

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 1850/Del/2023
(Assessment Year : 2011-12)

The Abhinandan Co-operative Group Housing Society Limited Plot No.GH-8, Sector – 51, Gurgaon, Haryana – 18 PAN : AABAT 5987 D (Appellant)	Vs.	Income Tax Office Ward – 4(4) Gurgaon (Respondent)
---	-----	--

Assessee by	Shri Suraj Bhan Nain, Adv. and Shri Mahfuzur Rehman, C.A.
Respondent by	Shri Amit Katoch, Sr. D.R.

Date of Hearing	09.10.2024
Date of Pronouncement	18.12.2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by assessee is against the order dated 24.05.2023 of Learned Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of assessment order dated 17.12.2018 of the Income Tax Department, Gurgaon (hereinafter referred as 'Ld. AO') under section 143(3)/147 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2011-12.

2. Brief facts of the case are that as per the information, the assessee had not filed any return of income for the year 2011-12 and made cash deposits of Rs.66,38,450/- maintained with Indian Overseas Bank and Gurgaon Central Co-op Bank. By recording reasons, the case was reopened after obtaining the necessary approval from PCIT, Gurgaon vide letter No.F.N.CIT/GGN/TECH/2017-18/7185. Notice under section 148 of the Act was issued on 22.03.2018. In response to notice, assessee submitted reply on 22.10.2018 and furnished ITR for the year 2011-12 on 20.04.2018 declaring income at Rs.1,81,140/- from other sources in response to notice under section 148 of the Act and requested reasons for reopening under section 148 of the Act. Reasons for reopening the case and notice under section 142 was sent on 20.11.2018. Assessee filed reply and furnished the list of members from whom assessee society received cash amounting to Rs.66,38,450/-. Show-cause notice dated 10.12.2018 was issued. Assessee did not submit any reply and on completion of proceedings, addition of Rs.66,38,450/- was made vide order dated 17.12.2018 by learned AO.

3. Aggrieved by the order of learned AO, assessee/appellant preferred appeal before the CIT(A) which was partly allowed.

4. Being aggrieved, appellant/assessee preferred present appeal.

5. Learned Authorized Representative for the assessee/appellant submitted that ground no.1.1 is not pressed by the assessee.

6. Learned Authorized Representative for the assessee/appellant submitted that learned Assessing Officer erred in initiating the re-assessment proceedings under section 147 of the Act without complying with mandatory statutory requirements of sections 147 to 151 of the Act, more so when jurisdiction was not assumed as per law.

7. Learned Authorized Representative for the assessee/appellant submitted that the learned Commissioner of Income Tax (Appeals) has erred in confirming the addition under section 69A of the Act to the extent of Rs.32,00,000/- made by the learned Assessing Officer on account of cash received from the members of the appellant society without properly appreciating facts of the case.

8. Learned Authorized Representative for the assessee/appellant submitted that the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the addition of Rs. 5,00,000/- on account of contribution by the member Shri Ram Lal Gupta on the ground that his name was not there in the list of members of the Society, whereas he was in fact a member of the society at that time.

9. Learned Authorized Representative for the assessee/appellant submitted that the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in confirming the additions of Rs. 22,00,000/- paid by Sh. Ashish Doon and Rs. 5,00,000/- paid by Sh. Karan Singh by partially rejecting their affidavits, without a proper rebuttal of their affidavits as they were not cross-examined with reference to their affidavits.

10. Learned Authorized Representative for the assessee/appellant submitted that the learned Commissioner of Income Tax (Appeals) has deleted the addition made by the learned Assessing Officer of Rs.14,64,000/- on account of cash contributed by Sh. Ashish Doon accepting the explanation of the assessee but erred both in law and on facts in making further new addition of Rs.22,00,000/- on account of the balance cash contributed by Sh. Ashish Doon, without giving any specific notice and opportunity to the appellant.

11. Learned Authorized Representative for the assessee/appellant submitted that the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in upholding the addition under section 69A of the Act to the extent of Rs. 32,00,000/- ignoring the fact that no addition can be made in the hands of the society on account of the contribution made by its members for construction of flats for and on their behalf, when such amounts had been duly reflected in the ledger accounts of the concerned members in the books of account maintained by the society and confirmed by the

members, and if any action is warranted, it should be taken against the members who made payment to the society.

12. Learned Departmental Representative for the Department of Revenue submitted that learned AO and learned CIT(A) have passed reasoned orders.

13. From examination of record in light of aforesaid rival contentions, it is crystal clear that appellant/assessee is a Co-operative Group Housing Society registered under “The Haryana Co-operative Societies Act, 1984” and incorporated on 22.05.2003 with the main objective to acquire land and construction of residential flats. Learned CIT(A) confirmed the addition under section 69A of the Act to the extent of Rs.32,00,000/- on account of cash received from the members of the society out of the addition of Rs.66,38,450/- made by the learned AO. The assessee had 44 members. Learned CIT(A) had not accepted explanation regarding deposit of Rs.30,00,000/-. The amount deposited out of cash received from following persons :

i.	Shri Ram Lal Gupta :	Rs.5,00,000/-
ii.	Shri Ashish Doon :	Rs.20,00,000/-
iii.	<u>Shri Karan Singh</u> :	<u>Rs.5,00,000/-</u>
	Total :	Rs.32,00,000/-

13.1 **Regarding Shri Ram Lal Gupta : Rs.5,00,000/-**

Sh. Ram Lal Gupta was a member of the society and was contributing funds to the society for his flat. Copies of his

ledger account in the books of the assessee society are enclosed (PB-Pages 37 to 41). He has contributed total amount of Rs. 28,51,000/- during F.Y. 2010-11 consisting of Rs.5,00,000/- in cash on 08.04.2010 vide receipt no. 453 and Rs. 23,51,000/- through cheques. His name was appearing at S. No. 23 in the list of members as on 31.03.2011 duly verified by Sub- Inspector (Audit), Cooperative Societies, Gurgaon (PB-Page-18). Subsequently he has resigned from the membership in favour of Sh. Kiran Garg on 11.07.2011 (PB-Page-28) as verified by Inspector (Audit) Cooperative Societies, Gurgaon. His total contributions of Rs. 37,98,850/- were refunded to him vide cheque no. 300845 on 23.07.2011 duly debited in the bank account of the assessee society (PB-Pages-41 and 77). Since he was an old man and left the membership of the society, the assessee could not furnish confirmation from him despite best efforts made by the society.

The Ld. CIT(A) has not accepted the source of this cash contribution of Rs. 5,00,000/- by Sh. Ram Lal Gupta observing that "the ROI for AY 2011-12 was checked wherein under PARTNERS/MEMBERS INFORMATION in row/Sr. No. B. Particulars of persons who were partners/members in the firm/AOP/BOI on 31st day of March 2011- the name of Sri Ram Lal Gupta is not there. In this regard, it is submitted that there was typographical error as at Sr. No. 36 the name of Sh. Ram Lal Gupta was by mistake written as 'RAMAN LAL GUPTA. It may be due to reason that just above at Sr. No. 35, the name of member was 'RAMAN GARG'

In totality of facts and surrounding circumstances, it is abundantly clear that Sh. Ram Lal Gupta had contributed Rs. 5,00,000/- to the society towards cost of his flat on 08.04.2010. The assessee society had refunded the total contribution to him including amount of cash contributed by

him. So the addition of Rs. 5,00,000/- of cash contributed by the then member Sh. Ram Lal Gupta deserves to be deleted.

13.2 Regarding Shri Ashish Doon : Rs.22,00,000/-

Sh. Ashish Doon is a member of the society and had been contributing funds to the society for his flat. Copies of his ledger accounts in the books of the assessee society are enclosed (PB-Pages-53 to 57). He has contributed total amount of Rs. 41,64,000/- during F.Y. 2010-11 consisting of Rs. 36,64,000/- in cash and Rs. 5,00,000/- through cheque. His name was duly appearing at S. No. 6 in the list of members as on 31.03.2011 duly verified by Sub-inspector (Audit), Cooperative Societies, Gurgaon (PB-Page-18). Sh. Ashish Doon has also furnished an affidavit (PB- Pages 51 & 52) for contribution of total cash of Rs.36,64,000/- during FY 2010-11 for his flat against which society has issued receipts. As can be seen from his ledger accounts, he had contributed total amount of Rs. 50,26,400/- for his flat up to the F.Y. 2012-13. Conveyance Deed of the flat was registered in his favour on 18.07.2014 (PB-Pages 58 to 66) for a consideration of the same amount i.e.

Cost of land	:	Rs. 12.94 lacs
Cost of construction	:	<u>Rs. 37.32 Lacs</u>
Total	:	<u>Rs. 50.26 Lacs</u>

Thus, the cash of Rs. 36,64,000/- was received from Sh. Ashish Doon during the FY 2010-11 for his flat which has been confirmed by him in his affidavit.

The Ld. CIT(A) has accepted the source of Rs. 14,64,000/- only as received from Sh. Ashish Doon as against cash of Rs.36,64,000/- contributed by him observing that in earlier

submission during assessment proceedings the assessee filed details that Sh. Ashish Doon had given Rs. 14,64,000/- only, whereas the revised confirmation was filed for Rs. 36,64,000/- and that reasons for revision of affidavit were not given and why the amounts have differed from the beginning submission to the end reply was not provided.

During assessment proceedings, the Ld. Assessing Officer was required to explain the source for deposit of cash of Rs. 66,38,450/- and the Accountant of the society, who was not well conversant with income tax provisions, prepared the list of contributions by members to the extent of Rs. 66,38,450/-, which included cash received from Sh. Ashish Doon to the extent of Rs. 14,64,000/- only. Accordingly, initial confirmation was obtained from him for Rs. 14,64,000/- only. But during appellate proceedings, when the assessee society engaged a CA for representing its case, on examination of bank statements it was noticed that the total cash deposits in bank accounts were Rs. 88,88,450/- as against Rs. 66,38,450/- stated by the Ld. Assessing Officer. During appellate proceedings before Ld. CIT(A), the assessee has filed an explanation of total cash received and deposited in bank accounts. Sh. Ashish Doon has contributed a total amount of Rs. 41,64,000/- during the year consisting of Rs. 36,64,000/- in cash and Rs. 5,00,000/- by cheque. Therefore, he has furnished a revised affidavit confirming payment of Rs. 36,64,000/- in cash during FY 2010-11.

Ld. CIT(A) was not justified in partially rejecting the affidavit of Sh. Ashish Doon because it is a well settled law that a document has to be read as a whole. It is not permissible to accept a part and ignore the rest of the document. Reliance is placed on Glass Lines Equipments Co. Ltd. v. CIT [2002] 253 ITR 454 (Guj) PB-Pages 89 to 96

Furthermore, an affidavit cannot be rejected in part or whole without cross examination of the deponent with reference to the statement made in the affidavit. In the present case, Ld. CIT(A) has not accepted part of the contents of the affidavit without cross examining Sh. Ashish Doon and hence rejection of explanation of part of the amount of Rs. 22,00,000/- is not tenable in law. Reference: to Mehta Parikh and Co. v. CIT [1966] 30 ITR 181(SC) is important in above context.

Considering the totality of facts and surrounding circumstances, it is abundantly clear that Sh. Ashish Doon had contributed Rs. 36,64,000/- in cash to the society towards cost of his flat during FY 2010-11. Conveyance Deed has also been registered in favour of Sh. Ashish Doon for the flat by the society clearly demonstrating that this amount was received from Sh. Ashish Doon by the assessee society as contribution for construction of his fat. So, the addition of Rs. 22,00,000/- of cash contributed by the member Sh. Ashish Doon is required to be deleted.

13.3 **Regarding Shri Karan Singh : Rs.5,00,000/-**

Sh. Karan Singh was a member of the society and was contributing funds to the society for his flat. He has contributed total cash amount of Rs.11,00,000/- during F.Y. 2010-11 consisting of Rs.5,00,000/- in his account and Rs.6,00,000/- for account of his daughter Nandini for obtaining membership for her. Copies of ledger accounts of his daughter Nandini in the books of the assessee society are enclosed (PB-Pages 43 & 44) and his ledgers are also enclosed (PB-Pages 45 to 50). His name was appearing at Sr. No. 13 in the list of members as on 31.03.2011 duly verified by Sub-Inspector (Audit), Cooperative Societies, Gurgaon (PB-Page-18). Sh. Karan Singh has furnished an affidavit (PB- Page 42)

for contribution of total cash of Rs.11,00,000/- during the FY 2010-11 to the society.

Subsequently, the contribution in the name of Nandini was returned to her by cheque no. 300838 dated 20.05.2011 (PB- Pages 44 & 77). This contribution has been accepted by the Ld. CIT(A).

However, Ld. CIT(A) has not accepted the source of Rs. 5,00,000/- contributed by Sh. Karan Singh in his account.

Sh. Karan Singh has mainly contributed funds towards construction of his flat by cheques as is evident from his ledger accounts in the books of the assessee. He has resigned from the membership in favour of Sh. Yashpal Abrol on 20.11.2011 (PB-Page- 28) as verified by Inspector (Audit), Co-operative Societies, Gurgaon. His net outstanding contribution was refunded to him vide cheque no. 285194 dated 20.09.2012 duly debited in the bank account of the assessee society on 21.09.2012 (PB-Pages-50 and 82) and the balance of Rs. 72,152/- in cash on 30.03.2013.

From above facts, it is abundantly clear that Sh. Karan Singh had contributed Rs. 5,00,000/- to the society towards cost of his flat and Rs. 6,00,000/- for his daughter Nandini. The assessee society had refunded the total contribution to him including amount of cash contributed by him. So the addition of Rs. 5,00,000/- of cash contributed by the then member Sh. Karan Singh is not permissible.

Further, Ld. CIT(A) was not justified in partially rejecting the affidavit of Sh. Karan Singh because it is a well settled law that a document has to be read as a whole.

An affidavit cannot be rejected in part or whole without cross examination of the deponent with reference to the statement made in the affidavit. In the present case, Ld. CIT(A) has not accepted part of the contents of the affidavit without cross examining Sh. Karan Singh and hence rejection of explanation of part of the amount of Rs. 5,00,000/- is not tenable in law.

Considering the totality of facts and surrounding circumstances, it is abundantly clear that Sh. Karan Singh had contributed Rs. 11,00,000/- in cash to the society during FY 2010-11 i.e., Rs. 5,00,000/- towards cost of his flat and Rs. 6,00,000/- for membership of his daughter Nandini. The assessee society had refunded the total contribution to him including amount of cash contributed by him. So the addition of Rs. 5,00,000/- of cash contributed by the then member Sh. Karan Singh is deleted.

14. Learned Counsel for the assessee submitted that as per section 251(1)(a) of the Act, in appeal against an order of assessment, the CIT(A) may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that the Ld. CIT(A) could change the provision of law qua the item of which the assessment was made. Thus, in the absence of such power, Ld. CIT(A) could not have treated the addition made in the assessment order u/s 69A of the Act. Hence, the addition upheld by the Ld. CIT(A) of Rs. 32,00,000/- u/s 69A of the Act is liable to be deleted. Reliance was placed on following two judgments:

- (i) Prashant Pitti vs. ACIT, Central Circle-4, Delhi in ITA No. 3032/Del/2022 for A.Y. 2016-17 order dated 07.02.2024 (ITAT-New Delhi)
- (ii) Toffee Agricultural Farms (P.) Ltd. vs. ITO [2022] 141 taxmann.com 429 (Delhi-Trib.); relevant portion of the same is reproduced as under:

“As per section 250 of the Act, the learned CIT(Appeals) is empowered to make further inquiry as he thinks fit or may direct the Assessing Officer to make further inquiry and report to the learned CIT(Appeals). As per section 251(1)(a), in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power provided by the law that learned CIT(Appeals) could change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, learned CIT(Appeals) could not have treated the addition made u/s 69C as the addition made u/s 69B and the same is contrary to the spirit of the Act, Reliance placed by the learned counsel for the assessee on the judgment of the Hon'ble Delhi high Court, rendered in the case of Aar Pee Apartments (P.) Ltd. (supra), has held that from the reading of sub-section (1) of section 142A, it is clear that legislature referred to the provisions of sections 69, 69A and 69B but specifically excluded 69C. The principle of casus omissus becomes applicable in a situation like this. What is not included by legislature and rather specifically excluded, cannot be interpreted by the Court through the process of interpretation. The only remedy is to amend the provision. It is not the function of the Court to legislate or to plug the loopholes in the law. In the light of the above binding precedent the action of the learned CIT(Appeals) in treating the addition made by the Assessing Officer u/s 69C as have been made u/s 69B is contrary to the law laid down by the Hon'ble Jurisdictional High Court. 1, therefore, respectfully following the decision of the Hon'ble Jurisdictional High Court in the case of Aar Pee Apartments (P.) Ltd. (supra), the impugned order is therefore set aside. The addition made u/s 69C on the basis of the report of the

DVO by the Assessing Officer deserves to be deleted. Hence, impugned addition is hereby deleted. Grounds of appeal taken by the assessee are allowed accordingly.”

15. In view of the above material facts and well settled principle of law, the confirmation of Rs.32,00,000/- by CIT(A) is set aside. Therefore, ground no.1 is dismissed as not pressed. Since, relief is granted on merits, ground no.2 challenging validity of reopening under section 147 of the Act need not be adjudicated and is left open. Ground nos. 3 to 7 are allowed.

16. In the result, appeal filed by the assessee is partly allowed.

Order pronounced on this day 18th December, 2024

**Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 18.12.2024

Priti Yadav, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI