

HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**D.B.: Hon'ble Shri P.K. Jaiswal**
Hon'ble Shri Virender Singh, JJ.**Income Tax Appeal No.54/2017**

Vijay Jain s/o Kailash Chand Jain

Versus

The Commissioner of Income Tax (Appeals), Ujjain and another

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Shri Mangesh Bhachawat, learned counsel for the appellant.

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ORDER(Passed on this 22nd day of March, 2018)**Per P.K. Jaiswal, J.**

This appeal under Section 260-A of the Income Tax Act, 1961 (herein after referred to as "the Act") has been filed by the appellant – assessee against order dated 17.10.2016 (Annexure A/1) passed by the learned Income Tax Appellate Tribunal, Indore Bench, Indore in Income Tax Appeal No.441/Indore/2016 (2011) for the assessment year 2006-07, whereby the learned Appellate Tribunal partly allowed the appeal against order dated 07.03.2013 (Annexure A/4) passed by the Commissioner of Income Tax (Appeals), Ujjain in Appeal No.U-195/09-10 by which the learned Commissioner, Income Tax (Appeals) partly allowed the prayer of the assessee while deleting addition of Rs.4.81,700/- (rupees four lakhs eighty one thousand seven hundred), but upholding the addition of Rs.10,28,000/- (rupees ten lakhs twenty eight thousand) as well as sum of Rs.20,00,000/- (rupees twenty lakhs) as unexplained investment under Section 69 of the Income Tax Act, 1961 and confirmed the de-

mand of Rs.30,28,000/- (rupees thirty lakhs twenty eight thousand).

2. It is not in dispute that the assessee has not filed his income tax return within time allowed under Section 139 (1) of the Income Tax Act, 1961 (herein after referred to as the Act). Hence, a notice under Section 148 of the Act was issued on 29.12.2008 and served upon the assessee on 05.01.2009. In response to which, the assessee filed return of income on 16.01.2009 declaring total income at Rs.96,000/- and showing income from business and profession under the provisions of Section 44AD of the Act. The assessee individually engaged in the construction business and Director of M/s. Kunjika Construction Private Limited; a statement under Section 131 of the Act was recorded from the assessee (appellant) Vijay Jain, Director of the Company, wherein it was admitted that he has purchased shares of Rs.35,000/- of M/s. Kunjika Construction Private Limited and also invested in share application money at Rs.44,28,000/.

3. The Assessing Officer examined the source and found that the assessee has raised loans of Rs.34,00,000/- from Shri Devdutta Yeolo. This source was found acceptable by the Assessing Officer. However, the balance amount of Rs.10,28,000/- (Rs.44,28,000/- minus Rs.34,00,000/-) was not found explained. It was further noticed that the assessee deposited amount in cash and paid in cash to Shri Navin Sodani, a Stamp Vendor, for purchase of stamps in respect of registration of immovable property purchased in the

case of M/s. Kunjika Construction Private Limited. Thus the assessee paid cash to Shri Navin Sodani an amount of Rs.25,12,000/-. The assessee was found to have invested Rs.19,15,000/- by cheque. The Assessing Officer observed that the assessee was having cash of Rs.14,85,000/- (34,00,000 minus 19,15,000). He has not explained the source of cash deposit of Rs.10,28,000/- (25,13,000/- minus 14,85,000) out of which cash deposits of Rs.25,13,000/-. The source of cash of Rs.10,28,000/- was explained out of own money / savings of Rs.1,75,710/-, Rs.3,00,000/- from 16 persons as loan and Rs.5,52,290/- out of recovery from old debtors of which source has not been explained. Hence, same was added as unexplained investment under Section 69 of the Act. The claim of loans from 16 persons being friends and relatives was not found acceptable as identity, credit worthiness and genuineness of transactions was not proved as the creditors as the assessee has failed to produce the creditors in spite of number of opportunities allowed to the assessee. The Assessing Officer also not accepted the explanation regarding own capital balance and savings of Rs.1,75,710/- and opening balance of debtors at Rs.5,52,290/-. In addition to above, the Assessing Officer has made an addition of Rs.10,28,000/-. Beside this, the Assessing Officer also added a sum of Rs.4,81,700/- deposited in cash in the bank account in absence of details.

4. The learned Commissioner of Income Tax (Appeals) has deleted the addition of Rs.4,81,700/- cash deposits in bank account by holding that cash balance was

available in the cash book of the assessee. However, the addition of Rs.10,28,000/- was confirmed by holding that the assessee has failed to establish creditworthiness and genuineness of transactions of the creditors. Rest of the addition was confirmed by the learned Appellate Authority.

5. The learned Income Tax Appellate Tribunal affirmed the findings of the lower authorities for the addition of Rs.4,75,710/- and the balance addition of Rs.4,75,710/- was deleted.

6. In respect of addition of Rs.20,00,000/- as unexplained investment under Section 69 of the Act in purchase agreement, the learned Income Tax Appellate Tribunal, after appreciating the agreement between the appellant and Shri Devidas and others, has held that Shri Santosh Kumar Lalwani admitted that he had seen the said agreement and as per the agreement, the appellant gave an amount of Rs.20,00,000/- to Shri Devidas; and held the following: -

“13. We have heard the rival submissions, have gone through the orders of the lower authorities, and perused the material available on record. We find from the orders of lower authorities that the assessee in his statement recorded on 19.12.2008 by the AO has claimed that the amount deposited as advance from directors at Rs.19,01,550/- in M/s. Kunjika Construction Private Limited relates to him. The source of this advance is claimed to be Rs.8,00,000/- received from Shri Santosh Kumar Lalwani as advance towards agreement to sale of land vide agreement executed on 15.08.2005. To verify this contention of the assessee, the AO examined Shri Santosh Kumar Lalwani and recorded his statement on oath on 01.12.2009 under Section 131 of the Act. We find that Shri Santosh Kumar Lalwani has accepted that he had entered into an agreement to purchase land situated at Gram Nanakheda, Ujjain on 15.08.2005 and paid an amount of

Rs.8,00,000/- as advance because of Bayana being advance for land intended to be purchased by him. It is also noticed that the assessee along with Shri Ajay Singh Kushwaha have purchased the said land from Shri Devidas and others by paying Rs.51,000/- as Bryana amount. The assessee further stated that they have entered into an agreement for sale of 1/3rd land to Shri Santosh Kumar Lalwani on 15.08.2005 and received Rs.8 lakh as advance out of which the assessee has deposited Rs.19.05 lakh as advance in M/s. Kunjika Construction Private Limited. We find that Shri Santosh Kumar Lalwani has also accepted this fact and the AO has accepted this source of payments. However, we further find that Shri Santosh Kumar Lalwani has also stated in the same statement recorded on 01.12.2009 stating that Shri Vijay Jain and Shri Ajay Singh Kushwaha have paid a sum of Rs.20 lakhs towards purchase agreement is not able to explain the source of payment of Rs.20 lakhs. It is the contention of the assessee that no such payment has been made by them. However, we find that this contention is not supported by any documentary evidence. It is the claim of the assessee that there was oral agreement for purchase of land at Survey No.329 Nanakheda Ujjain and only Rs.51,000/- were given as advance. This contention of the assessee is not found acceptable by the AO and Id. CIT (A). We find that the assessee has not been able to produce Shri Devidas for examination before the AO. The assessee has also failed to produce agreement for purchase of land from Shri Devidas and others. The learned counsel for the assessee stated that the statement of Shri Santosh Kumar Lalwani is not reliable as no opportunity of cross examination was provided and witness has failed suit against the assessee hence he is hostile witness. We find that this contention of the assessee is not tenable in law and facts. We find from assessment proceedings that AO has asked the assessee to produce Shri Devidas for examine but this opportunity was not availed by the Assessee. WE also note that Shri Vijay Jain has not made any comments on the contention of the statement of Shri Santosh Kumar Lalwani, during the course of assessment proceedings. We further find that at one hand the assessee is relying received Rs.8 lakh from him, but on the same footing the assessee has not accepting the other part of the statement of Shri Santosh Kumar Lalwani, that he has paid a sum of Rs.20 lakh to Shri Devidas

and other as against intended purchase of land. It is settled position of law that the statement is to be believed as a whole and not in piecemeal as one part suits to the assessee and other part does not suits to the assessee. We have seen the agreement for purchase of land dated 15.08.2005 between Shri Vijay Jain along with Shri Ajay Singh Kushwaha and Shri Devidas and others. The perusal of para 1 of the said agreement placed at paper book page 36 of the assessee, which find place at page 5 of the assessment order also and same is referred in question 14 of statement of Shri Santosh Kumar Lalwani, which clearly shows that there is a written agreement with the assessee from the owner of land and as written in the said agreement, they have right to sell the property and register the property in the name of self or others in part or in full. Further, in reply to question 14 of his statement (Shri Santosh Kumar Lalwani) has clearly stated that he has entered into this agreement and paid a sum of Rs.8 lakhs after seeing the executors of said agreement for purchase of $1/3^{\text{rd}}$ part of land had an agreement with original owner of the land in which it was clearly mentioned that they have right to sell the said property and so far as he remember they have paid Rs.20 towards Bayana for the purchase of said land. We also find that Shri Santosh Kumar Lalwani had agreed to purchase $1/3^{\text{rd}}$ of land for Rs.43,27,400/- and paid Rs.8 lakhs as advance for the same which means that the total value of the said land must be three times of Rs.43 lakh meaning there by around Rs.120-130 lakhs. Therefore, in the same way, Shri Vijay Jain is very likely might have paid $1/5^{\text{th}}$ of as advance as Bayana at $\text{Rs.}120/5 = 24$ lakhs or Rs.20 lakhs). Since the assessee has failed to produce the agreement for purchase of land with Shri Devidas and others, therefore, we are of the considered view that the lower authorities have justified in making addition of Rs.20 lakhs on this account. We also find that the AO has not only made addition based on the statement but also having regards to entire circumstances of the case. The circumstantial evidence and surrounding circumstances make the view of the AO as correct. We also find mentioned that the purchaser (executors) of said agreement have a written agreement of purchase of said land or executor. We find that in the said agreement, it has been clearly mentioned that the assessee has an agreement by which they have authorized to sell the land and get

registered the same in name of prospective buyers. In view of these circumstances, we uphold the finding of lower authorities. Accordingly, Ground No.2 of appeal is dismissed.”

7. The law on the subject is well settled. The Apex Court in the case of **Commissioner of Income Tax v. P. Mohanakala** reported in **(2007) 291 ITR 278 (SC)** has held that “In cases where the explanation offered by the assessee about the nature and source of the sum found credited in the books of account is not satisfactory, there is *prima facie* evidence against the assessee, viz. the receipt of income. The burden is on the assessee to rebut the same and if he fails to do so, it can be held against the assessee that it was a receipt of an income nature. The money came through cheque and was paid through banking channels was by itself not of consequence.”

8. The Apex Court in the case of **Sumati Dayal v. Commissioner of Income Tax** reported in **(1995) 214 ITR 801 (SC)** has held “any sum credited in the books of account may be added under Section 68 if the explanation offered about the nature and source thereof is, in the opinion of the AO, is not satisfactory.”

9. The explanation offered by the assessee can be negative. It is settled position of law that statement is to be believed as a whole and not in piecemeal as one part suits to the assessee and other part does not suits to the assessee. Shri Santosh Kumar Lalwani in reply to Question No.14 of his statement has clearly stated that he has entered into this agreement for purchase on 15.08.2005 and paid an amount

of Rs.8,00,000/- as advance (Bayana), after seeing the executors of said agreement for purchase of 1/3rd land had an agreement with original owner of the land in which it was clearly mentioned that they have right to sell the said property and they have paid Rs.20 lakhs towards Bayana for the purchase of said land. We are of the view that the learned Tribunal rightly upheld addition of Rs.20,00,000/- (rupees twenty lakhs) as unexplained investment under Section 69 of the Act. The findings recorded by the learned authorities are the findings of fact based on the agreement of purchase of land dated 15.08.2005 and the same was admitted by Shri Santosh Kumar Lalwani in reply to Question No.14 of his statement and thus, we cannot accept the contention of the learned counsel for the appellant that the learned authorities have committed an error in relying on the statement of Shri Santosh Kumar Lalwani.

10. On due consideration of the aforesaid, so also the reasoning assigned by the learned Appellate Tribunal, we are of the view that the income tax appeal filed by the assessee has no merit nor any substantial question of law is arising in the matter.

11. Accordingly, Income Tax Appeal No.54/2017 is dismissed.

(P.K. Jaiswal)
Judge

(Virender Singh)
Judge