

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 723/Ahd/2019
Assessment Year 2011-12**

Income Tax Officer, Ward-3(3)(3), Ahmedabad (Appellant)	Vs	Niyati Sanket Shah 104, Prerna Tirth-2, Nr. Prerna Tirth Derasar, Satellite, Ahmedabad Gujarat-380015 PAN: BFUPS6834Q (Respondent)
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**Assessee Represented: Shri S.N. Divetia, A.R. &
Shri Samir Vora, A.Rs.**

Revenue Represented: Shri Ashok Kumar Suthar, Sr.D.R.

Date of hearing : 25-09-2024

Date of pronouncement : 27-09-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against appellate order dated 06.02.2019 passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2011-12.

2. The brief facts of the case is that the assessee is an individual filed her Return of Income for the Asst. Year 2011-12 declaring total income of Rs.7,09,279/-.The return was processed u/s. 143(1) on 30.08.2011. Subsequently there was a search action u/s. 132 of the Act on 29.01.2013 in the residential premises of Shri Nayan Gondaliya and Shri Mansukh Patel (who were the Power of Attornies of the assessee) wherein some loose papers were found and seized. The A.O. claimed that the details of transaction in respect of lands bearing Block No. 470, 471 & 472 at Hathijan Village wherein Shri Nayan Gondaliya and Shri Mansukh Patel who are confirming parties in two pieces of land. The A.O. worked out the sale consideration/total expenditure at Rs.5,87,36,000/- as against the total cost claimed by the assessee at Rs.1,33,24,606/-. Thus the difference of Rs.4,54,11,394/- was treated as excess purchase price paid out by the assessee out of her undisclosed source of income. Thus assessment for the A.Y. 2011-12 was reopened by issuing notice u/s. 148 of the Act. The assessee replied to treat the original return in compliance to the 148 notice.

3. During the assessment proceedings, the contention of the A.O. and the response of the assessee are as follows:

Sr. No.	As per AO	As per appellant
1.	Page-77 of Annexure-A-5 seized from the premises of Mansukh Patei and NarayanGondaliya contains details of lands finally purchased by the appellant. The aland premium mentioned in POA was actually paid by the appellant. Hence, the transactions were not separate.	The notings on page-77 of Annexure-A5 relied upon by AO has not evidentiary value so far as the appellant was concerned, because the same were written neither by the appellant nor the same were found from the possession/ control of the appellant. Therefore, there is no presumption in relation to the appellant that the said notings pertain to the appellant.

2.	Both the aforesaid persons were land trader cum broker so that not interested in purchasing land.	When the notings on the documents are to be examined, it does not matter whether the aforesaid two parties were land trader or broker. The AO has observed at Sr. No.3 that there was profit earned by the said two persons in relation to this transaction and therefore, the said notings cannot be disbelieved so far as said two persons were concerned.
3.	The amount of land premium finds mention in the seized papers so that the payments as seen in loose papers were made by the appellant.	The notings on the loose papers have to be examined qua each item and the same cannot be generalized or said to be binding merely for one of the items may pertain to the transaction in question. The AO has failed to appreciate that when the notings relating to land conversion charges tally, the same can be said to be true and correct with regard to such payment but not with respect to other payments. The perusal of said notings also shows that though the brokerage of Rs.9 lakhs was not paid, it was noted.
4	The actual payment made by the appellant as per seized documents were at market price of land.	The AO has not brought on record any evidence to prove the market rate and at the most, the stamp duty value can be said to be market rate in view of section 50C, 44CA.

4. Thus the assessee sought for cross-examination of the parties from whom the seized materials was found, which was denied by the Assessing Officer and made excess payment for purchase of land Rs.4,54,11,394/- and added as the undisclosed income of the assessee.

5. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A). The Ld. CIT(A) deleted the addition on the ground that no statements of Shri Nayan Gondaliya and Shri Mansukh Patel were recorded by the Department and no opportunity of cross-examination given to the assessee and also not rejected the books of accounts. Further the Ld. A.O. has not rejected the

affidavit given by Shri Nayan Gondaliya and Shri Mansukh Patel thus allowed the appeal by observing as follows:

“8.1 There is no dispute that the document/page relied upon by the AO for the impugned addition in the hands of the appellant was found from the premises Shri Nayan Gondaliya and not from the premises of the appellant. The said page is neither written by the appellant/any representative of the appellant nor contains the name of the appellant/bears the signature/seal of the appellant. It appears that no statement was recorded during the course of search about the nature of the transactions recorded in these seized papers wherein it was stated by Shri Nayan Gondaliya or Shri Mansukh Patel that what were the description of the various notings in the said page, what is the total amount involved, to whom the payments were made and who provided the funds for such payments. During the post-search inquiries no inquiry appears to have been made in these regard. Thus the AO is not legally justified in holding the amount as per the seized documents as mentioned in the assessment order and as income of the appellant on account of undisclosed investment/expenses. The case of the AO further fails because during the assessment proceedings the appellant has furnished affidavits from Shri Nayan Gondaliya and Shri Mansukh Patel wherein it was denied that the expenses contained in the seized papers were incurred by the appellant. Any affidavit cannot be rejected merely on the allegation that it was an afterthought and connivance of the persons concerned. To reject an affidavit it has to be proven that the affidavit is false and cannot be relied upon.

8.2 As the documents relied upon by the AO were not found from the premises of the appellant, the presumption in favour of the Revenue by virtue of sections 132(4A) and 2920 are not applicable against the appellant. The appellant is not required to explain the seized paper and the notings contained therein. The appellant is further protected by various case laws, some of them being CIT us. Andaman Timbers, PCIT vs. Kanubhai M. Patel 79 taxmann.com 257 (Guj), CIT vs. Indrajit Singh 215 Taxman 58 (Guj), CIT vs. Ranchhod Jivabhai Nakhawa, 21 taxmann.com 159 (Guj), DCIT Vs. Rohini Builders 256 ITR 360 (Guj), CIT vs. Apex Therm Packaging P. Ltd. 42 taxmann.com 473 (Guj).

8.3 Another fact which is very important and material in the case is that the appellant has admitted before the AO to have paid sale consideration of Rs.95,77,800/- which is as per the sale deed and having paid land

premium of Rs.30,14,900/- for three plots (470, 471 and 472). No doubt in the seized papers there is mention of land premiums as admitted by the appellant and that the number of plots and the area thereof also match. Thus prima facie there can be a case that the brokerage to be paid of Rs.9,00,000/-, brokerage from seller side of Rs. 11,00,000/-, miscellaneous expenses of Rs.1,00,000/- and file fees of Rs. 12,75,000/- i.e. the aggregate of Rs.33,75,000/- may be related to those very land but the presumption in favour of Revenue is definitely not against the appellant. Moreover, it is very difficult to hold that other figures at the bottom of Page 77 also relate to the transactions of the appellant only. In this regard, from the perusal of the ledger accounts of these lands submitted by the appellant during the appeal proceedings the closing balance of expenses/investments appear as under:

Plot No.	As on 3.1/03/2011 (Rs.)	As on 01/10/2011 (Rs.)	As stated during the assessment (Rs.)	As on 24/01/2019 during appeal (Rs.)
Block No. 472	41,58,9507-	42,03,9507-	42,03,950/-	2,31,10,550/-
Block No. 471	42,29,790/-	42,74,790/-	43,22,486/-	1,78,12,951/-
Block No. 470	28,34,500/-	29,05,500/-	47,98,1707-	1,40,52,1557-
Total	1,12,23,240/-	1,13,84,240/-	1,33,24,6^67-	5,49,75,656/-

8.4 The above amounts include various expenses including payments to various farmers, rabaries, authorities (for stamp duty, premiums etc.) and such other. This has also been admitted by the appellant in the submission that she has been making payments to various persons for settling of the dispute and all such expenses are duly recorded in her books of accounts and the ledgers of three lands as on 24/01/2019 were filed during the appeal proceedings as evidence in support of her claim. It is noted that similar ledgers up to Nov./Dec. 2016 were also filed before the AO during the assessment proceedings and that the assessment order is silent about them. May be that the AO has not taken the submissions and the ledgers into cognizance that the appellant has been incurring the expenses regarding various payments in improvement of the lands and settlement of various disputes and that all such expenses were duly recorded in her books. As no defect has been pointed out in the books of the appellant, they cannot be rejected and therefore the appellant's submission that the expenses incurred after the sale deed are properly recorded deserves to be

accepted. It is evident that till date the appellant has incurred accounted expenditure of Rs.5,49,75,656/-. Even if the seized Page 77 as interpreted by the AO is conceded to for a moment the total investment/expenditure as per the seized page as worked out by the AO is Rs.5,87,36,000/- which is very much near to the accounted expenditure of Rs.5,49,75,656/- till January 2019. Thus also there remains not much scope for any adverse inference against the appellant.

8.5 In view of these ledgers from the books of the appellant along with the affidavits of Shri Nayan Gondaliya and Shri Mansukh Patel, in my considered view no adverse inference can be drawn based on Page 77 which has various infirmities and is not legally tenable as evidence against the appellant. In this background I do not see any requirement to discuss the submission of the appellant whereby attention has been drawn to the Valuation Report of the Registered Valuer estimating the fair market value of the lands at Rs.60,29,800/- against which the sale consideration as per the sale deeds is Rs.95,77,800/- which is claimed by the appellant to be higher than the jantri rate for the purpose of stamp duty at the time of registration.

8.6 Though not part of the appeal in consideration, it may be pertinent to mention that during the search in the case of Shri Nayan Gondaliya and Shri Mansukh Patel various vouchers (Annexure-A/14 pages 1 to 31) were found and inventorised and some of them (20 vouchers) were held to be related to three lands under consideration. There is no discussion of these vouchers in the assessment order of the appellant but an addition of Rs.2,82,00,000/- was made on protective basis in the hands of Shri Sanket Vijaybhai Shah, husband of the appellant and the substantive addition was in the hands of Shri Mansukh Patel, It is surprising that if the vouchers pertained to three lands which were purchased by the appellant who has her sources of funds why the addition even on protective basis was required to be made in the hands of the husband of the appellant. This treatment only goes to show that the AO has misdirected himself in appreciating the facts of the case and the laws related thereto.

8.7 In view of the fact that the seized Page 77 cannot be relied upon for drawing adverse inference against the appellant and making the impugned addition of Rs.4,54,11,394/- in the hands of the appellant without recording the statements of Shri Nayan Gondaliya and Shri Mansukh Patel, without giving the appellant an opportunity to cross examine them, without rejecting the books of accounts of the appellant and without disproving the affidavits given by Shri Nayan Gondaliya and

Shri Mansukh Patel. The way the expenditure related to three lands under consideration are recorded in the books of the appellant, I am convinced that as and when any expenditure is incurred by the appellant for improvement of title and for settling the disputes, they are incurred out of her sources of fund and recorded in the books. Under the circumstances the impugned addition of Rs.4,54,11,394/- cannot be upheld. The AO is directed to delete the addition. The ground succeeds.”

6. Aggrieved against the appellate order, Revenue is in appeal before us raising the solitary ground that Ld. CIT(A) erred in law on facts in deleting the addition of Rs.4,54,11,394/- on account of unexplained investment from unaccounted source of income by the assessee.

7. Ld. Sr. D.R. appearing for the Revenue supported the order passed by the Assessing Officer. However the Ld. D.R. could not place any evidence in support of its grounds and also could not contravert the appellate order passed by the Ld.CIT(A).

8. Per contra Ld. Counsel for the assessee supported the order and findings made by the Ld. CIT(A) and requested to uphold the same.

9. We have given our thoughtful consideration and perused the materials available on record. The Revenue could not establish that the entries made in the loose papers were neither written by the assessee nor the same were found from the possession or control of the assessee. Though the A.O. discussed about the notings as the market value, however he has not brought on record any evidence to prove the market rate or the stamp duty value. On the contrary the assessee filed the stamp duty value of the said lands, which clearly shows the document price was much more than the Jantri

value. Further it is evident the statement of Shri Nayan Gondaliya and Shri Mansukh Patel were not recorded u/s. 132(4) of the Act. Their respective affidavit discussing the entries in the loose sheets were also not controverted by the Revenue Authorities at any point of time. Thus the addition made by the Assessing Officer based on loose papers without corroborating evidence and the addition made thereon is without authority of law and the same is liable to be rejected. Thus we do not find any infirmity in the order passed by the Ld. CIT(A). Thus the ground raised by the Revenue is devoid of merits and the same is liable to be dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 27-09-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 27/09/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद