IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "G" : DELHI
[THROUGH VIDEO CONFERENCING]

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

ITA.No.6855/Del./2018
Assessment Year – 2009-2010

Smt. Sunita Gadde, New Delhi. PAN ACMPG 4589J C/o. M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi – 110 049.	vs.	The Income Tax Officer, Ward-10(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Mr. Pranshu Goel, C.A.
For Revenue :	Shri H.K. Choudhry, CIT-DR

Date of Hearing :	06.05.2021
Date of Pronouncement :	13.05.2021

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-22, New Delhi, Dated 30.08.2018, for the A.Y. 2009-2010, challenging the reopening of the assessment under section 147 of the I.T. Act, 1961 and addition of Rs.1,05,00,000/- on account of purchase of property.

2. We have heard the Learned Representative of both the parties and perused the material available on record.

3. The brief facts of the case are that the assessee filed return of income declaring income of Rs.38,82,621/- on 21.07.2009. In this case information was received from the O/o. DDIT (Inv.)-I, Faridabad through DCIT-1, Central Circle, Chandigarh that during the course of survey conducted on the above assessee as well as other Group Promoter of Lingaya Group Society on 30.06.2014/ 01.07.2014, various incriminating documents were found, examined and impounded. As per investigation reports received, Shri Pischeswar Gadde and Smt. Sunita Gadde [Assessee] had paid a consideration of Rs.3.15 crores towards purchase cost of farm house bearing No.1, Dera Mandi, Chattarpur, New Delhi. The seller Smt. Jaya Sharma stated the fact on oath during the course of her deposition on 02.07.2014 under section 131 of the I.T. Act, 1961, that both have paid Rs.3.15 crores towards purchase cost and out of the total amount of Rs.3.15 crores, Rs.2.10 crores

were paid in cash and balance amount of Rs.1.05 crores were paid through cheque. Smt. Jaya Sharma furnished a letter dated 03.07.2014 addressed to DDIT (Inv.) that she would pay taxes on that. Accordingly, reasons were recorded for reopening of the assessment and notice under section 148 was issued. The assessee filed letter before A.O. intimating that original return filed on 21.07.2009 may be treated as return having filed in response to notice under section 148 of the I.T. Act. The assessee filed objections to the reopening of the assessment before A.O. which have been rejected.

3.1. During the course of assessment proceedings, assessee was asked to provide complete details of sale / purchase of the properties along with documentary evidences and source of investment. The assessee has stated that she had purchased the property for Rs.1.05 crores and has not paid any other amount for purchase of this agricultural land of Village Dera Mandi, Chattarpur, New Delhi. The A.O. did not accept the contention of assessee in view of statement recorded of Smt. Jaya Sharma

on 02.07.2014 under section 131 of the I.T. Act that assessee and her husband have paid cash to her. The A.O. also noted that husband of the assessee Shri Picheswar Gadde who is also co-owner of 50% share in the property in his statement recorded during the course of survey admitted that he has sold the property to M/s. Mapple Destination Dreambuilt P. Ltd., for an amount of Rs.6.61 crores, out of which, part amount was paid through cash and part was paid through cheque and admitted to pay taxes thereon. The A.O. also noted that Shri Rakesh Sejwal, Manager of Lingaya's Society who was assigned the work of record keeping of various transactions of properties carried out by Lingaya's Group of Society or by husband of the assessee and assessee, has confirmed the collecting cash of Rs.5.41 crores on sale of property on behalf of assessee and her husband. The A.O. in view of the statement of the above persons, made addition of Rs.1.05 crores in the hands of the assessee being one half share of the assessee in purchase of the property.

3.2. The assessee challenged the addition before the Ld. CIT(A) as well as reopening of the assessment. The assessee also contended before the Ld. CIT(A) that no right of cross-examination have been given to the statement of Smt. Jaya Sharma which is recorded at the back of the assessee and used against the assessee, therefore, it cannot be read in evidence against the assessee. The Ld. CIT(A) rejected the contention of assessee as well as rejected the contention of assessee that no right of cross-examination have been given to the statement of Smt. Jaya Sharma because it is not an absolute right of assessee. The appeal of assessee was accordingly dismissed.

4. We have considered the rival submissions and perused the material available on record.

5. Learned Counsel for the Assessee as regards reopening of the assessment submitted that husband of the assessee Shri Picheswar Gadde's appeal for the assessment year under appeal i.e., 2009-2010 have been decided by the ITAT, Delhi F-Bench, Delhi in ITA.No.6856/Del./2018, vide Order Dated 20.01.2021, copy of which is filed at page-79 of

the PB in which reopening of the assessment have been quashed. Learned Counsel for the Assessee further admitted that in the case of husband of the assessee earlier assessment was framed under section 143(3), therefore, reopening of the assessment have been quashed. He has also submitted that in the case of assessee also earlier assessment have been done under section 143(3), but, he was not able to furnish copy of such assessment order under section 143(3). Learned Counsel for the Assessee referred to the reasons recorded by the A.O. for reopening of the assessment copy of which is filed at page-7 of the PB in which A.O. has specifically mentioned that in the case of assessee for the assessment year under appeal no Order under section 143(3) was passed. In view of these facts, it is clear that the Order in the case of husband of the assessee Dated 20.01.2021 would be of no help to the assessee. Therefore, the contention of assessee is rejected that the issue of reopening of the assessment is covered in favour of the assessee. No other submissions have been made with regard to reopening of the assessment as to how the

reopening is unjustified in the matter. Considering the above and that Counsel for Assessee have not been able to furnish any Order under section 143(3) in the case of assessee passed prior to reopening of the assessment, therefore, we are of the view that the issue is not covered by the Order of the Tribunal Dated 20.01.2021 (supra). This ground of appeal of assessee is accordingly dismissed.

6. Learned Counsel for the Assessee as regards addition on merit submitted that no material was recovered to show that any cash payment have been made by assessee or her husband over and above what is mentioned in the sale deed PB-23. Learned Counsel for the Assessee submitted that the statement of Smt. Jaya Sharma-Seller was recorded on 02.07.2014 under section 131 of the I.T. Act, but, later on she has retracted from her statement vide letter dated 15.09.2015 through her Counsel, copy of which is filed at page-4 of the PB in which even she has denied to have signed such statement on 02.07.2014. He has referred to PB-11 letter Dated 05.09.2016 addressed to the A.O. in which assessee requested for supply of all the material

collected at the back of the assessee and requested that persons whose statements are relied upon may please be made available for cross-examination on behalf of the assessee. He has also referred to PB-19 letter Dated 15.11.2016 addressed to the A.O. in which also assessee requested that cross-examination to the statement of Smt. Jaya Sharma be provided to assessee and she denied any cash payment. He has also referred to PB-21 which is another letter Dated 21.11.2016 addressed to the A.O. in which assessee similarly requested for cross-examination to the statement of Smt. Jaya Sharma before taking any adverse view against the assessee. PB-23 is registered sale deed Dated 30.05.2008 in which consideration of Rs.1.05 crores is paid have been mentioned through banking channel. He has also referred to PB-47 which is letter addressed to the A.O. Dated 19.12.2016 in which again the assessee similarly made a request to the A.O. that before taking any adverse view, copy of adverse material may be provided to the assessee and an opportunity may be provided to cross-examine such persons whose statements

are being relied upon against the assessee. Learned Counsel for the Assessee, therefore, submitted that since no material is supplied to assessee and that the statements of all persons are not allowed to cross-examine on behalf of the assessee, therefore, such material collected at the back of the assessee, cannot be used in evidence against the assessee. Therefore, the addition is wholly unjustified.

7. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that statement of Seller-Smt. Jaya Sharma was recorded under section 131 of the I.T. Act in which she has admitted to have received cash amount on executing sale deed in favour of the assessee and her husband and agreed to pay taxes thereon, therefore, such statement is relevant to make addition against the assessee. He has also submitted that A.O. has specifically mentioned in the assessment order that statement of husband of the assessee was recorded during the course of survey in which he has admitted to have sold the property to M/s. Mapple Destination Dreambuilt P. Ltd., and substantial amount was paid

through cash. Similarly A.O. has referred to statement of Shri Rakesh Sejwal, Manager of Lingaya's Society who have also confirmed of collecting cash of Rs.5.41 crores on sale of property on behalf of assessee and her husband. The Ld. D.R, therefore, submitted that these statements are sufficient to establish that assessee and her husband have paid cash on account of entering into sale transactions. Therefore, addition is wholly justified. The Ld. D.R. also submitted that retraction statement of Smt. Jaya Sharma-Seller is of no consequence in the matter.

8. We have considered the rival submissions and perused the material on record. The above facts clearly show that Revenue has made an addition of Rs.1.05 crores against the assessee solely relying upon statement of Smt. Jaya Sharma-Seller recorded under section 131 of the I.T. Act, 1961, in which she has admitted to have received cash from the assessee and her husband on account of sale of property at Dera Mandi, Chattarpur, New Delhi. It is a fact that later on Counsel of Smt. Jaya Sharma vide letter Dated 15.09.2015 denied from such statement recorded under

section 131 of the I.T. Act [PB-4]. In this letter also she has even denied to have signed any such statement recorded on 02.07.2014. It is, therefore, established on record that Smt. Jaya Sharma has retracted from her statement which was made the sole basis for making the addition against the assessee. It may also be noted here that assessee has made several requests before A.O. in writing at different stages that all the material collected at the back of assessee may be provided to the assessee and that statement of Smt. Jaya Sharma may be subjected to cross-examination on her behalf and she may be allowed to cross-examine the statement of Smt. Jaya Sharma, but, the A.O. even did not refer to such requests made by assessee in the assessment order. It is, therefore, clearly established that the A.O. has not supplied any adverse material to the assessee which was collected at the back of the assessee. It is also established that the request of the assessee to allow cross-examination to the statement of Smt. Jaya Sharma was not allowed by the A.O. and she was never produced at re-assessment proceedings for cross-examination on behalf of

the assessee. It is well settled Law that any material collected at the back of the assessee or any statement recorded at the back of the assessee cannot be read in evidence against the assessee, unless the same is confronted to the assessee and that assessee should be allowed to cross-examine to such statements. In this case, the A.O. has failed to produce Smt. Jaya Sharma before assessee for cross-examination on behalf of the assessee particularly when Smt. Jaya Sharma has retracted from her statement. Therefore, in these circumstances, it was the duty of the A.O. to produce Smt. Jaya Sharma at the re-assessment proceedings to allow cross-examination to her statement on behalf of the assessee. Therefore, such statement and material collected at the back of the assessee, cannot be read in evidence against the assessee. We rely upon the Judgments of Hon'ble Supreme Court in the cases of Kishan Chand Chellaram 125 ITR 713 (SC) and Andaman Timber Industries 281 CTR 214 (SC). The Ld. CIT(A) without any justification has rejected the contention of assessee that is not an absolute right of assessee to

cross-examine the statement of Smt. Jaya Sharma. These facts clearly disentitle the Revenue to use the statement of Smt. Jaya Sharma recorded under section 131 of the I.T. Act in evidence against the assessee. Therefore, we set aside the Orders of the authorities below and direct that such statement cannot be read in evidence against the assessee.

8.1. The A.O. also referred to statement of husband of the assessee recorded during the course of survey in which he has admitted to have sold the property to M/s. Mapple Destination Dreambuilt P. Ltd., and received the cash amount. The present case is with respect to purchase of property of Dera Mandi, Chattarpur, New Delhi from the Seller-Smt. Jaya Sharma. Therefore, the statement of husband of assessee is not relevant to the matter in issue. Further the A.O. has referred to statement of Shri Rakesh Sejwal, Manager of Lingaya's Society who was assigned various works with reference to transactions of different properties who have confirmed collecting cash of Rs.5.41 crores on sale of property on behalf of the assessee and her husband. This statement is also not relevant to the matter

in issue because transaction is a different one. Therefore, the statement of husband of assessee and Shri Rakesh Sejwal are not relevant to the matter in issue and as such they cannot be the basis for making any addition against the assessee in assessment year under appeal. Considering the totality of the facts and circumstances of the case it is clear that there were no basis for the A.O. to make any addition against the assessee of Rs.1.05 crores. We, accordingly, set aside the Orders of the authorities below and delete the addition. This ground of appeal is allowed.

9. In the result, appeal of Assessee Partly Allowed.

Order pronounced in the open Court.

Sd/-	Sd/-
(O.P. KANT)	(BHAVNESH SAINI)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Delhi, Dated 13th May, 2021
VBP/-
Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.