

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.2/Nag./2024
(Assessment Year : 2015-16)

Asstt. Commissioner of Income Tax
Central Circle-1(1), Nagpur Appellant

v/s

Suresh Gokuldas Bajaj
353, Near Janta Hospital
Jaripatka, Nagpur 440 014 Respondent
PAN – AANPB5987G

Assessee by : None
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 13/11/2024

Date of Order – 18/11/2024

ORDER

PER K.M. ROY, A.M.

The appeal has been filed by the Revenue challenging the impugned order dated 06/11/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2015-16.

2. In its appeal, the Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.29,17,371/- made by the A.O. on account of unexplained investment U/s 69 of the IT Act, 1961, without appreciating the facts that the addition made by the AO was based on copy of sale deed and the said document have the evidentiary value.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by the A.O., without appreciating the facts that the addition of Rs. 29,17,371/- was made by the Assessing Officer on account of unexplained investment u/s 69 of the I.T. Act, 1961 as the same was not found to be recorded in the books of accounts.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,52,62,629/- made by the AO which was based on copy of sale deed and the said document have the evidentiary value.*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,52,62,629/- made by the AO u/s 56(2)(vii)(b)(ii) of the IT Act 1961, being assessee's share of difference in the fair market value of property and sale consideration paid."*

3. Facts in Brief:- The assessee was engaged in the business of civil construction i.e., road, dam, bridges, pathways, etc., and is also registered with Government and Semi Government Departments for the construction and other related activities. The assessee had filed his return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*") for the year under consideration on 16/03/2016, declaring total income at ₹ 7,45,890. The assessee's case was re-opened under section 147 of the Income Tax Act, 1961 ("*the Act*") for the reason that the assessee along with one another had purchased a land from M/s. Jhulelal Developer for a consideration price of ₹ 23,94,742, and also paid stamp duty of ₹ 34,40,000, on 14/01/2015, whereas, according to the Assessing Officer, the fair market value of the property was ₹ 5,29,20,000. The assessee, in response to the notices issued under section 148 of the Act on 11/03/2021 and subsequent notice under section 142(1) of the Act which were issued on 17/12/2021, did not furnish any reply to these notices. Hence, the Assessing Officer again issued notice under section 142(1) of the Act on 27/01/2022, which was also not responded by the assessee. Since there was no response from the side of the

assessee, hence the Assessing Officer left with no option but to complete the assessment under section 147 of the Act ex-parte on 26/03/2022, determining total assessed income at ₹ 2,89,25,890, after making addition of ₹ 29,17,371, under section 69A of the Act and ₹ 2,52,62,629 on account of difference in sale consideration and fair market value of the land. Being unsuccessful, the assessee went in appeal before the first appellate authority.

4. During the first appellate proceedings, the assessee made following submissions:–

"The appellant's AR has made a detailed written submission and has also appeared and discussed the case in detailed. The written submission of the appellant's is reproduced as under:

1. The assessee had filed return of Income declaring Gross total Income of Rs.8,98,415/- on 16/03/2016 vide e-filing Acknowledgment No. 988630150160316 for the Assessment Year 2015-16.

2. The assessee is a regular and prominent tax payer and has been filing its return of income and payment of Taxes regularly.

3. The assessee is into business of civil construction i.e., road, dam, bridges, pathways etc and is also registered with government and semi-government department for the construction and other related activities.

1. The assessee further mentions that the assessee has filed the return of income against the Notice u/s 148 dated 11/03/2021 declaring Gross Total Income of Rs.8,98,415/- on 06/10/2021 vide e-filing Acknowledgment 642315130061021. The copy of Return of Income filed u/s 148 and computation of Income is enclosed for your perusal.

2. The assessee further mentions that the transaction of Purchase of property from Jhulelal Developers was illegitimate, illegal, unconstitutional and unlawful transaction which was cancelled by the order of the court. The assessee was found guilty for entering into or executing a fictitious transaction which never happened and there was no payment exchanged or made by the consenting party and the power of attorney was also illegal through which the sale transaction was executed.

3. The assessee further mentions that all the documents i.e.

1. The MOU executed between Jhulelal Developers and Devison Estate Pvt. Ltd. Dt. 19th December 2004.

2. *The Power of Attomey from Jhulelal Developers to Jaiprakash Bajaj Dt. 06th Dec 2005*

3. *The Sale Deed reflecting payment of Rs. 23,94,742 Dt. 14/01/2015*

All these documents / transaction were cancelled by the order of the court. The assessee encloses copy of Cancelled Sale deed where in page No 29 to 36 is Order of the court for cancelling the above fictitious documents/transaction.

1. The assessee further mentions that after giving effect to the aforesaid. INTERSE agreement, A CANCELLATION DEED was executed on 24th November 2017 and the same was registered with the Jt. Sub-Registrar vide Regd. Doe. No.3109/2017 and as per RECITALS recorded therein, the ORIGINAL DEED No. 400/2015 which conveyed rights over the property to the assessee remain CANCELLED and thereby the rights of ownership and possession were taken over by the PREVIOUS OWNER i.e. Jhulelal Developers and this 'CANCELLATION DEED came into force from the date of execution of the original sale deed, bearing 400/2015, i.e., from 14th January 2015. Thus the ORIGINAL SALE DEED BECAME VOID AB INITIAO AND by this EMPHATIC DECLARATION BY BOTH THE PARTIES, THE IMPUGNED PROPERTY shall be DEEMED TO BE VESTED WITH THE ORIGINAL/ PREVIOUS OWNERS i.e Jhulel Developers. Thus THERE IS NO RECOGNISED TRANSFER OF THE PROPERTY

2. The assessee further like to mention that when there is No ELEMENT OF TRANSFER of the impugned property by the owner Jhulelal Developers, When there is no Transfer of money or payment made, when there is no possession of the property with the assessee where is the question of paying income tax and where is the question of addition of difference in valuation as per the provision of section 56(2)(vilb) when the sale deed is cancelled.

3. The assessee further mentions that the stamp duty, registration charges and legal fees was paid by Mr. Omprakash Bajaj on behalf of assessee i.e. Suresh bajaj and Jaiprakash Bajaj on dated 30/12/2014 Amounting 35,17,000 from bank of Baroda A/c -08990400000050. The assessee further encloses the copy of bank statement for your perusal."

5. The learned CIT(A) while considering the submissions of the assessee, allowed the relief as sought by the assessee by observing as under:-

"I have gone through the submission of the appellant and the assessment order. Further it is found that a Cancellation-Deed was executed on 24th November 2017 which was registered with the Jt. Sub Registrar vide Regd. Doe. No.3109/2017 and as per recitals recorded therein the Original Deed No. 400/2015 which conveyed rights over the property to the appellant remain cancelled and thereby the rights of ownership and possession were taken over by the previous owner i.e. Jhulelal Developers and his CANCELLATION DEED' came into force from the date of execution of the original sale deed bearing 400/2015, i.e.,

from 14th January 2015. Thus the original sale deed became void ab initio and by this emphatic declaration by both the parties, the impugned property shall be deemed to be vested with the original/previous owners i.e. jhulel developers. Thus there is no recognised transfer of the property. When there is no Transfer of money or payment made and there is no possession of the property with the appellant the addition made on account of difference in sale consideration and fair market value of the land u/s 56(2)(vii)(b)(ii) is improper and is to be deleted as the sale deed was cancelled. In view of the above facts and circumstance I, direct the AO to delete the addition of Rs. 29,17,371/- made u/s 69 and Rs. 2,52,62,629/- made 56(2)(vii)(b)(ii). Hence ground no. 1 and ground no. 2 are hereby allowed.”

6. Before us, there was no representation from assessee's side.
7. The learned Departmental Representative strongly submitted that there was no explanation from the assessee before the Assessing Officer and the learned CIT(A) has misdirected himself in admitting additional evidence. However, it is felt that the cancellation deed is a clinching evidence to prove to the hint that transaction did not materialize at all and hence there is no question of any transfer to trigger the applicability of the provisions of section 56(2)(vii)(b)(ii) and provisions of section 69 of the Act. Further, in the grounds raised by the Revenue do not suggest any whisper of violation of provisions of Rule-46A of the Income Tax Rules, 1962. We, therefore, see no error or legal infirmity in the impugned decision of the learned CIT(A) warranting interference at the instance of the Revenue.
8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 18/11/2024

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 18/11/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur