

**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.6/Nag./2024**  
(Assessment Year : 2014-15)

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

..... Appellant

v/s

Shri Yashwant Ajabrao Khodke  
Plot no.194, Tuljai, Suyog Nagar  
Ring Road, Near Narendra Nagar  
Nagpur 440 001 PAN – AKWPK0381Q

..... Respondent

Assessee by : Smt. Veena Agrawal  
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 06/01/2025

Date of Order – 03/03/2025

**ORDER**

**PER V. DURGA RAO, J.M.**

Captioned appeal by the Department is directed against the impugned order dated 09/11/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15.

2. The Revenue has raised following grounds:-

*"1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,17,00,000/- on account of unexplained expenditure u/s 69C of the Act made by the AO which was based on the seized Document No. B/1 seized from residential premises of Shri Roshan Dhore who is a close aid of Shri Sachin Agnihotri (seller of plot), and the said document have the evidentiary value.*

*2. On the fact and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the facts that the addition of Rs. 2,17,00,000/- was made on*

*account of unexplained expenditure u/s 69C of the Act based on the original cash receipts seized from residential premises of Shri Roshan Dhore who is a close aid of Shri Sachin Agnihotri (seller of plot), the receipt signed in original by the seller and it contains the details of property to be sold and amount agreed to be received.*

*3. On the fact and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the facts that the addition of Rs. 2,17,00,000/- was made on account of unexplained expenditure u/s 69C of the Act based on the original cash receipts seized from residential premises of Shri Roshan Dhore who is a close aid of Shri Sachin Agnihotri (seller of plot) and these receipts are supported by the dairy impounded as Annexure B-10 during the survey u/s 133A at the premises of Narayana Education Society in which Shri Sachin Agnihotri (Seller of plot) is a trustee.*

*4. On the fact and in the circumstances of the case, the Ld. CIT(A) has failed to appreciate the facts that during the course of search/survey, loose paper or any incriminating documents hold the high value and the same would be treated as base for making any addition and is sufficient to take it as evidence against the assessee.*

*5. Any other ground that may be raised during the course of appellate proceedings."*

3. The core issue that we need to adjudicate in this Department's appeal is, whether or not the learned CIT(A) was justified in directing the Assessing Officer to delete the addition of ₹ 2,17,00,000, made by the Assessing Officer on account of unexplained expenditure under section 69C of the Income Tax Act, 1961 ("*the Act*").

4. The relevant facts of the case are that, on 03/04/2019, a search and seizure action under section 132 of the Act was conducted at the residential premise of one Shri Roshan Diwakar Dhore, Nagpur. For the year under consideration, on 09/02/2015, the assessee filed its return of income under section 139 of the Act disclosing total income of ₹ 42,17,640. On 18/02/2021, the Department issued notice under section 153C of the Act, which was said to be served upon the assessee requiring filing of its return of income within 30 days of receipt of the said notice dated 18/02/2021. In response to the

said notice dated 18/02/20021, the assessee, on 09/03/2021, filed its return of income under section 153C of the Act, declaring the same amount of income of ₹ 42,17,640, which was declared earlier on 09/02/2015. Further, the Department had also issued several statutory notices requiring the assessee to furnish the information and documents in support of their reply.

5. During the search proceedings at the residential premise of Shri Roshan Dhore, Nagpur, one loose paper bundle exhibited as B-1 which runs into 204 pages, was found and seized. On verification of Page-17 to 37 and Page-38 to 60, it was found by the Department that Shri Yashwant Ajabrao Khodke, the assessee herein, had purchased immovable properties from one Shri Sachin Agnihotri. From Page-38 to 44, the Department further found that there was an agreement of sale of land being Khasra No.72/73, Pande Layout, Khamla, Nagpur, which was executed between Shri Sachin Agnihotri (the seller of the immovable property) and Shri Yashwant Ajabrao Khodke & Ranjana Khodke (the purchasers) showing an amount of ₹ 1,35,00,000, as purchase price of the aforesaid land. The Department further found from Page-45 and 46 of the loose paper Bundle exhibited as Annexure B-1, the original cash receipt dated 11/11/2013, for an amount of ₹ 25,00,000, and original cash receipt dated 15/11/2013, for an amount of ₹ 25,00,000, which were paid by Shri Yashwant Ajabrao Khodke & Ranjana Khodke (wife of the assessee herein) and received by Shri Sachin Agnihotri, in lieu of sale of the said land mentioned on these receipts at ₹ 3,52,00,000. A copy of these receipts are exhibited in the assessment order vide Page-3, passed by the Assessing Officer. However, the said land was sold at ₹ 1,35,00,000, which

shows that a total cash of ₹ 2,17,00,000, was paid by Shri Yashwant Ajabrao Khodke, over and above the sale consideration in accordance with the sale agreement of ₹ 1,35,00,000, against the sale of the said property. On the other hand, the Department has also conducted a survey at the premise of Narayana Education Society, wherein Shri Sachin Agnihotri (the seller of the immovable property) is a trustee, the Department impounded a diary which is exhibited as Annexure B-10, which contains details of sale of the said property to the assessee Shri Yashwant Ajabrao Khodke, mentioned at Page-7, 8 and 13 of the impounded diary, wherein it is mentioned in detail the amount received in cash by Shri Sachin Agnihotri (the seller of the property). Such details also form part of the assessment order passed by the Assessing Officer at Page-5, 6 and 7. These noting in the impounded diary shows that Shri Yashwant Ajabrao Khodke, (the assessee herein) has paid cash as under:-

- i) Token amount of ₹ 25 lakh;*
- ii) Cash amount of ₹ 25 lakh paid; and*
- iii) Cash amount of 25 lakh paid to Shri Sachin Moon.*

6. It is to be noted here that Shri Sachin Moon, is also closely associated with Shri Sachin Agnihotri, and has also entered into various financial transactions on behalf of Shri Sachin Agnihotri, which has been admitted by Shri Sachin Agnihotri, that all the financial transactions were executed in the name of Shri Sachin Moon, on behalf of Shri Sachin Agnihotri. Moreover, on 08/10/2013, ₹ 25 lakh, is received by Shshil Sir, who is also a close associate of Shei Sachin Agnihotri, and also the financial transactions were executed by

him on behalf of Shri Sachin Agnihotri. So, the cash received by Shri Suchil

Sir, on behalf of Shri Sachin Agnihotri, are as follows:–

*₹ 25 lakh cash received on 11/11/2013;  
₹ 25 lakh cash received on 15/11/2013;  
₹ 30 lakh cash received on 29/11/2013 and  
₹ 50 lakh cash received from Shri Yashwant Ajabrao Khodke.*

7. On the basis of the above findings, the Assessing Officer computed in the income of the assessee in following lines:–

*"6. the reply filed by the assessee is general in nature without rebutting the fact that the receipt signed were in original by the seller and it contains the details of property to be sold and amount agreed to be received. Therefore, it cannot be treated as a rough noting and it is clinching evidence in support of the above transaction. Further, the receipts are dated 17.11.2013 which matches with the period of sale of property. The receipts bear the signature of the seller Shri Sachin S Agnihotri acknowledging the cash amount received from Shri Yashwant Khodke and Mrs. Ranjana Khodke. The receipt of cash by the assessee is supported by the diary impounded as Annexure B-10 during the survey u/s 133A at the premises of Narayana Education Society in which Shri Sachin Agnihotri is a trustee.*

*Thus, it is seen that the incriminating documents have been seized/impounded in two different premises which clearly proves the cash payment by the assessee to the seller.*

*The assessee's counsel has pleaded that generally the original receipt is always in the possession of the person who makes the payment and not in the possession of person who receives the payment. He has claimed that in this case the assessee is payer and therefore, the said amount was never paid by the assessee. The submission of the assessee's counsel is not acceptable as these transactions are out of books and generally once the sale deed is registered, these types of documents are returned back to the person who has signed it.*

*On basis of above documents, it is concluded that the above-described plot was agreed to be purchased for Rs.3,52,00,000/- and was finally sold for Rs.1,35,00,000/- thus on money of Rs.2,17,00,000/- paid by Shri Yashwant Khodke to Shri Sachin Agnihotri in the purchase of above plot.*

*7. In view of the above facts, it is concluded that the assessee has paid on money of Rs.2,17,00,000/- on the above transactions and is being treated as unexplained expenditure u/s 69C of the Act and added to the total income of the assessee. The penalty u/s 271(1)(c) of the Act is initiated for concealment of above income.*

8. With the above comments, the total income of the assessee is computed as under: -

Income as per return	₹ 42,17,640
Add: Unexplained expenditure u/s 69C	₹ 2,17,00,000
Total assessed income	₹ 2,59,17,640"

Consequent upon passing of the aforesaid assessment order passed by the Assessing Officer, the assessee being aggrieved carried the matter before the first appellate authority.

8. The learned CIT(A), while passing a detailed order on merits, was of the opinion that the addition made by the Assessing Officer is to be deleted and arrived at the following decision, which is also recorded in the impugned order passed by the learned CIT(A) vide Page-9 to 13:-

*"5. Discussion and decision:*

*The appellant has raised two grounds of appeals out of which Ground No. 2 is general in nature and not adjudicated. Hence this ground of appeal is hereby dismissed.*

*Ground No.1 is regarding the addition of Rs. 2,17,00,000/- on account of unexplained expenditure u/s 69C of the Act. The addition is made on the basis of the document impounded from the search premises of Shri Roshan Dhore.*

*During the search proceedings from the residential premises of Shri Roshan Dhore, who is a close aid of Shri Sachin Agnihotri, an original cash receipt was found was impounded. The impugned receipts were impounded and annexed as Annexure (B-1, page 45 and page 46). As per the receipt, it was written that Mr Sachin Agnihotri has received an earnest money of Rs 25,00,000/- each on two occasions from Shri Yashwant Khodke (appellant) & Smt. Ranjana Khodke (wife of the appellant) in lieu of the agreement to sell an immovable property for Rs 3,52,00,000/-. The Assessing Officer added the difference amount of aforementioned value and the sale deed value as an unexplained expenditure u/s 69C of the Act.*

*During the appellate proceedings, the AR of the appellant made detailed submissions, wherein he pointed out that the impugned document was neither signed by him nor by his wife. He further pointed out that the original cash receipt was found in the premises of the vendor, which implies that the said receipt even though prepared was never issued by the vendor. The appellant also highlighted that there is an apparent contradiction in the receipt and the sale deed. It was pointed out that as per the cash receipt, an amount is*

received from Shri Yashwant Khodke (appellant) and Smt. Ranjana Khodke (wife of appellant), however as per the registered sale deed, only appellant is the purchaser. The AR of the appellant also stated that even Shri Sachin Agnihotri has denied of receiving any such sum. The AR of the appellant further placed reliance on various judicial references.

The entire case of the Assessing Officer is based on the cash receipts found in the premises of Mr Roshan Dhore. On perusal of these receipts, it was observed that these are original cash receipts. As per these cash receipts, Shri Sachin Agnihotri has acknowledged receipts of cash of Rs. 25,00,000/- each on two dates (i.e.) 11.11.2013 & 15.11.2013. It is mentioned on the receipts, that aforementioned amount was received in pursuance to an agreement to sell the immovable property for Rs. 3,25,00,000/-. It is stated that the amount was received from (i) Shri Yashwant Khodke (S/o Ajabrao Khodke) & (ii) Smt. Ranjana Khodke (W/o Shri Yashwant Khodke). The said receipt was signed by Shri Sachin Agnihotri, but was not signed or acknowledged either by Shri Yashwant Khodke or Smt. Ranjana Khodke.

During the appellate proceedings, the AR of the appellant submitted a copy of registered sale deed. As per the registered sale deed, property was purchased only by Shri Yashwant Khodke (appellant) and Smt. Ranjana Khodke was not the party to the transaction. As the cash receipts are apparently contradicting the actual parties in the registered sale deed, the inference drawn by the

Assessing Officer is not tenable. Even otherwise, the cash receipts were neither signed by the appellant, nor it was found in the premises of the appellant. The Assessing Officer also made a reference to the diary of Shri Roshan Dhore, which was seized during the survey proceedings. Even with respect to this diary, again it is a unilateral notings of Shri Roshan Dhore, which are neither backed by any circumstantial evidence nor by any corroborative evidences. Therefore, on the basis of above observations and the judgment of the Hon'ble Supreme Court in the case of CBI v. V.C. Shukla 1998 taxmann.com 2155 (SC) and Common Cause v. UOI, [2017] 77 taxmann.com 245, I am of the considered opinion that the addition made by the Assessing Officer is to be deleted.

In this case, an additional submission is made by the assessee by taking recourse to the CBDT Circular No.19/2019 dated 14.08.2019 wherein the appellant has challenged the validity of the assessment order passed in this case in absence of Document Identification Number.

The appellant reproduced the circular and highlighted the exceptions Carved out in the case where DIN is not generated on the assessment order. The important Para 3 and Para 5 of the circular which states :-

Para 3 states exceptional circumstances where the aforementioned mandatory requirement may not be adhered to, but requires that if a communication which is not in conformity with paragraphs 2 and 3 of the Circular order/communication is to be issued without a DIN, it can be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director General of Income Tax. Further, paragraph 3 requires that if such exceptional circumstances are claimed, the orders/communication issued without a DIN must state this fact in a specific format set out in paragraph 3 of the Circular.

*Para 5 of the said Circular states that The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by:-*

- i. uploading the manual communication on the System.*
- ii. compulsorily generating the DIN on the System;*
- iii. Communicating the DIN so generated to the assessee/any other person as per electronically generated pro-forma available on the System.*

*The appellant pleaded that though the defect of non generation of PIN was regularized within the 15 working days as the date of assessment order is 07.07.2021 and the intimation letter wherein DIN was generated was dated 16.07.2021, the Para 3 of the said Circular was contravened as no specific mention of the approval of the prescribed authority was mentioned in the assessment order and on this count the appellant pleaded to quash the assessment order.*

*The Appellant relied on various judicial precedents like M/s Ashok Commercial Enterprises V/s ACIT Central Circle 2(4) (Mumbai) and Brandix Mauritius Holdings Ltd. (Hon'ble Delhi High Court).*

*In my opinion, as far as the CBDT Circular No.19/2019 dated 14.08.2019 is concerned, the object behind this Circular was to create an audit trail in communications issued without DIN. The said circular is a step in the right direction as there had been various instances where skull duggery had been employed by the Income Tax Authorities and back dated order/notices were being issued with gay abandon. Thus, to curb such instances and in order to maintain a proper audit trail the said circular was notified by the CBDT.*

*After considering the facts and circumstances of the case in hand and the intent of the CBDT behind introducing the said circular, I believe that no mischief has been carried in the present case, even though no DIN is mentioned in assessment order because the Statute had itself allowed a time period of 15 working days for the date the order is passed, wherein the said defect could be regularized.*

*In the present case, the date of assessment order is 07.07.2021 and the date of regularization ie intimation letter specifying the DIN was communicated on 16.07.2021 which is well within the time limit of 15 working days. An audit trail can definitely be established from this and the intent of law is not defeated. Hence, the said plea of the appellant to quash the assessment order for contravening Para 3 of the aforementioned Circular is hereby rejected.*

*Hence this ground of appeal is hereby allowed on merits."*

The assessee being aggrieved by the impugned order passed by the learned CIT(A), is in further appeal before the Tribunal.

9. Before us, the learned Departmental Representative strongly supported the impugned order passed by the Assessing Officer and submitted that the order of the learned CIT(A) be reversed. The learned Departmental Representative submitted that during the search proceeding at the premise of Shri Roshan Dhore, the original receipts were found amounting to ₹ 25,00,000, each dated 11/11/2013 and 15/11/2013. The total consideration on these receipts are mentioned as ₹ 3,52,00,000, and actual sale deed took place at the sale consideration of ₹ 1,35,00,000, and hence, there is total cash of ₹ 2,17,00,000, paid by the assessee over and above the sale consideration.

10. On the other hand, the learned counsel for the assessee submitted that the impugned order passed by the learned CIT(A) be sustained. She furnished a paper book containing all relevant evidences, which she relied upon during the course of hearing. She vehemently argued that the addition cannot be made, as the receipts of ₹ 25,00,000, dated 11/11/2013 and 15/11/2013, found during the search conducted at the residential premise of Shri Roshan Dhore, were never issued to the assessee and there is no signature of the assessee on the receipt. Further, the learned Counsel for the assessee argued that the agreement to sale took place at ₹ 1,35,00,000, which is found at the premise of Shri Roshan Dhore, and the sale deed is also executed at ₹ 1,35,00,000 and, therefore, there is no difference between consideration of sale agreement and sale deed executed. It is the argument of the learned counsel for the assessee that once the property is acquired through a

registered sale deed, it is a conclusive proof for the sale mentioned in the sale deed which is final, unless contrary is proved.

11. The learned Counsel for the assessee further argued that that Shri Sachin Agnihotri, denied receipt of cash in totality. Furthermore, no statement of Shri Sachin Agnihotri, has been provided stating Shri Sachin Moon and Shri Sushil Sir, are close associates of Shri Sachin Agnihotri. No opportunity was granted by the Department to cross-examination Shri Sachin Agnihotri, Shri Sachin Moon and Shri Sushil Sir.

12. The learned Counsel for the assessee further submitted that the loose bundles found during the survey at the premise of Narayana Education Society, bearing Page no.7, 8 and 13 of Annexure B-10 are non-speaking and dumb and even there is no signature of the assessee respondent. It is concocted document which was maintained by the third party. There is no date on many transaction mentioned on the above mentioned Pages. The transaction does not match with books of the assessee respondent. The bank details do not match with the bank details of assessee respondent. The valuation on the impugned loose papers does not match with the valuation of the sale deed so executed. Even the bank transaction does not match.

13. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The Assessing Officer held that the submission of the assessee that the original receipt remains always in the possession of the person who makes the payment and not in possession of the person who receives the payment and thus the

assessee never paid the amount was not acceptable as these transactions are out of books and generally once the sale deed is registered, these types of documents are returned back to the person who has signed it. We decline to accept the observation made by the Assessing Officer in this regard. There is no reason provided by the Assessing Officer behind returning back of the documentary evidences which could establish payment of a sum as huge as ₹ 25,00,000. The addition cannot be made on the whims and fancies without bringing corroborative documentary evidences on the record.

14. We further find that the documents found are from the premise of Shri Roshan Dhore, during search proceeding and from Narayan Education Society during survey proceeding and hence, the presumption under section 132(4A) and under section 292C of the Act, does not stand, as the documents are not found from the possession of the assessee.

15. It is pertinent to mention here that the original receipts are neither signed nor acknowledged by the assessee and were found from third party premises. Thus, the argument of the learned Counsel for the assessee that these receipts were never issued by the assessee finds force. Had it been a case where Shri Sachin Agnihotri, has received these amounts, the said receipts would have been found in the premises of the purchaser of the property i.e., the assessee and not the seller.

16. Further, the diary found at the Narayan Education Society, is also neither maintained by the assessee nor signed and/or acknowledged by the

assessee, which lacks existence of any circumstantial evidence or any corroborative evidences.

17. It is also noteworthy to add here that the sale agreement executed was of ₹ 1,35,00,000. The final sale deed was executed at sale consideration of ₹ 1,35,00,000. Thus, the sale agreement and sale deed are executed for the same consideration. It further invokes our attention to note that once the property is acquired through a registered sale deed and it is a conclusive proof for the sale mentioned in the sale deed which is final unless contrary is proved.

18. Thus, keeping in view the overall facts and circumstances of the case, we are of the considered opinion that the learned Departmental Representative failed to justify the addition made by the Assessing Officer. Mere denial of the transaction by the Revenue does not solve any purpose that too without adducing any corroborative and strong evidence on record to refuse. In the light of the forgoing findings, we find no cogent reason to take a view other than the view taken by the learned CIT(A) in his impugned order, which is hereby upheld. Accordingly, all the grounds raised by the Department are dismissed.

19. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 03/03/2025

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 03/03/2025**

*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