

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.132 /Nag./2021
(Assessment Year : 2014-15)

Madhusudan Marotrao Mude
Plot no.43, Uday Nagar
Ring Road, Nagpur 440 024
PAN – ABUPM4137B

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Central Circle-1(2), Nagpur

..... Respondent

ITA no. 137/Nag./2021
(Assessment Year : 2016-17)

Asstt. Commissioner of Income Tax
Central Circle-1(2), Nagpur

..... Appellant

v/s

Madhusudan Marotrao Mude
Plot no.43, Uday Nagar
Ring Road, Nagpur 440 024
PAN – ABUPM4137B

..... Respondent

Assessee by : None
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 27/01/2024

Date of Order – 29/01/2025

ORDER

PER K.M. ROY, A.M.

These cross appeals are emanating from the impugned common orders of even date 23/08/2021, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15 and 2016-17.

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

Whether in the law and fact the process of search carried out under section 132 is a valid search.

2. Whether the Ld. CIT(A) is justified in sustaining additions to the tune of Rs. 21,25,000/- out of total addition of Rs. 42,50,000/-unexplained expenditure under Sec 69C of the Income Tax Act, 1961 failing to appreciate documentary evidences placed on record.

3. Whether the Ld. AO was justified in making addition without mentioning the relevant section under which the addition is proposed.

4. The appellant craves to add, amend, and abandon any ground at the time of hearing."

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

"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 18,00,000 made by AO on account of unexplained investment in purchase of property.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,48,00,000/- made by AO on account of unexplained cash.

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 7,15,518/ made by AO on account of unexplained investment in jewellery.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in appreciating the fact that the assessee has retracted his admission of undisclosed income during the course of assessment proceedings by filing an affidavit dated 12/12/2017, which is 27 months from the date of search (06/08/2015). Mere filing of an affidavit without sufficient basis does not amount to retraction. Various courts have laid down the governing principles on the issue of retraction. Particularly, when the burdon to prove the genuineness of retraction of the assessee with supporting evidences.

5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering the case laws discussed in the assessment order and remand report dated 14/07/2021 (Dr. S.C. Gupta Vs. CIT(2001) 248 ITR 782 (All H.C.)), (CIT Vs. O. Abdul Razak [2012] 20 taxmann.com 48 (Ker)), (PCIT Vs. Roshan Lal Sancheti (ITA No. 47/2018)) and {Video Master Vs. JCIT (2002) 83 ITD 102 (Mum)}.

6. Whether on the facts and circumstances of the case and in law, the Ld.C(T(A) erred in appreciating the fact that the assessee during the course of

search proceedings has voluntarily declared the following undisclosed income u/s. 132(4):

During the year under consideration, the assessee has earned income from salary and income from other sources i.e. interest from Bank account and other income. During the course of search in the case of the assessee on 06/08/2015, incriminating documents were seized which included a diary, various loose papers, sale purchase agreement of immovable property. On being confronted with these documents and asked to explain the source of funds for the expenditure incurred, purchase of property and reconcile the same with the books of accounts, the assessee was not able to do so and disclosed income from undisclosed sources for the year under consideration had not been offered for tax earlier as under :-

F.Y.	A.Y.	Amount (₹)	Issue	Reference
2015-16	2016-17	18,00,000	Unexplained investment in purchase of property	Page-71 to 58 of Annexure B-1/7
2015-16	2016-17	1,48,00,000	Unexplained cash found and seized during the course of search	N.A.
2015-16	2016-17	7,15,518	Unexplained investment in jewellery of 314.04 grams	N.A.

7. Whether on the facts and circumstances of the case and in law, the Ld.C(T(A) erred in not appreciating the fact that assessee could not satisfactorily explained with supporting evidence to prove the nature and source of unexplained investment of Rs. 18,00,000/- particularly as the assessee's return of income his bank book etc. does reflect the accumulated saving of Rs. 15 lacs and mere holding of agricultural land without producing the supporting documents like 7/12 extracts, crops raised, yield per year etc. does not prove that assessee have agricultural income of Rs. 3,00,000/-

8. Whether on the facts and circumstances of the case and in law, the Ld.C(T(A) erred in not appreciating the fact that as per the impounded material i.e. diary for F.Y. 2015-16 relevant to A.Y. 2016-17, from the school premises, it is seen that the gross receipts (gross fee collected on) is only Rs. 47,53,810/- out of which certain expenses have been incurred by assessee. Therefore, unexplained money of Rs. 1,48,00,000/- found at the residence of the assessee not proved with supporting documents. Further, the details of students as per the proforma called for u/s. 142(1) dated 03/11/2017 not furnished with supporting documents even during the course of appellate proceedings.

9. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not appreciating the fact that the nature and source of

value of jewellery of Rs. 7,15,518/- (314.04 gms) as on date of search could not be substantiated with supporting evidences.

2. At the outset, it is apparent from Form no.36, that the tax effect on the amount disputed by the Revenue is below the revised monetary limit of ₹ 60 lakh applicable to appeals before the Tribunal (being ₹ 59,01,047), as per CBDT Circular no.09 of 2024, dated 17/09/2024. The Bench invited a response from the learned Departmental Representative as to the maintainability of the appeal before us.

3. The learned Departmental Representative agreed that the tax effect on the amount disputed by the Revenue is below the monetary limit of ₹ 60 lakh for both the years under consideration.

4. Having heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below, we are of the view that the tax effect on the amount disputed by the Revenue in the present appeals are below the revised monetary limit of ₹ 60 lakh as per CBDT Circular cited supra. It also stands clarified by the CBDT that the revised monetary limit of ₹ 60 lakh, as per the aforesaid CBDT Circulars, would also apply to all pending appeals. In view of the aforesaid, Revenue's appeals deserve to be dismissed. However, the Revenue is given liberty to seek recall of this consolidated order if, at a later point of time, it is found that the appeal fall under any of the exceptions provided in the CBDT Circular referred to above.

5. In the result, appeal filed by the Revenue is dismissed.
6. As regards the appeal of the assessee, the operating portion of the impugned order passed by the learned CIT(A) vide Para-8.4 is reproduced below:-

"8.4 The ground of appeal no. 9 is that the AO has made a mistake in making an addition of Rs 42.50 Lakhs on account of unexplained investment. The AO has discussed this addition at para no. 8 of the assessment order, wherein he has discussed that pages 148 to 152 of annexure M-10/B-1/7 show that the appellant has purchased an immovable property being land at K.H. No.69, Mauza Dhamana, Ward no. 15, Nagpur, for a consideration of Rs 42.50 Lakhs which was paid in cash.

During the assessment proceedings, the AO asked the appellant to explain the source of the investment. The appellant's AR filed his reply but the AO was not satisfied with the same and therefore the AO made an addition of Rs 42.50 Lakhs on account of unexplained investment.

The AO has made the addition on the basis of an agreement of sale dated 24.05.2013 wherein it is mentioned that the appellant and his wife are agreeing to purchase agricultural land admeasuring 2.34 hectares at Mauza Dhamana, Nagpur, from Jijabai Yelane and Narayan Krishna Yelane for a consideration of Rs 65 Lakhs. The AR has stated that the agreement dated 24.05.2013 was later revised on 20.12.2013 for Rs 38 Lakhs. The AR has also stated that the said land was eventually registered on 13.03.2014 in the name of Manisha Shiksha Prasarak Mandal (PAN AADTM6319B) and the appellant and his wife had signed the agreements and sale deed only as the office bearers of the Society. The AR further stated that this land is currently used as school premises and that the purchase of the said property is from Society funds and that the said land is recorded in the books of the Society. The AR has filed documentary evidence in support of her contention.

In the remand report dated 12.07.2021, the AO has stated that the dates of payment and amounts paid as per the agreement dated 24.05.2013 and the sale deed dated 13.03.2014 do not match. The AO has pointed out that payments of amounts are not accounted for properly and appellant has not explained the source of the payments made earlier as mentioned in the original agreement to sell.

I have carefully considered the written submissions of the appellant's AR, the remand report, the assessment order and also the original agreement to sell and other related documents filed by AR. In my considered opinion, the AO is correct in her observation that the original agreement to sell dated 24.05.2013 clearly mentions that the appellant and his wife have paid Rs 32.50 Lakhs on 24.05.2013 and then Rs 10 Lakhs on 06.01.2014. The fact regarding payment of Rs 10 Lakhs is written in handwriting in bottom left corner of page 4 of this agreement. On the other hand, the purchase deed dated 13.03.2014 states

that only Rs 23 lakhs in cash was paid on 24.05.2013 and the balance Rs 15 Lakhs was paid by cheque dated 13.03.2014.

Another notable thing is that the first agreement dated 24.05.2013 does not mention Manisha Shiksha Prasarak Sansthan as the purchaser and it is the appellant and his wife who are mentioned as purchasers. Whereas in the sale deed dated 13.03.2014, the society Manisha Shiksha Prasarak Mandal is clearly mentioned as the purchaser and appellant's wife Smt Satyasheela Mude, is signing the document as office bearer of the Society. It is also clearly noticed when the two documents are compared that although the size of the agricultural land and the khasra number are the same, the description of the land in question in the two documents are different. This is obvious from the following table:

A.Y.	Agricultural Land (Acres)	Agricultural Income (₹)	Total Income (₹)
2010-11	3.71	2,23,100	3,01,800
2011-12	3.71	1,85,488	3,48,110
2012-13	11.25	1,37,387	4,03,380
2013-14	11.25	74,284	5,65,840
2014-15	15.28	2,73,700	6,01,790
2015-16	15.28	10,00,000	6,50,000
2016-17	15.28	12,50,000	7,51,830

In the reply filed by the AR to the remand report, it is stated that the AO's argument that appellant has paid Rs 42.50 Lakhs is without any basis and is based merely on conjectures. The AR has also stated that Smt. Jijaba Yelane has submitted an affidavit stating that she had initially received Rs 32.50 Lakhs on 24.05.2013 but returned Rs 9.50 Lakhs to the appellant when the terms of the transaction were revised. It is also stated by AR that assessment of appellant's wife Smt. Satyasheela Mude was completed u/s 153C r.w. 143(3) and no addition was made by the AO on this issue.

I have carefully considered the arguments of the AR, the remand report submitted by the AO, the documentary evidence seized during the search operation as well as the documentary evidence filed by AR in support of the appellant. There is no doubt in my mind that appellant and his wife paid an amount of Rs 42.50 Lakhs, including Rs 32.50 Lakhs paid on 24.05.2013 and Rs 10 Lakhs paid on 06.01.2014 to Smt Jijabai Yelane and Sri Narayan Kisan Yelane. The obvious conclusion drawn from these facts is that the appellant and his wife intended to purchase a piece of land admeasuring 2.34 hectares from Shri and Smt Yelane and paid them Rs 42.50 Lakhs for the same. The description of the land they wanted to purchase from Shri and Smt. Yelane is also different from the land which Manisha Shiksha Prasarak Mandal purchased although the size and Mauza & Tehsil are same. The appellant's AR has failed to explain the source of the cash payment of Rs 42.50 Lakhs made by appellant and his wife to Shri Jijabai Yelane and Shri Narayan Kishan Yelane. The AR has also made the contention that no adverse view was taken by the AO on this issue in the assessment done u/s 153C rw 143(3) in the

case of appellant's wife, Smt Satyasheela Mude. Although it may indicate a contradictory stand taken by the AO, but it does not bind me into accepting the AR's contention while deciding this ground of appeal.

Thus, the above discussion indicates that it is an undisputed fact that appellant and his wife have paid a sum of Rs 42,50,000/- to Smt. Jijabai Yelane and Shri Narayan Kishan Yelane, which remains unexplained. Since this payment was done by both appellant and his wife and both are filing separate income tax returns it is held that one-half of the above mentioned payment, i.e. Rs 21,25,000/- is appellant's unexplained expenditure u/s 69C. The addition of Rs 42,50,000/-made by the AO is thus reduced to Rs 21,25,000/-. Hence, this ground of appeal is 'partly allowed'.

7. There was no representation from side of the assessee. The matter has appeared on list on 17 occasions. There is no contrary evidence to dislodge the impregnable findings of the learned CIT(A) and as a result of which the grounds raised by the assessee are liable to be dismissed.

8. In the result, appeal filed by the assessee is dismissed.

9. To sum up, Revenue's appeal as well as assessee's appeal are dismissed.

Order pronounced in the Court on 29/01/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 29/01/2025

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