

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No.2903/Ahd/2017  
Assessment Year 2014-15**

The DCIT, Central Circle-1(4), Ahmedabad  <b>(Appellant)</b>	Vs	Shri Alpeshkumar Rasiklal Lakhani, 24, Satyam Crystal Bungalows, B/h. Rajpath Club, Bodakdev, Ahmedabad-380054 <b>PAN: ABLPL5213E (Respondent)</b>
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**Revenue Represented: Shri Sudhendu Das, CIT-DR  
Assessee Represented: Shri Biren Shah, A.R.**

Date of hearing : 02-02-2024  
Date of pronouncement : 23-02-2024

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the appellate order dated 12.09.2017 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is an individual and Partners in various Firms engaged in Construction and Land Development Activities. There was a search action on 13.06.2013 in the residential premises of the assessee wherein a small pocket diary seized as Annexure-AS-5 containing 50 pages wherein details of cash received/paid of the various residential and commercial housing projects. The assessee submitted that the payments are relating to M/s. Yash Buildcon, M/s. Yash Developers, M/s. Soham Builders and M/s. Soham Properties Developers relating to the various projects carried out by the above firms.

2.1. During the assessment proceedings, the assessee explained each and every entries appearing in the seized pocket diary with assessee's Ledger account appearing in various partnership firms vide his letter dated 04.12.2015. However the A.O. disbelieved certain entries and made an addition of Rs.2,53,04,000/- as unexplained income of the assessee and also initiated Penalty proceedings u/s. 269SS, 269T and 271AAB of the Act.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) called for a Remand Report from the Assessing Officer and deleted the addition made by the Assessing Officer observing as follows:

*"...8.1 The cash receipts of the transactions mentioned in the diary were not accepted by the AO as the unaccounted income of the firms which they disclosed in their returns of income for the A.Y. 2014-15 on the ground that the firms made disclosure on account of their suppressed receipts from the customers. The firms made disclosure in the A.Y. 2012-13, 2013-14 and also in A.Y. 2014-15 but the transactions of the pocket diary pertained only to the A.Y. 2014-15. The disclosure made by Yash Buildcom, Yash Corporation and Dev Corporation in the A.Y. 2014-15 did not represent the cash receipts mentioned in the pocket diary, therefore, the assessee was*

wrongly taking benefit of telescoping on that basis. The other ground of rejection of the claim of the assessee was that the transactions of the pocket diary were related to the capital contribution of Rs. 1.10 crore made by the assessee to Soham Builders on various occasions in the A.Y. 2014-15. These were personal transactions of the assessee and did not pertain to the partners or to their firms. Further he worked out inflow of cash transactions of the credit side entries of the pocket diary to the tune of Rs.2,53,04,000/- and added the same in the hands of the assessee. The AO concluded the findings with the observation that the contention of the assessee that all the transactions of on-money pertained to the firms and their partners and did not belong to himself in his personal capacity was not fully true as some of the transactions were related to the capital contributed by the assessee to Soham Builders in the capacity as a partner.

8.2 It was observed, after going through the facts of the case, that the finding of the AO was not based on any material evidence on record. He did not discuss any factual evidence in the assessment order to rebut the statement of the appellant recorded u/s 132(4) of the Act. He accepted only part of the explanation of the appellant without giving any reasons. Further finding of the AO that the disclosure was made by the partnership firms on account of suppression of the on-money received from the clients and it did not include the transactions recorded in the pocket diary was also not supported by any material. He did not bring any evidence on record by conducting any inquiry on the issue either with the firms or their partners before coming to the finding particularly when the assessee claimed that the transactions in the pocket diary were related to the firms only. It was a fact on record that the firms, after making disclosure of unaccounted income, entered the disclosed income into their regular books of accounts in the period relevant to the A.Y. 2014-15 and that the disclosure recorded in the books of the firms also included the transactions mentioned in the pocket diary. The AO accepted the books of accounts in the assessment proceedings,

The finding of the AO, that the appellant contributed capital in his personal capacity to Soham Builders, was also contrary to the fact of the case. As a matter of fact, all the entries mentioned in the pocket diary were reproduced by the AO in English along with their particulars on page 2, 3 and 4 of the assessment order and the same were reproduced again on page no. 5, 6 and 7 in order. It may be mentioned that the transactions mentioned on page No. 1, 3, 6, 7, 8, 10 and 13 in the pocket diary there was no such narration about any capital contribution made by the assessee to the firm, Soham Builder as mentioned by the AO in the assessment order. The relevant entries in the debit side of the diary may be reproduced as below:-

Page no 1	Given Cash To Bkg. At The Time Of Payment Received 196/21 Vastral 31/5 Vala Till Date Hisab Chukte Between Bkg And Arl
Page no 3	En to SNa 20% (Arl)
Page no 5	Given to Soham Builder 30 Na 20% (Arl)
Page no 7	Given to Soham Builders 50 Na 40% Mujabh Haste Jayesh (Arl+Bkg)
Page no 8	Given to Soham Builders 50 Na 40% Mujabh Haste Jayesh (Arl+Bkg)
Page no 10	Given to Soham Builders 50 Na 40% Mujabh (Arl + Bkg)
Page no 13	Soham Builders 50 Na 40% Mujabh Haste Rajesh Ari + Bkg

8.3 Thus, it was clear that the finding of the AO was contrary to the facts of the case. The appellant repeatedly stated during the course of search, in the course of post search investigation and in the assessment proceedings that his source of income was from interest, remuneration and profit/loss from the firms wherein he was a partner. The AO nowhere in the assessment order rebutted this claim of the appellant with any material evidence. He did not give any basis for working out figure of Rs.2,53,04,000/- as unexplained cash in the hands of the appellant. The AO on the one hand worked out at Rs.57961200/- as the total amount involved in the transactions mentioned in the pocket diary, however, while making assessment in the case of the appellant he restricted addition to Rs.2,53,04,000/- in the hands of the assessee on the ground that these transactions of the diary were not recorded either in the books of the assessee or in the books of the partnership firms wherein the assessee was a partner. This finding of the AO contradicts his own finding that the noting in the pocket diary pertained only to the appellant. The explanation of the assessee that he was in charge of on money transactions received for the housing projects of the partnership firms and also that he was maintaining accounts of the partners of the firms was rejected without having any material evidence on the record. The AO did not disprove this fact either by carrying out cross verification with the partners of the firms or from the customers from whom the cash was received. The AO seems to be undecided about the entries in the pocket diary as to whether they pertained to the projects of the partnership firms or they were related only to the appellant.

Therefore, after having regard to the facts and circumstances of the case, in my considered opinion, the action of the AO was not sustainable. Accordingly, the ground of the appeal is allowed.

4. Aggrieved against the same, the Revenue is in appeal before us raising the following Grounds of Appeal:

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and/or on facts in deleting the addition of Rs.2,53,04,000/- made on account of entries appearing in a diary seized from the assessee.*
  - 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.*
  - 3. It is, therefore, prayed that the order of the Ld. CIT (A) be set aside and that of the A.O. be restored to the above extent.*
5. Ld. CIT-DR Shri Sudhendu Das appearing for the Revenue supported the order passed by the Assessing Officer and Ld. CIT(A) is not correct in deleting the addition of Rs.2.53 crores made on account of entries appearing in a diary seized from the assessee.
6. Per contra, Ld. Counsel Shri Biren Shah appearing for the Assessee brought to our notice, the Assessing Officer in his Remand Report having accepted that M/s. Dev Corporation disclosed Rs.50,00,000/- and M/s. Yash Buildcon admitted undisclosed income of Rs.2,94,50,649/- in their respective Returns of Income. In support of the same, Ld. Counsel for the assessee filed copies of the Returns of Income filed by M/s. Yash Buildcon and M/s. Dev Corporation relating to the Assessment Year 2014-15. Further in the case of M/s. Yash Buildcon, the Ld. CIT(A) considered the disclosed income while deciding the Penalty levied under section 271AAB of the Act. Thus it is clear that the Partnership Firms had disclosed this unaccounted income in their respective Returns of Income and paid taxes thereon. Thus in the present assessee's case, the Ld. CIT(A) correct in deleting the sum of Rs. 2.53 crores in the hands of the assessee. The findings arrived by the Ld. CIT(A) does not require any interference and Revenue appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. The Ld. CIT(A) has already held that the Assessing Officer did not disprove that the entries in the diary seized are relating to the money transaction received for various housing projects of the Partnership Firms and the assessee was maintaining the accounts of the Partners of the various Firms. Further the Assessing Officer nowhere in the assessment order rebutted the claim of the assessee with any material evidence. Further the Assessing officer did not give any basis for working out the figure of Rs.2,53,04,000/- as unexplained cash in the hands of the assessee, as against the workings of Rs.5,79,61,200/- found in the seized diary. Whereas the assessee produced before us the Return of Income filed by the partnership firm M/s. Yash Buildcon and M/s. Dev Corporation relating to the Assessment Year 2014-15 and Ld. CIT(A) order dated 24.07.2017 in the case of M/s. Yash Buildcon wherein the undisclosed income of Rs.2.94 crores declared by the assessee. The operative portion of the order reads as under:

*“3.2.1 A perusal of the assessment order shows that during the course of search proceedings on Yash group, the analysis of the seized material showed a difference of receipts amounting to Rs.8,24,61,819/- between the figures as per the seized material and as per books of accounts. This amount pertained to Asst. Years 2012-13, 2013-14 and 2014-15. The appellant made a total disclosure of Rs.8,24,61,819/- for these three years of which the disclosure for the year under consideration was Rs.2,94,50,649/. It is seen from the assessment order that the AO has given a finding that as per the audited accounts, the appellant's sales from construction work is Rs.1,86,56,556/- and the amount of disclosure is Rs.2,94,50,649/-. Accordingly, after debiting various expenses, the total income of the appellant was assessed at Rs.78,88,810/- for the year under consideration. From the above, it is evident that while the AO has correctly held that penalty u/s 271AAB is to be levied in the appellant's case, it is also a fact that the amount of Rs.78,88,810/- on which the penalty has been levied by the AO includes not only the disclosed income, but also the regular income of the appellant. In my view, the penalty is to*

*be levied @ 10% on the disclosed income which for the year under consideration was Rs.2,94,50,649/-. Therefore, the AO is directed to recompute the amount of penalty to be levied u/s 271AAB accordingly.”*

8. Thus we do not find any merits in the ground raised by the Revenue and do not find any infirmity in the order passed by the Ld. CIT(A). Therefore the ground raised by the Revenue is devoid of merits and the same is liable to be dismissed.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 23-02-2024
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 23/02/2024**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद