

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.579/Del./2017  
Assessment Year 2012-2013

The Income Tax Officer, Ward-1(3), Aayakar Bhavan, 13-A Subhash Road, Dehradun.	vs.	Shri Guneet Singh 4/6, Inder Road, Dehradun 248 001. PAN BAFPS7450A
(Appellant)		(Respondent)

For Assessee :	Shri Amit Arora & Shri Vishal Misra, C.A.
For Revenue :	Shri T. Vasanthan, Sr. D.R.

Date of Hearing :	04.09.2017
Date of Pronouncement :	06.09.2017

**ORDER**

This appeal by Revenue has been directed against the order of the Ld. CIT(A), Dehradun, dated 4<sup>th</sup> November, 2016, for the A.Y. 2012-2013, on the following grounds :

- 1. "The Ld. CIT(A), Dehradun, has erred in law and on facts in holding that the notice under section 148 was issued without any cogent reasons to believe and therefore, it is deserving of being quashed.*
- 2. That the Ld. CIT(A), Dehradun, has erred in law and on facts in deleting the addition of Rs.35,00,000 made on account of unexplained investment made by the assessee in purchase of immovable property."*

2. Briefly the facts of the case are that in this case, an information was received from the CIT, Central Circle, Dehradun, that a search and seizure operation was conducted under section 132 of the I.T. Act, 1961 in the case of Shri Parvinder Singh Kochar at 1-Chander Road, Dalanwala, Dehradun, the documents which were marked as pages 68, 69, 70 and 73 of Annexure LP-4 consisted of details of property and transactions made relating to sale of properties mentioned therein. It was informed that during the assessment proceedings in the case of Shri Parvinder Singh Kochar group, it came to light that the firm M/s. Uttaranchal Realtors had developed commercial space in a mall situated at 3-Khan Bandhu Marg, Dehradun better known as Cross Road Mall. The sale of unit F-4 was executed with the assessee and Unit-5 was executed with Smt. Charanjeet Kaur w/o. Shri N.P. Singh. Agreement for sale was executed at an amount of Rs.54,11,400 each and earnest money of Rs.5 lakhs had been paid by assessee for F-4 and Rs.5 lakhs by Smt. Charanjeet Kaur for F-5. Since F-4 and F-5 had been purchased by assessee and another member of his family so the accounts of these two units had been given together. The A.O. placed a scanned copy

of the documents on record and pointed out that on page No.73 for units F-4 &5, sale price as per registered documents, a figure of 108.23 is written under this head. It was explained that this figure was actually an amount of Rs.108.23 lakhs @ 7500 per sq. feet super area and it completely tallied with the amount of sale consideration of Rs.54,11,400 written on the original agreement to sale of each unit. Out of this sale consideration, Rs.1,08,22,800 was to be paid through "white" as per the registered document and the remaining amount of Rs.1,08,22,800 is to be paid as unaccounted "on money". However, there was a provision of discount which had not been mentioned in this case after which amount to be paid is Rs.71 lakhs. These amounts fully matched with the figures under the head "regist" and "other" which were 108.23 and 71 respectively. An amount of Rs.67 lakhs as on-money had been paid by the parties at the time of or before making of the agreement to sell and earnest money of Rs.10 lakhs for both the units and that is why under head "total" a figure of 77 was written which in fact denoted 67+10. The last head of this account on page 73 i.e., balance sheet under the head "UR" is figure 98.23 is written which was in fact Rs.98.23 lakhs i.e., balance

amount to be received as per the registered agreement or under registry. The A.O. pointed out that when assessee was asked to explain the amount given as per the column "other", it was submitted that assessee had purchased Unit F-4 and had paid Rs.5 lakhs earnest money which tallies with the amount mentioned at page-73 of the seized documents under the column "UR" which shows Rs.10 lakhs for two units. Assessee further submitted that he paid Rs.51,11,400 and stamp duty which tallied with the value given on the same page. The A.O. however, did not accept the contention of assessee and made addition of Rs.33,50,000 on account of unexplained investment in property purchased in Unit F-4, in cross road mall, Dehradun. The assessee challenged the addition before the Ld. CIT(A) and detailed submissions along with case law are reproduced in the appellate order. The Ld. CIT(A) considering the material on record, in the light of seized paper which is scanned in the assessment order found that transaction on the loose sheets are not recorded in the name of the assessee but in the name of some "Rajan". Therefore, nothing emerges from the loose sheets that could give the A.O. reason to believe that 'income has escaped assessment'

in the hands of the assessee unless the A.O. were to first bring on record, the connection between the assessee and Rajan. This has not been done by the A.O. The Ld. CIT(A), therefore, found that A.O. has not appraised the evidence himself but acted mechanically on the basis of the prompting of the A.O. of M/s. Uttaranchal Realtors, who may, in turn, be acting on the report of the investigation wing because it cannot be said that there emerged any reason to believe that from the recovered documents any income had escaped assessment in the hands of the assessee. The Ld. CIT(A) accordingly, quashed the reopening of the assessment under sections 147 & 148 of the Act. The Ld. CIT(A) on the same reasoning and in the absence of any evidence against the assessee, deleted the addition on merit as well.

3. Learned Counsel for the Assessee, at the outset, submitted that same issue has been considered by the ITAT, Delhi SMC Bench in the case of ITO vs. Smt. Laxmi Bijalwan, Dehradun in ITA.No.6404/Del./2016 dated 12.07.2017 in which in para-6 it has been held as under :

“6. After considering the rival contentions, I am of the view that no interference is called for in the matter. It is not in dispute that name of the assessee was not mentioned in the information provided by investigation wing, copy of the seized paper is noted in the impugned order. Learned Counsel for the Assessee also filed copy of the seized paper at page-4 of the paper book which is computerised printed sheet and as against property No.F-11 purchased by the assessee, the name of some “Nautiyal” has been mentioned. The department has not connected the assessee with the alleged person Nautiyal. In the absence of any evidence or material on record as to how the assessee is connected with the alleged Nautiyal, it is difficult to believe that assessee paid any money to the seller. It therefore, appears that the A.O. without applying his mind to the information provided to him reopened the assessment merely on suspicion. Ld. CIT(A) on proper appreciation of material on record, correctly quashed the reopening of the assessment in the matter. It may also be noted here that no

*evidence has been brought on record as to whether assessee had paid any on money to the seller. The seized paper have not been found and recovered from the possession of the assessee. These are computerised sheets and have not been signed by the assessee. The seized papers were not in the name of the assessee. Therefore, how these are admissible against the assessee in evidence has not been explained by the Revenue department. The Ld. CIT(A) therefore, correctly held that even addition on merit is wholly unjustified. Considering the totality of the facts and circumstances and in the light of finding of the fact recorded by the Ld. CIT(A), I am of the view that no interference is called for in the matter. I confirm the findings of the Ld. CIT(A) and dismiss the appeal of Revenue”.*

3.1. He, therefore submitted that the issue is covered in favour of the assessee.

4. The Ld. D.R. did not dispute the same.

5. After considering the facts of the case in the light of the order of the Tribunal in the case of ITO vs. Smt. Laxmi Bijalwan, Dehradun (supra), I find that the issue is covered in favour of the assessee in the case of ITO vs. Laxmi Bijalwan, Dehradun (supra) in which identical issue has been considered on the basis of the similar seized paper and order of the Ld. CIT(A) has been confirmed for quashing the reopening of the assessment as well as deleting the addition on merit. Following the order of the Tribunal in the case of ITO vs. Smt. Laxmi Bijalwan, Dehradun (supra), I find that the issue is covered in favour of the assessee by this order and accordingly, did not find any merit in the departmental appeal, the same is accordingly, dismissed.

6. In the result, appeal of the department is dismissed.

Order pronounced in the open Court.

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Delhi, Dated 06<sup>th</sup> September, 2017

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// By Order //

Asst. Registrar : ITAT Delhi Benches  
Delhi.