

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 2710/Del/2023 : Asstt. Year : 2019-20

ITA No. 2711/Del/2023 : Asstt. Year : 2020-21

Sai Samarpan Realtors Pvt. Ltd., C/o C. S. Anand, Adv., 104, Pankaj Tower, 10LSC, Savita Vihar, New Delhi-110092	Vs	ACIT, Central Circle-3, New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AAKCS6743D		

Assessee by : Sh. C. S. Anand, Adv.

Revenue by : Ms. Monika Dhami, CIT-DR

Date of Hearing: 12.02.2024

Date of Pronouncement: 04.03.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of Id. CIT(A)-23, New Delhi dated 28.08.2023.

2. Since the issue involved in both the appeals are similar, they were heard together and being adjudicated by a common order. In ITA No. 2710/Del/2023, following grounds have been raised by the assessee:

"1. On the peculiar facts of the case and in law, the proceedings u/s 153C ought not to have been initiated.

5

2. On the peculiar facts of the case and in law, the proceedings initiated u/s 153C and/or the proceedings conducted in pursuance to the notice dt. 14.01.2022 issued u/s 153C, are liable to be quashed because-

- a) *without providing copy of the 'Satisfaction recorded by the AO of the searched person' to the assessee (even after specific request made by the assessee vide its letter dt 20.12.2022), the learned AO had issued a communication on 23.12.2022 disposing off the basic/ primary objections raised by the assessee;*
- b) *it was neither the case of the learned AO that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belonged to the assessee nor the case of the learned AO that any books of account or documents, seized or requisitioned, pertained to the assessee nor the case of the learned AO that any information contained in the books of account or documents, seized or requisitioned, related to the assessee;*
- c) *as per the Satisfaction provided to the assessee, the proceedings u/s 153C were required to make thorough scrutiny in order to protect the interest of the revenue.*

3. On the peculiar facts of the case and in law, the addition of Rs. 2500000/- u/s 56 of the I.T. Act 1961 made by the learned AO and sustained by the learned CIT(A), is liable to be deleted because-

- a) *the assessee was not owing and possessing the property under reference;*
- b) *in the Agreement itself, it was clearly mentioned that the assessee is entering into the Agreement on behalf of Sh. Narender Kapoor and Sh. Aseem Doomra;*
- c) *Sh. Aseem Doomra (who alongwith the other co-owner namely Sh. Narender Kapoor was owing & possessing the property under reference) had executed a Sale Deed for self & on behalf of the other co-owner namely Sh. Narender Kapoor (in his capacity as GPA of Sh. Narender Kapoor), in respect of the property under reference and also got the same registered in the office of the concerned Sub-Registrar on 07.06.2019, in favour of some other party, while receiving the sale consideration through banking channel in the names of both the sellers, in equal ratio).*

4. On the peculiar facts of the case and in law, the addition of Rs. 2500000/- u/s 56 of the I.T. Act 1961 made by the learned AO and sustained by the learned CIT(A), deserves not to be upheld because the assessee had simply acted as facilitator between Sh. Narender Kapoor and Sh. Aseem Doomra (on one part) and Kritunairu Builders & Developers Pvt. Ltd. (on the other part).

5. On the peculiar facts of the case and in law, the addition of Rs. 2500000/- u/s 56 of the I.T. Act 1961 made by the learned

AO and sustained by the learned CIT(A), deserves not to be upheld because the assessee had not received the money from Kritunairu Builders & Developers Pvt Ltd., for self but had acknowledged the receipt of money on behalf of Sh. Narender Kapoor and Sh. Aseem Doomra (who were owing and possessing the property under reference)

6. On the peculiar facts of the case and in law, the addition of Rs. 2500000/- u/s 56 of the I.T. Act 1961 made by the learned AO and sustained by the learned CIT(A), deserves not to be upheld because the assessee was not the owner of the property under reference and also because the assessee had not forfeited such amount of Rs.2500000/-.

7. On the peculiar facts of the case and in law, the addition of Rs. 2500000/- u/s 56 of the I.T. Act 1961 made by the learned AO and sustained by the learned CIT(A), deserves not to be upheld because the Agreement itself (which it was not signed by the second party) was not a valid document in the eye of law.

8. The observations recorded by the learned CIT(A) in the appeal order are untenable and also unwarranted, as far as the case of the assessee is concerned.

9. The learned CIT(A)'s remark in para 27 of the appeal order "The appellant received money in the capacity of beneficial owner of the property, is unsubstantiated."

3. Facts relevant to the adjudication of the case are that, two persons namely Mr. Narender Kapoor (resident of Newzealand) & Mr. Aseem Doomra were joint owners of a property by virtue of a Sale Deed (registered on 27.06.2016) from Sh. Bhagwan Dass S/o Sh. Sita Ram. It is not in dispute that the assessee in question is not the owner of the property at any given point of time. Mr. Aseem Doomra who is in India had proposed to sell the said property to one M/s Kritunairu Builders & Developers Pvt. Ltd.

4. Since, one of the owners is a non-resident, Sh. Ashish Gupta, Director of the assessee company was roped in to take forward the deal of sale to M/s Kritunairu Builders & Developers Pvt. Ltd. Accordingly, the assessee entered into agreement to

sell & purchase on behalf of Sh. Narender Kapoor and Sh. Aseem Doomra. With a view to conclude the deal, Mr. Narender Kapoor (one of the joint owners) had executed a Power of Attorney at Auckland Country New Zealand in favour of Mr. Aseem Doomra (other joint owner), giving him power to execute the Sale Deed in respect of the said property, in his absence, in favour of the ultimate buyer.

5. M/s Kritunairu Builders & Developers Pvt. Ltd. made payment of Rs.25,00,000/- on 30.03.2019 and Rs.19,00,000/- on 04.06.2019 and taken signatures of Mr. Ashish Gupta of M/s Sai Samarpan Realtors Pvt. Ltd. who was working on behalf of the owners as per the agreement dated 04.02.2019. The said agreement reads as under:

"THIS AGREEMENT is made at Delhi, on this 04/02/2019 between M/s SAI SAMARPAN REALTORS PVT. LTD. having its Regd. office at 48, Chawla Complex 1/A215, SHAKARPUR DELHI-92 through its Director MR. ASHISH GUPTA hereinafter called the first party (on behalf of 1. SH. NARENDER KAPOOR AND 2. ASEEM DOOMRA)."

6. This agreement depicting the payment was found and seized during the search & seizure operation was carried out u/s 132 of the Act on 17.08.2020 in the case of Sh. Pranjil Batra Group. Accordingly, proceedings u/s 153C of the Act were initiated and the AO made addition of Rs.25,00,000/- and Rs.19,00,000/- received by the assessee u/s 56 of the Income Tax Act, 1961 as income from other sources. The AO made an addition of Rs.25,00,000/- u/s 56 with the remark since the assessee has not furnished any cogent explanation with respect

to the cash received amounting to Rs.25,00,000/- and the same has been received as an advance in respect of the immovable property and the transaction has not materialized as far as the assessee is concerned, the amount of Rs.25,00,000/- is being added to the income of the assessee as per the provision of section 56 of the Act.

7. Aggrieved, the assessee filed appeal before the Id. CIT(A) who confirmed the order of the Assessing Officer.

8. Aggrieved, the assessee filed appeal before the Tribunal.

9. Heard the arguments of both the parties and perused the material available on record.

- In para 8 at page 6 of the appeal order, the Id. CIT(A) had mentioned "from the agreement to sell and purchase dated 04.02.2019, it is evident that the appellant company though its director Shri Ashish Gupta was acting on behalf of Shri Narender Kapoor and Shri Aseem Doomra...."
- It reveals the real sellers (First Party) were Mr. Narender Kapoor & Mr. Aseem Doomra.
- In para 16 at page 19 of the appeal order, the Id. CIT(A) had mentioned "in para 15, the Ashish Gupta states that the money so received was handed over to Shri Aseem Doomra....". Since the said property was never owned by the assessee, it was not eligible /entitled to keep the money having been received by way of earnest money & part sale consideration in respect of the said property from the prospective buyer.

- The assessee has also filed an affidavit before the Id. CIT(A) stating that after having received of the aforesaid payment as an advance, the said payment was handed over to one of the Owner i.e. Mr. Aseem Doomra, as Mr. Narender Kapoor was in Auckland (Newzealand).
- The assessee was not the real beneficiary and he had acted like a facilitator only.
- Since the money which was received by it from M/s Kritunairu, actually belonged to Mr. Narender Kapoor & Mr. Aseem Doomra, there was no reason for the assessee to record such transaction in its books of account.
- The contents of the seized document being agreement to sell & purchase were required to be considered in entirety, not in piece meal. Hence, the view formed by the lower authorities to treat the assessee as real beneficiary of Rs.44,00,000/- (Rs.25,00,000/- during FY 2018-19 and Rs.19,00,000/- during FY 2019-20) is arbitrary and cannot be affirmed.

10. In the result, the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 04/03/2024.

Sd/-

(Astha Chandra)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 04/03/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR