

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

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

I.T.A.No.2709/Del./2015
Assessment Year 2011-2012

Shri Dhruv Madan, A-9/4, Vasant Vihar, New Delhi. PAN AJKPM2220K	vs.	The DCIT, Central Circle – 21, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Tarun Kumar Batra, C.A.
For Revenue :	Ms. Shaveta Nakra Dutta, Sr.D.R.

Date of Hearing :	14.01.2019
Date of Pronouncement :	21.01.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-16, New Delhi, Dated 30.03.2015, for the A.Y. 2011-2012, challenging the addition of Rs.1.44 crores on account of long term capital gains.

2. Briefly the facts of the case are that original return of income was filed on 04.03.2013 under section 139(1) of the I.T. Act, declaring income of Rs.84,02,200/-

under the Head “Income from Business and Profession”. A search and seizure operation under section 132(1) of the I.T. Act was conducted by DIT (Investigation) on 17.09.2010 in the case of M/s. Sanya Group of cases. The assessee is one of the group case of M/s. Sanya Group and his case was also covered under section 132(1) of the I.T. Act. M/s. Sanya Group is engaged in various fields ranging from Real Estate Development, Automobiles, Hospitality and FMCG goods. The assessee submitted before A.O. that return filed originally may be treated as return having filed in response to notice under section 153A of the I.T. Act. The assessee derived income from salary, house property, business and profession and income from other sources and capital gains. The assessee filed the details before A.O.

3. During the course of search and seizure operation, a copy of the agreement in respect of sale of property No.B.90, Hill View Apartment, Vasant Vihar, New Delhi was seized as per pages 1 to 47 of Annexure-A1. According to the said agreement, the sale consideration is for Rs.81 lakhs. The assessee is the seller and Shri Pawan

Khurana is the purchaser of this property. A receipt of Rs.1 lakh as advance against this property was also seized as per page-47 of Annexure-A1 (PB-17). As per this receipt, Shri L.C.Madan has received a sum of Rs.1 lakh from Shri Pawan Khurana-Purchaser of the property. The said receipt has been duly signed by Shri L.C. Madan and witnessed by the purchaser. As per this receipt, the sale proceeds of this property was settled between Shri L.C.Madan, father of the assessee and Shri Pawan Khurana, Purchaser of the property at Rs.2.25 crores. The assessee was required to explain as to why the sale proceeds of the above property should not be treated at Rs.2.25 crores as against Rs.81 lakhs shown by the assessee and that as to why capital gain should not be worked-out on the amount of Rs.2.25 crores. The assessee objected to the same and submitted that the said pages contain Agreement to Sell and Purchase dated 23.06.2010 executed between the assessee (seller) and Shri Pawan Khurana (Buyer) in respect of the above property for a consideration of Rs.81 lakhs. Since the property in question is in the name of the assessee and not owned by

Shri L.C. Madan, therefore, he is not authorised to enter into any sale deal with anyone and the assessee can enter into any agreement in respect of the said property. So, any agreement entered by Shri L.C. Madan does not have any legal value and the assessee is not liable for the acts of Shri L.C. Madan. The assessee has sold the property at Rs.81 lakhs.

3.1. The A.O. however noted that the receipt in question have been issued by Shri L.C. Madan on behalf of assessee being his father and was residing together. Shri L.C. Madan has not denied to have issued this receipts on behalf of the assessee. Therefore, denial of the assessee is an afterthought. The receipt executed of Rs.1 lakh advanced on 18.04.2010 is witnessed by Shri Vikram Sharma, broker and the said receipt has not been withdrawn and agreement is not cancelled. The statement of assessee was recorded on 17.09.2010 under section 131(1)(A) of the I.T. Act and in Question No.8, the assessee admitted that property in question was sold at Rs.1.50 crores. The A.O. accordingly

taken the sale consideration at Rs.2.25 crores and computed the capital gains accordingly.

4. The assessee challenged the addition before the Ld. CIT(A) and written submissions of the assessee is reproduced in the appellate order in which the assessee briefly explained that the receipt in question is not signed either by the seller or by the buyer. The statement recorded on 17.09.2010 was under lot of pressure and assessee made a wrong statement declaring the sale consideration of Rs.1.50 crores. The sale deed executed was of Rs.81 lakhs and father of the assessee is not authorised to deal with the property in question. A.O. did not find-out market value of the property in question. Photo copy of the receipt has no evidentiary value. The Ld. CIT(A), however, confirmed the addition. His findings are reproduced as under:

As regards ground No.2 touching on the sale consideration of the impugned property at New Delhi after hearing and considering the various aspects of the matter pleaded before me by the appellant I am of the

firm view that there was ample justification with the AO to reject the consideration of Rs.8! lacs as apparent from the "agreement to sell" and accept the consideration of Rs.2.25 crores as manifest from the "money receipt" seized during the course of search from the appellant's custody. The various reasons which persuade me to uphold the view of the AO are enumerated below:-

- 1. The very fact that Sh L.C. Madan. father of the appellant, who issued the receipt on behalf of the appellant with whom he was residing and also acting as the Manager of the appellant's business affairs did not ever reside from the fact of having issued the receipt, elevated the receipt to the status of an admission regarding the sale of Flat No.B-90, Hill View Apartment, Vasant Vihar, New Delhi for Rs.2.25 crores. His reticence was a tacit approval of the fact. The receipt had clear, certain, definite value and effect and not ambiguous, vague or confused.*

2. *The appellant did not also contradict the veracity of the statement given by Sh L.C. Madan, his father, in respect of the house property sold by him for Rs.2.25 crores in any manner whatsoever. The agreement to sell showing Rs.81 lacs co-existed with this un-rebutted piece of evidence as page 47 of the agreement to sell. Had the said receipt been redundant the appellant would not have preserved it as a part of the agreement to sell.*
3. *The receipt issued by the appellant's father clearly reflected receipt of advance for Rs.one lac and sale consideration as Rs.2.25 crores which was not refuted by the appellant. Rather the appellant admitted having suppressed the true value of sale consideration by stating that the property was sold for Rs.1..50 crores u/s 131(1 A).*
4. *The witness to the execution of the said document i.e. receipt of Rs.2.25 crores, Sh Vikram Sharma, did not also come forward to deny or assail it as incorrect.*

5. *No agreement cancelling the receipt issued by the appellant's father to the purchaser was also produced by the appellant.*
6. *Vide statement u/s 131(1 A) dated 17.09.2010 the appellant admitted the sale consideration as Rs.1.50 crores. Admission is as much binding on the crown as on an ordinary person.*
7. *The contents of the receipt stood proved the moment the appellant's father who authored and issued the receipt did not ever come forward to deny that the sale consideration of the said property did not amount to Rs.2.25 crores.*
8. *The authenticity of the said piece of paper i.e. money receipt by Sh L.C. Madan, the author of the money receipt, was also not challenged by the appellant before the AO at the stage of assessment proceedings with the help of satisfactory evidence in the form of a letters of rebuttal by the father, the executant of the receipt, and the witness, Sh Vikram Sharma, witnessing the execution. Such admission of the said*

documents amounted to admission of contents.

9. *The very fact that the appellant's father. Sh L.C. Madan. the author of the money receipt, admitted the truth of the contents of the piece of paper recovered from the appellant's searched premise u/s 1.32 of the Act and thereby the link between such incriminating piece of paper and the sale instance of the same property, whose sale was effected soon thereafter, took the said evidence i.e. money receipt, out of the domain of suspicious documents and placed his disclosure in the category of admission of a precise fact sufficient to pin the appellant down to the very admission.*
10. *The appellant failed to adduce evidence contradicting the positive conclusion of the AO that the receipt evidencing sale of flat for Rs.2.25 crores was bogus or irrelevant.*
11. *The admission regarding the sale consideration was made by the appellant in a statement recorded on oath u/s 131(1 A) of the Act also though only partly.*

12. *As per section 17 rws 58 of the Indian Evidence Act the appellant was bound by the receipt as for want of denial from his father it was as good as an admission of such a nature which could not lead to some other inference or which could characterize it as an admission in respect of a different fact.*
13. *By conceding that the value of sale reflected in the piece of paper was partly true and correct, the appellant waived/dispensed with his right to produce the evidence to the contrary in future.*
14. *No satisfactory explanation could be produced by the appellant during the assessment proceedings before the AO proving the contrary of what was stated in the piece of paper.*

All the above factors pinpoint to the fact that the property at Flat No.B-90, Hill View Apartment, Vasant Vihar, New Delhi was sold for Rs.2.25 crores. Accordingly the addition of Rs.2.25 crores is sustained and the ground 2 of the appellant is dismissed.”

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee did not sign the receipt. The sale deed of the property is executed on the same day on 23.06.2010 which is the date of agreement found during the course of search in which sale consideration was of Rs.81 lakhs also. The statement of assessee recorded under section 131 of the I.T. Act was under pressure in which wrong statement was made and that after search, statement of assessee was recorded under section 132(4) of the I.T. Act in which assessee has clearly denied the execution of the receipt in question. He has submitted that there is no evidence on record to prove father of the assessee was authorised to deal with the property of the assessee. He has, therefore, submitted that presumption under section 132 stands discharged and no addition could be made against the assessee.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and produced the assessment record for perusal of the bench and filed copies

of the statements recorded on assessee and Shri L.C. Madan and order sheet on record. The Ld. D.R. submitted that since the document in question was found from the possession of the assessee, therefore, presumption raised under section 132(4A) is applicable against the assessee. Since the assessee failed to rebut the presumption, therefore, addition was correctly made. The Ld. D.R. in support of the above contention relied upon several decisions in the written submissions.

7. We have considered the rival submissions and perused the material on record. The A.O. noted that during the course of search, agreement to sell of the property in question i.e., B-90, Hill View Apartment, Vasant Vihar, New Delhi was found and seized which contain sale consideration of Rs.81 lakhs between assessee and Shri Pawan Khurana-purchaser. The assessee filed copy of the agreement as well as copy of the sale deed registered between the parties to show that sale deed of the same property was also executed on 23.06.2010 for a sum of Rs.81 lakhs. The Department is however, relying upon the

receipt dated 18.04.2010 executed by Shri L.C. Madan in favour of the purchaser. The copy of the receipt is filed at page-17 of the PB. It is stated to be signed by Shri L.C. Madan and witness by Shri Vikram Sharma, Broker. The receipt in question is not signed by the assessee (seller) as well as by the purchaser Shri Pawan Khurana. However, according to the department, this receipt was found during the course of search from the possession of the assessee. When statement of the assessee was recorded after search and the receipt in question was shown to him with reference to the sale consideration of the property of Rs.2.25 crores, assessee denied having any idea regarding this paper. The assessee in answer to another question confirmed that the property was sold for Rs.81 lakhs only for which agreement to sell and sale deed was executed. Therefore, there is a difference of sale consideration as per seized agreement to sell and seized copy of the receipt. The agreement to sell is supported by the registered sale deed. It may be noted here that the agreement to sell and the sale deed of the property in question have been signed by the witness Shri Vikram

Sharma as a Broker of the property, whose signature was also appearing on the seized receipt. Therefore, in such circumstances, the A.O. should not have merely relied upon the presumption against the assessee under section 132(4A) of the I.T. Act. The A.O. should have made thorough enquiry into the matter because the seized papers contain different sale consideration. When statement of assessee was recorded under section 131 of the I.T. Act on the date of search itself, it was explained that sale consideration of this property was Rs.1.50 crores. Again a different version was coming-up which is not supported by any evidence or material on record. The statement of assessee under section 131 of the I.T. Act is contradictory to the documents found during the course of search. Therefore, no reliance could be placed upon such statement made under section 131 of the I.T. Act. Since the assessee at the initial stage i.e., on the date of search itself denied having any idea about the receipt of Rs.1 lakhs in question, therefore, the burden upon the assessee stood discharged as it created a doubt whether the amount was settled for a consideration of

Rs.2.25 crores. Since the assessee was owner of the property, therefore, there were no justification to the A.O. to record that the receipt in question have been issued by Shri L.C. Madan being father of the assessee on his behalf. There is no material on record to support such observation of the A.O. Since the receipt is not signed either by the seller or by the purchaser, therefore, there is no question of withdrawing the same receipt by the parties to the transaction. Similarly, there was no reason for the Ld. CIT(A) to ignore the facts and circumstances of the case and to observe that receipt was executed on behalf of the assessee. According to Section 132(4A) and Section 292C of the I.T. Act, when any document was found in possession or control of any person in the course of search, it may be presumed that such document belong to such person and the contents of the same are true and correct. Such a presumption is rebuttable. Considering the totality of the facts and circumstances of the case, it is clear that different versions were coming-up during the course of search itself regarding the amount of the sale consideration and the

assessee at the initial stage itself on the date of the search denied execution of any receipt in the matter. This statement is supported by the fact that the assessee being seller did not sign the receipt in question which was also not signed by the purchaser Shri Pawan Khurana. The A.O, therefore, wrongly recorded in the assessment order that the said receipt has been witnessed by Shri Pawan Khurana, purchaser of the property. Therefore, in such circumstances, the Revenue should not merely rely upon presumption against the assessee and the A.O. was required to make thorough investigation into the matter. It may also be noted that statement of Shri L.C. Madan was recorded by the search party on 09.11.2010, copy of which is supplied by the Ld. D.R. which was with regard to search of Locker No.304 of Corporation Bank, Vasant Vihar, New Delhi. No other statement of Shri L.C. Madan have been brought on record with regard to genuineness of the receipt in question. When the receipt is alleged to have signed by Shri L.C. Madan and witness by Shri Vikram Sharma, it was necessary for the A.O. to record their statements under

section 131 of the I.T. Act along with statements of purchaser Shri Pawan Khurana under section 131 of the I.T. Act in order to bring the truth on record. Further, the A.O. has failed to make proper investigation into the matter for the best reasons known to him. The Hon'ble Supreme Court in the case of Kapoor Chand Shrimal 131 ITR 451 held that the appellate authority has jurisdiction and duty to correct all errors in proceedings under appeal to issue necessary directions to the authority to dispose of the whole of the matter afresh. In the present case, the department is heavily relied upon the receipt in question with regard to taking sale consideration of the property in question at Rs.2.25 crores which fact is contradicted by the sale agreement found during the course of search and the sale deed executed by the parties. Since the receipt in question is not signed by the seller and the purchaser, therefore, it was duty of the A.O. to record the statement of Shri L.C. Madan, Shri Pawan Khurana and Shri Vikram Sharma under section 131 of the I.T. Act in order to adjudicate upon the issue between the parties. In this view of the matter, we

are of the view that the matter requires reconsideration at the level of the A.O. The decisions relied upon by the Ld. D.R. in the written submissions would not support the case of the Revenue because of the findings above. We, accordingly, set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to make proper enquiry into the matter by recording statements of Shri L.C. Madan, Shri Vikram Sharma and Shri Pawan Khurana under section 131 of the I.T. Act with regard to sale consideration mentioned in the receipt in question dated 18.04.2010. The A.O. shall give reasonable and sufficient opportunity of being heard to the assessee before passing the assessment order afresh as per Law.

8. In the result, appeal of Assessee is allowed for statistical purposes.

Order pronounced in the open Court.

Sd/-
(O.P.KANT)
ACCOUNTANT MEMBER
Delhi, Dated 21st January, 2019
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.