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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 11.03.2015

\+ **ITA 980/2011**
**ITA 994/2011**

CIT .....Appellant

Through : Sh. N.P. Sahni, Sr. Standing Counsel with Sh. Nitin Gulati, Jr. Standing Counsel.

versus

TILAK RAJ ANAND ..... Respondent

Through : Sh. Salil Aggarwal, Advocate.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. In these appeals, the Revenue is aggrieved by a common order of the Income Tax Appellate Tribunal (ITAT) dated 03.12.2010 in IT (SS) A No.48/Del/2006 and IT (SS) A. NO./85/Del/2006. The ITAT had affirmed the findings of Commissioner of Income Tax (Appeals) [hereafter referred to as "CIT(A)"] in regard to certain amounts originally added in the course of block assessment proceedings by the Assessing Officer (AO).

2. The brief facts are that the assessee's premises were searched pursuant to which notice under Section 153A of the Income Tax Act, 1961 (hereafter referred to as "the Act") was issued. The assessee, in response, filed his block return declaring undisclosed income to the tune of ₹26,70,540/-. Notice in the course of these proceedings was issued and subsequently on 31.05.2005, the AO framed the assessment. This order

included addition in respect of the sum of ₹107 lakhs under Section 69C of the Act pertaining to unexplained purchase of residential property. Other amounts too were added. The assessee's appeals were allowed in part in that an addition of ₹39,47,500/- under Section 69C and ₹5,00,000/- under Section 69 and a further sum of ₹30 lakhs towards unexplained expenditure was affirmed.

3. Both the Revenue and the assessee appealed. The Revenue's appeals were rejected by the impugned order, barring affirmation of a small amount of ₹ 6,93,000/- . The assessee's appeals were, however, allowed.

4. The first question sought to be urged is with respect to the deletion of the sum of ₹1 crores directed by the CIT(A) and upheld by the ITAT. The facts pertaining to these are that the assessee was involved in transactions in respect of two immovable properties. He had purchased a property, i.e. D-123, Anand Niketan, New Delhi and the company in which he had substantial interest had sold another property, 167 Golf Links, New Delhi (hereafter referred to as "the Golf Links property". The search operations extended to his premises as well as some co-owners of the Anand Niketan property.

5. The AO, after considering the records held that the value of the property purchased, i.e. D-123, Anand Niketan was not truly disclosed. In doing so, the AO took note of the statements made and materials gathered in the search of co-owners. An important consideration which weighed with the AO in concluding that the amounts were liable to be taxed under Section 69C was the fact that the purchaser of the Golf Links property, one Sh. Arjun Khosla in the course of his statement did not support the assessee's plea with respect to having paid the amounts in cash.

6. The CIT(A) in his order noted that the AO's order reflected the examination of only one document. The CIT(A), therefore, after analyzing the other documents, i.e. A-1 to A-39 which emanated from the office premises of the company in which the assessee had substantial interest, i.e M/s. Regal Flats Private Ltd as well as documents A-12 and A-20, took note of the entirety of the transactions and inferred as follows:

*"7.7 The assessing officer has taken the statement on oath of Mr. Arjun Khosla and his denial regarding payment of Rs.1 crore cash is perfectly in line with this type of transaction being recorded all over the country. His statement regarding non-payment of Rs.1 crore runs counter to the entries found in the cash book of the company which was entered on 24/03/2005 in the normal course of writing of cash book at page 60. The statement of Mr. Arjun Khosla is obviously motivated as the market value of the property of Golf Link would definitely be not at Rs.1.55 crore for house built on 375 sq. yard of plot at the most expensive locality of Delhi.* ***The bonafide of the assessee in this case is proved to a large extent through entries found in the cash book, in the diary and also in the statement of the assessee recorded.***

*7.8 Any survey or other action on or near the date of search on 13/05/2003 on Mr. Arjun Khosla could have helped the department in ascertaining truth. Survey u/s 133A on the office premises of the company,* ***search u/s 132*** *at the residence of the assessee and at the residence of Ms. Mangla Sood, one of the co-owners of property D-123, Anand Niketan provide enough evidence and material in the hands of the Income Tax Department to arrive at the impartial decision regarding the taxability of the cash amount of Rs.1.07 crore. In the hands of Ms. Mangla Sood the Assessing Officer has already accepted it as a sale consideration of property No.D-123, Anand Niketan. In the case of assessee I give the finding that Rs.1 crore has been received as cash by the assessee from his own company M/s. Regal Flats Pvt. Ltd. on account of sale of property No.167, Golf Links, Delhi. Entries found in cash book (A-12 as discussed above), impounded in course of survey u/s 133A cannot be ignored by the Department. The Assessing Officer should have examined all the papers from Annexure A-1 to A-39 before giving his finding in the assessment order since material found and impounded from the office premises of the company M/s. Regal Flats*

*Pvt. Ltd. provide substantive evidence, the same should be taken as true in accordance with Section 132(4A) of the Income Tax Act."*

7. The ITAT noticed that the documents presented before it which were part of the record before the CIT(A) showed that a cash receipt of ₹1 crores was reflected in the books along with sale of the Golf Links property and on 24.03.2003, there was an entry on the credit side of the cash book regarding payment of cash to the purchaser of the other property as imprest. The corresponding entry of balance sheet of Ms. Regal Flats Pvt. Ltd. as on 31.03.2003, i.e. ₹100 lakhs was shown on the assets side as an imprest to the Director. The ITAT further held that:

*"In the balance sheet of M/s. Regal Flats Pvt. Ltd. as on 31.3.2003, copy of which is available at page 75 of the assessee's paper book, an amount of Rs.100 lakhs has been shown on the assets side as imprest to its director. As per the assessment order of M/s. Regal Flats Pvt. Ltd. for AY 2003-04 copy of which is available on pages 180 & 181 of the paper book, it is seen that it has been noted by the AO in this assessment order that company has sold a property bearing No.167, Golf Links, New Delhi for Rs.225 lakhs and sale consideration is claimed to have been received by cheque of Rs.155 lakhs and cash Rs.100 lakhs. It is further noted by the AO that the assessee has shown a computation of capital gain which has been shown at Rs.203.16 lakhs and the same is accepted. Undisputed position is that assessee was shown that a cash of Rs.100 lakhs was received by it from its own company M/s. Regal Flats Pvt. Ltd. and that company was shown cash receipt of Rs. 100 lakhs on account of sale of a property and has declared long term capital gain on the basis of sale proceeds of Rs.255 lakhs which has been accepted by the AO of that company and hence, it has to be accepted that this much cash was received by that company although Shri Khosla who is the buyer of that property is denying about any payment in cash to the assessee or to that company. It is to be noted that when a person has made payment out of his unaccounted cash, he will not accept it and hence the denial by Shri Khosla that he has not made any cash for purchase of property in question cannot be accepted as a gospel truth. Now, the question is whether that money received by M/s. Regal Flats Pvt. Ltd.*

*was used by the assessee for making this payment of Rs.107 lakhs for purchase of property. As per the regular cash book of that company, i.e. M/s. Regal Flats Pvt. Ltd. which was impounded by the department in the course of survey on 13.5.2003, the entries are appearing in the cash book of that company with effect to receipt of cash from sale of property and transferring of cash to the assessee under imprest. Since this cash book of M/s. Regal Flats Pvt. Ltd. was impounded by the department on the same date, this allegation of the department cannot be accepted that entry in the regular cash book of M/s. Regal Flats Pvt. Ltd. is an after thought. One more objection of the department is that there is no posting in the ledger of that company with regard to this cash transaction. It is bit unusual but simply on the basis of this fact alone that these cash transactions were not posted in the ledger account, it cannot be accepted that these transactions have not taken place and entries in the cash book are after thought because the cash book is the regular cash book of that company and same was impounded in the course of survey on the same date when the search was carried out by the assessee. Regarding this objection of learned DR of the Revenue that there was no entry in the ledger of the company it was explained by the learned AR that since the cash was shown in the balance sheet in the company as imprest lying with the director of the company, the entry was not posted in the ledger by the accountant because he was not aware as to whether the same is to be posted in the running account of the assessee in the books of that company or to a separate account. Considering all these facts, we do not find any reason to interfere in the order of CIT(A) on this aspect to the extent of Rs.98 lakhs."*

8. In the course of hearing, it was sought to be highlighted that these findings are contrary to the statements of purchaser of the Golf Links property – Arjun Khosla. It was submitted that the statement had to be accepted since it was made by a third party unconnected with assessee.

9. We are of the opinion that given the fact-intensive nature of the matter, and – as noted by the CIT(A) – the rare instance where cash transactions were indeed reflected in the books of one of the assessees which had an intimate connection with the present assessee, any further enquiry

would involve more weighing of evidence rather than interpretation of law. Barring exceptional cases where the findings are based on no evidence or after overlooking material evidence, the scope of appeal under Section 260A of the Act involves examination of substantial questions of law. We see none in respect of this transaction.

10. In respect of the second question sought to be raised, it is noteworthy that block assessment resulted in an addition of ₹44,47,500/-. The amounts were based upon seizure of handwritten notes containing particulars of demands made by the assessee. This was comprised of four amounts, i.e. ₹30,85,500/- - advanced to some persons; ₹1.69 lakhs towards payment of air tickets; loan amount of ₹5 lakhs and payment of ₹6.93 lakhs by the assessee. The assessee's explanation here was that during the course of his business dealings in property and during discussions, the parties used to write rough figures and amounts on a piece of paper relating to estimates for some further dealings. These notings may or may not have materialized in any business. The assessee, therefore, submitted that no further explanation could be given since the notings were made a long ago. The AO was not satisfied with the explanation and added ₹39,47,500/- as unexplained expenditure and ₹5 lakhs under Section 69A as an unexplained loan given by the assessee. The CIT(A) confirmed addition of ₹28,96,000/- and deleted balance and also deleted the sum of ₹5 lakhs under Section 69A. Both the assessee and the revenue appealed against the decision of CIT(A).

11. The assessee, in the course of hearing before the ITAT relied upon the documents, one of which clearly stated that the figure mentioned was an estimate. The ITAT noted that in some instance, the word, "paid" and in

some cases, the word "estimate" and "short receipt" had been recorded. In one case, an explanation for the sum of ₹5 lakhs existed but was not legible and yet in another case, the noting was "diff. paid excess to". As against these, for the sum of ₹6.93 lakhs, the noting was "settled on 08.07.1998". The ITAT, therefore, observed that there was no clarity whether these were payments or receipts by the assessee. It also noted that in the absence of dates mentioned in the concerned pages of the seized notes and in view of the note "old account" at the end of the calculation, no addition could be made during the course of block assessment since no particular amount was attributable for a specified year. It, however, noted that in respect of the sum of ₹6.93 lakhs, a clear date, i.e. 08.07.1998 was attributable. The addition of this amount was, therefore, affirmed and the balance from ₹44,47,500/- originally made by the AO, was deleted.

12. Here again, like in regard to the first question, the matter is entirely factual. The CIT(A) subjected the record to close scrutiny and the ITAT thereafter went into the record by examining the actual entries. It is not as if the ITAT deleted the entire amount. The *rationale* for retaining ₹6.93 lakhs has been clearly mentioned, i.e. that it pertained to a specific transaction for which a date was attributable or discernable. However, with respect to the other notings, no definitive date or period could be ascribed. Therefore, the ITAT concluded that the said amount of ₹44,47,500/- could not be brought to tax.

13. We hold that there is no infirmity in these findings as to require the Court to frame substantial questions of law for the purposes of entertaining

this appeal. In view of the above conclusions, there is no merit in the appeals which are consequently dismissed.

**S. RAVINDRA BHAT**
**(JUDGE)**

**R.K.GAUBA**
**(JUDGE)**

**MARCH 11, 2015**