

आयकर अपीलिय अधिकरण  
दिल्ली पीठ "डी", दिल्ली  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री नवीन चंद्र, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", DELHI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI NAVEEN CHANDRA, ACCOUNTANT MEMBER

आसं.2515/दिल्ली/2024 (नि.व. 2016-17)  
ITA No.2515/DEL/2024 (A.Y.2016-17)

Vibhuti Bhargava,  
202, Anarkali Complex,  
Jhandewalan Extn. New Delhi 110055  
PAN: AAPPV-1204-J

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Commissioner of Income Tax,  
Circle International Taxation 1(1)(2),  
Delhi 110002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Kalpesh Shah, Chartered Accountant  
प्रतिवादीद्वारा/ Respondent by : Shri Vijay B Vasanta, CIT-DR &  
Shri Ashish Tripathi, Sr. DR

सुनवाई की तिथि/ Date of hearing : 14/02/2025  
घोषणा की तिथि/ Date of pronouncement: : 21/02/2025

आदेश/ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the assessment order dated 27.03.2024 passed u/s. 147 r.w.s 144 of the Income Tax Act, 1961(hereinafter referred to as 'the Act'), for assessment year 2016-17.

2. Shri Kalpesh Shah, appearing on behalf of the assessee submits that the assessee is a non resident. The assessee has no source of income in India. A search & seizure action u/s. 132 of the Act was carried out in the case of Navratna Group

on 11.04.2017. The Navratna Group is engaged in development of various real estate projects. During the course of search a laptop was seized from one Murlidhar M Trivedi. On examination on the same one excel sheet was found. As per the excel sheet various details of real estate project Kalhaar Blues & Greens (KBG) was found. The details included, unit number, area of the unit, sale price of land, construction cost, amount received from purchaser, etc. It is alleged that details of on-money received on sale of units at KBG was also found. The assessee purchased a unit at KBG in joint name with Shri Mukul Shankar Bhargava. According to the Assessing Officer (AO), the assessee paid on-money amounting to Rs.9,06,000/- i.e. the difference between actual price of villa(Rs.1,15,14,000/-) minus registered value (Rs.1,06,08,000/-) of property. The stand of the assessee is that the assessee has not paid any on-money. The assessee had booked property in Financial Year 2009-10 relevant to the assessment year 2010-11 and property was registered in Financial Year 2015-16 relevant to the impugned assessment year. The details of payment made by the assessee were furnished before the AO. The entire consideration for purchase of property was funded from remittances from Singapore through banking channel and loan from HDFC Bank. The details of payments made spread over the period starting from 02.05.2009 to 18.03.2016 are given by the AO at page no. 10 & 11 of the Final Assessment Order. He submitted that the assessee has no source of income in India therefore payment of on-money cannot be attributed on the assessee. The assessee has remitted funds from Singapore through bank to make payment for agreed consideration. The assessee placed reliance on the decision of Tribunal in *ITA No. 53/Mum/2020 for AY 2014-15 in the case of Vijaykumar Kanaiyalal Matta vs ITO* to contend that the provisions of

section 69 of the Act get triggered if on money is paid from source of income in India.

2.1. In respect of ground no. 4 of appeal relating to addition of Rs.5,20,000/-, the Id. Counsel for the assessee submits that AO had made aforesaid addition in the final assessment order on directions of the Dispute Resolution Panel (DRP). He pointed that in the draft assessment order, the AO had not made any such addition, therefore, no objection was raised by the assessee against said addition. Since Rs.5,20,000/- was not a subject matter of dispute before the DRP, the aforesaid payment could not have been considered by the DRP for enhancement.

2.2. The Id. Counsel for the assessee stated at Bar that he is not pressing ground no. 1 of appeal challenging validity of notice issued u/s. 148 of the Act.

3. Per contra, Shri Vijay B Vasanta representing the department vehemently defended the impugned order and directions of the DRP. The Id. DR submitted that the assessee has taken fresh arguments before the Tribunal. In proceedings before the AO and the DRP, the consistent stand of the assessee was that Rs.9,06,000/- was not paid by the assessee during the impugned assessment year. The case of the assessee before lower authorities was that the details pertain to different assessment years. Consequent to directions of the DRP, the assessee was to provide details as to when Rs.9,06,000/- was paid by the assessee. No such details were furnished by the assessee to the AO, hence, the AO rightly sustained the addition in final assessment order. In so far as the addition of Rs.5,20,000/- the Id. DR submits that the addition has been made by the AO, in accordance with the directions of the DRP. The assessee failed to substantiate source of payment of Rs.5,20,000/- through its NRO account.

4. We have heard the submissions made by rival sides and have examined the order of authorities below. The assessee in appeal has raised as many as seven grounds. In so far as ground no. 1 assailing validity of proceedings u/s. 148 of the Act, the Id. Counsel for the assessee stated at Bar that he is not pressing this ground. Hence, ground no. 1 of appeal is dismissed as not pressed.

5. Ground no. 2 & 7 of appeal are general in nature, hence, require no separate adjudication.

6. In ground no. 3 of appeal, the assessee has assailed addition of Rs.9,06,000/- on account of alleged payment of on-money by assessee for purchase of residential unit. It is an undisputed fact that the assessee in joint names has purchased a property i.e. unit no. 474 Kalhaara Blues & Greens S No. 267/F, Sanand Virangam Sanand, for a total consideration of Rs.1,15,14,000/-. For purchase of aforesaid property, the assessee had taken a loan of Rs.81,63,000/- from HDFC Bank and the balance amount is transmitted from Singapore. These facts have not been disputed by the Revenue. The allegation of payment of on-money stem from incriminating material found during the course of search in the case of a builder. The AO while alleging payment of on money by the assessee to the builder has taken the difference of actual payment made by the assessee to the builder and the registered value of the property. Holding such difference as on money is bizarre. The assessee has made payment for purchase of property from declared and proved sources. All the payments to the builders have been made either from loan account or through banking channel from foreign remittances. The assessee in order to substantiate source of payment has placed on record bank statement and loan disbursement details. Hence, to make addition of difference between actual

payment and registered value as on money is unwarranted and without any basis, when the entire amount is paid from declared sources through banking channels. The Revenue has not substantiated assessee's any undisclosed source of income in India for payment of alleged on money. Thus, we find merit in ground no. 3 of appeal, hence, addition of Rs.9,06,000/- is directed to be deleted.

7. In ground no. 4 of appeal, the assessee has assailed addition of Rs.5,20,000/-. The aforesaid addition has been made on the basis of directions of the DRP. The DRP while deciding the objections raised by assessee against addition of Rs.9,06,000/- had given following directions to the AO:-

*"46. .... The panel directs the AO to verify the documents placed before the DRP in conjunction with the documents filed in the course of assessment proceedings to*

*(i) Ascertain the residential status of the assessee during the relevant P.Y. on the basis of the period of her stay in India*

*(ii) Ascertain the share of the assessee in the immovable property purchased from the documents placed on record*

*(iii) To ascertain the amount of payments made by the assessee towards purchase of property during the relevant F.Y.*

*(IV) To verify the genuineness of the loan transactions as claimed by the assessee as the substantial source of funds for purchase of immovable property*

*(v) To verify, from the documents placed on record, if the factual claim of the payments made during the year amounting to Rs. 18,77,059/- represents the earnings of the assessee abroad, and the same is linkable (through documentary trail of transaction) to the payments made by the assessee for purchase of the immovable property under consideration*

*(vi) To verify if the assessee's claim, that the alleged cash payment of Rs. 9,06,000/- proposed as a variation to returned on come being unexplained money pertains to a different A.Y., is factually correct."*

8. Section 144C of the Act deals with the reference to Dispute Resolution Panel (DRP). Sub-section (5) to section 144C of the Act mandates the DRP to issue directions on the objections, if any received from the assessee. Sub-section (6) to section 144C list out the items to be considered by the DRP before issuing directions. Sub-section (7) empowers the DRP to make such further enquiries, as it think fit or cause any further enquiry to be made by the Income Tax Authority and report result of the same to it before issuing any directions. As per Sub-section (13), once the DRP issues directions, the AO shall in conformity with the directions, complete the assessment without providing any further opportunity of being heard to the assessee within one month from the end of the month in which such directions are received. The scheme of section 144C does not provide option to the DRP to issue directions to the AO to make further enquiries or verification after DRP directions. Section 144C(7) empowers the DRP to conduct enquiries and verifications on the documents furnished by the assessee during DRP proceedings. The DRP cannot cause the AO to verify documents placed before the DRP before passing the Final Assessment Order. In our considered view, the DRP has gone beyond its jurisdiction in giving such directions to the AO, hence, addition of Rs.5,20,000/- made by the AO in Final Assessment Order is without jurisdiction. Ergo, addition of Rs.5,20,000/- is directed to be deleted. The assessee succeeds on ground of appeal no. 4.

9. Ground no. 5 of appeal is in support of ground no. 3 of appeal, hence, no separate findings are required to be recorded on this ground.

10. In ground no. 6 of appeal, the assessee has assailed initiation of penalty proceedings u/s. 271(1)(c) of the Act. Challenge to penalty proceedings at this stage is premature; hence, ground no. 6 of appeal is dismissed.

11. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced in the open court on Friday the 21<sup>st</sup> day of February, 2025.

Sd/-

(NAVEEN CHANDRA)

लेखाकार सदस्य/ACCOUNTANT MEMBER

दिल्ली/Delhi, दिनांक/Dated 21/02/2025

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**NV/-**

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI