



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

**BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHIR VINAY BHAMORE, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.867/PUN/2024
निर्धारण वर्ष / Assessment Year: 2011-12

Dilip Bhavarilal Gaud, 133-134 Near Nagar Bank, Jalna – 431203. Maharashtra. PAN: AHHPD6694F	Vs	The Income Tax Officer, Ward-1(3), Jalna.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Prateek Jha – AR
Revenue by	Shri Rajesh Gawali – Addl.CIT(DR)
Date of hearing	14/08/2024
Date of pronouncement	20/08/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by Assessee against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income tax Act, dated 02.03.2024 for the A.Y.2011-12. The assessee has raised the following grounds of appeal :

“1. A) On the facts and circumstance prevailing in the case and in law, the honorable CIT Appeal Coimbatore has erred



in not considering the submission made by the appellant in fair and judicious manner, while confirming the addition made by the AO amounting to Rs 24,23,700/- u/s 69C of the IT Act. Therefore, the addition made by the AO may kindly be deleted and that of the order passed by the Hon'ble CIT Appeal may be set aside.

B) On the facts and circumstance prevailing in the case and in law, the honorable CIT Appeal has erred in not giving due consideration to the grounds of appeal raised by the appellant in as much as the following issues have not been properly rebutted by him:

i. The statement recorded and the material found in the possession of third party have not been provided and used behind back of the appellant against him, and make the addition.

ii. The submissions made by the appellant on several dates including the the submission made, responding to the prayer for admission of additional grounds of appeal, the Hon'ble CIT Appeal has confirmed the addition of Rs 24,23,700/- erroneously on the dumb documents found in the possession of the third party.

iii. The Ld AO has violated the mandatory provision to issue notice u/s 142(3) of the IT Act before completion of the assessment to the appellant and hence, the assessment order passed may kindly be declared void ab initio and bad in law. The addition deserved to be declared void ab initio and bad in law, it is prayed to the



Hon'ble ITAT to quashed the addition made by the AO.”

Submission of ld.AR :

2. Ld.AR submitted that in this case assessment order has been passed u/sec.143(3) r.w.s. 147 of the Act for A.Y.2011-12. The AO had issued notice u/sec.148 of the Act dated 27.03.2018 for A.Y.2011-12. The assessee filed a return of income on 02.11.2018 in response to notice u/sec.148 of the Act. As per the law laid down by the Hon'ble Supreme Court, once assessee has filed return of income in response to notice u/sec.148 of the Act, the Assessing Officer(AO) was duty bound to provide reasons recorded for re-opening of assessment. In this case, copies of reasons have not been provided to assessee. Therefore, assessment order is bad in law. The AO has not provided copy of the statement of Mr.Kishore Omprakash Agarwal relied by AO. The AO has also not provided copies of all the documents relied by the AO in the assessment order. Therefore, the assessment order is bad in law.

2.1 Ld.AR invited our attention to paragraph 14 and 15 of the assessment order. Ld.AR specifically stated that in these



paragraphs, the AO has relied on page no.10 and 11 of the Shivkrupa Diary No.1, impounded during the survey in the case of Kishore Omprakash Agarwal. Nowhere, assessee's name appears on these pages. Assessee has not purchased any such plot. Ld.AR specifically invited our attention to page no.11 of the impugned Shivkrupa Diary No.1, [Copies of these documents have also been filed by the Id.Departmental Representative for the Revenue]. Ld.AR submitted that on this page, name mentioned is "बबन सेठ".

The amount mentioned is Rs.24,23,700/-. Ld.AR submitted that in the assessment order, AO has made addition of Rs.24,23,700/- u/sec.69 of the Act. Ld.AR readout the dates mentioned on the impugned page no.11 of Shivkrupa Diary No.1. The dates mentioned on this page are 03.07.2011 and 31.10.2011. Therefore, ld.AR pleaded that no addition can be made in F.Y.2010-11 based on these documents. However, ld.AR further submitted that assessee do not accept any transaction of Rs.24,23,700/-.

