

IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

ITA No. 467/JP/2011
Assessment Year : 2007-08.

Shri Sharad U. Mishra, D-120, Kabir Marg, Bank Park, Highway, Jaipur.	Vs.	Deputy Commissioner of Income Tax, Central Circle-3, Jaipur.
PAN No. AFWPM 4586 N		
Appellant		Respondent

ITA No. 519/JP/2011
Assessment Year : 2007-08.

Deputy Commissioner of Income Tax, Central Circle-3, Jaipur.	Vs.	Shri Sharad U. Mishra, D-120, Kabir Marg, Bank Park, Highway, Jaipur.
PAN No. AFWPM 4586 N		
Appellant		Respondent

Assessee by : Shri Rajeev Sogani (CA)
Revenue by : Shri Ranjan Kumar (CIT)

Date of Hearing : 15.11.2016.
Date of Pronouncement : 25/11/2016.

ORDER

PER SHRI KUL BHARAT, JM.

These two cross appeals by the assessee and the revenue are directed against the order of Id. CIT (A), Central, Jaipur dated 16.03.2011 pertaining to assessment year 2007-08. Both the appeals are taken up together and are being disposed off by a consolidated order, for the sake of convenience.

2. First, we take up assessee's appeal in ITA No. 467/JP/2011. The assessee has raised the following grounds of appeal :-

1. On the facts and in the circumstances of the appellant's case, the Id. CIT (A) should have deleted the addition of Rs. 30,92,000/- which was carried out merely on the basis of statement of Shri Hanuman Yadav without any iota of evidences suggesting payment of such on money to him. The Id. CIT (A) on the basis of cross examination should have held that the above deponent is unreliable and false and in the interest of natural justice it could not have considered his statement as reliable.
- 1.2 On the facts and circumstances of the appellant's case, the Id. CIT (A) has thus failed to appreciate the overall facts and the hostility of the deponent Shri Hanuman Yadav towards the appellant which has been brought out during the course of cross examination. The Id. CIT (A) ought to have held that Shri Hanuman Yadav was taking undue advantage of the situation and the circumstances of the appellant and therefore, he should have held that the statement of Shri Hanuman Yadav cannot be considered as base for carrying out the impugned addition.
- 1.3. In law and on the facts and circumstances of the appellant's case, the Id. CIT (A) has erred in not appreciating the fact that the AO having provided an opportunity to the appellant for cross examination has failed to consider the facts and evidences arising there from & hence, the very opportunity of providing cross examination was not met. He should have thus deleted the very addition on this count.
- 1.4. In law and in the facts and circumstances of the appellant's case, the Id. CIT (A) has failed to appreciate the fact that once the cross examination of deponent Shri Hanuman Yadav was carried out the onus of proving that alleged on money was paid to the deponent by the appellant shifted upon the department and in absence of any positive evidence suggesting payment of such on money to the deponent the addition was baseless and required to be deleted.
- 1.5. In law and in the facts and circumstances of the appellant's case, the Id. CIT (A) has failed to appreciate the fact that no evidences were found during search indicating payment of such alleged on money and that the impugned addition is merely based on the statement of deponent who shown to be hostile in such cross examination.
2. Without prejudice to the above, the Id. CIT (A) has erred in appreciating the fact that the flag ship company of the group to whom the appellant belongs to had offered income by way of

sources & that this flagship company was the ultimate beneficiary of the land purchased by the appellant by way of having rights for development in such lands and thus without prejudice such income offered there by way of source was available to meet such alleged payments even otherwise.

3. In the law and in the facts and circumstances of the case, the appellant denies his liability to pay interest u/s 234A & 234B of the Act.

3. Briefly stated the facts of the case are that a search operation was carried out on the assessee on 03.05.2007. The assessee was searched under section 153 of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 19/11/2007 requiring him to furnish return of income within 35 days. The requisite return was filed. The assessment under section 143(3) read with section 153 of the Act was framed thereby the AO made addition of Rs. 42,27,000/- as undisclosed investment. The addition was made on the basis that one of the sellers Shri Hanuman Yadav who appeared before the AO and submitted that the sale consideration of the land was Rs. 35,00,000/- as against Rs. 4,48,670/- declared by the assessee. Further the AO also observed that the assessee had purchased 10 bighas land from Shri Madan Singh in Phagi for Rs. 4,15,000/- as per the sale deed. However, in the statement recorded on 23.05.2007, Shri Madan Singh stated that he had sold the said property @ Rs. 1,55,000/- per bigha which would take the total figure at Rs. 15,50,000/-. However, the AO observed in the assessment order that Shri Nathawat stated that the statements were not read back to him nor was a copy given to him and that he had not said anything more than the price indicated in the sale deed. Thus two additions were made i.e. Rs. 30,92,000/- and Rs. 11,35,000/- totaling Rs. 42,27,000/- on account of difference between the sale consideration declared in the

sale deed and in the statement given by Shri Hanuman Yadav. The assessee by this, preferred an appeal before Id. CIT (A), who after considering the submissions of the assessee and the material placed on record, sustained the addition of Rs. 30,92,000/- in respect of the transaction entered with Shri Hanuman Yadav and deleted the addition in respect of the transaction with Shri Madan Singh.

4. Aggrieved by this, the assessee and the revenue are in appeal before the Tribunal.

5. The only effective ground in assessee's appeal is against sustaining the addition made on account of the statement of Shri Hanuman Yadav. The Id. Counsel for the assessee submitted that Id. CIT (A) failed to appreciate the fact oral evidence cannot over ride the documentary evidence. In support of this contention, Id. Counsel placed reliance on the decision of the Coordinate Bench of the Tribunal rendered in the case of Shri Ghanshyam Das Agarwal vs. ITO in ITA No. 1161/JP/2010. The Id. Counsel submitted that the Tribunal while deciding the issue has followed the ratio laid down by Hon'ble Supreme Court in the case of Union of India vs. T.R. Verma 1957 SC 882 and also in the case of Kishan Chand Chellaram vs. CIT, 125 ITR 713 (SC). Further, he submitted that the Tribunal has also followed the judgment of Hon'ble Punjab & Haryana High Court rendered in the case of Paramjit Singh vs. ITO (2010) 323 ITR 588. It is also submitted by the Id. Counsel that the authorities below failed to appreciate the fact that the seller of land was having dispute with the assessee and was black mailing the assessee. In support of this contention, the Id. Counsel submitted that a recorded voice was placed before the AO.

5.1. On the contrary, the Id. D/R supported the order of the AO.

5.2. We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. The AO made the addition on the basis of the statement of the seller of the land, who in his statement before the DDIT (Inv.) has stated that the sale consideration was at Rs. 2,10,000/- per bigha and he had received total sale consideration of Rs. 35,00,000/-. The Id. Counsel has not refuted the statement. However, he submitted that the statement was not bonafide but Shri Hanuman Yadav was black mailing the assessee. He submitted that interestingly the Revenue has accepted the sale consideration of the nearby vicinity. The Id. CIT (A) affirmed the view of the AO in this respect. Now the issue which requires our consideration is whether the addition can be sustained solely on the basis of the statement of Shri Hanuman Yadav, when there is no material placed on record that Shri Hanuman Yadav has made any claim against the assessee in any court of law seeking cancellation of sale deed or filing a recovery suit. The Coordinate Bench of the Tribunal after following the ratio laid down by Hon'ble Supreme Court under the similar circumstances has held in the case of Shri Ghanshyam Das Agarwal (supra) that in the absence of any conclusive evidence the document could not have been disbelieved. The Id. D/R could not point out any binding precedent wherein it has been held that the oral statement would over ride the documentary evidence. Therefore, respectfully following the decision of the Coordinate Bench in the case of Shri Ghanshyam Das Agarwal (supra), we are of the view that the AO was not justified to make addition solely on the basis of the statement of Shri Hanuman Yadav when there was a registered sale deed and more particularly when the maker of statement has not challenged the sale deed before any court of law. It is also not placed on record whether the sale deed was

executed under coercion. Therefore, considering the totality of facts of the present case, we hereby direct the AO to delete the addition. This ground of the assessee's appeal is allowed.

6. Now we come to the revenue's appeal in ITA No. 519/Jp/2011.

7. At the outset, Id. Counsel for the assessee submitted that the appeal by the revenue is not maintainable in view of the CBDT Circular No. 21/2016 [F. No. 279/Misc.142/2007-ITJ (Pt)] dated 10th December, 2015. As per section 268A if tax effect is less than Rs.10 lacs then appeal of department is not maintainable. Moreover, we do not find any exception in the appeal filed by the revenue as prescribed in the CBDT Circular referred above. Accordingly the appeal of the Department is dismissed in limine.

8. In the result, appeal of the assessee is allowed whereas appeal of the revenue is dismissed.

Order pronounced in the open court on 25/11/2016.

Sd/-

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(VIKRAM SINGH YADAV)
ys[kk lnL;@Accountant Member

Jaipur

Dated:- 25/11/2016.

Das/

Sd/-

(dqy Hkkjr)
(KUL BHARAT)
U;kf;d lnL;@Judicial Member

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1. The Appellant- Shri Sharad U Mishra, Jaipur.

2. The Respondent- The DCIT, Central Circle-3, Jaipur.
3. The CIT,
4. The CIT (A)
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 467(2)/JP/2011)

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lgk;d iathdkj@ Assistant. Registrar