

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2312/Del./2014
Assessment Year 2007-2008

Shri Nitin Johari, 2 nd Floor, 15 Sadhana Enclave, New Delhi. PAN AAJPJ4136D	vs.,	The ACIT, Central Circle13, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Rahul Chourasia, C.A.
For Revenue :	Shri R.L. Meena, CIT-D.R.

Date of Hearing :	24.09.2019
Date of Pronouncement :	01.10.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXV, New Delhi, Dated 16.01.2014 for the A.Y. 2007-2008, challenging the addition of Rs.8 lakhs.

2. Briefly the facts of the case are that a search and seizure action u/s 132 of the Income Tax Act, 1961 was

carried out in the M/s Bhushan Steel Group of cases on 03.03.2010. The case of the assessee was also covered in operation under section 132 of the Income Tax Act, 1961. Notice u/s 153A was issued to assessee. In response to the same, the assessee had filed his Return of Income, declaring a total income of Rs.11,45,776/- on 02.02.2011. Statutory notices were. In this case original return of income was filed by the assessee on 31.07.2007, declared total income of Rs.11,46,740/- which was processed under section 143(1) of the Income Tax Act, 1961.

2.1. During the course of assessment proceedings, it was noticed that the assessee has purchased a flat in Hyderabad (Flat No.201, 2nd Floor, Regency Squire Apartment, 1-5-76, Street No.8/26 Habsiguda, Uppal Municipality and Mandal Hyderabad). The cost of acquisition or purchase value for the same has been declared/shown as Rs.9,00,000/- by the assessee. The payment of Rs.9,00,000/- has been claimed to have been made in the following manner : -

- (i) Rs.4,00,000/- in A.Y. 2006-07.
- (ii) Rs.5,00,000/- in A.Y. 2007-08.

2.2. However, from the perusal of Page No.126, Annexure A-2, Party SR-8, which have been seized from the residential premises of the assessee during the course of search, it was observed that the sale value of the aforesaid property is Rs.17,00,000/-. From the perusal of the Page-126, Annexure-A2, Party SR-8 that the assessee had only paid a sum of Rs. 17 lacs i.e., Rs.9 lakhs by cheque and Rs.8 lakhs in cash for purchase of Flat No.201, 2nd Floor, Regency Squire Apartment, Hyderabad. The details of the cheque payments have been shown at Rs.4 lakhs on 31.03.2006 and Rs.5 lakhs on 27.09.2006. It was further submitted that the assessee had paid a sum of Rs. 8 lacs in cash towards the purchase of the said property. The said sum *was* paid out of the advance received against the sale of Car Garage no. C-102 attached with the Flat no.C-438, Phase-1, Sheikh Sarai, New Delhi, as per which, the advance of Rs.8 lacs in cash have been received. Copy of the said agreement with M/s Rockman Breweries (TNK) Ltd.

was entered into on 15.04.2006 was filed. The A.O. however, did not accept contention of assessee because the cash receipt issued by assessee to the buyer of the said garage was not filed. No documentary evidence as to why the sale consideration in the sale agreement as purchased by the assessee for the aforesaid property was shown at Rs.9 lakhs. No documentary evidence in support of availability of cash of Rs.8 lakhs to the buyer of the garage on the date of payment have been filed. The A.O, therefore, treated Rs.8 lakhs as paid by assessee out of undisclosed sources and addition of the same was accordingly made.

3. The assessee challenged the addition before the Ld. CIT(A). The assessee reiterated the submissions before the Ld. CIT(A) and it was submitted that receipt of garage could not be located due to passage of time. The Ld. CIT(A), however, dismissed the appeal of assessee. His findings in para-4 of the impugned order are reproduced as under :

“4. I have given my thoughtful consideration to the solitary ground of appeal, the submissions made by the

appellant during appellate proceedings and the order passed u/s 143(3) r.w.s. 153A of the Act. The Ld. AO's order was also perused. On a comparative analysis of the facts, I am of the considered view that the Id.AO was fully justified in adding Rs 8,00,000/- which was claimed by the appellant to have been received as an advance in cash from the buyer of the garage referred to above i.e. M/s RBL (TNK) as there was no direct, proximate and immediate connection between the date of receipt of the said advance as per the agreement and the date of payment of the same sum i.e. Rs 8,00,000/- (Eight lacs) to the seller of the flat at Hyderabad. Moreover, it was the finding of fact of the Id.AO and found to be true also subsequently that the appellant was not in possession of the receipts for Rs 9 lacs (Nine lacs) allegedly issued by it to the buyer M/s RBL (TNK) to substantiate its claim that Rs 8 lacs proceeded from the said sum of Rs 9 lacs received against the sale of the garage to M/s RBL.

In the above conspectus, the order of the Id.AO is sustained for want of evidence of the source of Rs 8 lacs paid in cash to the seller of the flat at Hyderabad with the appellant. For want of contemporaneity between the alleged receipt of Rs.Nine lacs as per the agreement and the sum of Rs. Eight lacs allegedly paid in cash by the appellant to the seller of the flat at Hyderabad, the said amount is held to be the concealed income of the appellant. Accordingly, the solitary ground of appeal pressed by the appellant is dismissed and the order of the ld. A.O. is confirmed.”

4. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and referred to receipt of Regency Squire Apartment for Rs.17 lakhs and also filed copy of the agreement to sell Dated 15.04.2006 for sale of the garage for a sum of Rs.8 lakhs. He has submitted that source of payment of Rs.8 lakhs is explained.

5. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

6. We have considered the rival submissions and do not find any justification to interfere with the Orders of the authorities below. During the course of assessment proceedings, it was noticed that assessee has purchased a Flat in Hyderabad in Regency Squire Apartment. The cost of acquisition or purchase value of the same have been declared at Rs.9 lakhs. The payments have been made in a sum of Rs.4 lakhs and Rs.5 lakhs each in A.Ys.2006-2007 and 2007-2008 i.e., prior to the date of the search. However, during the course of search, Page No.126, Annexure A-2 was found and seized from the residential premises of the assessee which shows the value of the property so purchased by assessee was at Rs.17 lakhs. Thus, there is a contradiction in the statement of the assessee because assessee has prior to the search has shown the value of the property purchased at Hyderabad in a sum of Rs.9 lakhs, for which, payments have been made through cheque. Later on incriminating material was found during the course of search which shows value of the Flat purchased at Hyderabad at Rs.17 lakhs. The assessee in order to cover-

up the balance amount of Rs.8 lakhs made-up a story that Rs.8 lakhs have been received out of sale of the garage through Agreement to Sell Dated 15.04.2006. The assessee did not produce any receipt executed in favour of the purchaser of Rs.8 lakhs. No reasons have been explained why the cash of Rs.8 lakhs have been received. Further no evidence have been produced on record with respect to availability of Rs.8 lakhs in cash with the buyer of the garage. Further cheque payment of Rs.9 lakhs have been made in March, 2006 and September, 2006, but, the Agreement to Sell of the garage is Dated 15.04.2006 which has no co-relation with the payments for purchase of the Flat at Hyderabad. The assessee failed to prove the genuineness of the execution of the Agreement to Sell Dated 15.04.2006. The alleged purchaser has not filed any confirmation before the authorities below. Considering the totality of the facts and circumstances of the case and incriminating document found during the course of search to show that assessee has initially declared lesser value of the Flat, but, when seized document was found during the

course of search which shows assessee has paid higher value of the flat. It, therefore, appears assessee has created a story of payment of Rs.8 lakhs on receipt of Rs.8 lakhs for sale of garage. The preponderance of the probability do not support the case of the assessee at all. Considering the totality of the facts and circumstances of the case and conduct of the assessee prior to the search and after search clearly disentitle the assessee for any relief. No interference is required in the mater. We, therefore, confirm the Orders of the authorities below and dismiss the appeal of assessee.

7. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 01st October, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :
Delhi.