

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1264/Del./2020
(ASSESSMENT YEAR : 2011-12)**

ITO, Ward 10 (1),
New Delhi.

vs. Gammon Construction Pvt.Ltd.,
N – 89, 3rd Floor, Panchsheel Park,
New Delhi – 110 017.

(PAN : AABCG9161C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Sushil Chadha, CA

REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing : 18.09.2023

Date of Order : 20.09.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the Revenue is directed against the order of the Id. Commissioner of Income-tax-4, New Delhi dated 20.01.2020 pertaining to assessment year 2011-12.

2. The only ground taken by the Revenue read as under :-

“Whether the Id. CIT (A) erred in deleting the addition of Rs.2,00,00,000/- made by the AO, ignoring the facts & circumstances of the case as mentioned in the assessment order.”

3. In this case, assessment was reopened on the basis of following information received :-

“The office of the Income Tax Officer, Ward 18 (4), New Delhi has enclosed copy of TEP alongwith copy of agreement to sell between M/s. Northern India Plywood Pvt. Ltd. (first party – the seller) and M/s. Gammon Constructions Pvt. Ltd. (second party – the purchaser). As per agreement the assessee has made payment of Rs.4 crore (2 crore by cheque and 2 crore in cash) the M/s. Northern India Plywood Pvt. Ltd. as advance for the farm house at Vasant Kunj, Delhi on 04.12.2010.

On enquiry in this regard, assessee submitted that assessee is not at all party to the document and the same was fabricated document. Assessee’s response before the AO is as under :-

"that the alleged agreement copy of which was given to us is a fabricated document by some person. Further it is clear that no such agreement/receipt has ever being signed by any of the party and no payment has exchanged hands either in cash or by cheque. The agreement itself does not contain correct information and no seller could enter into any such agreement that it will try to sell and mislead the buyer by selling 7.5 acre of land whereas it has only 3.6 acre of land. No actual /bonafide seller will ever enter into such type of agreement.”

Considering the submissions of the assessee, AO noted that assessee company filed bank statements to prove that they have not received any payment by way of cheque or through banking channel. Hence, AO dropped the issue of cheque cleared/debited from the bank account but not the addition for cash payment of Rs.2 crores. AO made the addition upon a finding that assessee has not been able to give proof that such transaction was not taken place. AO’s order in this read as under :-

“ Considering the facts and circumstances of the case, it cannot be held that they have not signed the said agreement to sell on behalf of the respective companies. So far as the measurement of land is concerned, it may be stated that it might be a clerical mistake. So far as the cash payment of Rs.2,00,00,000/- is concerned, it was also denied having made such payment by the assessee company as no transfer of any such land has ever taken place. However, when the assessee was asked to produce documentary evidence in support of its contention, the assessee could not produce the same. It was specifically asked that the cash payment leaves

no proof behind, it was specifically required to prove that no transaction with regard to cash payment of Rs.2,00,00,000/- has been undertaken. In reply, it was stated that no such transaction has ever taken place. However, no independent witness or documentary evidence was produced. On the other hand, as per the copy of agreement to sell available on record, the assessee company has made payment of Rs. 2,00,00,000/-, receipt of which has been signed and issued by one director and confirmed by the other of the assessee company. Further, there is no evidence on record to prove that the said amount of Rs.2,00,00,000/- was ever returned by the assessee company in case of non compliance of the terms of alleged agreement. Hence, the payment of Rs.2,00,00,000/- made in cash is treated as amount of investment towards purchase of land not fully disclosed in books of accounts and added to the income of the assessee company u/s 69 B of the Income Tax Act.”

4. Against this order, assessee appealed before the ld. CIT (A). Ld. CIT (A) deleted the addition by noting that AO has put the onus on assessee to prove that the said cash transaction has not taken place. The order of ld. CIT(A) read as under :-

“ I have considered the assessment order, submission and agreement of the appellant and the documents available on record. Upon examination of the issue, I find that the AO is not justified in concluding that the appellant failed to prove that no cash transaction has taken place and that no independent witness or documentary evidence was produced to prove that the cash transaction did not take place. In this regard, I find that it was upon the AO to prove that the cash transactions of Rs.2,00,00,000/- took place rather than upon the assessee to prove that it did not take place. It is not proper on the part of the AO to ask the appellant was asked to prove with witnesses and documentary evidences a non-occurring of an event. The witnesses and documentary are called upon to prove an occurrence of the event not the non-occurrence of it. Besides, there are statements denying any such signing of agreement or entering into cash transaction and clear evidences of ownership of land measuring 3.6 acre in the name of M/s Northern India Plywood Pvt. Ltd. which were disregarded by the AO.”

5. Against this order, Revenue is in appeal before us. We have heard both the parties and perused the records.
6. Ld. DR for the Revenue relied upon the order of Assessing Officer.

7. Per contra, Id. Counsel of the assessee supported the finding of the Id. CIT (A). He further submitted that document being relied upon by the Revenue is a photocopy and an unsigned one.

8. Upon careful consideration, we find that Id. CIT (A) has passed a correct order. The document on the basis of which addition of Rs.2 crores is sought to be made is not a cogent document. The same is unsigned photocopy on which the addition was made for the impugned amount. Furthermore, AO instead of proving that cash transaction took place rather put the burden on the assessee to prove that the said transaction did not take place. We find that the Id. CIT (A) has passed a correct order which does not require any interference on our part. Accordingly, we uphold the order of the Id. CIT (A).

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

Order pronounced in the open court on this 20th day of September, 2023.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 20TH day of September, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-4, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.