

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.240/Nag./2016
(Assessment Year : 2007-08)

Shri Dharampal Ramkumar Agarwal
290, Satnami Lay Out, Wardhman Nagar
Nagpur 440 008 PAN – ABHPA2471M

..... Appellant

v/s

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

..... Respondent

Assessee by : Shri Sachin V. Luthra
Revenue by : Shri Harshad S. Vengurlekar

Date of Hearing – 14/05/2025

Date of Order – 15/05/2025

ORDER

PER K.M. ROY, A.M.

Captioned appeal by the assessee is emanating from the impugned order dated 26/02/2016, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2007-08.

2. The assessee has raised following grounds:-

"1. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming addition of ₹ 9,61,000, made by the A.O. on account of unexplained investment in land.

2. Any other ground of appeal that may be raised at the time of hearing of the appeal."

3. Facts in Brief:- During the year, the assessee was engaged in the business of coal trading and transportation. The assessee is also a director in a number of Group companies and has shown income derived on account of

salary, rent, interest and other income for the year under consideration. On 16/03/2011, a search and seizure action was conducted in assessee's group cases namely M/s. Shree Agarwal Coal India Pvt. Ltd. including the assessee's residential premises and the directors and family members in the group cases of M/s. Shree Agarwal Coal India Pvt. Ltd. The assessee herein is one of the members of this group. For the year under consideration, on 31/10/2007, the assessee filed its return of income under section 139(1) of the Income Tax Act, 1961 ("*the Act*") disclosing total income of ₹ 23,72,873. The Assessing Officer determined the assessed income of the assessee at ₹ 2,33,74,400. Subsequent to the search and seizure action conducted under section 132 of the Act, on 17/01/2013, statutory notice under section 153A of the Act was issued and was served upon the assessee. During the course of search, books of account and other documents of the assessee were found and seized. The case of the assessee was selected for compulsory scrutiny by the Assessing Officer. On 21/03/2013, the Assessing Officer concluded assessment under section 143(3) r/w section 153A of the Act by making following additions:-

<i>Name of the Assessee</i>	<i>Amount of addition by A.O.</i>	<i>Additions sustained by the CIT(A)</i>
<i>Shree Agarwal Oil Industries Pvt. Ltd. (One of the sister concern of Shri Agarwal Coal Group wherein Shri Dharampal Ramkumar Agarwal, Managing Director, was a signatory</i>	<i>₹ 7,70,000</i>	<i>Out of this addition, the learned CIT(A) confirmed the addition to the extent of ₹ 3,70,000.</i>
<i>Shri Dharampal Ramkumar Agarwal</i>	<i>₹ 83,95,797</i>	<i>Out of this addition of ₹ 83,95,797, the learned CIT(A) confirmed the addition to the extent of ₹ 5,91,000</i>
<i>Total:-</i>	<i>₹ 91,65,797</i>	

The assessee being aggrieved by the issuance of the assessment order so passed by the Assessing Officer carried the matter before the first appellate authority.

4. On appeal, the learned CIT(A) confirmed the assessment order passed by the Assessing Officer sustaining the aforesaid two additions. Consequent upon the issuance of the impugned order passed by the learned CIT(A), the assessee filed further appeal before the Tribunal agitating the aforesaid two additions.

5. Before us, the learned Counsel, Shri Sachin V. Luthra, appearing for the assessee made following arguments in support of his claims:-

"Addition of Rs. 3,70,000: Nine (9) draft agreements on stamp paper in the name of Shree Agarwal Oil Industries Pvt. Ltd. (SAOIPL) were seized during search proceedings. The draft mistakenly mentioned Shri Dharampal Agarwal (MD) as the purchaser instead of the company, although it also identified him as the Director / Authorised Signatory. It may be noted that this was only a draft agreement which was not even signed by the assessee. An advance of Rs. 4,00,000 was paid via cheque during A.Y. 2007-08, recorded as "Advance for Agricultural Land Purchase" in the audited Balance Sheet of SAOIPL, as it was paid by the company. The A.O. alleged that a cash component of Rs. 3,70,000, was paid during the same assessment year as per draft agreements and added it as undisclosed income in the hands of Shri Dharampal Agarwal, even though the stamp paper was in the name of SAOIPL and the advance was given by SAOIPL.

The same cash component of Rs. 3,70,000 was also wrongly added to the income of SAOIPL, which was later deleted by CIT(A), being double addition. This clearly indicates that A.O. was not certain that this addition is to be made in SAOIPL or in assessee's case. The A.O. could not adduce any evidence that cash was actually paid by the assessee. The A.O. did not make any inquiries or confirmation about receipt of alleged cash payments from land sellers.

The assessee clarified that no cash payment was made at the time of the agreement. Only the advance of Rs. 4,00,000/- was paid during A.Y. 2007-08 through banking channels. The transaction was on behalf of the company, where the assessee acted only as an Authorized Signatory for SAOIPL. The unsigned draft agreement erroneously mentioning the MD's name instead of the company's name led to the AO attributing the alleged cash payment to the individual, despite his role as an authorized signatory.

The addition cannot be made on the basis of unsigned draft agreements. Moreover, the AO did not prove that cash was actually paid by the assessee.

Addition of Rs.5,91,000/-: In this case, land advances were paid to five landowners. The cash of Rs.5,91,000/- paid as advance/stamp duty was already recorded in the regular books of accounts of the assessee. The same was reflected in the Audited Balance Sheet of the assessee (Page 28 & Page 41 of paper book). Thus, this was not an undisclosed transaction for the purchase of land. The assessee had explained the advance/stamp duty cash payment along with its source and supporting documents. However, the AO and CIT(A) did not agree with the assessee's explanation and added this amount as it was paid in cash, ignoring the source of cash available with the assessee and the fact that the transaction was already disclosed in the regular books of accounts. The AO did not raise any discrepancy in the books of accounts nor rejected the books of accounts. The AO did not make any inquiry from the landowners. Hence, the addition cannot be sustained when the source of cash payment of Rs. 591000 is explained and already recorded in the regular books of accounts.

6. The learned Departmental Representative, Shri Sandipkumar Salunke, relied on the findings of the learned CIT(A) and supported the addition of ₹ 3,70,000, on the grounds of the seized draft agreements, though unsigned. The learned Departmental Representative further asserted that the addition of ₹ 5,91,000, was justified as cash payments were made, despite being recorded in the assessee's books of accounts.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We have also gone through the impugned order passed by the learned CIT(A) thoroughly. We find that learned Counsel for the parties, we find that the addition of ₹ 3,70,000, made by the Assessing Officer was based on the assumption that cash payments were made, relying on the draft agreements, which mistakenly mentioned the name of Director, Shri. Dharampal Ramkumar Agarwal instead of SAOIPL. The learned CIT(A) had deleted addition of ₹

91,65,797, sustaining addition of only ₹ 3,70,000 and ₹ 5,91,000 aggregating to ₹ 9,61,000. However, the draft agreements on which the additions were made were unsigned and unregistered. Thus, they cannot be considered reliable evidence to attribute the cash payment to the assessee in absence of any concrete evidence. Furthermore, the assessee has provided clear documentation and evidence that the advance of ₹ 4,00,000 payments were made through banking channels on behalf of the company-SAOIPL. The Assessing Officer neither conduct any independent verification of the cash payment nor undertook any detailed investigation from the sellers to substantiate the claim of a cash payment. The Assessing Officer added the same amount in SAOIPL and the assessee as well, which demonstrates that the Assessing Officer did not have any conclusive evidence to add this amount. This course of action clearly demonstrates that the Assessing Officer is in double mind and he is unsure about who is actual investor. Given these circumstances, we are of the view that the addition of ₹ 3,70,000, is not justified and deserves to be deleted particularly when the addition in case of company was deleted by the learned CIT(A).

8. With regard to the second addition, we find that the amount of ₹ 5,91,000, was paid as an advance and for stamp duty in cash and was duly recorded in the regular books of accounts of the assessee. The assessee adduced sufficient documentation to substantiate the legitimacy of the payment and the source of the funds. The source of payment was undisputed neither by the Assessing Officer nor by the learned CIT(A) with any contrary evidence. The Assessing Officer did not rejected the books of accounts nor did

he raise any specific and objections to the entries therein regarding source of cash. In the light of the aforesaid discussions and given that no independent inquiry was conducted by the Assessing Officer to verify the cash payments, we find no merit in the the addition of ₹ 5,91,000, made by the Assessing Officer and sustained by the learned CIT(A). It is a trite law that entries in the regular books of account cannot be disregarded unless any other corroborative evidences are brought to the light to discredit the same in accordance with provisions of section 34 of The Evidence Act, 1872. After examining the facts, documents, and submissions, we are of the considered opinion that the additions made by the Assessing Officer and confirmed by the learned CIT(A) are unsustainable. Consequently, we set aside the impugned order passed by the learned CIT(A) on this issue and the addition of ₹ 3,70,000 and ₹ 5,91,000, so made so made by the Assessing Officer and confirmed by the learned CIT(A) are hereby directed to be deleted.

9. In the result, assessee's appeal is allowed.

Order pronounced in the open Court on 15/05/2025

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 15/05/2025

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