore TDS of Rs.3,00,000/- was not claimed by the assessee, & even the assessing officer has rightly considered income of only Rs.1,75,00,000/- instead of Rs.4,75,00,000/- appearing on the portal as per sale deed. It is also found that the civil suit of forgery was filed by the purchaser in August 2019 & a simultaneous complaint was also filed by the assessee against the purchaser for not making balance payment to the assessee being consentor. It is also found that till date even after 8 years the assessee has not refunded the amount to the purchaser & also contesting civil suit against the purchaser for receiving the balance payment of Rs.3,00,00,000/-, this clearly shows that the assessee is not willing to refund the amount to the purchaser. It is also found that there was a clause in the sale deed that in the event of dispute the parties

will approach to the arbitrator, but the assessee did not opt this option, because, since beginning it was known to him that the property is disputed & the arbitrator will not give decision in his favour. It is therefore observed by the bench that the assessee was working with mala-fide intention & does not have clean hands & now also wants to defraud the revenue by not making payment of due taxes in the guise of pending litigation. It is also observed by the bench that the assessee also tried to misguide the income tax department by claiming deduction in the name of coordination & settlement expenses for which he does not have any supporting documents. It is also held, that the claim of the assessee, that the Assessing Officer has made the addition, is not correct, because he himself declared the income & during the assessment proceedings, could not substantiate the deduction claimed by him. It is also important to observe here that the case of the assessee was selected under CASS for the reason of claiming deduction under the head "income from other sources". Therefore, it was the duty of the Assessing Officer to verify the claim of deduction made by the assessee in his return of income. In the instant case the assessee failed to provide any proof in support of expenses/deduction

claimed by him. It is worthwhile to mention here that legislature has provided certain procedure under the Income Tax Act & the assessee cannot chose to show income or expenses according to his own choice. Undoubtedly, the assessee was in receipt of income of Rs.1,75,00,000/- in his hands, which was voluntarily declared by him in his return of income and the deduction towards expenses claimed by him were not supported by any vouchers. It is also found that at the time of return filing there was no civil suit pending against the assessee, it was only 3 years later, when the civil suit was filed against the assessee & therefore it was an afterthought to cover his mistake in return filing in the guise of civil suit, when the case was selected for scrutiny. It is pertinent to mention here that the assessee is still fighting civil suit against the purchaser & claiming that the amount of Rs.3,00,00,000/- is still due from the purchaser. Under the above facts & in the circumstances of the case, we find that even after 8 years the assessee is not willing to refund the amount already received by him, & at the same time does not want to pay the legitimate taxes to the revenue. Therefore, in our considered opinion that LD Assessing Officer has not committed any error in disallowing the

expenses claimed by the assessee in the name of coordination & settlement expenses, in the absence of any supporting evidence, which consequently resulted in income of Rs.1,75,00,000/- in the hands of the assessee.

12. It is also the contention of the assessee that due to the pending litigation, the income is not accrued to him & therefore not real income & its declaration was only for the purpose of disclosure with Income Tax Department. In this regard, we find that the income was already appearing on the portal in Form 26AS in the shape of principal amount & its TDS. The assessee himself chose to declare only Rs.1,75,00,000/- this year & remaining amount was carried forward by him to next year. If the income was not accrued to him, the assesse could very well carry forward the whole of the amount appearing on the portal to next year but it was not done & only Rs.3,00,00,000/- was carried forward to next year & Rs.1,75,00,000/- was shown as income of the year under consideration. In this regard, we find that it has already been decided by Hon'ble Apex Court in many cases including the case of Commissioner of Income Tax vs. Shiv Prakash Janak Raj And Co. Pvt. Ltd., (1996) 222 ITR 583 (SC), that the concept of real

income cannot be employed so as to defeat the provisions of the Act & the Rules. Where the provisions of the Act & the Rules apply, it is only those provisions which must be applied & followed. There is no room nor would it be permissible for the court to import the concept of real income so as to whittle down, qualify or defeat the provisions of the Act & the Rules. In the instant case, the assessee himself has decided that what is to be shown, how much is to be shown & when to be shown. In the light of above case law the assessee is not at liberty but bound by the provisions of the Income Tax Act & Rules. While filing return of income the assessee discovered his own process by declaring the income of Rs.1,75,00,000/- & simultaneously claiming 100% of it as expenses though he did not have any such expenses. Secondly, the civil suit of forgery was filed by the purchasers only after 3 years of the sale of the property, till then the assessee was enjoying the amount without making payment of income tax. Even after the intimation of the civil suit against him the assessee did not bother to refund the amount to the purchaser & has also filed complaint against the purchaser for recovery of the balance amount from the purchaser. It is obvious that till date the sale deed has not been

cancelled by the authority but still the assessee is trying to avoid the payment of income tax in the name of civil suit. On the basis of section 5(1) of the Income Tax Act the assessee was required to show income in the year of receipt which was in-fact followed by him but he claimed deduction of the full amount in the name of expenses for which he does not have any evidence, & therefore the Assessing Officer in the absence of any evidence was not at fault to disallow the expenses claimed by him.

13. Before us, LD counsel of the assessee relied on the decision of a Coordinate Bench of this Tribunal in the case of Rohan Projects vs. DCIT in ITA No.306/PUN/2015. In the case law above referred, the assessee was able to demonstrate the fact that the amount received was taxed in the year of receipt & the disputed amount was subject to tax in next year & therefore the bench gave relief to the assessee. This case law is of no help to the assessee because assessee is not the Builder developer or the property owner, he is simply a consentor receiving payment for performing some work. Even if it is treated that the income is to be taxed in the light of this case law, then, only the amount received by the assessee has to be taxed & the amount not received by the

assessee, cannot be taxed. Similarly in the instant case in hand the AO has also taxed Rs.1,75,00,000/- which was received by the assessee & not taxed the amount of Rs.3,00,00,000/- which was not received by the assessee.

14. The assessee further relied on judgement of Balbir Singh Maini, [2017] 398 ITR 531 (SC), this case law also does not apply on assessee because there was issue related to capital gain & here capital gain is not in picture because the assessee is neither the owner of the property nor has any right in the property, because haami patra in his favour was already cancelled way back. Even if it is treated that the income is to be taxed in the light of this case law, then, only the amount received by the assessee has to be taxed & the amount not received by the assessee, cannot be taxed. Similarly in the instant case in hand the AO has also taxed Rs.1,75,00,000/- which was received by the assessee & not taxed the amount of Rs.3,00,00,000/- which was not received by the assessee. We therefore do not hesitate in holding that the Assessing Officer has not committed any error in accepting the income of Rs.1,75,00,000/- disclosed by the assessee himself in his return of income under the head “income from other sources” for

which the assessee has also claimed relevant TDS of Rs.1,75,000/- & therefore considering the totality of the facts, we do not see any infirmity in the order passed by LD CIT(A)/NFAC & therefore does not require any interference from this Tribunal. Hence, the grounds of appeal raised by the assessee in the present appeal are dismissed.

15. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 10th July, 2024.

Sd/-	Sd/-
(R. K. PANDA)	**(VINAY BHAMORE)**
VICE PRESIDENT	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 10th July, 2024.
Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "**B**" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.