

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 2581/Del/2015
(Assessment Year: 2011-12)

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| Braham Arenja, C/o. M/s. Rohit Malik & associates, 1403, Chiranjiv Tower-43, Nehru Place, New Delhi PAN: AADPS1953D (Appellant) | Vs. | ACIT, Central Circle-18, New Delhi (Respondent) |
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| Assessee by : | Shri Styen Sethi, Adv |
| Revenue by: | Shri Munish Kumar Gupta, CIT DR |
| Date of Hearing | 09/05/2019 |
| Date of pronouncement | 13/05/2019 |

ORDER

PER PRASHANT MAHARISHI, A. M

1. This appeal is filed by assessee, individual against the order of the Commissioner of income tax appeals –XXVII, New Delhi dated 27/2/2015 for assessment year 2011 – 12.
2. The assessee has raised the following grounds of appeal:-
 1. *That the search u/s 132 conducted at the premises of the appellant on 10-02-2012 was without jurisdiction and not based on any incriminating material on record. Therefore, the proceeding; initiate erroneous and without jurisdiction, deserves to be quashed.*
 2. a) *All the transactions of the appellant with Mr. Jayant Ghadia were duly recorded in the books of accounts. The CIT (Appeals) went wrong on facts and in law in sustaining the addition made by the assessing Officer of a*

sum of Rs. 75,00,000/- as unexplained income of the appellant based on a receipt of Rs. 75,00,000/- given by Mr. Jayant Ghadia to the appellant as a security.

b) The consequent addition of Rs. 75,00,000/- made by the assessing officer and sustained by Ld CIT(A) being illegal, erroneous and without jurisdiction, deserves to be deleted.”

3. The only dispute in this appeal is with respect to the addition of INR 7,500,000 made by the learned assessing officer in the hands of the assessee. Brief facts of the case shows that assessee is an individual, who was issued notice u/s 153A of The Income Tax Act on 13/12/2013 in pursuance to search conducted in the Arens group on 17/8/2011. The assessee filed his return of income declaring income of INR 645770/-. Notices u/s 142 (1) was issued to the assessee.
4. Search was conducted on 17/08/2011 on Arens group. Consequent to that search on residential premises of the assessee was also conducted on 10/2/2012. The office of the assessee was also covered and survey was conducted thereon. During survey 1 memorandum of understanding dated 25/6/2010 along with the receipt signed by one Mr Jayant Ghadia was found. The receipt contains the information that Mr Jayant Ghadia has received INR 2,500,000 by cheque dated 25/06/2010 and INR 7,500,000 in cash. The dispute is about the addition of INR 7,500,000 in the hands of the assessee. On enquiry by the learned assessing officer, Assessee submitted that the cash amount of INR 7,500,000 shown in the receipt appearing at page number 62 of

annexure A – 1 of the seized document was never paid by the assessee nor received by him. Thus the receipt of Rs. one crore is null and void as by giving the cheque number 894382 dated 25/06/2010 the assessee squared up his account with Shri Jayant as on 25/06/2010 and no amount was receivable for him at that time. However the learned assessing officer rejected the contention of the assessee stating that the explanation given by the assessee is not satisfactory and no evidence whatsoever has been given by the assessee relating to the correspondence between the assessee and Sri Jayant regarding the negotiation of other properties. The learned AO noted that the MOU and receipt are duly signed by Sri Jayant and 2 witnesses from the office of the assessee. One of the witness also confirmed that he along with another witness has signed the document on the direction of assessee and Mr Jayant. Therefore the learned assessing officer noted that it clearly shows that INR 7,500,000 has been received by Shri Jayant from the assessee. He further stated that on perusal of the receipt given by Sri Jayant on which the word 'received' itself confirms the receipt of the entire amount of Rs. One crore and not only INR 2,500,000/- as claimed by the assessee. He further stated that during the course of assessment proceedings the assessee produced Shri Jayant who has reiterated the stand of the assessee. Accordingly he made an addition of INR 7,500,000 and determined the total taxable income of INR 8145770/- vide order under section

153A read with section 143 (3) of The Income Tax Act dated 27/3/2014.

5. The assessee aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT – A who confirmed the addition stating that the explanation of the assessee with regard to the cash payment of INR 7,500,000 is vague and motivated and afterthought. Therefore assessee aggrieved with the order of the learned CIT –A has preferred this appeal before us.
6. At the beginning of the hearing the learned authorised representative submitted that the ground number 1 of the appeal is not pressed. Therefore same is dismissed.
7. Ground number 2 of the appeal is with respect to the addition made by the learned assessing officer of INR 7,500,000 as unexplained income of the assessee based on receipt of INR 7,500,000 given by Mr Jayant to the appellant as security. He submitted that memorandum of understanding dated 25/6/2010 and receipt signed were found during the course of survey under section 133A of the income tax act. He submitted that in case of a survey addition u/s 6960 9C can you made if explanation of the assessee is not satisfactory. Merely on the basis of the memorandum of understanding without further collaborating the material no addition can be made. He further relied upon the decision of Harish Daulatram Inanni vs deputy Commissioner of income tax (2008) 24 SOT 541 (MUM). He further submitted that from

the bare reading of the memorandum of understanding dated 25/6/2010 it is evident that no person would give INR 7,500,000 on the security of documents referred to in the memorandum of understanding. He further stated that property K – 2036, CR Park belong to the other person who died on 8/4/1992. And therefore the person who received the money had no title or interest in the above property therefore the explanation of the appellant that no payment on the strength of memorandum of understanding was made cannot be brushed aside. He further stated that presumption u/s 132 (4A) of the income tax act is rebuttable and the assessee has reported it. He further stated that the documents and the MOU in the receipt belong to the appellant and it is for the appellant to explain the contents of the documents and transaction has been the consistent stand of the revenue. He further stated that the memorandum of understanding which is placed at page number 18 of the paper book. Shows that to whom the property belongs to. He further stated that memorandum of the understanding does not have the signature of the assessee. He further referred to the receipt placed at page number 24 of the paper book wherein same is on dated. He further referred to memorandum of understanding which shows that property does not belong to the person who has claimed to have received the money in the receipt. He further stated that the assessee as well as the person who is alleged to have received the money both have

appeared before the learned assessing officer and confirmed that there is no such transaction which has taken place. He otherwise submitted that in absence of any corroborative material merely on the basis of the document these additions cannot be made.

8. The learned CIT DR vehemently supported the orders of the lower authorities and submitted that there is a receipt which is being found by the income tax department which clearly shows that assessee has paid a sum of INR 7,500,000 to the Shri Jayant. Therefore the addition has been correctly made by the learned assessing officer and confirmed by the learned CIT – A.
9. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly during the course of survey he office of the assessee 1 memorandum of understanding and 1 receipt was found. Based on this the addition has been made by the learned assessing officer and confirmed by the learned CIT – A. The brief fact shows that there is an memorandum of understanding dated 25/6/2010 with respect to the property K – 2036, 3 and in part, New Delhi. The above property belong to One Shri bankim Gangully who passed away on 8/4/1999. On is that the property bequeathed to Smt Deepa Chakraborty. By agreement to sale dated 29/09/2007 and a general power of attorney dated 9/10/2007 , Mrs Chakraborty sold the

property to Mr Jayant. Based the document of agreement to sale and general power of attorney he approached the appellant for financial assistance of rupees one crore. Mr Jan was to repay INR 1 50,00,000 x 30/11/2010 within 6 months of the memorandum of understanding, failing which he was to transfer K – 2036, Chittenden Park, New Delhi property to the assessee on payment of INR 5,000,000. Based on MOU dated 25/6/2010 Mr Jayant prepared the receipt of Rs. one crore. Neither the MOU got fructified as it did not result into transaction executed, nor the memorandum was signed by the assessee. During the course of assessment proceedings on 11/2/2012, the statement of the assessee was recorded wherein the assessee submitted the complete detail of the transaction with respect to property at A 66, Chittenden Park for which assessee has paid 1,60,00,000 which are recorded in the books of accounts of the assessee. However with respect to the memorandum of understanding which is found, he submitted that there is no such transaction which has taken place. He therefore submitted that he has not paid the impugned some as found in the receipt in the memorandum of understanding. He further submitted that the payment of INR 2,500,000 by cheque number 894382 dated 25/6/2010 was not in respect of the property at a – 2036, Chittenden Park, New Delhi referred to in MOU dated 25/6/2010 but it was that the payment of INR 2,500,000 due to Mr Jayant. Therefore the stand of the assessee before the learned assessing officer that

the payment was of only INR 2,500,000 on 25/6/2010 and there is no payment of cash of INR 7,500,000. The learned assessing officer further recorded the statement of Mr Jayant on 06/03/2014. He also confirmed that he has not received any payment in cash of INR 7,500,000 from assessee. He also explains the nature of the transaction as explained by the assessee. It is very important to note that had this transaction actually taken place, then along with the memorandum of understanding and the receipt the relevant documents/title deed of the property, should also have been found from the premises. No question has been raised by the learned assessing officer about the existence of the documents of that property in the form of title deed et cetera. Though the memorandum of understanding and receipt were found from the office of the assessee however in absence of any corroborative material the addition cannot be made. Further the memorandum of understanding that has been found from the office of the assessee was not signed at all by the assessee. Even the property mentioned in that particular memorandum of understanding was never transacted at all. Further on reading of the memorandum of understanding it is clear that Mr. Jayant did not have any right in the property. Preamble of the memorandum of understanding clearly shows that the property is in dispute. Further the assessee has also explained the other transactions entered into by Mr. Jayant with the assessee. Further the receipt found from the office of

the assessee was also not dated and therefore it was not known that on which date the assessee has paid the alleged money to Mr Jayant. It is also interesting to note that memorandum of understanding has been signed by the witness who confirms that both the parties have signed in their's presence; however there is no signature of another party on the memorandum of understanding itself. Further on the receipt also the signature of these 2 parties have been obtained, however none of the parties confirmed that in fact there witness to the payment of INR 7 500,000 by assessee to Mr Jayant.

10. In view the fact that
 - i. property did not belong to Mr Jayant,
 - ii. even otherwise he did not have any right to sell this property,
 - iii. property mentioned in the memorandum of understanding remains untransacted,
 - iv. no enquiry by the learned assessing officer with respect to the original title deed of the property mentioned in the memorandum of understanding along with the receipt but not found during the course of search
 - v. memorandum of understanding not signed by the assessee,
 - vi. confirmation of both the parties that the transactions have not fructified,

- vii. version of the witness not confirming the memorandum of understanding and
- viii. in absence of any corroborative material found during the course of search with respect to the above property,

We are not inclined to confirm the above addition. Accordingly the orders of the lower authorities are reversed and the addition of INR 7,500,000 is deleted.

- 11. Accordingly ground number 2 of the appeal of the assessee is allowed.
- 12. In the result appeal is partly allowed.

Order pronounced in the open court on 13/05/2019.

-Sd/-

(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/05/2019
A K Keot

Copy forwarded to

- 1. Applicant
- 2. Respondent
- 3. CIT
- 4. CIT (A)
- 5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi