

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BANGALORE BENCH**

BEFORE SHRI N.V VASUDEVAN, VICE-PRESIDENT

ITA No.52/Bang/2020
Assessment Year : 2010-11

M/s. Suraj Stones Corporation Ltd., Survey No.29, Behind Plot No.81E/2, Road No.8, 1 st Phase, Near Anekal Taluk, Bengaluru – 562 106. PAN : AACCS 9674 F	Vs.	Income Tax Officer, Ward –6(1)(4), Bengaluru.
Appellant		Respondent

Assessee by	:	Shri. V. Srinivasan, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Jr. Standing Counsel

Date of hearing	:	16.02.2021
Date of Pronouncement	:	18.02.2021

ORDER

This is an appeal of the assessee against the order dated 27.08.2019 of CIT(A)-6, Bengaluru, relating to Assessment Year 2010-11.

2. The only issue that arises for consideration in this appeal which was pressed for adjudication is the addition of Rs.29 lakhs made by the AO being money deposited in the bank account of the assessee which was treated by the AO as income from undisclosed sources.

3. The assessee is a company engaged in real estate business. For Assessment Year 2010-11, proceedings under section 147 of the Income Tax Act, 1961 (hereinafter called ‘the Act’) were initiated against the assessee by issue of notice

under section 148 of the Act. Proceedings were initiated on the basis of the details received from ITO (Investigation Wing-4, Kolkata) which was as under:

“During the financial year 2009-10 relevant to the Assessment Year 2010-11 assessee M/s Suraj Stone Corporation Ltd had made cash transaction in total of Rs. 19,00,000/- with M/s Sherawali Corporation of Rs. 5,00,000/- and M/s Venkata Industries of Rs. 14,00,000/-. The assessee company had filed Nil Return of Income and had claimed Refund of Rs. 1,59,860/-.”

4. In the course of assessment proceedings, the assessee filed the following documents to explain the credits in the name of *M/s Sherawali Corporation and M/s Venkata Industries:*

- 1. Copy of the Bank Statement in Standard Chartered Bank for the year ended 31/03/2010.*
- 2. Copy of the Confirmation of Accounts from M/s. Sherawali Corporation for funds received.*
- 3. Copy of the Confirmation of Accounts from M/s. Venkata Industries for funds received.*
- 4. Copy of the ledger account along with the Share bills of M/s. Mag Impex Shares purchased by M/s. Sherawali Corporation.*
- 5. Copy of the ledger account along with the Share bills of M/s. Mag Impex Shares purchased by M/s. Venkata Industries .*

5. It was the case of the assessee that the Assessee received by RTGS (Bank Transfer) a sum of Rs.8,00,000 & Rs.6,00,000/- on 10.2.2009 and 15.10.2009 respectively from Venkata Industries and Rs.15,00,000/- on 19.9.2009 from Sherwali Corporation. The amounts in question were received by RTGS i.e., bank transfer and was not a cash deposit. The assessee also explained that the aforesaid receipts

were on account of sale of shares of M/s. Mag Impex Pvt. Ltd. The confirmation from the purchasers were also filed. It was the plea of the assessee that the information received by the AO from Investigation Wing of the Department in Kolkata cannot be the basis to make any addition in the light of the evidence furnished by the assessee.

6. The AO, however, made an addition of Rs.29 lakhs with the following observations:

“4. On verification of the documents submitted by the AR of the assessee It is noticed that in the bank account mostly the cash was deposited and subsequently the said funds were transferred to other entities by way of fund transfer/ RTGS.

4.1 It is also observed that as per Standard Chartered bank passbook bearing Account No. 331051308137 of the assessee the payment received from Venkata Industries are 8,00,000/- and 6,00,000/7 vide deposit date 06.10.2009 and 15.10.2009 respectively whereas payment received from the Sherwali corporation vide deposit date 19.092009 is Rs. 15,00,000/-. Therefore, the total amount which escaped the assessment is Rs. 29,00,000/-.”

7. On appeal by the assessee, the CIT(A) confirmed the order of the AO. The submissions made before the AO were reiterated by the assessee before CIT(A). The CIT(A), however, confirmed the order of the AO observing as follows:

“5.4. Grounds of appeal nos. 4 and 5 are both related to the merits of the addition made and are hence taken up together. From the assessment record, it is seen that the appellant's case was reopened u/s 148 after receipt of STR from the Investigation Wing Kolkata regarding suspicious transactions in the case of an entity known as Sneha International. This entity which was opened in August 2009, had been in operation for only about two months during which time it had received deposits in cash totaling over Rs.2.6 crores. Subsequently, the funds were transferred to other entities through fund transfer/RTGS. The finding of the STR was that M/s Sneha International was rotating the cash by transferring funds to entities where the proprietor of M/s Sneha International was a partner/proprietor/ authorised signatory for the purpose of layering and then transferring the cash to the ultimate beneficiary. As per the STR, the vo

entities to whom M/s Sneha International transferred funds after receiving cash deposits were M/s Sherawali Corporation and M/s Venkata Industries. These two entities served as a layer for the transmission of funds to various beneficiaries, including the appellant. From the appellant's bank statement it is seen that funds were received from M/s Sherawali Corporation and M/s Venkata Industries through funds transfer. It was submitted that these transfers were on account of sale of shares of Mag Impex P. Ltd. However, from the copies of the ledger accounts submitted that it is at the signatures of the confirming parties i.e. M/s Sherawali Corporation and M/s. Venkata Industries are barely visible and no indication is available about the identity of the signatory to the confirmations. Further, the copies of the sale bills Landed show that these bills do not have any number and appear to be generated for the purpose of creating the necessary documentation with regard to the transactions. In light of the information contained in the STR about the appellant being the beneficiary of the cash deposited the account of M/s Sneha International that was wed to it through M/s Sherawali Corporation and M/s Venkata Industries, the amount of Rs.29,00,000/- received by the appellant from these entities is held to be its unexplained income. The addition made by the AO on this account is therefore sustained. These grounds of appeal are dismissed.”

8. Aggrieved by the order of the CIT(A), assessee is in appeal before the Tribunal. Learned Counsel for the assessee reiterated submissions made before the CIT(A). Learned DR while relying on the order of the CIT(A) also placed reliance on decision of the Hon'ble Supreme Court in the case of CIT Vs. P. Mohana Kala 291 ITR 278(SC) and the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Vikram Singh 315 ITR 105(Del.).

9. I have carefully considered the rival submissions. It is clear from the orders of the revenue authorities that they not made any reference to the documentary evidence filed by the assessee. The case of the Revenue appears to be that M/s. Sneha International was rotating cash by transferring funds to various entities. M/s. Sneha International received cash and thereafter transferred funds to M/s. Sherawali Corporation and M/s. Venkata Industries who in turn transferred funds to the Assessee in the form of RTGS bank Transfer. The claim of the Assessee was that the receipts by the Assessee from the aforesaid two parties was for sale of shares of a

company by name Mag Impex Ltd., was not disbelieved either by the AO or the CIT(A). As far as the assessee is concerned, he has filed confirmation of Sherawali Corporation and Venkata Industries. Copies of which are at pages 32 and 33 of the Paper Book. The CIT(A) has ignored this confirmation on the ground that the signature of the confirming parties were barely visible. The address of the confirming parties are very much available in the confirmation and if any doubt persisted on the veracity of the confirmation, then the proper course would have been to issue summons to the confirming parties to find out the truth or otherwise of the transactions on sale of shares on account of which monies were received by the assessee through banking channels. Without resorting to such process, I am of the view that the CIT(A) has confirmed the addition made by AO ignoring the evidence available on record. In my view the evidence filed by the assessee satisfactorily explains the credits in question and the impugned addition has been made ignoring the material on record on the basis of surmises and conjectures. There is an allegation that it is Assessee's money which went to Sneha International and that was deposited by Snehal International in a bank account and from that bank account funds were transferred to M/S.Sherwali Corporation and M/S.Venkata Industries, but there is no evidence to substantiate such allegation.

10. As far as the decision cited by the learned DR is concerned in the decision rendered in the case of Mohana Kala (supra), the Hon'ble Supreme Court has emphasized that the assessee did not contend with the material and circumstances available on record not justifying credit being treated as income. In the present case, I am of the view that the assessee has produced material evidence to show that the sum in question was received on account of sale of shares and no evidence has been brought on record to counter the plea of the assessee. In the case of Vikram Singh (supra), the Hon'ble Delhi Court held that the facts and circumstances of the case established that transactions were dubious. As already stated, no such evidence has

been brought on record in the present case except to make an allegation that Sneha International was involved in rotating cash and the bank transactions in question had been made by Sneha International in favour of M/S.Sherwali Corporation and M/S.Venkata Industries after depositing such cash in their bank account. The learned Counsel has rightly placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of Orissa Coporation Pvt. Ltd., 159 ITR 78 (SC) and Hon'ble Patna High Court in the case of ACIT Vs. Hanuman Agarwal 151 ITR 150 (Patna) for the proposition that without issuing summons under section 131 of the Act to a party who filed confirmation, no adverse inference can be drawn by the AO. In the light of the facts and circumstances of the case, I am of the view that the addition made by the AO and sustained by the CIT(A) deserves to be deleted and the same is directed to be deleted. Appeal of the assessee is accordingly allowed.

11. In the result, appeal by the assessee is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V VASUDEVAN)
Vice President

Bangalore,
Dated : 18.02.2021
/NS/*

Copy to:

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|-------------------------|---------------|---------------|-----------|
| 1. Appellant | 2. Respondent | 3. CIT | 4. CIT(A) |
| 5. DR, ITAT, Bangalore. | | 6. Guard file | |

By order

Assistant Registrar
ITAT, Bangalore.