

(DEL-ITAT) 2020 ITL 97

Girraj Bansal V. Assistant Commissioner of

Income Tax

IN THE ITAT OF DELHI

Sudhanshu Srivastava, JM And Anadee Nath Misshra, AM

ITA No 2002/Del/2017

ASST YEAR : 2008-2009

DATED - 08-01-2020

The Income Tax Act 1961 - Section 153A

The Income Tax Act 1961 - Section 143(3)

The Income Tax Act 1961 - Section 234A

The Income Tax Act 1961 - Section 234C

The Income Tax Act 1961 - Section 132(4A)

IN FAVOR OF Assessee

APPELLANT BY: Rajesh Malhotra, CA

RESPONDENT BY: Inder Pal Singh Bindra, CIT-DR

REVENUE: respondent

JUDGMENT

Per, Anadee Nath Misshra, JM:

(A) This appeal filed by the assessee is against impugned appellate order dated 20.01.2017 passed by the Ld. CIT (Appeals)-31, New Delhi for assessment year 2008-09. Following grounds of appeal have been raised as under :

“1. On the facts and in the circumstances of the case and in law, the Learned CIT(A) has erred in concluding that Learned AO has correctly assumed jurisdiction to assess the assessee u/s 153A/143(3) of the Act, the whole action is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

2. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming addition of Rs.83,50,000/- on presumption basis that the assessee has received this amount of Rs.83,50,000/- in cash not declared in Registered Sale Deed on account of sale of first floor and barsati of property no. 31, Block J, South Extension Part I, New Delhi. The action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

3. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition of Rs.83,50,000/- objected in ground no. 2 above on the basis of search and seizure conducted and alleged evidences found in premises of third party without following the proper procedure in the law before relying on those evidences therefore action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

4. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming addition of Rs.83,50,000/- on presumption basis that the assessee has received this amount of Rs.83,50,000/- in cash not declared in Registered Sale Deed on account of sale of another property at ground floor no. 31, Block J, South Extension Part I, New Delhi. The action of the authorities below is

wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

5. On the facts and in the circumstances of the case and in law, the authorities below have erred in confirming the addition of Rs.83,50,000/- objected in ground no.4 above on the basis of search and seizure conducted and alleged evidences found in premises of third party without following the proper procedure in the law before relying on those evidences therefore action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

6. On the facts and in the circumstances of the case and in law, the authorities below have erred in charging interest u/s 234A Rs.5,03,685/-, interest u/s 234B Rs.53,72,637/- and interest u/s 234C Rs.2,08,000/-. The action of the authorities below is wrong, illegal, misconceived, unjustified and bad at law therefore it should be quashed.

7. The appellant craves the right to add, submit, alter or withdraw any or all grounds of appeal before or on the date of hearing.

(B). The assessment order dated 30.03.2016 was passed u/s 253A/143(3) of Income Tax Act wherein two separate additions of Rs. 83,50,000/- each, total 1,67,00,000/- was made on account of alleged undisclosed cash received towards sale of properties. The assessee had 50% share in the aforesaid properties and the addition made by the Assessing Officer as aforesaid was 50% of the alleged total cash received by the two co-owners of the properties. The remaining 50% addition has been made in the hands of the other co-owner, namely Sh. Bharat Singh who also happens to be the brother of the assessee. The relevant portion of the assessment order is reproduced as under :-

4 During the search operation carried out at the office premise of Sh. Naresh Gupta, i.e R-36, Greater Kailash, Part-1, New Delhi various incriminating documents both in paper and digital form was found and seized On perusal of the computer hard disc marked as Annexure A-19 (G Drive) of party no 6 seized from the office premise of Sh. Naresh Gupta. draft deeds pertaining to various parties have been found, which are showing cash transaction in the property deals made by the various parties. Out of these draft deeds, one agreement to sell found pertain to the assessee As per this document, agreement to sell is executed by Shri Giriraj Singh and Sh. Bharat Singh R/o Ch. Attar Singh both Rio Farm No 14, Ashoka Avenue, DLF Farm. Village Chattarpur, New Delhi in favour of Sri Rajiv Gee' Sic Late Sh. J. Goel Rio 75, Khan Market, New Delhi for a total sale consideration of Rs. 2,01,00,000/- for First Floor and Barsati of a freehold plot of land bearing no. 31 in Block 'Jr measuring 267 sq. yds situated in the residential colony, South Extension Part 1 New Delhi. The relevant extract is reproduced below:

"That is consideration of the sum of Rs. 2,01,00,000/- out of which a sum of Rs. 70,00,000/- as advance money has been received by the vendors from the vendee, in the following manner:

Rs. 55,000/-in Cash

Rs. 5,00,000/-vide Cheque no.....dated

Rs. 10,000/- vide Cheque nodated

4.1 However, the as per the registered sale deed, the property was sold at Rs. 34,00 000/- only. On verifying the contents of the draft of sell of agreement found in hard disc and registered sale deed, the contents of the both are same only there is a difference of sale consideration. The details of payment mentioned in registered sale deed is as under.

"That in consideration of the sum of Rs. 34,00,000/- (Rs. Thirty Four lacs only), which has been received by the Vendors (from the Vendee, in the following manner

Rs. 5,00,000/- vide Cheque Nc 965677, dated 26.08.2007

Rs. 10,00,000/- vide Cheque No 965678, dated 26 08 2007

Rs. 12,00,000/- vide Cheque NO 965684 dated 04 10.2007

Rs. 7,00,000/- vide Cheque No. 965685, dated 04.10.2007"

4.2 To examine the facts, summons u/s 131(1A) of the Income Tax Act, 1961 was issued to Shri Naresh Gupta and statement on oath of Shri Gupta was recorded on 08.11.2013. He was confronted with the printout of the draft deed agreements, which were extract from the working copies of the hard disc seized during the search The relevant portion of the statement of Shri Naresh Gupta is produced as under:

"0-12 I am showing you printouts taken from the hard disk seized from your office premises R-36, GK Part-1, New Delhi in which contain various agreements to sell and sale deeds. In view of the fact and circumstances

(a) Why these document should not be treated as belong to you u/s 132(4A) of the I T Act, 1961

(b) Why those should not be treated as true?

Ans. The printouts of the documents shown to me taken from the hard disk from my office is pertaining to my various clients, it does not pertain to me in any manner whatsoever. These documents are drafted under the instructions of various clients in discharge of my professional duty/obligation. Any other information/actual details of money transaction are not my knowledge. Any other details pertaining to the same is protected under the privileged communication under the Indian Evidence Act.

4.3 During the assessment proceedings, the assessee was confronted with the above facts and show caused vide his office letter dated 17.03.2016 that as to why the difference of sale consideration as mentioned in draft sell agreement and original registered deed should not be added to your total income considering that the difference was received by you in cash In reply dated 22 03.2016. the assessee has submitted as under-

"That the assessee has sold a freehold property bearing no 31, Stock-J, measuring 267 sq yards situated in the residential colony, South Extension, Part-1, New Delhi for 3 consideration of Rs. 34,00,000/- during the A.Y. 2008-09

That draft of deeds pertaining to above mentioned property found on computer hard disk from office premise of Sh. Naresh Gupta was merely a soft drafts and it may be possible that it was a copy of another draft which was not completely modified or finalized.

This is a general practice by deed writers to copy the deeds/agreements and change the particulars of same as per the transaction requirements due to which wrong amounts were mentioned in the above said drafts found in the Hard Disk.

That confirmation from Sh. Naresh Gupta is enclosed, confirming that the draft soft copy of properly documents related to J-31, NOSE-1 New Delhi was merely a soft drafts and it may be possible that it was a copy of another draft which not completely modified or finalised"

4.4 The above submission of the assessee was considered but found not satisfactory On perusal of the draft deeds found in the hard disc and original registered sale deed, it is seen that transaction mentioned in the 'agreement to sell' extracted from the seized Hard disc from business premise of Sri, Naresh Gupta, was actually made by the concerned parties, which is matching with the details mentioned in the document. Further the details mentioned in the registered sale deed regarding mode of payments and payment details also tallying with the details mentioned in the agreement to sell except cash payments From the above, it is clear that the assessee with his co-owner has received the difference of above documents, i.e. Rs. 1,67 crore in cash from Sh. Raiv Goel and as the assessee share or this property was 50%, hence 50% of the sale consideration received by the assessee and his co-owner over and above the registered price. i.e. Rs. 83,50,000/- 150% of Rs. 1,67,00,000/- (Rs.

2,02,00,000/- less Rs. 34,00,000/-) is added to the total income by the assessee as undisclosed Short Term Capital Gains. Since the assessee has concealed his income and furnished inaccurate particulars of his income resulting in escapement of Income, penalty proceeding u/s 271(1)(c) of the I T. Act, 1961 is to be initiated separately.

(Addition Rs.83,50,000/-)

5 Further it is also to be noted that. during the year under consideration the assessee and Sh. Bharat Singh, co-owner of property bearing no J 31, South Extension, Part 1, New Delhi has also sold ground floor of property as discussed above to Mrs. Suman Goel W/o Rajiv Goel (purchaser of above property). As the area covered and description of the property is same and the buyer is wife of Sr.,. Rajiv Goel who gave cash payment in respect of above property, it is presumed that the assessee has received cash of Rs 83,50,000/- in respect of the property as well. Hence addition of Rs. 83,50,000/- is also made with regard to sale of ground floor of property bearing no J-31, South Extension, Part 1, New Delhi. Since the assessee has concealed his income and furnished inaccurate particulars of his income resulting in escapement of income, penalty proceeding uis 271(1)(c) of the I. T. Act, 1961 is to be initiated separately.

(Addition Rs. 83,50,000/-)

(C). Aggrieved, the assessee filed appeal before the Ld. CIT(A) who, vide his impugned appellate order dated 20.01.2017, dismissed the assessee's appeal and confirmed the aforesaid additions total 1,67,00,000/- was confirmed. The relevant portion of the aforesaid impugned order dated 20.01.2017 of the Ld. CIT(A) is reproduced as under :-

“7.4it is clear that the appellant had received a cash of Rs.83,50,000/- upon sale of 1st floor of the property. The ground floor of the same property was sold to the wife of the buyer of the 1st floor. Thus, the automatic conclusion is that the same also must have fetched an equal amount of cash, which has been added by Id. AO to the income of the appellant.

7.5 Various decisions relied upon by IdAR are distinguishable both on facts and law hence the reliance is not well placed.

7.6 In view of the above, I do not find any reason to interfere with the order of Id. AO. Accordingly, the addition of Rs. 1,67,00,000/- is confirmed and the ground nos. 3 to 8 are dismissed.”

(D). Aggrieved again, the assessee has filed this present appeal in ITAT against the aforesaid impugned appellate order dated 20.01.2017 of the Ld. CIT(A). In the course of appellate proceedings in ITAT, copy of order dated 25.01.2019 of co-ordinate Bench of ITAT, Delhi in the case of Sh. Bharat Singh (the other co-owner of the properties, was who also happens to be the assessee's brother) in ITA Nos. 2001/Del/2017 was filed from the assessee's side.

(E). At the time of hearing before us, the Ld. Authorised Representative (AR for short) of the assessee submitted at the outset that the issue in dispute in the present appeal is squarely covered in favour of the assessee by aforesaid order dated 25.01.2019 of Co-ordinate Bench of ITAT, Delhi in the case of the aforesaid Sh. Bharat Singh. He submitted that in identical facts and circumstances, additions have already been deleted by ITAT vide the aforesaid order dated 25.01.2019 of co-ordinate Bench of ITAT, Delhi; and contended that the additions made in the hands of the assessee also deserves to be deleted following the precedent in the case of Sh. Bharat Singh. The Ld. CIT-DR appearing for Revenue also agreed that the issues in dispute in the present appeal are squarely covered in favour of the assessee vide the aforesaid order dated 25.01.2019 of co-ordinate bench of ITAT, Delhi in the case of aforesaid Sh. Bharat Singh. Moreover, he could not bring out any distinguishing facts and circumstances in the case of the assessee to persuade us to take a view different from the view already taken by co-ordinate

Bench of ITAT, Delhi in the case of aforesaid Sh. Bharat Singh. The Ld. CIT-DR further agreed that facts and circumstances in the case of assessee are identical to the facts and circumstances in the case of the aforesaid Sh. Bharat Singh.

(F). We have heard both sides and perused the materials on record. There is no dispute that the facts and circumstances in the case of the assessee are identical to facts and circumstances in the case of the aforesaid Sh. Bharat Singh in whose case co-ordinate bench of ITAT, Delhi has already deleted similar additions vide aforesaid order dated 25.01.2019. Neither side has brought any distinguishing facts and circumstances to our notice to persuade us to take a view different from the view taken already in identical facts and circumstances, in the case of aforesaid Sh. Bharat Singh; by co-ordinate Bench of ITAT, Delhi in the aforesaid order dated 25.01.2019 of ITAT. For ready reference the following portion of the aforesaid order dated 25.01.2019 of co-ordinate bench of ITAT, Delhi is reproduced :-
“5.14we are of the opinion that no addition can be sustained only on the basis of the unsigned draft agreement to sell found from the premises of the third party and that too without any corroborative evidences. Accordingly, we set aside the order of the Ld. CIT(A) and the Assessing Officer on the issue in dispute and direct the Assessing Officer to delete the addition of Rs.83,50,000/- for alleged cash received on sale of 1st floor of the property under reference. The grounds No. 2 and 3 of the appeal are, accordingly, allowed.

6. In ground 4 and 5 of the appeal, similar addition of Rs.83,50,000/- has been made in respect of the ground floor of the same property sold by the assessee on the basis of the draft agreement to sale discussed in Grounds No. 2 and 3 of the appeal. The Grounds No. 2 and 3 of the appeal have already been allowed and thus, to have consistency in our decision on the issue in dispute, the ground no. 4 and 5 of the appeal are also allowed.”

(G). Respectfully following the aforesaid decision of coordinate Bench of ITAT, Delhi in the case of aforesaid Sh. Bharat Singh in whose case vide aforesaid order dated 25.01.2019, co-ordinate Bench of ITAT, Delhi has already deleted similar additions in identical facts and circumstances, we also decide the issues in dispute in the present appeal in favour of the assessee and direct the Assessing Officer to delete the aforesaid two separate additions, each of Rs. 83,50,000; totaling Rs.1,67,00,000/-.

(H). In result, appeal of the assessee is allowed.

Order pronounced in the open court on 08/01/20.