

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.538/PUN/2022

निर्धारण वर्ष / Assessment Year : 2011-12

Anoop Gopikishan Jaju, Bankat Niwas, Bharat Nagar, Jalna, Aurangabad 431 203 Maharashtra PAN : AEJPJ0360B	Vs.	ACIT, Jalna Circle, Jalna
Appellant		Respondent

Assessee by Shri S.N. Puranik
Revenue by Shri Ramnath P. Murkunde

Date of hearing 22-06-2023
Date of pronouncement 23-06-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order dated 02-06-2022 passed by the CIT(A) in National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2011-12.

2. The assessee has raised two additional grounds. The ld. DR strongly objected to their admission by submitting that fresh investigation of facts was required to decide the grounds and necessary facts were not available on record. It was further

submitted that the assessee raised these grounds without any corroborating evidence to support them. In the guise of these grounds, the assessee was seeking to verify the record of the Department on all possible scores without showing non-compliance by the Revenue of all the requisite procedures. The Id. AR could not controvert the submissions advanced on behalf of the Revenue.

3. The Hon'ble Supreme Court in the case of *National Thermal Power Company Ltd. Vs. CIT* (1998) 229 ITR 383 (SC) has held that the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee notwithstanding the fact that the same was not raised before the lower authorities. The requisite condition for accepting an additional ground is that the relevant facts on that legal issue must be available on record. In view of rival but common submission, it is seen that the relevant facts for deciding these grounds are not available on record inasmuch as the assessee was just exploring the options without anything to substantiate that there was non-compliance of the requisite conditions or procedures by the

Revenue in this regard. As such, we are not inclined to admit the additional grounds.

4. On merits, the only issue raised is against the confirmation of addition of Rs.43.00 lakh on account of on-money paid by the assessee for purchase of land in the name of his mother.

5. Pithily put, the facts concerning this issue are that a survey action was taken u/s.133A of the Act on M/s. Mahalaxmi Properties and Developers, Jalna (in short 'MPD'). During the course of survey, various incriminating documents and books were found which were impounded. MPD admitted the receiving of on-money from sale of land and offered the same for taxation. Later on, MPD filed Settlement Application before the Settlement Commission declaring that they had received on-money on the sale of plots and offered additional income of Rs.8,55,86,106/- over and above the income declared in the return of income. The said disclosure was further enhanced by Rs.2.00 crore by the Settlement Commission. The impounded documents disclosed that the assessee paid a sum of Rs.60.94 lakh against the purchase of a plot in the name of his mother, out of which a sum of Rs.4,69,400/- was refunded, leaving the amount of

Rs.56,24,600/- paid in cash. Out of this amount, a sum of Rs.43.00 lakh was paid during the year. The AO made addition for Rs.43.00 lakh, which came to be countenanced in the first appeal. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

6. We have heard the rival submissions and gone through the relevant material on record. It is seen that MPD admitted during the course of survey that it received on-money from various persons, which was kept outside the books of account. The name of the assessee specifically appeared in such a list. It was not only a mere admission by MPD, but corresponding record in this regard was also found, which duly recorded the name of the assessee with the amount of on-money. MPD offered such total amount received from all the buyers including the assessee for taxation. The matter was also taken to the Settlement Commission, which accepted the declared additional income of Rs.8.55 crore and further enhanced it by Rs.2.00 crore. It has been brought to our notice that the order of the Settlement commission has attained finality.

7. The contention of the assessee that no plot was purchased by him from MPD is inconsequential because the incriminating material indicated the name of the assessee to have paid the on-money against the purchase of land. It is not disputed that the plot against which the name of the assessee was recorded with the amount of on-money, was actually purchased in the name of his mother. Not only this, the piece of land so purchased was subsequently sold as is emanating from the orders of the authorities below indicating the names of further buyers. At this juncture, the question is not as to who purchased the flat from MPD, but who paid the on-money and in whose name such an amount was recorded in the incriminating material. It is the assessee only, whose name was recorded in the incriminating material with the amount of on-money paid. The assessee did not furnish any source of such money.

8. During the course of instant proceedings before the AO, which started with the receipt of information about the payment of on-money by the assessee, a request was made by the assessee for the supply of incriminating material from MPD. The AO, vide notice u/s.142(1) dt. 07-12-2018, offered the assessee to inspect

the impounded material based on which the assessment was re-opened and requested the assessee to be present on 11-12-2018. The assessee chose to ignore this opportunity. The Id. DR has brought on record the service of such notice dt. 07-12-2018 on the assessee on the immediately next day, i.e. 08-12-2018. This shows that the assessee, despite requesting for the inspection of the incriminating material having his name with the amount of on-money, did not turn up to carry out the inspection of the impounded material when a specific opportunity was provided to him. This deciphers that the assessee had no explanation and was just trying to find lame excuses here and there to come out of the situation contrary to him. Page 12 of the impounded loose material, i.e. Annexure A4 had the name of the assessee at Sl.No.21 giving the area, square feet rate, total amount, amount received till today, received amount before 27-04-2012 and amount due. Not only that even the dates of payments were also mentioned in the separate ledger maintained by MPD for this purpose.

9. In view of the foregoing discussion, it is absolutely clear that the assessee paid on-money to MPD for purchase of immovable

property in the name of his mother. As such, we are satisfied that the authorities below were justified in making and confirming this addition.

10. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 23rd June, 2023.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 23rd June, 2023
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr. CIT concerned
4. DR, ITAT, 'A' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	22-06-2023	Sr.PS
2.	Draft placed before author	23-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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