Submission of ld.DR :

3. Ld.DR for the Revenue filed copy of letter dated 25.07.2024 of ITO, Ward-1, Jalna and copies of page 8, 10, 11 of the



impugned Shivkrupa Diary No.1. Id.DR submitted that assessee had purchased a plot for Rs.24,23,700/- and not shown the said investment in the Return of Income. The assessee had not filed any Return of Income u/sec.139(1) of the Act. Ld.DR also referred to statement of Mr.Kishore Omprakash Agarwal. Mr.Kishore Omprakash Agarwal while explaining the page no.11 of the impugned Shivkrupa Diary No.1, stated that Shri Dilip Goud has purchased the plot at the rate of Rs.901/- for a total consideration of Rs.24,23,700/- as under :

“Page No.11 : On this page transactions relating to purchase and sale of two plots bearing No.35 and 35A situated at Markande Nagar admeasuring area 2690 square feet is mentioned. The reference of the aforesaid plot is also mentioned on page No.8 for which I had already explained the transactions. This plot has been purchased by Shri Rajesh Malwadkar at the rate of Rs.611/- amounting to Rs. 16,43,590/- from Shri Sunil Rohra and sold to Shri Ritesh Saklecha and Shri Dilip Gour at the rate of Rs.901/- for a consideration of Rs.24.23.700/-. The amounts mentioned on this page in respect of receipt and payment of monies have been mostly given by these parties in my presence on various dates mentioned on the said page. The sale deeds have been executed by the respective parties. I have earned one percent commission out of this transaction.”

3.1 Ld.DR heavily relied on the statement on the impounded documents mentioned in the assessment order.

Findings & Analysis :

4. We have heard both the parties and perused the records. The Assessing Officer(AO) in the assessment order for A.Y.2011-12 has made addition of Rs.24,23,700/- u/sec.69 on account of investment made by assessee in the plot. There was a survey u/sec.133A of the Act on 13.03.2015 in the case of Mr.Kishore Omprakash Agarwal as mentioned in the assessment order. During the course of survey, Diary No.1 Shivkrupa Laxmi Diary was impounded which was containing details of various cash transactions. Subsequently, statement of Mr.Kishore Omprakash Agarwal u/sec.131 of the Act was recorded on 26.12.2017. We have perused the statement of Mr.Kishore Omprakash Agarwal recorded on 26.12.2017 u/sec.131 of the Act. Mr.Kishore Omprakash Agarwal in the statement stated that he is a commission agent in real-estate business. In answer to question no.5, Mr.Kishore Omprakash Agarwal explained various pages of the impugned impounded Shivkrupa Diary No.1. The relevant part



of statement of Mr.Kishore Omprakash Agarwal in which assessee's name appears is reproduced here as under :

“Page No 8 : On this page there is details of sale of plot located at Markande Nagar through me by Shri Sunil Rohra, Near Central Bank. Mangal Bazar Jaina. As per the details mentioned the plot at the rate of 661 per square meet was sold at Rs.12.74.000/- and monies on various dates received by him is shown. The said plot was purchase by Shri Malwadkar resident of Near Udpi Hotel, Jaina. The sale deed has also been executed and I am not having a copy of the said deed with me.

Page No 10 On this page transaction relating to purchase and sale of four plots situated at Jangada Nagar. Bhokardan Road, Jalna having area to the extent of 8780 (approximately) is mentioned. These plots have been purchased by Shri Deelip Rathi from Shri Naresh Jethliya and sold to six persons (i) Shri Rajesh Malwadkar (ii) Shri Paresh T.hakkar (iii) Shri Nilesn Thakkar (iv) Shri Paresh Raithatta (v) Shri Sanjay Ganatra and (vi) Shri Pradeep Zharkbantie at the rate of Rs.711 oer square feet amounting to Rs 62,45.580/-. These persons have sold two plots admeasuring area to the extent of 4390 square feet to Shri Nikhil Shah at the rate of Rs. 1111/- per square feet amounting to Rs 48,77,380/- and also sold 4390 square fee: land to one of the persons nanred Shri Hire and also one of the servan: of JPC Bank at the rate of Rs.900/- per square feet amounting to Rs.39.55.000/-. As far as my knowledge is



concern the sale deeds have been executed by the respective persons. The amounts have been mostly given by these parties in my presence on various dates mentioned on the said page.

Page No.11 : On this page transactions relating to purchase and sale of two plots bearing No.35 and 35A situated at Markande Nagar admeasuring area 2690 square feet is mentioned. The reference of the aforesaid plot is also mentioned on page No.8 for which I had already explained the transactions. This plot has been purchased by Shri Rajesh Malwadkar at the rate of Rs.611/- amounting to Rs. 16,43,590/- from Shri Sunil Rohra and sold to Shri Ritesh Saklecha and Shri Dilip Gour at the rate of Rs.901/- for a consideration of Rs.24.23.700/-. The amounts mentioned on this page in respect of receipt and payment of monies have been mostly given by these parties in my presence on various dates mentioned on the said page. The sale deeds have been executed by the respective parties. I have earned one percent commission out of this transaction.

Page No.12 : On this page there is purchase of Plot No.4,23 and 24 out of Survey No.422 situated at Shivshakti Green City. Station Road, Jaina by (i) Shri Rajesh Malwadkar (ii) Shri Paresh Thakkar (iii) Shri Nilesh Tnakkar (iv) Shri Paresh Raithatta (y) Shri Sanjay Ganatra and (vi) Shri Pradeep”



4.1 Thus, according to Mr.Kishore Omprakash Agarwal, transaction mentioned in the page no.11 of the impugned diary is the transaction pertaining to Mr.Dilip B. Goud. We have perused the impugned page no.11. Nowhere on this page, name of Mr.Dilip B. Goud appears. The relevant entries appearing on this impugned page no.11 are reproduced here as under :

- 1) $2690 \leq 901$
2423700/- - Total
- 2) 600000 $03.07.11$
1823690/- Bal - 31.10.11 - Registry
(100000 x 6) - Part dividend
03.07.11

4.2 Thus, it seems that as per the impugned page no.11 on 03.07.2011, Rs.6 lakhs was paid in cash. Then, balance of Rs.18,23,690/- on 31.10.2011. There is also a word “Registry” mentioned against the date 31.10.2011. It apparently means that the impugned transaction was registered on 31.10.2011.

5. We specifically asked the Id.DR regarding the impugned Registered Deed dated 31.10.2011. However, Id.DR could not answer anything. Neither in the assessment order, nor in the order of the Id.CIT(A), there is any reference to any Registered Deed.

Ld.AR for the assessee on specific question asked by us, denied any such transaction.

6. Be it as it may be, both the dates i.e. 03.07.2011 and 31.10.2011 pertains to F.Y.2011-12 means A.Y.2012-13. However, the AO has made addition of Rs.24,23,700/- in A.Y.2011-12. Since the impugned documents relied by Revenue are pertaining to A.Y.2012-13, no addition can be made in A.Y.2011-12.

7. We have gone through the page no.8 of the impugned Shivkrupa Diary No.1 referred in the assessment order and statement of Mr.Kishore Omprakash Agarwal. However, there is no mention of Mr.Dilip B. Goud on the impugned page no.8 also the figures mentioned does not match with the figures mentioned in the Assessment Order. Therefore, page no.8 of the impugned diary does not have any relevance to the assessment order in the case of Mr.Dilip B. Goud.

7.1 Therefore, we are of the considered opinion that Assessing Officer(AO) had no relevant material to make addition of



Rs.24,23,700/- in A.Y.2011-12. Accordingly, we direct the Assessing Officer to delete the addition of Rs.24,23,700/-.

Legal Ground:

8. Since we have allowed appeal of the assessee on merits, we are not adjudicating the legal ground raised by the assessee, as it becomes academic in nature.

9. In the result, Appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20th August, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 20th August, 2024/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

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