

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH

Before: Ms. Suchitra Kamble, Judicial Member

ITA No. 578/Ahd/2020
Assessment Year 2009-10

Manish Ramanbhai Patel, Plot No. 483, Sector -1C, Gandhinagar PAN: AHYPP9781G (Appellant)	Vs	The Income Tax Officer, Ward-3, Gandhinagar, (Respondent)
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Assessee by: None

Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.

Date of hearing : 04-09-2023

Date of pronouncement : 13-09-2023

आदेश/ORDER

This is an appeal filed against the order dated 19-08-2016 passed by
ld. CIT(A) for assessment year 2009-10.

2. The grounds of appeal are as under:-

“1. The Ld. AO has erred in law by allowing an addition of INR 13,07,000 in the hands of the assessee, when the actual payment was made by the co-owners of the land and the same was also accepted by them on record.

2. The Ld. AO has erred both in law and fact, in making the addition of Rs. 11,30,000/-under section 69C of the Income Tax Act, 1961 being unexplained source of income incurred towards purchase of the land without properly appreciating the various submissions/ explanations / evidences on record where in-fact the assessee had not paid a single penny in cash and the entire share of the

transaction was routed through the bank accounts and the entire share of "on-money" was admitted to be paid by the co-owners. This fact existed in the official records as well and the Ld. CIT(A) has also confirmed the same in his order. Furthermore the Ld CIT (A) also erred in confirming the captioned addition when he over-looked all the facts and passed order without due consideration of the same.

3. Hence both the Ld. A.O. and Ld. CIT (A) erred in making the addition of Rs. 13,07,000/- in the hands of the assessee. Furthermore an addition of INR 1,77,000/- was also made in the hands of appellant, presuming share paid towards stamp-duty, even though Baldevbhai Patel (one of the co-owner(s)) had on-record admitted that he had solely paid the amount towards the stamp-duty and the assessee had no role to play therein.

4. Further in the case of PCIT v Bhagwanbhai K. Patel (2019) it was held by the Hon'ble Gujarat High Court, that an assessee is liable only to explain the sources for his share in the purchase transaction. Applying the rationale of the above case-law, the assessee in this case reasonably justified the discharge of the payment for the purchase transaction and the same was duly supported by cross-examination of facts of other parties to the transaction (i.e. payment of INR 30,00,000 by cheque and the remaining by the co-owners).

5. Furthermore as held in the case of CIT, Kottayam v. Sree Ganesh Trading Company (2019) by the Hon'ble Kerala High-court, where the assessee firm received funds from partners, if at all the source of funds of donor/creditor was doubted then the addition should be made in the hands of the donor / creditor only and not the assessee. Applying the same rationale, when the assessee and the co-owners had on-record admitted the payment arrangement and the same was no-where disputed or varied in facts, and it was accepted by everyone including co-owners, that the assessee had paid only INR 30,00,000 and the "on-money" and the stamp-duty were solely discharged by the other co-owners, the addition of INR 11,30,000 in the hands of the assessee on protective basis, for what was paid by the co-owners (similar to partners / donors/creditors) was impugned and bad in law. Also the same is against the principles of natural justice.

6. Hence in light of the above facts and similar case-laws, the assessee requests the Hon'ble ITAT to quash the order of the Ld CIT(A), along with the order for penalty u/s 271 (1) (C) as the same is bad in law and provide any other appropriate relief.

7. The appellant craves leave to add, alter or delete any ground either before or in the course of hearing of the appeal."

3. The return of income was filed on 25-03-2010 declaring total income of Rs. 3,10,110. The case was reopened u/s. 147 of the Act and notice u/s. 148 of the Act was issued on 28-03-2014. The Assessing Officer observed that assessee along with other two co-owners had purchased land for Rs. 1,50,00,000/- as per registered sale deed. The assessee made payment of Rs. 30,00,000/- by cheque out of total amount of Rs. 1,50,00,000/-, other two co-owners had made payment of Rs. 50,00,000/- by cheque and remaining payment of Rs. 70,00,000/- was made in cash. The Assessing Officer enquired as to who made payment in cash of Rs. 70,00,000/- as there was no share specified in investment sale/purchase land. The assessee submitted before the Assessing Officer that during the search action u/s. 132 of the Act in the case of Shri Baldevbhai Patel who is one of the co-owners of the said land property had admitted that the sale land had been purchased for Rs. 2,06,55,000/- and remaining payment of Rs. 56,50,000/- was made as on money. The Assessing Officer after taking cognizance of the reply of the assessee made addition of Rs. 41,78,333/- u/s. 69 of the Income Tax Act, 1961 as unexplained investment.

4. Being aggrieved by the assessment order, the assessee filed appeal before the Id. CIT(A). The Id. CIT(A) partly allowed the appeal of the assessee.

5. At the time of hearing, none appeared on behalf of the assessee despite giving several notices which were duly received as per the acknowledgment card received by the registry. Therefore, proceeding on the basis of details such as assessment order, order of the Id. CIT(A) and

some of the case laws along with Form 35 and Form 36 filed by the assessee. The contentions made by the assessee before the Assessing Officer as well as CIT(A) are taken as contentions before the Tribunal.

6. There is a delay of 1494 days for which the assessee has filed condonation of delay application thereby stating that the assessee is not residing in India and in fact is a NRI and therefore was not aware to the order dated 19-08-2016 passed by the Id. CIT(A). The assessee in his affidavit as well as in condonation of delay has given details about the delay of four years in sympathetic consideration. After taking cognizance of the reasons and the documents, we are condoning the delay but this should not be taken as precedent in any other matters.

7. The Id. Departmental Representative submitted that Id. CIT(A) has rightly upheld the addition to the 20% out of the total addition of Rs. 41,78,333/- and therefore the appeal needs to be dismissed.

8. Heard Id. Departmental Representative and perused all the relevant materials available on record. It is pertinent to note that the search action against Mr. Baldevbhai Patel was not based for reopening of assessee's case and assessee as well as co-owners i.e. Shri Baldevbhai Patel and Saileshbhai Patel had admitted that the share of three purchasers was 60:20:20 respectively was there as Shri Baldevbhai Patel and Saileshbhai Patel and Shri Manish Ramanbhai Patel i.e. assessee. The additional amount paid in cash on money was admittedly paid by the other two-owners and not by the assessee as per the reply filed by the assessee during the assessment

proceedings. In fact, the assessee's portion of share only 20% i.e. of 1,77,000/- and the ld. CIT(A) has categorically observed that both co-owners has challenged the ratio of land holdings amongst co-owners who challenged addition of on money on the ground that money received earned on sale of land were utilized by said co-owners for making money payment of land. This explanation was not taken into consideration by the Assessing Officer as well as by the ld. CIT(A) and thus in fact charging/making 20% addition of Rs. 1,77,000/- was not justified and therefore the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 13-09-2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 13/09/2023

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