

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "H" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1040/Del/2022  
(Assessment Year: 2010-11)

ACIT, Central Circle-1, Income Tax Office, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.	Vs.	Amarpreet Anand 1155, Sector-34C, Chandigarh,  PAN No.ABZPA4892Q
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

&

Cross Objection No.63/Del/2023  
(In ITA No.1040/Del/2022)  
(Assessment Year: 2010-2011)

Amarpreet Anand 1155, Sector-34C, Chandigarh,  PAN No.ABZPA4892Q	Vs.	ACIT, Central Circle-1, Income Tax Office, 2 <sup>nd</sup> Floor, ARTO Complex, Sector-33, Noida, Uttar Pradesh.
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Akhilesh Kumar, Adv. & Shri Vipin Garg, Adv.
Revenue by	Ms. Sapna Bhatia, CIT DR

Date of hearing:	25.09.2024
Date of Pronouncement:	12.11.2024

**ORDER**

**PER PRADIP KUMAR KEDIA, AM:**

The captioned appeal has been filed at the instance of the Revenue against the first appellate order dated 12.11.2021 passed under s. 250(6) of the

Income Tax Act, 1961 (the Act) by the Commissioner of Income Tax (Appeals), Kanpur-4, [CIT(A)] arising from the assessment order dated 30.12.2017 passed under s. 153A r.w.s. 143(3) of the Act by the Assessing Officer (AO) for the AY 2010-11 in question.

2. As per the grounds of appeal, the AO has assailed the first appellate order, wherein additions made by the AO towards unaccounted income attributable to 'agreement to sale' executed by the assessee for sale of certain property and found in the search action under s. 69A of the Act was reversed and cancelled.

3. The Assessee, as per its cross objection, has also assailed the first appellate order on account of certain enhancements made therein. The grounds of cross objections are reproduced hereunder: -

1. *“Because the CIT(A) has erred in law and facts making a new addition without any enhancement notice, of Rs.38,54,000/- based on an arbitrary valuation of the company at Rs.1,69,00,000/- and making addition of entire Rs.38,54,000/- to the income of the Assessee by wrongly invoking s. 69A of the Act;*
2. *Because the Ld.CIT(A) has erred in law and facts in computing capital gains on sale of shares at Rs.13,38,720/- in AY 2010-11 whereas the shares were transferred on 02.03.2011 and therefore were taxable in AY 2011-12;*
3. *Because alleged cash receipt of Rs.25,00,000/- as per agreement to sell, though not admitted, even if presumed to be true, the Assessee only held 1,61,000 shares out of total shareholding of 5,88,334 and thus the Assessee share in total sum of Rs.25,00,000/- comes out at Rs.6,84,135/- only.”*

4. Briefly stated, a search action was conducted on 30.09.2015 under s. 153A of the Act on the premises of the assessee comprising of Airwil Group of cases. Consequently, a notice under s. 153A of the Act was issued and the proceedings under s. 153A were set in motion. Pursuant to the notice issued under s. 153A, the assessee filed return of income at Rs.8,00,700/-. In the course of the assessment, the AO made reference to an 'agreement to sale' executed between the assessee (Amarpreet Anand) and one Mr. Manoj Choudhary for sale of property bearing no. B-21, 22, Sector-16, Noida for a consideration of Rs.3,75,00,000/- by the assessee. The AO on examination found that the said transaction was related to property presently held by M/s RD Finlease Pvt. Ltd. whose ownership had been transferred from assessee to Manoj Choudhary. The AO reproduced the copy of agreement to sell as found in the course of search in para 5 of the assessment order and observed that despite sale of property at a consideration of Rs.3,75,00,000/-, no capital gain has been offered. The entire sale consideration was thus treated as unaccounted income of the assessee susceptible to taxation as unaccounted income. The addition towards unaccounted income was thus made in the hands of the assessee.

5. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee reiterated its instance taken before the AO and pointed out that assessee Amarpreet Anand is not the owner of this property in her individual capacity. The property is owned by RD Finlease

Pvt. Ltd. (supra) where the assessee is a Director. The property was never sold or transferred by the Company (RD Finlease) and the said agreement to sell found in the course of search was never acted upon in as much as the said property is duly reflected in the audited finance statements of RD Finlease. It was alleged that the AO has made additions of Rs.3,75,00,000/- by merely picking the figure from the said agreement without appreciating the relevant facts that the property was neither owned by the assessee in his personal capacity but held by the Company nor even the said property was sold by the Company also who actually owned it. The assessee further pointed out before the Ld.CIT(A) that factually, 5,88,300 shares of RD Finlease were sold by the shareholders of the said company at an aggregate sale consideration of Rs.1,30,46,000/- out of which the sale consideration attributable to assessee stands at Rs.35,69,370/- attributable to her shareholding in the company of 1,61,000 shares. On consideration of factual matrix, the CIT(A) granted partial relief and confirmed the addition to the extent of Rs.38,54,000/- under s. 69A of the Act. Further additions of Rs.13,38,720/- was confirmed as capital gains on sale of 161000 shares in the hands of the assessee.

6. The relevant operative para of the order of the CIT(A) is reproduced hereunder for ready reference: -

*“6.5 I have carefully considered the assessment order, written submissions filed by the Ld. A.R. and the remand report received from the AO. The property under consideration i.e. the property situated at B 21, 22 of Sector-16, Noida was owned by RD Finlease Pvt Ltd., N-176 Panchsheel Park, New Delhi-110017 and the*

*shares of this company were held by the appellant i.e. Smt. Amarpreet Anand (1,61,000 shares) and husband of the appellant i.e. Sh. Ashish Anand (4,27,300 shares). The Agreement to sell dated 06.05 2009 has been found and seized as page no. 51 to 54 of Annexure A-1 of R-06 during the search proceedings conducted on 30.09.2015. From this Agreement to sell it is clear that property under consideration was agreed to be sold at Rs. 3,75,00,000/- for which cash of Rs. 5,00,000/- has been received on 08.04.2009 and further cash of Rs. 20,00,000/- has been received on 18.04.2009 and draft dt. 02.05.2009 of Rs. 15,00,000/- has also been received. This fact has been categorically mentioned in the Agreement to sell dt. 06.05.2009 which contains signature of appellant i.e. Smt. Amarpreet Anand and Sh. Sanjay Kumar who is one of the purchasers of the company alongwith Sh. Manoj Kumar. However this is a fact that this singular Agreement of Sell of property was not executed and the entire company was transferred to Sh. Sanjay Kumar and Sh. Manoj Chaudhary by selling shares of M/s. RD Finlease Pvt Ltd., N-176 Panchsheel Park, New Delhi-110017 for a consideration of Rs. 1,30,46,000/- out of which the appellant Smt. Amarpreet Anand received Rs. 35,69,370/- in lieu of 1,61,000 shares and Sh. Ashish Anand received Rs, 94,76,630/- in lieu Of 4,27,300 shares, Since the property under consideration i.e. property situated at B- 21, 21 Sector-16, Noida has not been sold in isolation by its owner i.e. M/s. RD Finlease Pvt Ltd., it cannot be concluded that the capital gain in lieu of sale of only property has arisen in the hands of its owner. But since the entire company under consideration i.e. RD Finlease Pvt Ltd., N-176 Panchsheel Park, New Delhi-110017, has been sold, the capital gain needs to be taxed in the hands of its shareholders i.e. the appellant Smt. Amarpreet Anand and her husband Sh. Ashish Anand.*

*6.6 From the evidence which is seized during search proceedings i.e. Agreement to sell dt. 06.05.2009 it is clear that the property under consideration has been valued at Rs. 3,75,00,000/- and in lieu of transfer of entire company, which owns the property under consideration, the appellant and her husband have shown total receipts of Rs. 1,30,46,000/- and the AR submitted that there were liabilities in the company, therefore total valuation of the company could not reach to Rs. 3,75,00,000/-. In support of his contention the AR submits that in the seized agreement to sell itself, there is mention of one liability of Rs. 1,91,00,000/- which was a liability to be paid to Reliance Capital ltd. to discharge the lien on the subject property as reflected in the audited balance sheet. The AR further submits that from the balance sheet of M/s. RD Finlease*

*Pvt Ltd., N- 176 Panchsheel Park, New Delhi-110017, it can be verified that Sh. Ashish Anand and Smt. Amarpreet Anand, themselves gave unsecured loan to this company and the same were outstanding till 31.03.2010 at Rs. 38,10,000/- and Rs. 1,75,000/- respectively.*

*6.7 It is undoubted that finally the entire company i.e. M/s. RD Finlease Pvt Ltd., N-176 Panchsheel Park, New Delhi-110017, was sold by the appellant and her husband to Sh. Manoj Chaudhary and Sh. Sanjay Kumar and this company owns underlying property. Hence, the ownership of the said property has been transferred and the deal was materialized. Now the only issue which needs to be determined is that of capital gain. Had only property under consideration been sold by the company i.e. M/s. RD Finlease Pvt Ltd., to the purchasers, there would have been capital gain determined on sales consideration of Rs. 3,75,00,000/- but in this case the entire company has been sold as going on concern, the liability of Rs. 1,91,00,000/- needs to be given set off on this sales consideration which is mentioned in the seized Agreement to sell itself. Further there is no doubt that the appellant has received cash of Rs. 25,00,000/- on two installments i.e. on 08.04.2009 & 18.04.2009 which is mentioned in the agreement to sell itself, therefore this needs to be taxed as undisclosed income apart from balance component of undisclosed income which needs to be computed from this agreement to Sell and actual sales consideration as shown by the appellant and her husband.*

*6.8 From the agreement to sell it is clear that the total deal was signed for Rs. 3,75,00,000 out of which Rs. 1,91,00,000 is the loan taken by the company from Reliance Capital Limited which was paid by the new shareholders i.e. Manoj Choudhary and his brother Sanjay Choudhary directly to Reliance Capital Limited, the fact of which is also mentioned in the Agreement to Sell found and seized during search. Therefore, the sale consideration is reduced to the extent of Rs. 1,84,00,000 from the original amount of Rs. 3,75,00,000/-. The AR further submitted the amount of Rs. 15,00,000/- which is shown in the seized agreement to sell has been given by draft dt. 02.05.2009 to M/s. RD Finlease Pvt Ltd., and this draft was issued by Sh. Sanjay Kumar, i.e. the purchaser of the company and this amount is duly accounted for in the books of M/s. RD Finlease Pvt Ltd. therefore the same should not be considered as undisclosed receipt in the hands of the appellant and her husband. And furthermore the appellant and her husband have given loan of*

*Rs. 38,10,000/- and Rs. 1,75,000/- to the company, therefore at best this amount of Rs. 15,00,000/- may be considered as loan return in their hands. Thus it is concluded that valuation of company was shown at Rs. 1,30,46,000/- since the same was sold by taking consideration of Rs. 1,30,46,000/- in lieu of shares however its actual worth was Rs. 1,69,00,000/- {Rs. 3,75,00,000/- (-) Rs. 1,91,00,000/- (-)Rs. 15,00,000/-}. Out of this amount Rs. 25,00,000/- was taken in cash as is evident from the agreement to sell.*

*6.9 Considering the above facts, the following undisclosed income is accrued in re hands of the appellant:-*

<b>S.No.</b>	<b>Particulars</b>	<b>Amount (INR)</b>	<b>Remarks</b>
1.	Sale Consideration as per seized agreement to sell	3,75,00,000	
2.	Less: Loan discharged by New directors/shareholders towards liability of Reliance Capital Ltd.	1,91,00,000	
3.	Less: amount paid in draft dt.02.05.2009 to the company to discharge loan liability of appellant and her husband	15,00,000	
4.	Net sale consideration		1,69,00,000
5.	Sales Consideration of Shares as shown by both the shareholders	1,30,46,000	
6.	Net undisclosed gain in the hands of the appellant		38,54,000

*6.10 From the above discussion it is clear that the appellant is required to pay tax on this income of Rs.38,54,000/- which has not been shown in the books. This amount includes cash amount of Rs.25,00,000/-. Therefore addition to the extent of Rs. 38,54,000/- is hereby confirmed as undisclosed income u/s 69A of IT Act. Further the appellant is required to pay capital gain on sale of 1,61,000 shares which are sold at Rs 35,69,370/-, therefore capital gain tax is required to be paid on Rs. 13,38,720/- also. As on 30.09.2009 the appellant has shown the list of shareholders, therefore the capital gain in their hands is computed as under by taking the total sell consideration of Rs. 1,30,46,000/- for 5,88,334 shares by*

considering sales price i.e. Rs. 22.17 per share:

S. No.	Name	Address	No. of Shares	Sales Consideration @ Rs. 22.17 per share	Purchase Cost	Indexed Purchase Cost (x*632/447) by considering initial share holding in F.Y. 2002-2003 and sale in F.Y. 2009-10	Net capital gain
1	Rajiv Deva	U- 23 Green Park (Mains) New Delhi	10	Rs. 221.70	100	141	80.70
2	Madhu Deva	U- 23 Green Park (Mains) New Delhi	21	Rs. 465.57	210	296	169.57
3	Pushpawati Deva	U- 23 Green Park (Mains) New Delhi	1	Rs. 22.17	10	14.10	8.07
4	Neha Deva	U- 23 Green Park (Mains) New Delhi	1	Rs. 22.17	10	14.10	8.07
5	Meghna Deva	U- 23 Green Park (Mains) New Delhi	1	Rs. 22.17	10	14.10	8.07
6	Ashish Anand (HUF)	N-176, Pancheel Park New Delhi	31000	Rs. 687270	310000	437100	250170
7	Amarpreet Anand	N-176, Pancheel Park New Delhi	161000	Rs. 3569370	1610000	2230650 (15000 shares purchased in FY 2007-08)	1338720
8	Ashish Anand	N-176, Pancheel Park New Delhi	391300	Rs. 8675121	3913000	5517330	3157791
9	Adity Anand	N-176, Pancheel Park New Delhi	2500	Rs. 55425	25000	35250	20175
10	Amanani Anand	N-176, Pancheel Park New Delhi	2500	Rs. 55425	25000	35250	20175
Tot al			588334	Rs. 13046000	5883340	8334959	4789941

6.11 In the light of above discussion, the addition of Rs. 38,54,000/- is confirmed as undisclosed receipt in the hands of the appellant and the same is considered as deemed income u/s 69A of IT Act. Further addition of Rs.13,38,720/- is confirmed as capital gain in the hands of appellant. From the above computation' it is clear that the various shareholders are required to pay capital gain tax on Rs. 47,89,941/- from re capital gain arising on the sale of shares of M/s. RD Finlease Pvt Ltd. However total addition of Rs.3,75,00,000/- was made by the AO, therefore the addition of Rs3,23,07,280/- is deleted and Rs. 38,54,000/- is confirmed u/s 69A of IT Act and Rs. 13,38,720/- is confirmed as capital gain. The grounds of appeal no. (i), (ii) & (iii) are adjudicated accordingly.”

7. Aggrieved by the partial relief granted by the CIT(A) and enhancement action undertaken both Revenue and Assessee are in appeal before the Tribunal.

8. When the matter was called for hearing, the Ld.CIT DR for the Revenue relied upon the assessment order as well as the enhancement made by the CIT(A).

9. The Ld. Counsel for the assessee, on the other hand, reiterated the facts placed before the lower authorities and submitted that the draft MOU found in the course of search was between the assessee in her personal capacity and Manoj Choudhary, whereas the property belonged to RD Finlease and not to the assessee. Such MOU has neither been acted upon nor could have been acted upon. Since the ownership of the property was vested with RD Finlease and not with Amarpreet Anand such MOU is a dumb document. Besides, Amarpreet Anand is only one of the shareholders of the Company holding the property in question and hence the question of selling the property through MOU by one of the shareholders do not arise. Furthermore, the said MOU was shown to be dated 06.05.2009 falling in the FY 2009-10 whereas the assessee and his brother were allotted shares of 'RD Finlease' in the FY 2010-11 and therefore, there was no authority with the assessee to enter into such MOU. Notwithstanding, the assessee (Amarpreet Anand) held only 1,61,000 shares of the company, whereas another shareholder Ashish Anand held 4,75,300 shares. The Ld. Counsel also pointed out that the valuation of shares as per Rule 11UA

of the Rules (although not applicable in the said year) as on 31.03.2009 would come to Rs.16.47 per share, whereas the assessee had acquired the shares at Rs.22.17 per share which is above the fair market value. The Ld. Counsel referred to the judgment rendered in the case of *Bhoruka Engineering India P. Ltd. Vs. DCIT (2013) 36 taxmann.com 82 (Kar.) (HC)*, wherein it was held that the sale of shares of company by the shareholders cannot be equated with sale of immovable property vested with company. The Ld. Counsel thus, submitted that where the assessee herein held only 1,61,000 shares (27.36%) out of total 5,88,300 shares and shares were transferred in the subsequent year AY 2011-12, the additions made based on some MOU which was never implemented could not give rise to any taxability in the hands of the assessee by way of unaccounted income. The Ld. Counsel thus supported the partial relief granted by the CIT(A) on first principles. However, in the same vain, the Ld. Counsel assailed the additions confirmed by the CIT(A) on the grounds of misappreciation of facts and ignoring the actual facts.

10. The Ld. Counsel adverted to the cross objection filed in this regard pointed out that the CIT(A) while addressing the grievance of the assessee went into an all together different tangent and enhanced the assessment by way of Rs.38,54,000/- towards undisclosed receipt in the hands of the assessee under s. 69A of the Act and also enhancement to the extent of Rs.13,38,720/- towards capital gains in the hands of the assessee. The Ld. Counsel pointed

out that such additions by way of enhancement towards undisclosed receipt is impermissible in law under s. 251(1)(a) of the Act on two grounds:

- (i) the assessee sold her shares in the said company in the next AY 2011-12 in terms of transfer deed dated 02.03.2011 which is duly recorded in the share certificate on 22.03.2011. Besides, the annual Return filed with the Registrar of Companies (ROC) for FY 2009-10 continue to reflect the assessee as its shareholder as on 30.09.2010.

The Ld. Counsel also pointed out that the sale consideration of the shares sold were revised from Rs.1,30,46,000/- to Rs.1,69,00,000/- on the basis of valuation made by him without any material in an arbitrary manner without any enhancement notice and acted contrary to the facts available on record. The additions so made towards undisclosed income in the hands of the assessee company on sale of shares carried out in subsequent year(s) is beyond the scope of s. 69A of the Act and also do not emanate from the MOU found and seized in the course of search. Similarly apart from non-issuance of any enhance notice incumbent under s. 251(1)(a) of the Act, the additions of Rs.13,38,720/- under the head “capital gains” also pertains to AY 2012-13 and thus, could not be assessed by way of enhancement in the AY 2010-11 in question. The Ld. Counsel, thus, sought relief as claimed in the cross objection.

11. We have carefully considered the rival submissions and perused the material available on record. As per the Revenue appeal, the additions towards unaccounted income to the tune of Rs.3,75,00,000/- is subject matter

of controversy. As contended on behalf of the assessee and also as per facts noted in the first appellate order, we find that the genesis of additions is an agreement to sell found to be entered between the assessee and Manoj Choudhary for sale of property at a consideration of Rs.3,75,00,000/-. As demonstrated on behalf of the assessee before the CIT(A), firstly the property belongs to RD Finlease and, therefore, the MOU executed in personal capacity between Amarpreet Anand and Manoj Choudhary is in the nature of dumb document carries no legal effect. The MOU has neither been acted upon nor could have been acted upon. Secondly, the shares of the company (RD Finlease Ltd.) were sold by the shareholders including the assessee holding 1,61,000 shares (out of total shares 5,88,300) during the financial year relevant to AY 2012-13. Thirdly, the shares transferred by the assessee do not *tantamount* to transfer of property held by the company as held in *Bhoruka Engineering Ltd. (supra)*. Fourthly, the shares were sold by the assessee at a higher price than what is FMV as per valuation adopted under Rule 11UA of the Rules. Based on such facts, the additions towards unaccounted income based on dumb document in the form of a MOU (remaining un-acted) has been rightly reversed by the CIT(A). The action of the CIT(A), thus, cannot be faulted.

12. The appeal of the Revenue thus deserves to be dismissed.

13. We now advert to the cross objection raised by the assessee.

14. As pointed out on behalf of the assessee, the additions made do not emanate from the seized documents i.e. MOU but on account of valuation of shares sold by the assessee. In this regard, it is contended that (i) no enhancement notice has been issued; (ii) the transactions relate to a different assessment year and, therefore, the alleged share of undisclosed income of Rs.38,54,000/- and capital gains of Rs.13,38,720/- thereon could not be assessed by way of enhancement by the CIT(A) in the AY 2010-11 in question.

15. We fully agree. In the light of the facts and material available on record, the action of the CIT(A) in resorting to additions towards undisclosed income attributable to sale of shares and capital gains on sale of shares without enhancement notice, deserves to be quashed at the threshold. Furthermore, the transaction of shares resulting in such additions has not happened in the FY 2009-10 relevant to AY 2010-11. Therefore, the additions by way of enhancement are not permissible in the AY 2010-11 in question even on merits. Ground nos. 1 & 2 of the cross objection thus deserves to be allowed.

16. As transpired in the course of hearing, Ground No.3 of the cross-objection as in the nature of alternative ground. Since the substantive issue raised in other grounds stands adjudicated in favour of the assessee, the alternative grievance raised in Ground No.3 do not survive for independent

adjudication. Thus, Ground No.3 in effect is rendered infructuous and does not call for separate adjudication.

17. The cross objection raised by the assessee thus deserves to be allowed.

18. In the combined result, the appeal of the Revenue is dismissed whereas the Cross Objection of the Assessee is allowed.

**Order was pronounced in the open Court on 12 /11/2024.**

*Sd/-*

**(SUDHIR KUMAR)  
JUDICIAL MEMBER**

*Sd/-*

**(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER**

Dated: **12/11/2024**

\*Kavita Arora, Sr. PS

Copy forwarded to:

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

Assistant Registrar  
ITAT, New Delhi