

**THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT AND
MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No. 824/Del/2018
Assessment Year: 2015-16

ACIT, Central Circle-16, New Delhi	Vs.	Kamlesh Kumar Rathi, 5- Sadhna Enclave, Malaviya Nagar New Delhi-1100 17
PAN :AFFPRS5799K		
(Appellant)		(Respondent)

ITA No. 553/Del/2018
Assessment Year: 2015-16

Kamlesh Kumar Rathi, 5- Sadhna Enclave, Malaviya Nagar New Delhi-1100 17	Vs.	ACIT, Central Circle-16, New Delhi
PAN :AFFPRS5799K		
(Appellant)		(Respondent)

Assessee by	Dr. Rakesh Gupta & Shri Deepesh Garg, Advocates
Department by	Ms. Rishpal Bedi, CIT, DR & Ms. Parul Singh, Sr. DR

Date of hearing	04.07.2024
Date of pronouncement	30.07.2024

ORDER**PER MS. MADHUMITA ROY: JUDICIAL MEMBER:**

Both the appeals filed by the Revenue and Assessee are directed against the order passed by the Learned Commissioner of Income-Tax (Appeals)-XXVI, New Delhi dated 28th November 2017 arising out of the Assessment Order dated 31.12.2016 under Section 143(3) of the Income-Tax Act, 1961 (hereinafter referred to as “the Act”) passed by the ITO, New Delhi for AY – 2015-16. Since, both the appeals relate to the same assessee, these are heard analogously and are being disposed of by this common order.

ITA No.824/Del/2018 (Revenue’s Appeal):

2. The Revenue has filed the appeal with the following grounds:

“Whether Ld. CIT(A) is erred in law and on facts in allowing the claim of the assessee that the case does not fall under section 68 of the I.T. Act, 1961 whereas the addition of Rs. 2,48,07,500/- was made as undisclosed income received on sale of land.

(2) Whether Ld. CIT(A) is erred in law and on facts in allowing the claim of the assessee of filing revised return after getting final show cause incorporating the undisclosed income to the extent of Rs.1,21,90,000/- and claiming the same as exempt.

(3) Whether Ld. CIT(A) is erred in law and on facts in holding that the addition was made on estimates only whereas sufficient evidences, statement of the employee dealing with the properties and also the assessee himself accepting the same by filing revised return.

(4) Whether the employee of the assessee whose statement was recorded in the premises of the assessee during the course of search & seizure can be termed as third party vis-a-vis affairs of the assessee.

(5) Whether Ld. CIT(A) is erred in law and on facts in holding that conclusive proof is not available with the Department evidencing unexplained investment towards purchase of land amounting to Rs. 5,37,00,000/- whereas it is clearly mentioned in the assessment order referring such documents evidencing cash payments over and above deed value.

(6) Whether Ld. CIT(A) is correct in holding that the Department should have conducted further enquiries to prove the fact of cash payments whereas onus was on the assessee to prove otherwise as prescribed by section 132(4A) of the I.T. Act, 1961.

(7) Whether Ld. CIT(A) is correct in allowing benefit of telescoping of undisclosed income received in earlier years towards undisclosed investments in absence of any details/evidences filed by the assessee to show the availability of such funds for investments by the assessee.

(8) Whether Ld. CIT(A) is correct in allowing benefit of telescoping of undisclosed income received in earlier years by other family member towards investment by the assessee in relevant previous year to the extent of Rs. 1,00,00,000/-

(9) The appellant craves leave to add, amend or alter any/all the grounds of appeal before or during the course of hearing of the appeal.

3. Ground Nos. 1 to 4 relate to addition of Rs.248,07,500 on account of undisclosed income received on the sale of land.

4. The brief facts leading to these grounds are that the assessee has filed a return of income on 20.12.2016 where he has increased the amount of sales consideration of land at Gata, Surajpur, U.P to

Rs.266,45,000/- from the original return of income filed under Section 139 of the Act to the tune of Rs.144,55,000/-. The assessee claimed the said receipts as exempt under Section 2(14)(iii) of the Act. Notice under Section 143(2) of the Act was issued. The case of the assessee before the Assessing Officer is this that the valuation of the property done by the assessee was for the purpose of obtaining bank loan from the Bank which cannot be the basis of estimating the consideration of the property sold. The property sold can be deemed to be the value as has been enunciated under the provisions of Section 50C of the Act i.e. Stamp duty valuation done by the Stamp Valuing Officer of the Registrar appointed by the Government for the registration of the sales deed. Further that the valuation done does not mean the transfer of the property and unless the property is transferred capital gain cannot be worked out on the basis of valuation done for the bank loan. It is relevant to mention that the sales consideration shown in the return of income filed under Section 153(A)/143(3) of the Act in respect of the sale of the property was of Rs.144,55,000/.

5. On the other hand, actual receipts calculated based on the valuation report is of Rs. 392,62,500/-. The Learned Assessing Officer, in fact, was of the view that as

the assessee has not disclosed the sale proceeds of the property to the extent of Rs.248,07,500/- in his original return and an amount of Rs.266,45,000/- has been offered which has been claimed as exempt being sale proceeds of the agricultural land. The total undisclosed income arising out of the sale proceeds was worked out to Rs.248,07,500/- which was added to the total income of the assessee. However, the Learned Commissioner (Appeals) in the appeal preferred by the assessee, deleted the same. Hence, the instant appeal before us.

6. Before the Learned Commissioner (Appeals), the assessee raised the following points:

“5.17 The Ld. Counsel of the appellant has raised the following pertinent points which arguing on the instant ground of appeal:

a) Since the relevant amount of undisclosed income indicated by the A.O to the tune of Rs. 2,48,07,500/- is not found credited in the books of accounts of the appellant, the same cannot be taxed by invoking provisions of Section 68 of the Income Tax Act, 1961.

b) The A.O himself has admitted the fact that agricultural land belonging to the appellant, does not constitute 'Capital asset' as per provision of Section 2(14)(iii) of the Act and therefore the original return for the instant Assessment Year has been accepted wherein gain out of sale of such agricultural land was treated as exempt. Therefore, the additional consideration received, as assumed by the A.O, would also arise from such sale of agricultural land and the consequential gain would be exempt also being against such sale of agricultural land which does not

constitute a capital asset. Under no circumstances, the relevant gain would constitute undisclosed income liable to tax as has been held by the A.O erroneously.

c) The addition has been made by the A.O purely on the basis of valuation report of the year 2004 in respect of the relevant lands owned by the appellant, ignoring the fact that such valuations were made purely on estimate basis for obtaining bank loans by the appellant. Such estimated values cannot be adopted as actual sale consideration or for any comparison of the actual consideration received by the appellant, and on this rational also, the addition made by the A.O is not sustainable.

d) The addition appears to have been made on the basis of third party statement without ever confronting the same to the appellant for his reaction and this statement has been used as evidence for filing the appellant which does not fit into standard of any test for objection evaluation of the instant case”.

7. The assessee’s submission was considered by the learned First Appellate Authority and with the following observations, deleted the addition:

“The Ld. Counsel while explaining the 1st point (a) has cited the case of Rakha Earn Vs. LTO reported in 2017 (8) TMI 668- Supreme Court wherein the How Me Karnataka High Court has held that (the essence is that the credit should be shown in the account and that would satisfy the requirement of Section 68 of the Act. Once the credit so mentioned in the Section is found to be not supported by any acceptable evidence, then the sum to credited may be charged to Income Tax as the income of the assessee of that precious year.

The ruling resolves the lave raised by the Ld. Counsel of the appellant and since the relevant amount of Rs. 2,48,07,500/- under consideration being additional receipt as per the opinion of the Assessing Officer, against sale of agricultural land, is not found to be credited in the books of accounts of the appellant, such amount cannot be treated as undisclosed Income in the nature of unexplained cash credit by invoking the provision of

Section 68 of the LT. Act, the Order of the A.O is held to be erroneous on this score.

As regards, the 2d point raised by the Ld. Counsel of the appellant, the ruling of Hon'ble Supreme Court in the case of Principal UT Vs. Neeraj Jindal reported in 2017 (9) T349 123-is quite relevant wherein it was held that Once the assessee files a revised return u/s. 153A, for all other provisions of the 153A, for all other provisions of the Act, the revised return will be treated as the original return w/s 139.

In the instant case of the appellant, in the original return the gain on sale of agricultural land was treated as exempt as per provisions of Section 2(14)(iii) of the Act. In the revised return filed within allowable time, the additional gain was declared on such sale of agricultural land and such revised return cannot but partake of the character of original return wherein sale of agricultural land was disclosed and admitted by the A.O. and thus the additional receipt duly declared in the revised return was nothing but gain on sale of agricultural land which is not a capital and within the meaning of Section 2(14)(iii) of the Act and accordingly such gain declared in the revised is fully return exempt from taxation. On this score also, the view of the A.O in taxing the difference in value of agricultural land as per valuation report of 2004 and the actual consideration adopted in the sale deeds executed by the appellant, is not sustainable and is liable to be quashed,

The Ld. Counsel of the appellant has also challenged the adoption of actual sale consideration based on the valuation report of the land in the year 2004, while was primarily used for the purpose of obtaining bank loans by the appellant. The judicial relief cited in this regard directly on this issue is in the case of CIT Vs. Smt. Suraj Devi (Delhi H.C) ITA No. #11 of 2010, 13th August 2010 (2011) 64 DTR (Del.) 372, wherein it has been held that, 'In any event, the opinion of DVO, per se, is not an information and cannot be relied upon without the books of accounts being rejected which has not been done in the present case. Moreover, in the present case, no evidence much less incriminating evidence was found as a result of search to suggest that the assessee had made payment over and above the consideration mentioned in the registered purchase deed.Consequently, no substantial question of law arisen in the present appeal which being of no merit is dismissal'.

From the aforesaid ruling, it is quite clear that the report of the valuation officer determining the value of land at a particular

point of time is not an information which can be adopted and relied upon without rejecting the books of accounts. This value, being notional and purely on estimate, cannot supercede the actual consideration reported in the sale deed, unless specific evidence to the contrary is unearthed by the Revenue and adopted after confronting the same to the appellant in absence of any cogent explanation for the same. In the instant case, the A.O failed to establish the reasonableness of adoption of the valuation arrived at by the Valuation Officer by supporting the same with cogent evidence of receipt of additional consideration on sale of agricultural lands by the appellant. I am not in a position to suppress the adoption of valuation of valuation report of 2004 by the A.O vis-a-vis the actual sale consideration indicated in the sale deeds executed by the appellant. The order passed by the A.O is erroneous on this score also.

Lastly, the Ld. Counsel has vehemently opposed the adoption of third party statement without confronting the same to the appellant and the judicial pronouncements on this issue have been inferred to as under:

- i) CIT vs. SMC Broker Ltd. reported in 288 IRT 345-it was that "in absence of witness being made available for cross-examination, his statement could not be relied upon to the detriment of the assessee".
- (ii) M/s Sri Kumaran Trading Co. vs. DCIT Manali Assessment Circle, Chennai - Writ Petition No. 14851 of 2005.

'Cross examination should be allowed to the assessee when the assessment is solely based on the evidence from Third Party- Madras H.C., October 25, 2016

- iii) CIT vs. Sri Agarwal, 293 IIR 43, It was held in this case 'that statement made by the assessee daughter, cannot be said to be relevant or admissible evidence against the assessee, since the assessee was not given any opportunity to cross examine her and even from the statement, no conclusion can be drawn that the entries made on the relevant page belong to the assessee and represents his undisclosed Income.

The above rulings set at rest the point that third party evidence by way of statements or information cannot be used against the petitioner /appellant without confronting the same to him and allowing him to cross examine such witnesses rendering statements

against the declared stand of the petitioner/appellant. In the instant case, the A.O has failed to confront the statement of Shri R.K. Sharma to the appellant inviting his reaction to the same about admissibility of such statement and thus the order of the A.O is erroneous on this score also.

Having regard to the above findings, I am not in a position to sustain the addition of Rs. 2,48,07,500/- made by the A.O as undisclosed income of the appellant, by Invoking erroneously the provision of Section 68 of the Income Tax. Act, 1961 and the same is directed to be deleted.”

8. Apart from that it was placed on record by the Ld. Advocate appearing for the assessee that the addition made on on-money receipt in respect of the sale of the agricultural land for Assessment Year 2013-14 and 2014-15 in respect of this assessee has been deleted by the ld. CIT(A) in appeal preferred by the assessee which was further upheld by the Coordinate Bench in ITA Nos. 822 & 823/Del/2018 a copy whereof has also been submitted before us.

9. We have considered the said order passed by the Coordinate Bench dated 16.05.2023 and find that the income derived from sale of the property in question being and agricultural land has been found to be exempted and the same, therefore, has not been treated as capital asset under Section 2(14)(iii) of the Act.

10. Having regard to the said ratio laid down by the Coordinate Bench we find that the addition made herein on account of suppression of sale of agricultural land is not sustainable. In addition to that as the statement of Shri R.K. Sharma was considered as evidence and addition was made thereon without confronting the same to him and without allowing the assessee to cross-examination such witness, the mode of assessment was rightly found to be erroneous by the Ld. CIT(A) and on this score alone, the deletion of addition made by the Learned Commissioner (Appeals) is found to be just and proper so as not to warrant interference. These grounds of appeals are, thus dismissed.

11. Grounds Nos. 5 to 8 relates to addition of Rs.537,00,000/- out of which Rs.430,00,000/- was deleted by the ld. CIT(A) we find that while dealing with the particular issue the ld. CIT(A) was pleased to observe as follows:

“The addition made by the A.Q on account of unexplained investment to the tune of Rs. 5,37,00,000/- for purchase of agricultural land at Bhiwadi, Rajasthan is not on sound footing in absence of conclusive proof, besides, the enhanced considerations received by the appellant and other family members against sale of agricultural land at Surajpur, U.P, in different assessment years already indicated earlier, get subsumed towards purchase of agricultural land at Bhiwadi by meeting the relevant cash components of such transactions, which warrant no further addition to this effect and accordingly, I have no hesitation to direct quashing of the addition of Rs.

5,37,00,000/- made in this regard and consequential relief may be granted to the appellant. But, a document/paper has been found at the place of the assessee it cannot altogether be ignored, therefore, taking the cognizance of this paper. I believe that the amount has been paid as on money on the purchase of the property, but, since the assessee has also revised the Return of Income for A.Y. 2013-14, 2014-15 and 2015-16 and has shown there revised consideration received on account of sales of agriculture land in the hands of assessee himself of Rs. 7,20,96,000 as against the original consideration of Rs. 3,90,96,000 there by shown extra income of Rs. 3,30,00,000 that has been subsumed in the unexplained investment of the assessee and Sh. Anurag Rathi son of the assessee has also revised the Return for the A.Y. 2014-15 and 2015-16 under the jurisdiction of same A.O and has declared extra sales consideration received on account of sales of agriculture land shown in the revised return and further, the A.R. of the assessee has also pleaded in the alternative arguments made by him for justification of the paper found. Extra consideration of Rs. 1,00,00,000/- in the hands of Sh. Anurag Rathi gets subsumed in the transaction of purchase of land at Riwari, Ld AR submits that against the total unexplained income of Rs. 5,37,00,000, the assessee has also declared extra income from sale of agriculture land of Rs. 3,30,00,000 in the hands of Sh. Kamal Kumar Rathi and Rs. 1,00,00,000 in the hands of Sh. Anurag Rathi upon examination of the argument preferred by the assessee against unexplained investments of Rs. 5,37,00,000, the Income of Rs. 4,30,00,000 has been subsumed, it is seen that the quantum is short by (Rs. 5,37,00,000 - Rs. 4,30,00,000) i.e. Rs. 1,07,00,000 and this amount remains unexplained. In view of discussion above in respect of the documents seized, I hold this amount of Rs. 1,07,00,000 as income of the appellant from unexplained sources and this quantum is directed to be added separately in the income of the assessee appellant. The amount of Rs. 4,30,00,000/- being subsumed in the transaction shall not be separately added. The ground is disposed as above and the enhancement as supra is made on account of the transaction discussed here above.”

We find from the above that the addition of Rs. 1,07,00,000/- has been upheld by the Ld. CIT(A) as the same remained unexplained and thus found to be income of the appellant from unexplained sources.

12. Thus, taking into consideration this particular aspect of the matter the quantum has been directed to be added separately in the income of the appellant. We do not find any reason to interfere with the same for the reason already assigned by the ld. CIT(A). Hence, grounds Nos. 5 to 8 are dismissed.

13. Ground No. 9 is general in nature and therefore no separate deliberation is required.

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14. Confirmation of the addition of Rs,1,07,00,000/- on account of income from unexplained sources in respect of purchase of property by the assessee is under challenge before us.

15. The assessee's case is as follows:

When the Ld. AO made additions of Rs.72,49,000/- (1,82,90,000/- + 2,93,11,500/- + 2,48,07,500/-) (page 6 of the assessment order) in A.Y. 2013-14, 2014-15 & 2015-16 on account of suppression of sale consideration of agricultural land, then this much of cash must be available with the assessee for

which telescoping should be allowed against investment made.

16. However, it appears from page 10 of Assessment Order that the break-up of actual of receipt on account of landed property has been calculated by the Ld. AO in the following manner:

Assessment year	Details of Property Sold	Sale Consideration shown in return of Income filed u/s 153A/143(3)	Actual receipt calculated based on Valuation Report	Additional Receipt
A.Y. 2013-14	10,260 Sq. Yds Gat No.44, Surajpur, U.P.	73,60,000	2,56,50,000	1,82,90,000
A.Y. 2014-15	15,757 Sq. Yds. Gata No. 109 & 108 and 2,880 Sq. Yds. GAta No. 107, Surajpur, U.P	1,72,81,000	4,65,92,500	2,93,11,500
A.Y. 2015-16	15,705 Sq. Yds Gata No. 102, Surajpur, U.P	1,44,55,000	3,92,62,500	2,48,07,500
Total		3,90,96,000	11,15,05,000	7,24,09,000

17. Principally, we agree to the contention made by the assessee's counsel that once addition has already been made the impugned addition of Rs.1,07,00,000/- could have been allowed through telescoping against investment made as cash must be available with the assessee out of the additional receipt in respect of sale of land made by the assessee. In that view of the matter we

quash the impugned addition and remit the issue to the file of the ld. A.O for verification of this factual aspect of the matter and to grant relief to the assessee in accordance with law. The ld. AO is further directed to grant an opportunity of being heard to the assessee and to consider the evidence on record or any other evidence which the assessee may chose to file at the time of hearing of the matter. The assessee's appeal, is, therefore, allowed for statistical purposes.

18. In the result, the appeal of the Assessee is allowed for statistical purposes and appeal of the revenue is dismissed.

Order pronounced in the open court on 30/07/2024.

Sd/-

(G.S. PANNU)
VICE-PRESIDENT

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Dated: 30 July, 2024.
Rohit

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi