

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA No. 860/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15

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| Kanta Devi Jain 112, Taruchhaya Nagar, Sanganer, Tonk Road, Jaipur | बनाम Vs. | DCIT, Central Circle-01, Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABKPJ 0550 D | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Sh. Tanuj Agarwal, Adv.
राजस्व की ओर से / Revenue by : Sh. Ajay Malik, CIT

सुनवाई की तारीख / Date of Hearing : 05/08/2024
उदघोषणा की तारीख / Date of Pronouncement: 05/09/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Because the assessee was dissatisfied from the finding so recorded in the order of the Commissioner of Income Tax (Appeals), Jaipur-4 dated 24/05/2024 [for short Id. CIT(A)] for assessment year 2014-15 the present appeal is filed by the assessee on 08.06.2024. That order of the Id. CIT(A) arises because the assessee challenged the order of the assessment dated 27.12.2019 passed under section 143(3) of the Income Tax Act [for short Act], by DCIT, Central Circle-01, Jaipur.

2. In this appeal, the assessee has raised following grounds: -

"1. That on the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) grossly erred in sustaining an addition of Rs. 5,00,000/- as unexplained investment in land on the basis of one unsigned agreement which was never signed by the appellant.

2. That the appellant craves leave to add, amend, alter, modify, substitute or delete any ground or grounds of appeal on or before the hearing of the appeal."

3. Succinctly, the fact as culled out from the records is that a search & seizure operation u/s 132(1) of the Act was carried out on 28.09.2017 at the various premises of Jain Plywood House Group, Jaipur. Consequent to that search, resident premises of the assessee was also covered.

The assessee has declared Business and profession income from firm M/s. Arun Oil Industries, income from house property from Jain Plywood House & Cottage Handicrafts Textiles, Interest income from saving bank, NSC and FDRs. Original return of income u/s 139 of the Act was filed on 03.02.2015 declaring a total income at Rs. 8,42,670/-.

Consequent to the search notice u/s 153A of the Act was issued to the assessee on 25.07.2018, in response to notice, assessee filed her return of income on 17.08.2018 declaring total income at Rs. 8,42,670/-.

3.1 The assessment proceedings after filing of return as per section 153A were initiated by the DCIT, Central Circle -1, Jaipur. In that assessment

proceeding the Id. AO noted that during the search at the residential premises of the assessee, a copy of ikrarnama dated 30.08.2013 between Shri Hari Narayan Sharma (as a seller of resident of Village – Balawala Tehsil Sanganer) and the assessee Kanta Devi Jain (as buyer) regarding sale of agricultural land at Village Balawala for Rs. 70 Lacs per bigha was found and seized as Page no. 1-4 of Exhibit-2 where amount of Rs. 5 lac has been paid in advance in cash by Smt. Kanta Devi Jain. This agreement shows that the assessee has paid an amount of Rs. 5,00,000/- in cash to Shri Harinarayan Sharma for purchase of the above land.

3.2 Vide Show cause notice dated 13.09.2019 the assessee was asked to furnish the source of investment in the immovable property. The assessee was also asked to furnish explanation for page no. 1-4 of Exhibit no. 2 seized from the residential premises of the assessee. The assessee filed reply stating that this agreement was not executed between the assessee Kanta Devi Jain and Hari Narayan Sharma. The assessee further contended that however it was drafted but the deal was not fianlised and therefore, the same remained unexecuted. The Id. AO considered the reply of the assessee but not found fully acceptable and therefore, on 19.12.2019 again a show cause was issued to the assessee.

3.3 Ld. AO noted that the assessee has not furnished any new facts and therefore, he found not acceptable observing that the agreement was found from the possession of the assessee. If this was only a draft agreement then why it was kept by the assessee for such a long time. The date of agreement was 30.08.2013 and the same was kept safely by the assessee till the date of search i.e. 28.09.2017 almost for 4 years. The agreement was signed by ShriHari Narayan Sharma along with the two witnesses. The same was found from the residence of the assessee. Assessee has not furnished the reason why the agreement handed over to the assessee without received the consideration as mentioned in the agreement. The agreement was already signed by Shri Hari Narayan Sharma i.e. seller and two witnesses. The agreement clearly show that the seller has received the consideration of Rs. 5,00,000/- in cash and handed over the sale agreement to the buyer. The agreement was executed by the seller. The agreement was in the possession of the assessee that can be signed by her at any time. Hence, the submission of the assessee is not accepted. The assessee has furnished the false story only. She has not furnished the source of Rs. 5,00,000/- paid to Shri Hari Narayan Sharma. Therefore, in absence of the source of Rs. 5,00,000/- the same

added to the total income of the assessee as unexplained investment u/s 69 r.w.s. 115BBE of the I. T. Act, 1961.

4. Aggrieved from the order of assessment the assessee preferred an appeal before the Commissioner of Income Tax, Appeals-4, Jaipur. Apropos to the grounds so raised the assessee, relevant finding of the Id. CIT(A) is reiterated here in below:

“4.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

Fact remains from the assessment order that a copy of Ikrarnama dated 30.08.2013 between Shri Harinarayan Sharma (as a seller resident of Village - Balawala, Tehsil - Sanganer) and Smt. Kanta Devi Jain (as buyer) regarding sale of agricultural land at Balawala for Rs. 70 lacs per bigha was found and seized as Page no. 1-4 of Exhibit-2 where amount of Rs. 5 lac has been paid advance in cash by Smt. Kanta Devi Jain. This agreement shows that the assessee has paid an amount of Rs 5,00,000/- in cash to Shri Harinarayan Sharma for purchase of the above land.

In this case the document prepared on a stamp paper and duly signed by one of the two parties to the agreement and also duly signed by two witnesses was found in the premises of the appellant. The appellant is also one of the two parties of the agreement. As per the agreement the appellant has paid cash of Rs. 5 lakhs to the seller of property. The seller of the property has signed the agreement along with the two witnesses. The learned AO has highlighted various facts of the case which have not been disputed by the appellant in the present appeal except merely the arguments regarding the legality of the agreement.

The appellant has contended that this agreement cannot be considered as executed and also this cannot be considered a contract. Whether this document is a contract or not is completely irrelevant to the issue at hand. Further whether this document is executed or can be considered as executed or not, is also

completely irrelevant to the issue at hand. The issue at hand is whether cash payment of Rs. 5 lakhs was done by the appellant or not. Even if the agreement is considered as a mere payment acknowledgement even then the appellant is required to show the source of the payment made. It cannot be disputed that the document clearly shows and proves as a payment acknowledgement that money was received by the seller of the property. The legality of the document to constitute or serve or show a payment acknowledgement is very much established.

The appellant has also challenged the agreement by contending that this was only a draft agreement. However this contention of the appellant is factually incorrect as the agreement is signed by three third parties ie. the seller of the property and two witnesses. They are the third parties and the agreement which is prepared on a stamp paper is signed by them but found in the possession of the appellant. It cannot be considered a draft format. This contention of the appellant is rejected. The seller of the property and the witnesses on the agreement are the witnesses of the appellant in the context of the income tax proceedings. In other words the onus was on the appellant to produce them before the learned AO for their cross examination and however the same has not been done.

In view of the above discussion there is a conclusion to be arrived that the cash payment was made by the appellant

Without prejudice to the above, when a document is found during the survey, as per the legal fiction specifically provided in the Income Tax Act, the contents of the same are to be presumed to be true. Such presumption is provided under section 292C of the Act. It is undisputable that the document was found with the appellant in the survey action. The document is made on a stamp paper and signed by the receiver of the money and by two witnesses. It is also indisputable that in the document it is mentioned that cash payment of Rs. 5 lakhs has been done by the appellant. The appellant is one of the parties to the agreement. The contents of the document are not in dispute. The appellant has challenged the correctness of the contents of the document. The contention of the appellant to challenge the correctness of the contents of the document is hit by the presumptions provided under section 292C of the Act. The section reads as under

Presumption as to assets, books of account, etc.

292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or

control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed-

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person,

(ii) that the contents of such books of account and other documents are true, and that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by or to be in the (iii) handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

(2) Where any books of account, other documents or assets have been delivered to the requisitioning officer in accordance with the provisions of section 132A, then, the provisions of sub-section (1) shall apply as if such books of account, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of section 132A. had been found in the possession or control of that person in the course of a search under section 132.

As per the legal presumption, the contents of the document are true. There is no onus on the assessing authority to prove the correctness of the document or in other words it is not required for the assessing authority to gather any evidence to prove the correctness of the document. In case the appellant challenges the correctness of the contents of the document, in this regard the onus is completely on the appellant. The appellant is required to place on record sterling evidences to prove the contents of the document to be untrue. In the present case the appellant has not done so, in other words, the appellant has not placed on record any evidences to prove the document to be untrue and has merely raised legal arguments that the agreement is not executed etc.

Considering the facts and the circumstances and the applicable law, the conclusion to be arrived at is that payment of Rs. 5 lakhs as mentioned in the above referred agreement was actually done by the appellant to the seller of the property. And since the appellant has not disclosed this payment anywhere, the source of this payment remains unexplained, the AO has rightly treated it from the unexplained income of the appellant.

In view of the above, this ground of appeal of the appellant is hereby dismissed."

5. As the assessee did not find any favors, from the appeal so filed before the Id. CIT(A) the assessee has preferred the present appeal before this tribunal on the ground as reproduced hereinabove. To support the various grounds so raised by the Id. AR of the assessee, he has relied on the written submissions in respect of the only addition of Rs. 5 lac made in the hands of the assessee. The contention raised in the written submission reads as follows:

“During search operations on the appellant, a copy of ikrarnama was found from the premises of the appellant dated 30.08.2023 for sale of disputed agricultural land by one Mr. Ghan Shyam Sharma for Rupees Seventy Lakhs out of which advance payment was mentioned as Rs.5,00,000/-. The said ikrarnama was signed by the seller Mr. Ghan Shyam Sharma and also by witness but was not confirmed and signed by the appellant due to the reason the appellant never agreed to purchase the disputed property. It was merely an offer made by the seller which was never accepted and executed by the appellant even till today. The learned Assessing Officer treated the alleged advance money of Rs.5,00,000/- as undisclosed money of the appellant and made the addition which was confirmed by the learned CIT(A). Being aggrieved, the appellant has preferred this appeal in order to seek justice.

Appellant's Humble Submissions: It is humbly submitted that the both the lower authorities grossly erred in appreciating the facts of the case as well as the provisions of law. Copy of ikrarnama was just an offer made by the seller Mr. Ghan Shyam Sharma which was never accepted and executed by the appellant even till today as the agreement was never agreed and signed by the appellant which is also evident from the copy of agreement furnished at paper book page no. 1 to 5. The learned Assessing Officer grossly failed to exercise his powers in making independent inquiries from the seller rather opted for making the impugned addition merely on surmises and conjectures.

It is humbly submitted that signature on agreement of all the parties to the agreement is very important without which it cannot be treated as executed and enforceable by law. Consent of all parties to an agreement is one of the essential aspect for a valid agreement which is not present in the present case as the appellant has not given her consent by signing the agreement. An agreement not enforceable by law is void agreement as per section 2(g) of the Indian Contract Act, 1872.

Reliance is heavily placed on the judgment of Hon'ble ITAT, Delhi Bench, in the case of Anil Bala Goyal Vs.DCIT (ITA No. 1533/Del/2021 decided on 19.01.2023, copy enclosed) wherein under similar circumstances addition for undisclosed cash advance for purchase of property was deleted in absence of signature on the agreement of buyer.

Relevant para no. 32 to 34 at page no. 45 to 50 of the judgment are reproduced as under :-

“32. On careful consideration of rival submissions first of all from the relevant part of the assessment order, we observe that the A.O. in para 5 has reproduced some parts of agreement LP-1 pages no. 35-39. The A.O. at page 5 drew a table from the said agreement wherein the payment of Rs. 54,00,000/- has been shown at serial no.3 but no cheque/UTR no. has been mentioned against said amount. At the same time we observe that an amount of Rs. 50,000/- each has been shown to have been paid by the assessee through cheque no. 100095 and 100096 which has been admitted by the assessee before the A.O. with an explanation that it was token amount but thereafter the assessee changed his mind and came out from the deal of purchase of property. The said agreement was not signed by the assessee and the same was only signed by the builder, except this agreement there was no documentary evidence in the hands of A.O. in support of his claim that the assessee has paid of Rs. 54,00,000/- in cash out of his income from other undisclosed sources treating the same as unexplained money under provision of 69A of the Act. Undisputedly, the document was found and seized from the possession of the assessee but only on the standalone basis of such document which was not signed by the assessee and never acted upon by the assessee. The provision of section 69A of the Act cannot be pressed into service against the assessee. We may also point out that it is not a case of the A.O. or Ld. CIT(A) that in the said agreement there was mentioning of Rs. 54,00,000/- in cash or any other document, diary or notings were found to support of this allegation was found and seized during the search operation. Only on the basis of such document which cannot be branded or labelled as an agreement in absence of signature of both the parties no addition can be in the hands of the assessee u/s. 69A of the Act. To support this proposition the Ld.AR has relied on various orders and judgments of Hon'ble High Courts and coordinate benches of Tribunal which are listed below:-

- i) Commissioner of Income Tax vs. Ravi Kumar [(2008) 168 taxman 150 (Punjab & Haryana)*
- ii) Kantilal Chandulal & Co. v. Commissioner of Income Tax [1992] 136 ITR 889*
- iii) PCIT vs. Nexus Builders and Developers (p.) Ltd. (2022) 134 taxmann.com 82 (Bom)*
- (iv) Monohar Lal Rattan Lal vs. DCIT [2004 (2) TMI-275-ITAT Amritsar]*
- (v) Saamag Developers (P.) Ltd. vs. ACIT [(2018) 90 taxmann.com 20m (Delhi-Trib)*
- (vi) DCIT vs. Rajat Agarwal [(2012) 27 taxmann.com*
- vii) DCIT vs. M/s Signature Colonisers, Bhopal [ITA No. 218/Ind/2020 and ITA No. 219/Ind/2020]*
- (ix) M.M Financiers (P.) Ltd. vs. DCIT [(2007) SOT 5 (Chennai) (URO)] (x) Anil Kumar Bhatia vs. ACIT [(2010) 1 ITR (T) 487 (Delhi)]*

(xi) *Commissioner of Income Tax vs. Tips Industries (P.) Ltd.*, [(2010) 321 ITR 154 (Bom)]

(xii) *S.K Gupta vs. DCIT (1999) 69 TTJ Del 535.*

33. On careful perusal of above judgments and other we find that the Hon'ble Bombay High Court in the case of *PCIT vs. Nexus Builders and Developers (P.) Ltd. (supra)* held that there was no evidence found against the respondent and no enquiry was carried out by the A.O. to find out the more details and when the entire addition has been made on hypothetical basis then the Tribunal was right in deleting the addition. In the case of *Monohar Lal Rattan Lal vs. DCIT (supra)* coordinate bench of ITAT Amritsar held that wherein addition was made on the basis of unsigned agreement then no addition can be made in the hands of the assessee in this order the coordinate bench of Tribunal held that it is true that the finding of this document from the premises of the assessee had raised doubts in the mind of the AO with regard to the actual sale consideration of the said property. But it is not sufficient and enough to hold and sustain the addition. If the AO was not satisfied with the version of the assessee, it was incumbent upon him to examine the seller of the property, and ascertain the facts regarding the actual sales consideration. In the absence of having carried out any such exercise, we are satisfied that a case has not been made out for making the addition.

34. In the similar manner coordinate bench of Delhi ITAT in the case of *Saamag Developers (P.) Ltd. vs. ACIT* held that when the Assessing Officer has not made any independent enquiry from such persons and in the absence thereof no addition can be made. Especially when the Assessing Officer did not bring any adverse material on record or gave a finding with cogent evidence contrary to the explanation of the assessee and has not brought any independent corroborative material suggesting that the assessee has purchased such land/property and has made payment as recorded in the seize paper. In the present case also the Assessing Officer has made addition merely on the basis of so called agreement which has not been signed by the assessee and the A.O. has not brought on record any other positive or corroborative material to show that the assessee has actually purchased property under this agreement and made payment of Rs. 54,00,000/- in cash out of books of accounts from the income earned from undisclosed sources. Therefore, we reach to a logical conclusion that the addition made by the A.O. and confirmed by the Ld. CIT(A) u/s. 69A of the Act, is not sustainable hence we direct the A.O. to delete the same."

It is further submitted that signature is an essential document for a valid document, be it a notice, order, letter, agreement, audit report, valuation report, cheque or any other document. Courts have held on various occasion that an income tax notice without signature of AO is invalid. Reliance is being placed on the judgment of *Prakash Krishnavtar Bhardwaj Vs ITO (Bombay High Court) WP No. 9835/2022* dated 09.01.2023, wherein the Hon'ble Bombay High Court held that notice without signature affixed on it, digitally or manually, is invalid and would not vest AO with any further jurisdiction to proceed to reassess the income of the petitioner.

The learned Assessing Officer grossly failed to exercise his powers in making independent inquiries from the seller rather opted for making the impugned addition merely on surmises and conjectures. Reliance is being placed on the case of Dhakeshwari Cotton Mills Ltd. 26 ITR 775 wherein Hon'ble Supreme Court held that a suspicion remains a suspicion unless the same is established and can never take place of reality. Assessment cannot be made on guesswork without any reference to any material on record.

In the aforesaid circumstances and in the interest of justice, it is most respectfully requested that the appeal may kindly be allowed.”

6. At the time of hearing of the appeal the Id. AR of the assessee submitted that the agreement found is one sided document and has not been signed by the buyer of the property and therefore, the same is not binding to the assessee as per Indian Contract Act. The Id. AR further submitted that even after passage of 4 years the assessee never signed that document and is not executed. To drive home to this contention the Id. AR of the assessee relied upon the recent decision of the co-ordinate bench of Delhi in the case of Anil Bala Goyal Vs. DCIT ITA No. 1533/Del/2021.

7. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR also submitted that the document was found in possession of the assessee. The said document is signed in 2013 by the seller of the property along with the witness. Since the assessee has

not submitted the details of the source of the said money so advanced the addition is rightly sustained by the Id. CIT(A).

8. We have heard the rival contentions and perused the material placed on record. The only dispute raised by the assessee in this appeal is the addition of Rs. 5 lac made by the Id. AO and sustained by the Id. CIT(A). The brief facts related to the dispute is that the assessee filed her regular return of income u/s 139 of the Act on 03.02.2015 declaring a total income at Rs. 8,42,670/-. The residential premises of the assessee were subjected to search on account of the fact that the assessee is one of the member of the Jain Plywood House Group. In that search a copy of Ikrarnama dated 30.08.2013 between Shri Harinarayan Sharma (as a seller resident of Village -Balawala, Tehsil - Sanganer) and Smt. Kanta Devi Jain (as buyer) regarding sale of agricultural land at Balawala for Rs. 70 lacs per bigha was found and seized as Page no. 1-4 of Exhibit-2 where amount of Rs. 5 lac has been paid advance in cash by Smt. Kanta Devi Jain.

This agreement shows that the assessee has paid an amount of Rs 5,00,000/- in cash to Shri Harinarayan Sharma for the purchase of the above land. The bench noted that the agreement is dated 30.08.2013 found after four year of search. The assessment is conducted in December 2019.

In between revenue could not establish that this unilateral agreement in fact is real transaction undertaken by the assessee. As contended by the assessee that this is merely an offer made by the seller Mr. Ghan Shyam Sharma which was never accepted and executed even till the date of search the agreement was never agreed and signed by the assessee, as is evident from the copy of agreement furnished.

The Id. AO though the document in possession since 28.09.2017 to till the completion of the assessment till 27.12.2019 did not controvert the contention of the assessee that he has in fact not undertaken the transaction. Though the land is agreed to purchase at 70 lac per vigha he satisfied by making addition of Rs. 5 lac only and that too without making any efforts of finding the truth by making independent inquiries from the seller rather or of the witness but he opted for making the impugned addition of Rs. 5 lacs merely on surmises and conjectures.

The bench noted that signature on agreement of all the parties to the agreement is very important without which it cannot be treated as executed and enforceable by law. The consent of all parties to an agreement is one of the essential aspect for a valid agreement which is not present in the present case as the appellant has not given her consent by signing the agreement.

An agreement not enforceable by law and is void agreement as per section 2(g) of the Indian Contract Act, 1872. Thus, when there is no inquires conducted to controvert the submission made by the assessee the same cannot be considered as evidence against the assessee. The apex court in the case of Dhakeshwari Cotton Mills Ltd. 26 ITR 775 held that “a suspicion remains a suspicion unless the same is established and can never take place of reality. Assessment cannot be made on guesswork without any reference to any material on record.”

The Id. AR cited recent decision of the co-ordinate bench of Delhi in the case of Anil Bala Goyal in ITA no. 1533/Del/2021 wherein the co-ordinate bench held that

:-“32. On careful consideration of rival submissions first of all from the relevant part of the assessment order, we observe that the A.O. in para 5 has reproduced some parts of agreement LP-1 pages no. 35-39. The A.O. at page 5 drew a table from the said agreement wherein the payment of Rs. 54,00,000/- has been shown at serial no.3 but no cheque/UTR no. has been mentioned against said amount. At the same time we observe that an amount of Rs. 50,000/- each has been shown to have been paid by the assessee through cheque no. 100095 and 100096 which has been admitted by the assessee before the A.O. with an explanation that it was token amount but thereafter the assessee changed his mind and came out from the deal of purchase of property. The said agreement was not signed by the assessee and the same was only signed by the builder, except this agreement there was no documentary evidence in the hands of A.O. in support of his claim that the assessee has paid of Rs. 54,00,000/- in cash out of his income from other undisclosed sources treating the same as unexplained money under provision of 69A of the Act. Undisputedly, the document was found and seized from the possession of the assessee but only on the standalone basis of such document which was not signed by the assessee and never acted upon by the assessee. The provision of section 69A of the Act cannot be pressed into service against the assessee. We may also point out that it is not a case of the A.O. or Id.

*CIT(A) that in the said agreement there was mentioning of Rs. 54,00,000/- in cash or any other document, dairy or notings were found to support of this allegation was found and seized during the search operation. **Only on the basis of such document which cannot be branded or labelled as an agreement in absence of signature of both the parties no addition can be in the hands of the assessee u/s. 69A of the Act.** To support this proposition the Ld.AR has relied on various orders and judgments of Hon'ble High Courts and coordinate benches of Tribunal which are listed below:-*

- i) Commissioner of Income Tax vs. Ravi Kumar [(2008) 168 taxman 150 (Punjab & Haryana)*
- ii) Kantilal Chandulal & Co. v. Commissioner of Income Tax [1992] 136 ITR 889*
- iii) PCIT vs. Nexus Builders and Developers (p.) Ltd. (2022) 134 taxmann.com 82 (Bom)*
- (iv) Monohar Lal Rattan Lal vs. DCIT [2004 (2) TMI-275-ITAT Amritsar]*
- (v) Saamag Developers (P.) Ltd. vs. ACIT [(2018) 90 taxmann.com 20m (Delhi-Trib)*
- (vi) DCIT vs. Rajat Agarwal [(2012) 27 taxmann.com*
- vii) DCIT vs. M/s Signature Colonisers, Bhopal [ITA No. 218/Ind/2020 and ITA No. 219/Ind/2020]*
- (ix) M.M Financiers (P.) Ltd. vs. DCIT [(2007) SOT 5 (Chennai) (URO)] (x) Anil Kumar Bhatia vs. ACIT [(2010) 1 ITR (T) 487 (Delhi)]*
- (x) Anil Kumar Bhatia vs. ACIT[(2010) 1 ITR(T) 487(Delhi)]*
- (xi) Commissioner of Income Tax vs. Tips Industries (P.) Ltd., [(2010) 321 ITR 154 (Bom)*
- (xii) S.K Gupta vs. DCIT (1999) 69 TTJ Del 535.*

33. On careful perusal of above judgments and other we find that the Hon'ble Bombay High Court in the case of PCIT vs. Nexus Builders and Developers (P.) Ltd. (supra) held that there was no evidence found against the respondent and no enquiry was carried out by the A.O. to find out the more details and when the entire addition has been made on hypothetical basis then the Tribunal was right in deleting the addition. In the case of Monohar Lal Rattan Lal vs. DCIT (supra) coordinate bench of ITAT Amritsar held that wherein addition was made on the basis of unsigned agreement then no addition can be made in the hands of the assessee in this order the coordinate bench of Tribunal held that It is true that the finding of this document from the premises of the assessee had raised doubts in the mind of the AO with regard to the actual sale consideration of the said property. But it is not sufficient and enough to hold and sustain the addition. If the

AO was not satisfied with the version of the assessee, it was incumbent upon him to examine the seller of the property, and ascertain the facts regarding the actual sales consideration. In the absence of having carried out any such exercise, we are satisfied that a case has not been made out for making the addition.

*34. In the similar manner coordinate bench of Delhi ITAT in the case of Saamag Developers (P.) Ltd. vs. ACIT held that when the Assessing Officer has not made any independent enquiry from such persons and in the absence thereof no addition can be made. Especially when the **Assessing Officer did not bring any adverse material on record or gave a finding with cogent evidence contrary to the explanation of the assessee and has not brought any independent corroborative material suggesting that the assessee has purchased such land/property and has made payment as recorded in the seize paper.** In the present case also the Assessing Officer has made addition merely on the basis of so called agreement which has not been signed by the assessee and the A.O. has not brought on record any other positive or corroborative material to show that the assessee has actually purchased property under this agreement and made payment of Rs. 54,00,000/- in cash out of books of accounts from the income earned from undisclosed sources. Therefore, we reach to a logical conclusion that the addition made by the A.O. and confirmed by the Ld. CIT(A) u/s. 69A of the Act, is not sustainable hence we direct the A.O. to delete the same.”*

On being consistent to the finding so recorded by the co-ordinate bench we see no reasons to sustain the addition in the hands of the assessee and therefore, the same is directed to be deleted. Based on these observations ground no. 1 raised by the assessee is allowed. Ground no. 2 being general in nature does not require any adjudication.

In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 05/09/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 05/09/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Kanta Devi Jain, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-01, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 860/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar