

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 887/DEL/2020 [A.Y 2016-17]

M/s Vatika Ltd  
4<sup>th</sup> Floor, Vatika Triangle  
M.G. Road, Sushant Lok-I  
Block -A, Gurgaon

Vs. The A.C.I.T  
Central Circle - 8  
New Delhi

PAN: AABCV 5647 G

(Applicant)

(Respondent)

Assessee By : Shri C.S. Aggarwal, Sr. Adv  
Shri Ravi Pratap Mall, Adv  
Shri D.B. Jain, CA

Department By : Shri M. Baranwal, CIT-DR

Date of Hearing : 07.11.2022  
Date of Pronouncement : 11.11.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the assessee is preferred against the order of the  
ld. CIT(A) - 24, New Delhi dated 31.12.2019 pertaining to A.Y. 2016-17.

2. The solitary grievance argued before us relates to the addition of Rs. 8,75,31,250/- made as unexplained investment in property u/s 69 r.w.s 115 BBE of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. The representatives of both the sides were heard at length, the case records carefully perused and relevant documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules duly considered.

4. The underlying facts in issue are that on 17.10.2016, a survey u/s 133A of the Act had been conducted at the premises of M/s Boss Gears Ltd. wherein Annexure A-1 to Annexure - A8 had been found and impounded. The impounding order dated 17.10.2016 is exhibited at page 32 of the paper book titled "Synopsis in Brief".

5. At the time of survey, statement of Shri Digvijay Kapuria, CEO of M/s Boss Gears Ltd has also been recorded. Pursuant to the survey operation and impounding of the aforesaid documents, a search u/s 132 of the Act was conducted at the premises of the assessee on 17.10.2016 to 19.10.2016.

6. On perusal of the documents seized, it was noticed that the assessee has entered into MOU with M/s Boss Gears Ltd. on 02.09.2015 for purchase of land measuring 21m kanal 13 marla situated a Village Sikandarpur Badha, Gurgaon for Rs.18.22 crores. However, on perusal of registered deed of the said land dated 24.12.2015, it was noticed that the purchase consideration for this land was declared at Rs. 9,47,18,750/-.

7. During the course of search and seizure operation, these facts were confronted to Shri Gautam Bhatia, Managing Director of the assessee company when his statement was recorded u/s 132(4) of the Act. In his statement, Shri Gautam Bhatia accepted the transaction with M/s Boss Gears Ltd. for purchase of the said land and it was explained that the total purchase consideration was Rs. 9.47 crores instead of Rs.18.22 crores.

8. The Assessing Officer was not convinced with the explanations given by the Managing Director of the assessee company and was also not convinced with the explanation given by Shri Yuvraj, CEO of M/s Boss Gear Ltd [seller of the said land]. The Assessing Officer could not believe the steep fall in the purchase consideration mentioned in the

MOU which was Rs.18.22 crores and transaction value recorded in the sale deed which was Rs. 9.47 crores

9. We find that the assessee had specifically replied on 22.11.2018 that the purchase price of Rs.18.22crores, as agreed in the MOU was on the assurance from M/s Boss Gears Ltd. that the said land was free from all sorts of encumbrances, attachments, mortgages, liens, etc. whereas the said land has outstanding dues to the Director General, Town and Country Planning, Haryana. It was further found that the seller M/s Boss Gears Ltd. also failed to fulfill the other conditions of the MOU like restoration of status of the land to its original status, removal of factory premises under operation and obtaining of NOC from the department for transfer of the said land.

10. All these reasons given by the assessee were dismissed by the Assessing Officer who concluded the assessment by making an addition of Rs. 8,75,31,250/- being difference in sale consideration mentioned in the MOU and sale consideration mentioned in the sale deed.

11. The assessee strongly agitated the matter before the Id. CIT(A) but without any success.

12. There is no denying that the said MOU along with Annexures A-1 to A-8 were Impounded during the course of survey operation u/s 133A of the Act from the business premises of M/s Boss Gears Ltd. Plot No. 606-607 JMP, Manesar, Sector-8, Gurgaon on 17.10.2016 which is evident from the impounding order exhibited at Page 32 of the “Synopsis in Brief”.

13. A perusal of the statement of Shri Yuvraj, CEO of M/s Boss Gears Ltd. shows that he has accepted the fact that M/s Boss Gear Ltd sold its land to Vatika Group.

14. Replying to the specific question relating to sale consideration of this transaction, Shri Yuvraj Kapuria categorically stated that to the best of his knowledge, total sale consideration of this transaction was approximately Rs.9 crores and mode of receipt of payment received from Vatika Group were all in the form of cheques or bank transfers. It was also categorically stated that there was no sale agreement that was entered into before sale deed was executed.

15. When the MOU was confronted to Shri Yuvraj wherein sale consideration was mentioned at Rs.18.22 crores and wherein Shri Yuvraj was also a witness, Shri Kapuria replied that the said document was not prepared before him nor was it read before him and he had no knowledge of the contents of this document and since his father had signed the document, he also signed the same.

16. Shri Kapuria, however, once again stated that to the best of his knowledge, sale consideration was Rs.9 crores.

17. However, we find that though the statement of Shri Yuvraj was recorded but no statement of Shri Digvijay was recorded who also happens to be one of the signatory to the MOU. In our considered opinion, the initial burden is on the revenue to establish that the assessee had made investment of the sum alleged to have been invested and no such evidence has been brought on record by the revenue to establish that the assessee has made investment of Rs.18,22,50,000/- and on the contrary, the assessee has successfully demonstrated that the said land has been purchased for Rs. 9,47,18,750/-.

18. We have the benefit of going through the assessment order of M/s Boss Gears Ltd. for Assessment Year. 2016-17 which order dated 20.11.2018 has been framed u/s 144 of the Act wherein the Assessing Officer has categorically mentioned that :

**"The assessee has also shown sale of immovable property at value Rs. 9,47,18,750/- and had adopted cost of acquisition with indexation at Rs. 1,26,90,432/- and cost of improvement with indexation a Rs. 64,21,405/-. In the absence of assessee's response he is left with no option as to how to check the accuracy of the computation. Still the assessment has to be completed, so I will no be unfair to exclude the cost of improvement in the absence of any reply submitted by the assessee. Hence the deductions u/s 48 is restricted to Rs. 1,26,90,432/- and the capital gain arising out of this will be Rs. 8,20,28,318/-."**

19. A perusal of the assessment order in the case of the seller M/s Boss Gears Ltd. clearly shows that sale consideration has been accepted by the revenue at Rs. 9.47 crores and it cannot be stated that the Assessing Officer at Ludhiana was not aware of the survey proceedings conducted at the premises of M/s Boss Gears Ltd. It is not understandable nor it can be accepted in light of the impounding order dated 17.10.2016 exhibited at page 32 of "Synopsis in Brief" that the

Assessing Officer of M/s Boss Gears Ltd was unaware of survey operations conducted at the business premises of M/s Boss Gears Ltd.

20. On identical set of facts, the Hon'ble Delhi High Court in the case of Ved Prakash Choudhary 305 ITR 245 has held as under:

"3. On the basis of the MOUs, the Assessing Officer issued a questionnaire to Ravi Talwar and Madhu Talwar regarding receipt of the amount of Rs. 25 lakhs each but while they both admitted having signed the MOUs, they denied having received any amount. The Assessing Officer concluded that the denials by the assessed of having made payments and of Ravi Talwar and Madhu Talwar of having received the amounts was only to escape payment of tax liabilities. Accordingly, an amount of Rs. 50 lakhs was added in the hands of the assessed under [Section 69](#) of the Income Tax Act, 1961 (for short the Act) as unexplained expenditure.

4. The view taken by the Assessing Officer was not accepted by the Commissioner of Income Tax (Appeals) and also by the Tribunal. Both concurrently were of the view that there was not enough evidence to add the amount in the hands of the assessed.

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12. In so far as the present case is concerned, the assessed had stated that in fact there was no transfer of money between him and Ravi Talwar and Madhu Talwar. On the other hand, Ravi Talwar and Madhu Talwar had denied receipt of any money from the assessed. In the fact of these denials, there ought to have been corroborative evidence to show that there was in fact such a transfer of money. Both the Commissioner as well as the Tribunal have come to the conclusion that there was no such material on record.

13. The Assessing Officer relied on certain other transactions entered into by the assessed with Ravi Talwar and Madhu Talwar for drawing a presumption in respect of the transfer of money, but the Tribunal rightly held that those were independent transactions and had nothing to do with the MOUs, which were the subject matter of discussion. Even if there was something wrong with some other transactions entered into, that would not give rise to an adverse inference in so far as the subject MOUs are concerned."

21. Similar view was taken by the Hon'ble Kerala High Court in the case of Smt. K.C. Agnes & Ors. 262 ITR 354 where in it has been held as under:

"5. After considering the evidence and on the basis of the assessment order passed against Pasha, the case of the assessee that the property was purchased at the rate of Rs.

8,000 per cent has been accepted. Thus, the Tribunal allowed the appeals. The sale deed will show that the price was for Rs. 8,000 per cent when the agreement dated March 1, 1983, shows that the parties agreed to purchase the property at Rs. 12,951 per cent. A receipt is also relied on in the form of a letter dated April 2, 1983, to show that the property was agreed to be purchased at Rs. 12,951 per cent. When the document shows a fixed price, there will be a presumption that it is the correct price agreed upon by the parties. It is true that on the basis of the agreement the sale deed was executed. But it is not necessary that the price stated in the agreement will be the price shown in the sale deed. Sometimes, it may be higher and sometimes it may be lower. Sometimes intentionally a lesser value may be shown in the sale deed. Even if it is assumed to be so, unless it is proved that the agreement was acted upon and unless the amount stated in the agreement was paid for the sale, we cannot come to the conclusion that the price mentioned in the sale deed is not correct. In this case, further it is found that in the assessment of Pasha, it was finally found that the amount was received only at Rs. 8,000 per cent. It is taking into all these matters into consideration that the Tribunal held that the property was sold at the rate of Rs. 8,000 per cent. Thus, the Tribunal, on the basis of the facts and circumstances of the case and on the appreciation of evidence, came to the conclusion that Rs. 12,951 was not the amount for which the property was sold. According to us, there is no rule that the amount shown in the receipt was the actual amount paid. So far

**as the other questions are concerned, we do not find that any substantial questions of law arise because as already stated, the only question in this case is whether the amount stated in the sale deed is correct or not. According to us, the amount stated in the sale deed is the correct amount unless there are circumstances to ignore the same."**

22. Considering the facts in totality, we are of the considered view that it is not the case where during the course of search the assessee has been found to have made any investment but it is a case that as a result of documents found and impounded at the time of survey on M/s Boss Gears Ltd. the impugned addition has been made.

23. It is also an undeniable fact that the seller has admitted to have received Rs.9.47 crores as against Rs.18.22crores alleged by the Assessing Officer. Therefore, the burden is squarely upon the revenue to prove that the actual transaction was of Rs.18.22 crores, which it has grossly failed to establish, and most importantly, assessment order of the seller M/s Boss Gears Ltd., mentioned elsewhere, and exhibited at page 609 of the Paper Book clearly demonstrates that the sale consideration in the case of the seller has been accepted at Rs.9.47 crores and by any stretch of imagination it cannot be accepted that the Assessing Officer of M/s Boss Gears Ltd. was unaware of the fact

that survey operation was conducted at its premises during the financial year relevant to the Assessment Year considered by him while framing the said assessment order. We, therefore direct the Assessing Officer to delete the impugned addition of Rs. 8,75,31,250/-. The grounds argued before us are allowed.

24. In the result, the appeal of the assessee in ITA No. 887/DEL/2020 is allowed on the ground argued before us.

The order is pronounced in the open court on 11.11.2022.

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 11<sup>th</sup> November, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	