

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH.M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.3029/Del/2023
Assessment Year: 2005-06

DCIT Central Circle -15 New Delhi	Vs	Sanjeev Agrawal 1, Maharaja Lal Lane Civil Lines, New Delhi PAN NO.ABOPA4675N
(APPELLANT)		(RESPONDENT)

Appellant by	Ms. Jaya Choudhary, CIT DR
Respondent by	Dr. Rakesh Gupta, Advocate Sh. Somil Aggarwal, Advocate Sh. Deepesh Garg, Advocate

Date of hearing:	17/10/2024
Date of Pronouncement:	11/12/2024

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the revenue is directed against the order of the Commissioner of Income Tax (Appeals), Delhi [hereinafter referred to as "CIT(A)"] vide order dated 03.08.2023 pertaining to A.Y. 2005-06 pertaining to arises out of the assessment order dated 02.08.2023 under section 143(3) r.w.s. 254 of the Income Tax Act 1961 [hereinafter referred to as 'the Act'].

2. The revenue has raised following grounds of appeal :-
1. *Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,80,00,000/- made by AO on account of undisclosed investment u/s 69 of IT Act. 1961 on account of purchase of property.*

 - 2 *Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has ignored the evidence "receipt-cum-agreement" found during the search and duly signed by the buyer and seller and acceptance by the assessee of the signature on the same and seizure of unaccounted cash from the locker and residence of Smt. Veer Bala Agarwal that clearly points out that on-money was involved in the above mentioned sale transaction found during the course of search and also other circumstantial evidence in the form of proportionate share of on-money found in sellerlockers.*

 - 3 *Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the statement of Smt. Veer Bala Agarwal wherein she had accepted that on-money of Rs. 1,80,00,000/- was involved in sale transaction with the assessee and also surrendered and paid taxes thereon in her case in relevant assessment year.*

4 Whether on the facts & circumstances of the case and in law, the Ld. CIT(A) has ignored the facts that ample opportunities of cross-examination was provided to the assessee for both the times, first during the course of post search investigation and second during the original assessment proceedings.

3. The brief facts of the case are that a search and seizure conducted in Ashok Kumar Jain Group of cases, Smt. Veer Bala Agarwal and Shri D. C. Agarwal on 04.10.2004. The four Jain brothers Sh. Ashok Kumar Jain, Deepak Kumar Jain, Pradeep Kumar Jain and Vipin Kumar Jain were the owner of Property No-2 Underhill Road, Civil Lines, New Delhi. During the course of search, it was found that Shri Sanjeev Aggarwal the assessee and M/s. Superior Exim Pvt. Ltd. through its Director Shri Sanjeev Agarwal which a portion of the said property admeasuring 900 sq. yards was purchased by the assessee Shri Sanjeev Aggarwal in his personal capacity. As per the sale deed the consideration was Rs 4500000/-. However, Smt Veer Bala Agarwal has disclosed in her statement u/s132 of the Act that the sale proceeds at Rs 2,25,00,000/- admitting that a sum of Rs 45,00,000/- was paid through the banking channels and remaining Rs 1,80,00,000/- in cash. During the course of enquiry Smt Veer Bala Agarwal also produced copy of receipt

cum agreement between her and assessee for the sale consideration of Rs 2,25,00,000/-. The AO has made the addition of Rs 1,80,00,000/- u/s 69 of the Act. Against that order the assessee has filed the appeal before the Ld CIT(A), who dismissed the appeal against which the assessee has filed the appeal before Tribunal who vide order dated 22-10-2010 allowed the assessee appeal and deleted the addition made by AO.

4. Against the order of the tribunal the Revenue has filed the appeal before the Hon'ble High Court Allahabad who vide order dated 25-08-2014 remitted the matter back to the Tribunal with following direction;

- Main grievance of the assessee is that no opportunity was provided to cross-examine the vendor (Mrs. Veer Bala Agarwal) who made statement that 'on money' was received by the assessee.
- The AO has not made any attempt to verify the accounts of the assessee.
- Whether any search was conducted at the business premises of the assessed, is not clear?

- Though, it is common practice that property is registered on the circle rate and remaining money is paid as 'on money' but in the absence of any evidence/document, the same cannot be applied by closing of the eye and that there must be evidence on record to prove that 'on money' was received by the assessee.
- The AO has not examined he accounts especially withdrawal of the assessee in a proper manner.
- That whether cross-examination of the vendor can make any difference, was not examined by the Tribunal?

5. The Tribunal thereafter on remand from the Hon'ble High Court vide order dated 04-04-2019 remitted the matter back to the AO with the following direction:

“We have heard both the parties and perused all the relevant material available on record. We have also gone through the order directions dated 25.08.2014 of the Hon'ble Allahabad High Court. After going through the records especially the statement of Shri Sanjeev Agarwal dated 02/13 2005 in the very first answer to a question, Shri Sanjeev Agarwal one of the assessee, herein have stated them the contents of affidavit statement given by Smt. Veer Bala Agarwal is not correct. Besides that from the order sheet dated 22.06 2007, it can be seen that the assessee Shri Agarwal wanted to examine cross examine the seller. From the perusal of the Assessment Record before us it can be seen that on the note sheet of 02 10 200 there is no mention as to cross-examination of the seller.

Thus, there is no opportunity given to the assessee for the cross examination of the seller. From the summary of the findings of the Assessing Officer it can be seen that the total money paid by buyer in cash which was found in the lockers was on the estimated basis. But no verifications were done by the Assessing Officer as relates to the slips of the PNB bank found in the locker. The Assessing Officer has also not specified particular activities carried out by the vendors for earning income. Instead has given a general finding that the vendors were engaged in numerous activities. Besides that no valuation of the property was done by the Assessing Officer to arrive at the proper findings. Thus, it will be appropriate to remand back these issues to the file of my Assessing Officer for verification as well as allow the assessee to cross examine the seller. Thus we are accepting the submissions of the Ld AR to remand back these matters to the file of the Assessing Officer. Needless to say, the assessee be given opportunity of hearing by following the principles of natural justice"

6. The AO again completed the assessment and made the addition of Rs 18000000/- as undisclosed investment u/s 69 of the ACT. Aggrieved the order of the AO the assessee has filed the appeal before the Ld.CIT(A) who vide his order dated 02-08-2023 has partly allowed the appeal against which the revenue is the appeal before us.

7. Ld DR has vehemently supported the order of the AO and stated that there are a number of circumstantial evidence against the assessee on which basis the addition was made by AO.

8. Ld counsel for the assessee has submitted that specific direction has been given to the assessing officer to allow the cross examination to the assessee with the vendor Smt Veer Bala Agarwal. He has further submitted that AO has wrongly mentioned in the order that the assessee not pressed the cross-examination application. Ld counsel has also submitted that in the absence of opportunity to cross-examine the statements recorded by the Investigation Wing from the back of the assessee have no evidentiary value.

9. Ld CIT(A) has observed in his order as under:

“7.4 I have considered the fact of the case and submission filed the appellant A search and seizure operations was conducted at the residential premises of Jain brothers and San Veer Bala Agarwal. Their hank lockers were also seized. From the bank, lockers, huge cash amount was found and seized. Their statements were recorded. The Jain brothers stated that the recovered amount of Rs. 8.5 cr. was received "on money for sale of the property as the deal was for Rs. 16.5 cr. The Jain brothers specifically stated that out of 16.5 cr.. Rs. 8 crore were declared in the sale-deed and remaining amount of Rs. 8.5 cr. was received in cash. Similarly. Sh. Veer Bala Agarwal, in her statement stated that total consideration was Rs. 2.25 cr., out of which Rs 45 lacs were shown in the registered sale deed and remaining amount of Rs. 1.80 er. was received in cash from Sh. Sajees Agarwal.

Thereafter, the assessment in this case was made us 143(3) dated 09.07.2007 wherein addition of Rs. 1.80,00,000- was made on account that the property was purchased by the assessee for Rs.2.25.00.000/- and not for Rs.45.00.000/ The appellant filed appeal against the assessment order passed which was decided against the assessee by Ld. CII(A) vide order dated 30.01.2009. Against the appeal order dated 30.01.2009, assessee filed an appeal in Hon'ble tribunal. Hon'ble tribunal vide order dated 22.10.2010 allowed the appeal of assessee and deleted the impugned addition.

Against the order of Hon'ble Tribunal dated 22.10.2010. Revenue went to the High Court Allahabad. The High Court Allahabad vide order dated 25.08.2014 remitted the matter to the Hon'ble Tribunal by making following points/findings which is as under:

“Whether/opportunities to cross-examine the vendors can make any difference specially when assesses will always deny and vendors will endorse their statement. This aspect was not examined either by the Tribunal or by the lower authorities Hence, we set aside the impugned order and restore the matter to the tribunal for fresh adjudication in the light of the above discussion?”

The Hon'ble Tribunal thereafter on remand from Allahabad High Court, vide its order dated 04.04.2019 remitted the matter back to the Ld. AO with the following directions:

“We have heard both the parties and perused all the relevant material available on record We have also gone through the order directions dated 25.08.2014 of the Hon'ble Allahabad High Court. After going through the records especially the statement of Shri Sanjeev Agarwal dated 02 03 2005 in the

very first answer to a question, Shri Sameer Agarwal ner of the assessee, herein above stated that the contents of affidavit statement given by Smt. Veer Bala Agarwal is not correct. Besides that from the order sheet dated 22.06.200 can be seen that the assessee Shri Agarwal wanted to examine cross examine the seller From the perusal of the Assessment Record before as it can be seen that on the note sheet of 02.07.2007 there is no mention as to cross examination of the seller. Thus, there is no opportunity given to the assessee for cross examination of the seller. From the summary of the findings of the Assessing Officer it can be seen thin the total money paid by buyer in cash which was found in the lockers was on the estimated busts. But no verification were done by the Assessing Officer as relates to the slips of the PNB bank found in the locker The Assessing Officer has also not specified particular activities carried out by the vendors for earning income Instead has given a general finding that the vendors were engaged in numerous activities. Besides that no valuation of the property was done by the Assessing Officer to arrive at the proper findings. Thus, it will be appropriate, to remand back these issues to the file of the Assessing Officer for verification as well as allow the assessee to cross examine the sellers. Thus, we are accepting the submissions of the Lal AR to remand back these matters to the file of the Assessing Officer. Needless to say the assessee be given opportunity of hearing by following principles of natural justice.

Thereafter, AO vide order dated 31.03.2021 passed the assessment order, wherein the addition of Rs. 1.80,00,000/- has been made on account of purchase of property.

7.4.1 Hon'ble ITAT vide its order dated 04.04.2019, has clearly directed the assessing officer for verification as well as allowing the

assessee to cross examine the sellers. The assessing officer in his assessment order dated 31.03.2021. has mentioned that in view of direction of Hon ble ITAT. New Delhi summons u/s 131 of the IT Act. 1961 dated 15.03.2021 were issued to Smt. Veer Bala Agarwal. Summons u's 131 of the Act. 1961. were also issued to the assessee and Jain Brothers for appearance on 18.03.2021. Sh Sanjeev Agarwal appeared and none of the other parties including Smt. Veer Bala Agarwal appeared. Thereafter, the assessing officer passed the assessment order and made addition of Rs. 1.80,00,000/-, Thus, the assessing officer has neither made any further verification nor been able to provide cross-examination with Smt. Veer Bala Agarwal. The assessment was completed on the basis of the same facts of material which were already on record. No new facts have been brought by the assessing officer

Further, a remand report was also called by the undersigned and in the remand report furnished by the assessing officer, wherein it has been stated that Sh. Ram Kini Yadav, OS was deputed for serving the summons to Smt. Veer Bala Agarwal. On visiting the address, he found that name of Smt. Veer Bala Agarwal bearing address A-242. GF. New Friends Colony. New Delhi was placed. On enquiry it was found that she had died 4-5 years ago. Further, no family member of Smt. Veer Bala Agarwal was available at that time. The guard has not provided any written document about the death of Smt. Veer Bala Agarwal.

7.4.2 In the order dated 22.10.2010, the Hon'ble ITAT Delhi 'G Bench' has held that

“28.... The only addition factor in the present appeal is the availability of agreement-con- receipt on at the premise of vendor. Assessee has duly explained as to how this agreement was not acted

upon. The shelf life of the alleged agreement was of 15 days otherwise it was stated to be stand cancelled. As per the facts emerging out from the record the sale deed was neither executed within 15 days from the alleged agreement nor the payment was made. It itself indicates that the agreement was not acted upon. A note exhibiting the cancellation of the agreement was found at the premises of Smt. Veer Bala Agarwal I was signed by Sh. D.C Aggarwal, husband of Smt. Veer Bala Agarwal. The Ld. Revenue Authorities did not give weightage to this document on the ground that it was not under the signature of Smt. Veer Bala Agarwal. In our opinion, this document may not give rise to any executable right but for deciding the genuineness as well as whether assessee and Smt. Veer Bala Agarwal had acted upon the alleged agreement dated 03.04.2004 availability of this document exhibiting cancellation of earlier agreement is a corroborative piece of evidence." Accordingly, the Hon'ble IT AT has allowed the appeal of the assessee

7.4.3 The Hon'ble ITAT vide its order dated 04.04.2019 in the appellant's case has observed that (1) the AO has not provided the opportunity to the assessee for cross-examination of the seller, (ii) the total money paid by buyers in cash which was found in the lockers was on the estimated basis and no verification were done by the AO as relates to the slips of the PNB Bank found in the locker, (iii) the AO not specified particular activities carried out by the vendors for earning income, and (iv) no valuation of property was done by the AO to arrive at the proper findings Accordingly, the Hon'ble ITAT has considered to appropriate to remand back these issues to the file of the Assessing Officer for verification as well as allow the assessed to cross-examine the sellers.

7.4.4 In view of the above discussion following facts emerges:

- i. As per the statement given by Smt. Veer Bala Agarwal she had received cash of Rs. 1,80.00,000-from the appellant against the sale of property.
- ii. An agreement to sale was seized during search on Smt Veer Bala Agarwal and shelf life of the alleged agreement was of 15 days otherwise it was stated to be stand cancelled. The actual sale agreement was executed after the expiry of the said agreement
- iii. Another document was also seized during search stating the cancelation of the said agreement in view of some ongoing legal dispute related to the property which was signed by Sh. DC Aggarwal, husband of the seller
- iv. The appellant also submitted details of the ongoing dispute and the related document with respect to the property under consideration.
- v. The addition was made just on the basis of the statement of the seller and the alleged agreement found during search which was cancelled.
- vi. No cross-examination opportunity was made available to the appellant.
- vii. Further, no verification was done by the AO as directed by the Hon'ble HAI its order dated 04.04.2019 (para 7.4.3 above).

7.4.5 In view of the above facts and findings, it is observed that despite specific direction from Hon'ble HAT the assessing officer has failed to allow cross examine to the appellant with the vendor and neither any inquiry conducted with respect to the bank clips

found from the locker of the seller, nor with respect to nature of business of Smt. Veet Bala Agarwal, nor with respect to valuation of the property to find out the market rate of the property under consideration. Therefore, in absence of proper verification and cross examination of the vendor and respectfully following the findings of the Hon'ble ITAT, it is held that the addition made by the assessing officer is not justified. Hence, the same is directed to be deleted and the appeal filed by the appellant on these grounds is allowed.”

10. Perusal of the order of the AO, reveals that the AO has made the addition on the circumstantial evidences without complying the order of the Hon'ble High court and tribunal. In the compliance of the order of the Hon'ble High Court, the AO has issued the notice to Smt Veer Bala Agarwal for the cross examination but vendor did not appear for cross-examination. Without complying the Hon'ble High order, the AO has noted that the assessee did not the press the application. The assessing officer has not conducted the enquiry with respect to the bank slip found from the locker of the vendor. Ld CIT(A) has examined the issues in correct prospective and rightly deleted the additions towards un explained income u/s 69 of the Act in the absence of the proper verification and cross examination from the vendor.

11. The reasoning and findings of the Ld CIT(A), while granting relief to the assessee is on proper appreciation of law expounded by the judicial dicta. We do not find any infirmity

with the findings of the Ld CIT(A). The appeal of the revenue is liable to be dismissed.

12. In the result the appeal of the Revenue is dismissed.

Order pronounced in the open court on 11.12.2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

Mohan Lal
Dated: 11.12.2024

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(Appeals)
- 5.DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI