

**IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai**

**Before Shri Jason P. Boaz, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA Nos. 1720 & 1721/Mum/2010
(Assessment Years: 2006-07 & 2007-08)

Income Tax Officer (Central)
Pawar Industrial Estate
Edulji Road, Charai
Thane 400601

Sri Venkateshwara Builders &
Developers
Vs. 144, Mint Street
Chennai 600003

PAN - AAXFS9117M

Appellant

Respondent

Appellant by: Shri G.M. Doss
Respondent by: Shri Brijmohan P. Agarwal

Date of Hearing: 11.05.2016
Date of Pronouncement: 17.05.2016

ORDER

Per Jason P. Boaz, A.M.

These appeals by the Revenue are directed against the orders of the CIT(A)-1, Thane dated 30.10.2009 for both assessment years 2006-07 and 2007-08. As both appeals have interlinked issues, they were heard together and are being disposed off by way of this combined order.

2. The facts of the case, briefly, are as under: -

2.1 A search and seizure action under section 132 of the Income Tax Act, 1961 (in short 'the Act') was carried out at the premises of the Venkatesh Group on 21.02.2007. The assessee firm is in the business of civil construction. Subsequently, notices under section 153A/148 of the Act were issued on 04.11.2008 and served on the assessee calling for returns of income to be filed for the concerned years.

For A.Y. 2006-07 the assessee filed the return of income on 15.11.2008, in response to notice under section 153A of the Act, declaring income of ₹9,03,940/-. The assessment was concluded under section 153A r.w.s.

143(3) of the Act vide order dated 31.12.2008, wherein the income of the assessee was determined at ₹1,11,72,827/-.

For A.Y. 2007-08 the assessee in response to notice issued under section 148 of the Act submitted vide letter dated 01.12.2008, that the return of income filed for A.Y. 2007-08 on 31.10.2008, be treated as filed in response to the said notice under section 148 of the Act. The assessment was subsequently completed under section 143(3) r.w.s. 147 of the Act vide order dated 31.12.2008 wherein the income of the assessee was determined at ₹28,53,431/-.

2.2 Aggrieved by the orders of assessment for assessment years 2006-07 and 2007-08 dated 31.12.2008, the assessee preferred appeals before the CIT(A)-1, Thane. The learned CIT(A) disposed off both the appeals for assessment years 2006-07 and 2007-08 vide separate orders dated 30.10.2009 allowing the assessee partial relief.

3. Revenue, being aggrieved by the orders of the CIT(A)-1, Thane, has preferred appeals for both assessment years 2006-07 and 2007-08 before the Tribunal. We now proceed to dispose off these appeals in seriatum hereunder.

Revenue appeal in ITA No. 1720/Mum/2010 for A.Y. 2006-07

4. The ground raised by Revenue in this appeal are as under: -

- “01. On the facts & circumstances of the case the Ld. CIT(A)-I, Thane erred in allowing relief of R.s.54,63,230/- to the assessee.*
- 02. On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that the entries in the diary which undisputedly belong to Shri Narendra Jain, partner and was be utilized for recording sale transactions of land at Kellambakkam cannot represents any unreal or fictitious transactions but are real monetary transactions.*
- 03. On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that Shri Narendra Jain, partner had admitted to striking out the three entries himself, thereby confirming that he was well aware about the transactions contained therein.*
- 04. On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that on top of these three entries "cash"*

is written clearly show that transactions are cash receipts which was not recorded in the books of accounts.

05. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane erred in directing to allow telescopic benefit to the extent of Rs.26.40 Lacs in A.Y. 2007-2008, as this will reduce income of A.Y. 2007-2008 below returned income which is contrary to the provisions of law.*
06. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane erred in directing for allowing telescopic benefit of Rs.26.40 Lacs in A.Y. 2007-2008 without bringing any evidence on record.*
07. *The Appellant craves leave to add, after delete any of the above grounds of Appeal.”*

Revenue appeal in ITA No. 1721/Mum/2010 for A.Y. 2007-08

5. The ground raised by Revenue in this appeal are as under: -

- “01. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane erred in allowing relief of R.s.9,17,200/- to the assessee.*
02. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that the entries in the diary which undisputedly belong to Shri Narendra Jain, partner and was be utilized for recording sale transactions of land at Kellambakkam cannot represents any unreal or fictitious transactions but are real monetary transactions.*
03. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that Shri Narendra Jain, partner had admitted to striking out the three entries himself, thereby confirming that he was well aware about the transactions contained therein.*
04. *On the facts & circumstances of the case the Ld. CIT(A)-I, Thane failed to appreciate the fact that on top of these three entries "cash" is written clearly show that transactions are cash receipts which was not recorded in the books of accounts.*
07. *The Appellant craves leave to add, after delete any of the above grounds of Appeal.”*

6. **Grounds 1 to 4 of A.Y. 2006-07 & 2007-08 - Proportionate Addition on account of undisclosed cash receipts on sale of Kellambakkam land - ₹54,63,230/- & ₹9,17,200/- respectively**

6.1 In these similar ground raised by Revenue on this issue (supra), the Revenue assails the impugned orders of the learned CIT(A) in deleting the additions on account of cash receipts on sale of Kellambakkam land of ₹54,63,230/- for A.Y. 2006-07 and ₹9,17,200/- for A.Y. 2007-08. It is

contended that the learned CIT(A) failed to appreciate the fact that the entries in the diary which undisputedly belonged to Shri Narendra Jain, partner in the assessee firm, was utilized for recording sale transactions of land at Kellambakkam represent real monetary transactions and the noting of "cash" written on the top of these entries indicate that these transactions are cash receipts which were not recorded in the assessee's books of account. It was argued that the learned CIT(A) failed to appreciate that Shri Narendra Jain, partner in the assessee firm, had admitted to striking out these entries, which are in respect of the aforesaid additions, which confirms that he was well aware about the transaction contained therein. The learned D.R. for Revenue was heard and placed strong reliance on the grounds raised and supported the findings of the AO in making the aforesaid additions in respect of undisclosed cash receipts of ₹54,63,230/- and ₹9,17,200/- on sale of Kellambakkam land in assessment years 2006-07 and 2007-08 respectively.

6.2 Per contra, the learned A.R. for the assessee supported the findings of the learned CIT(A) in the impugned orders deleting the additions of ₹54,63,230/- and ₹9,17,200 in assessment years 2006-07 and 2007-08 respectively made in respect of undisclosed cash receipts on sale of Kellambakkam land after taking into consideration all the facts of the matter. The submissions put forth before the CIT(A) was reiterated before us; to the effect that the addition of ₹63,80,430/- (i.e. ₹54,63,230 + ₹9,17,200) as unexplained cash received on sale of land at Kellambakkam, based on the entries in the seized material which were in the handwriting of their site engineer, Mr. Kartik, the details of which they are not aware and which were cancelled out, could not be made in the assessee's hands as has been rightly held by the learned CIT(A) in the impugned orders. In support of the proposition that additions made on the basis of loose sheets/papers found during search without bringing out any corroborative evidence cannot be sustained, the learned A.R. for the assessee placed reliance on the decisions of the ITAT Delhi Bench, inter alia, in the case of S.K. Gupta (13 TTJ 352) and ITAT Pune Bench in the case of Prabhat Chandra S. Jain in ITA No. 1325 to 1329/PN/2013.

6.3.1 We have heard the rival contentions of both the parties and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance on. The facts of matter as emanate from the record are that in the course of search in the assessee's case on 21.02.2007, a diary was seized which reflected certain entries based on which the AO made the impugned additions of ₹54,63,230/- for A.Y. 2006-07 and ₹9,17,200/- for A.Y. 2007-08. It is seen that in the context of the said seized diary, that a statement was recorded from Shri Narendra Jain, relevant portion of which from Q. 11 to Q.20 is extracted in the impugned order. The AO on an appreciation of the entries in the seized diary was of the view that the entries represented income of the assessee and issued a show cause notice calling for the assessee's explanation in the matter. The AO rejected the explanations put forth by the assessee and proceeded to make proportionate additions to the income of the assessee out of the entries totalling ₹63,80,430/-, i.e. ₹54,63,230/- for A.Y. 2006-07 and ₹9,17,200/- for A.Y. 2007-08. On appeal, the learned CIT(A) deleted the aforesaid additions for assessment years 2006-07 and 2007-08 as being unwarranted and unjustified as he was of the view that the adverse inferences drawn by the AO on the entries of the seized diary were erroneous as the relevant entries on which the aforesaid additions were made, were not in the handwriting of the assessee, who denied knowledge of their context, but in the handwriting of the assessee's former employee Shri Kartik (site supervisor) who has not been examined and also since the said entries in the diary had been struck off.

6.3.2 An appreciation of the facts on record reveal that the additions made to the assessee's income were on the basis of struck off entries made in the said seized diary, i.e. ₹54,63,230/- for A.Y. 2006-07 and ₹9,17,200/- for A.Y. 2007-08. In this regard, a statement of Shri Narendra Jain, partner of the assessee firm, was recorded on 26.12.2008. As per the relevant portion of this statement, which is extracted in the impugned order, it is seen that Shri Jain while admitting the diary belonged to him, has stated that the said scored out entries on the right side of the diary were written by a former employee, Shri Karthik (site supervisor) and he denied any

knowledge of the context of their recording. We find that the AO has rejected the assessee's explanation and concluded that these said scored out entries on the right side of the diary were of Shri Jain and accordingly brought the same to tax in the assessee's hands, i.e. ₹54,63,230/- in A.Y. 2006-07 and ₹9,17,200/- in A.Y. 2007-08, without making any efforts whatsoever to examine the said Sri Karthik in this regard. We agree with the observations of the learned CIT(A) that these scored out entries do not indicate whether they are cash receipt or payments; does not indicate from whom it was received or to whom it was paid. In this context, there is merit in the assessee's contentions that the aforesaid additions being made on the basis of loose papers/sheets/paper found in the course of search, without the AO bringing on record any corroborative material evidence are factually unsustainable, as has been held by the various Benches of the Tribunal, inter alia, of the ITAT, Delhi Bench in the case of S.K. Gupta (supra) and of ITAT, Pune Bench in the case of Prabhat Chandra S. Jain (supra).

6.3.3 In these facts and circumstances of the case, as discussed above, we are of the considered opinion that the finding of the learned CIT(A) that the additions of ₹54,63,230/- for A.Y. 2006-07 and ₹9,17,200/- for A.Y. 2007-08, in the case of hand are factually unsustainable since the said scored out entries on the right side of the diary are not in the handwriting of Shri Narendra Jain (partner of the appellant firm) who has disowned knowledge of their context and that they were recorded by Shri Kartik, a former employee of the assessee firm who was not examined by the AO. In these factual circumstances and placing reliance on the decisions of the ITAT, Pune Bench in Prabhat Chandra S. Jain (supra) and ITAT, Delhi Bench in the case of S.K. Gupta (supra), in support of the proposition that additions made on the basis of papers found in the course of search without bringing any corroborative evidence is not factually sustainable, we uphold the order of the learned CIT(A) in holding that the additions of ₹54,63,230/- in A.Y. 2006-07 and ₹9,17,230/- in A.Y. 2007-08 are unwarranted and unjustified. We hold as direct accordingly. Consequently, grounds 1 to 4 of

Revenue appeal for A.Y. 2006-07 and grounds 1 to 4 in A.Y. 2007-08 are dismissed.

7. Ground Nos. 5 to 7 (for A.Y. 2006-07 only)

7.1 In these grounds, the Revenue assails the learned CIT(A) in allowing the assessee telescopic benefit to the extent of ₹26.40 lakhs for A.Y. 2007-08 as this will reduce the income of A.Y. 2007-08 below the returned income for that year without bringing any evidence on record. The learned D.R. was heard in support of the grounds raised.

7.2.1 We have heard the rival contentions of the learned D.R. in support of the grounds raised and of the learned A.R. for the assessee in support of the impugned order of the learned CIT(A) on this issue. On an appreciation of the facts on record, it is seen that in the course of assessment proceedings the AO noticed that 18 plots had been sold by Shri Narendra Jain during the year under consideration. On being required by the AO, the assessee furnished details thereof, including the names and addresses of persons to whom plots had been sold and details of amounts received with cheque numbers. Shri Narendra Jain submitted that one entry of cash of ₹26.40 lakhs received from one Shri Nazar to whom plots No. 1 to 10 and 16 were sold through a POA was neither deposited in the bank account of the firm nor in his own bank account, but was credited in the books of account of the firm on 06.04.2006. In this connection, a statement of Shri Nazar was recorded under section 131 of the Act by the ADIT (Inv.), Unit-3, Chennai on 26.12.2008 from which the ADIT gathered that the assessee had sold plots to Nazar for a total consideration of ₹44 lakhs, out of which ₹5.70 lakhs was paid by Shri Nazar to the assessee and the balance ₹38,96,828/- was payable to assessee. Shri Narendra Jain, however, stated that ₹26.40 lakhs was actually received by him from Shri Nazar which was credited in the books of account of the firm on 06.04.2006. In this context, the AO recorded the statement of Shri Narendra Jain, partner in the assessee firm on 26.12.2008. On the basis of the above statements, the AO issued a show cause notice to the assessee requiring him to show cause why the amount of ₹26.40 lakhs should not

be treated as unexplained cash credit in the books of account. The explanation put forth by the assessee, inter alia, that this amount of ₹26.40 lakhs credited in its books of account on 06.04.2006 would pertain to A.Y. 2007-08 wherein the said amount had been offered as income, did not find favour with the assessee. The AO concluded that Shri Nazar sold plots for a total sum of ₹45 lakhs out of which ₹5.70 lakhs was paid to the assessee in October, 2007 and that the balance remained payable to the assessee. After affording the assessee an opportunity to cross examine Shri Nazar at 2.00 p.m. at the office of ADIT (Inv.), Chennai on 31.12.2008, the AO rejected the explanation put forth by the assessee to the show cause notice and treated the entire sum of ₹36,81,818/- as unexplained cash credit under section 68 of the Act and added the same to the assessee's income for A.Y. 2006-07.

7.2.2 Before us the assessee put forth various explanations as to why the addition of ₹36,81,818/- under section 68 of the Act should not be upheld. It was also submitted that the assessee firm credited the sum of ₹26.40 lakhs, being cash received from Shri Nazar in its books of account on 06.04.2006. In these circumstances, it is contended that this amount of ₹26.40 lakhs, being credited as income in the profit and loss account of the assessee for the year ending 31.03.2007, it constituted income of the assessee for A.Y. 2007-08 and therefore the AO ought to have deducted this amount of ₹26.40 lakhs while making the addition of ₹36,81,818/- for A.Y. 2006-07, as the same income which was offered to tax in A.Y. 2007-08, cannot be added once again in the assessee's income for A.Y. 2006-07, since this would amount to double taxation of the same income in two different assessment years.

7.2.3 We find from the record that the learned CIT(A) after factually examining the claims of the assessee, and the findings of the AO has correctly upheld the AO's action in treating the proportionate sale proceeds of ₹36,81,818/-, including ₹26.40 lakhs said to have been received from Shri Nazar, as income of the assessee for A.Y. 2006-07 and at the same time allowing the assessee's plea that telescoping is to be

allowed in respect of income of ₹26.40 lakhs admitted by the assessee in A.Y. 2007-08, on account of sale consideration received from Shri Nazar from out of the addition of ₹36,81,818/- under section 68 of the Act in A.Y. 2006-07. We find that apart from raising the above grounds, the learned D.R. for Revenue has not been able to bring on record any material evidence to controvert the above findings of the learned CIT(A), and with which we concur. In this factual matrix of the case, as discussed above, we find no reason to interfere with or deviate from the factual findings recorded by the learned CIT(A) and therefore uphold his order allowing telescoping of ₹26.40 lakhs in this year on account of income of ₹26.40 lakhs admitted by the assessee in A.Y. 2007-08 on account of sale consideration received from Shri Nazar.

8. Ground No. 7 (A.Y. 2006-07 and Ground No. 5 (for A.Y. 2007-08

8.1 These ground being general in nature, no adjudication is called for thereon.

9. In the result, the Revenue's appeals for both assessment years 2006-07 and 2007-08 are dismissed.

Order pronounced in the open court on 17th May, 2016.

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Jason P. Boaz)
Accountant Member

Mumbai, Dated: 17th May, 2016

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -1, Thane
4. The CIT - Central, Pune
5. The DR, "F" Bench, ITAT, Mumbai

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.