

Harjeev Aggarwal Vs. Joint Cit

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Court : Delhi

Decided On : Jun-23-2003

Reported in : (2004)89TTJ(Del)187

Appeal No. : IT(SSM No. 68/Del/2002; Block period 1st April, 1988 to 25-2-1999
23 June 2003

Appellant : Harjeev Aggarwal

Respondent : Joint Cit

Judgement :

ORDER

V. Dongzathang, P:

These cross-appeals are directed against the order of the Commissioner (Appeals), dated 13-2-2002.

2. The facts are that a search was conducted on a specific information received from the Investigation Wing that a property No. C-104, Naraina Vihar, Delhi, owned by Shri Arvind Seth, NRI was being sold for Rs. 86 lacs out of which only Rs. 12 lacs were paid by cheque and the balance was to be paid in cash.

The search resulted in recovery of Rs. 42.50 lacs and 30,000 US Dollars from Shri Arvind Seth of N-29, Green Park, New Delhi. Copy of the agreement to sell and the part payment receipt confirming the sale consideration were found and seized.

Shri Arvind Seth, the seller, admitted in his statement recorded during the course of the search that he had received total consideration of Rs. 86 lacs out of which Rs. 12 lacs by way of cheque and Rs. 74 lacs in cash. Shri Arvind Seth confirmed that he sold property No. C-104, Naraina Vihar, New Delhi to Shri Harjeev Aggarwal of C-108, Naraina Vihar for a total sum of Rs. 86 lacs. He, however, admitted that he has received so far only Rs. 66 lacs and the balance of Rs. 20 lacs were still owed to him by Shri Harjeev Aggarwal though he had signed the receipt for the total sum of Rs. 86 lacs consisting of Rs. 74 lacs in cash and Rs. 12 lacs by way of cheque. On the basis of this information, a search was carried out at the premises of Shri Harjeev Aggarwal on 2-2-1999. His statement was recorded and it was admitted by him that he entered into a deal for purchase of C-104, Naraina Vihar for a sum of Rs. 86 lacs. He further confirmed that a sum of Rs. 74 lacs was paid in cash and Rs. 12 lacs by way of cheque. Shri Harjeev Aggarwal by his letter dated 5-2-1999, admitted that out of Rs. 86 lacs, Rs. 74 lacs were paid as follows :

'That I have been asked to submit certain information relating to the search. That as for the information presently available with me I may submit that a property bearing No. C-104, Naraina Vihar was agreed to be purchased by us

jointly in names of Harjeev Aggarwal, Harjeev Aggarwal & Sons HUF and Anita Aggarwal from Arvind Seth. The sum agreed to be paid was Rs. 86 lacs out of which Rs. 74 lacs was paid in cash and the balance amount of Rs. 12 lacs is yet to be paid. All the three above named co-purchasers of the property have jointly contributed the said amount.

That we have been asked to explain source of funds of Rs. 74 lacs given to Arvind Seth. In this regard it is submitted that an approximate sum of Rs. 14 lacs was paid out of cash in hand accumulated over a period of time in personal as well as firm's account of the company-purchasers and the balance amount of Rs. 60 lacs was paid out of sale proceeds of unaccounted stock (tax free) sold in cash in the market by these company-purchasers.

This fact was stated to have been reiterated on 24-2-1999, by Shri Harjeev Aggarwal in answer to question No. 1 as follows :

UAs I have submitted in my submission dated 5-2-1999, the amount of Rs. 60 lacs as I have already submitted it represents unaccounted money belonging to me and I shall pay tax on it at the appropriate time.'

The receipt prepared and duly signed by Shri Arvind Seth and witnessed by Shri J.K. Gulati and Kamal Seth dated 28-1-1999, reads as follows

'RECEIPT

I, Arvind Seth son of late Shri RK Seth r/o N-29, Green Park Extn., N. Delhi, (hereinafter called the Executant) have received a sum of Rs. 59,00,000 (rupees fifty nine lacs only) from Shri Harjeev Aggarwal son of Sh. J.R. Aggarwal, resident of C-108, Naraina Vihar, New Delhi-110028, as the part payment of the sale consideration of my built up property No. C-104, measuring 300 sq. yds. situated at Naraina Vihar, New Delhi-110028. The total consideration amount is Rs. 86,00,000 (Rupees eighty six lacs only) and the details of payment given below :

(a) Rs. 15,00,000 (Rupees fifteen lacs only) is already paid on 8th July, 1998, in cash

(b) Rs. 59,00,000 in cash on 28th Jan., 1999

(c) Rs. 12,00,000 by cheques

Total amount is Rs. 86,00,000 (Rupees eighty six lacs only).

Hence this receipt is made and executed at New Delhi on this 28th Jan., 1999, in the presence of the following witnesses

WITNESSES;

.1. sd/-

EXECUTANT

(J. K. Gulati)

(Sh. Arvind Seth

N-29, Green Park Extn., New Delhi.

2. sd/-

(Kamal Seth) B - 1, Amar Colony,

L. Nagar-4.'

Since there is clear indication of actual transaction of Rs. 86 lacs, the assessing officer confronted the assessed to explain the source of the investment of Rs. 74 lacs in cash for the purchase of the property. On 9th Dec., 2000, the assessed submitted the following reply :

'The assessed had entered into an agreement for purchase of property bearing No. C-104, Naraina Vihar, New Delhi through Sh. J.K. Gulati, Power of Attorney holder of Arvind Seth for Rs. 86 lacs on 8-7-1998, along with one Sh. D.D. Berry, builder.

However, D.D. Berry builder withdrew from the bargain forcing assessed to make full payment of Rs. 86 lacs including Rs. 12 lacs by cheque as on 28th Jan., 1999 and the assessed simultaneously agreed for purchase of above property floor-wise in concurrence with Sh. Arvind Seth, as per details given below :

(a) Shri Harjeev Aggarwal. purchased ground floor of the property bearing No. C-104, Naraina Vihar for Rs. 37.35 lacs.

(b) Mrs. Anita Aggarwal purchased 1st floor of above property for Rs. 29 lacs.

(c) M/s Harjeev Aggarwal, HUF purchased End floor of the property for Rs. 19.65 lacs.

The original receipts of Rs. 86 lacs issued by Arvind Seth against sale of property bearing No. C-104, Naraina Vihar, New Delhi to aforesaid three purchasers have been seized by the IT Deptt.

Source of investment

Your honour would appreciate the assessed had originally intended to develop the above property on a commercial basis in collaboration with D.D. Berry, a builder who withdrew from the bargain subsequently. The assessed had no alternative but he entered into agreements to sell the above property to raise requisite finance for purchasing the property.

The assessed i.e., Sh. Harjeev Aggarwal, Anita Aggarwal and M/s Harjeev Aggarwal, HUF entered into memorandums of understanding with M/s Penguin Chits (P) ITD., M/s Parmeshwar Chits (P) ITD. and M/s Jai & Associates from whom they received Rs. 20 lacs, Rs. 15 lacs and Rs. 10 lacs, respectively, in cash as earnest money.

The assesses have made payment to Arvind Seth for purchase of above property as under

Harjeev Aggarwal

The assessed made a total payment of Rs. 37.35 lacs the source of which is as under :

Rs. 20 lacs recd. by him as earnest money from Penguin Chits ITD. (copy of agreement by Harjeev with Penguin Chits (P) ITD. dated 22nd Jan., 1999, for receipt of Rs. 20 lacs enclosed).

Rs. 12.90 lacs (copy of capital account of prop. in his proprietorship firm M/s Machine Tools & Hardware Stores evidencing withdrawal of Rs. 12.90 lacs).

Rs. 4.45 lacs being the amount of cheques issued.

Mrs. Anita Aggarwal

Mrs. Anita Aggarwal made payment of Rs. 29 lacs to Arvind Seth for purchase of first floor of above property the source of which is as under :

Rs. 15 lacs received as earnest money in cash from M/s Parmeshwar Chits (P) ITD. (copy of agreement by Mrs. Anita Aggarwal with Parmeshwar Chits (P) ITD. dated 25th Jan., 1999, for receipt of Rs. 15 lacs enclosed).

Rs. 1. 10 lacs Personal contribution,

Rs. 3.85 lacs Cheques, issued. Cheques not encashed.

Rs. 9.05 lacs Tax reflected sources.

M/s Harjeev Aggarwal, HUF

Harjeev Aggarwal, Karta of HUF made payment against purchases of second floor of Rs. 19.65 lacs, the source of which is as under :

Rs. 10 lacs received by Harjeev Aggarwal, HUF as earnest money in cash from Jai & Associates (copy of agreement dated 27th Jan., 1999, for receipt of Rs. 10 lacs in cash enclosed).

Rs. 5.95 lacs from tax reflected sources.

Rs. 3.70 lacs cheques issued (cheques not encashed).

A copy of the affidavit of assessed in this regard is-enclosed for your perusal and record.'

4. The assessing officer examined the details of this Explanationn and also examined the alleged creditors like M/s Jai & Associates, M/s Penguin Chits (P) ITD. and M/s Parmeshwar Chits (P) ITD. through Prop. and Chairman, etc. of the companies. It was admitted by them that cash advance to Shri Harjeev Aggarwal for the purchase of property No. C- 104, Naraina Viliar, New Delhi was given by them. The assessing officer, however, found that Shri Aggarwal was buying this property from Shri Arvind Seth, NRI and till date the title was not in the name of Sh. Harjeev Aggarwal, although Sh. Arvind Seth has admitted in the receipt that he has received total amount of Rs. 86 lacs and Sh. Harjeev Aggarwal has also admitted that he has paid full amount of Rs. 86 lacs as full and final payment for this property. The assessing officer further found that the entries were made in cash and reflected in the books of account as advance against the property No. C-104, Naraina Viliar, to avoid provisions of section 269SS. It was further noticed that the same amount had been received back by both the chit fund companies and M/s Jay & Associates. He, thereforee, held that it was only a book entry and

no actual transaction of cash was made. The assessing officer further found that there was no urgency for making the transaction in cash. It was also his view that when the property was not in the name of Harjeev Aggarwal till today, there is no question of entering into agreement with any other person and to make cash payment for the property belonging to another person. It is also found by him that the agreements prepared for purchase and sale of this property were not registered in the office of the Registrar. He, therefore, held that the property was intended to be transferred for a consideration of Rs. 12 lacs the payment of which was made by cheque and the remaining amount was to be paid out of undisclosed income. The assessing officer also examined the income returned since assessment year. 1989-90 and it was found that the income declared for each of the year was marginal and there was no scope for generating such income to purchase the property. He, therefore, held that the total amount of Rs. 74 lacs paid in cash and Rs. 12 lacs paid through cheques was undisclosed income and added the same as assessable income.

5. Aggrieved by the said order, the assessed took up the matter in appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) considered the submissions as made before him. According to him the assessed himself admitted that Rs. 60 lacs were paid out of sale proceeds of unaccounted stock sold in cash vide his letter dated 5th Feb., 1999. In the statement on oath under section 131, he again submitted that Rs. 60 lacs represented unaccounted money belonging to him and he would pay the tax at appropriate time. In all these statements, there was no mention of earnest money received from the three concerns. It was only in the letter dated 16th April, 1999, that the assessed changed his stand and claimed that the amount paid by him out of his tax reflected sources, borrowings and advance against future commitments. The claim of these borrowings and advances was made by the authorized representative of the assessed vide letter dt. 28-6-1999. On the basis of the sequence of events, the learned Commissioner (Appeals) held that the assessed changed, his stand to suit his convenience. According to him the initial admission by the assessed has evidentiary value and, therefore, the assessing officer was justified in coming to the conclusion that the assessed was trying to suppress the sale consideration of Rs. 72 lacs paid in cash by showing only payment of Rs. 12 lacs by way of cheque.

6. The learned Commissioner (Appeals), however, before coming to a definite conclusion called for remand report from the assessing officer. The assessing officer submitted the following report which is reproduced by the learned Commissioner (Appeals) at para 8 as follows:

'8 The director and partner of the above-named three concerns were again served with summons under. Section 131 by the Assistant Commissioner, Circle 27(1), and the case was fixed for 22-1-2002. However, a single representative, Shri M.N. Sehgal, appeared on behalf of the three concerns and requested for adjournment. The case was adjourned to 23-1-2002, but nobody appeared on this date. However, after a perusal of the impounded books of account of these concerns, the assessing officer has reported as under

(a) In the books of M/s Penguin Chits (P) ITD., cash deposits have been shown as under, just prior to date of alleged advance on 22nd Jan., 1999, to the assessed :

Date of deposit

Amount of deposit

2-1-1999

Rs. 2,75,000

9-1-1999

Rs. 2,50,000

15-1-1999

Rs. 1,50,000

18-1-1999

Rs. 1,50,000

19-1-1999

Rs. 2,25,000

21-1-1999

Rs. 2,38,000

Against each of these entries the noting 1nd. Land at Anand Parbat, By cash received from Shri Rajinder Prasad Sharma' is mentioned.

(b) In the books of M/s Parmeshwar Chits (P) ITD., which is claimed to have advanced Rs. 15 lacs on 25-1-1999 in cash, the opening cash balance as on 1-12-1998 was Rs. 12,17,842 and closing balance as on 31-12-1998, was Rs. 22,85,025. The cash shown as received was Rs. 2,15,000 from Shri Sanjay Sharma, Rs. 2,33,500 from the directors of the company and balance from different parties in amounts less than Rs. 20,000 described as 'temporary accommodation'.

(c) In the case of M/s Jai & Associates, withdrawals from the bank on different dates have been shown for no apparent reason before the alleged advance to the assessed.'

7. The learned Commissioner (Appeals), therefore, held that the above evidences have been fabricated to explain the source of cash paid by the assessed. He, therefore, rejected the Explanationn furnished by the assessed for the source of payment of Rs. 45 lacs in cash.

8. With regard to a sum of Rs. 12.90 lacs stated to have been withdrawn from the proprietary concern M/s Machine Tools & Hardware Store, the learned Commissioner (Appeals), however, found that a !gum of Rs. 4 lacs in total had been withdrawn from the bank on 26-1-1998 and on 7-12-1998. The balance cash was stated to be out of sale proceeds of the stock approximately Rs. 37,70,000. The learned Commissioner (Appeals), however, found that the benefit of withdrawal from the bank cannot be allowed as the withdrawals were made much prior to the date of payment of the amount to Shri Arvind Seth. He also rejected the source of Rs. 12,90 lacs as explained by the assessed.

9. Insofar as payment of Rs. 12 lacs by cheque, the learned Commissioner (Appeals) accepted the same and directed the assessing officer to delete the same.

10. The assessed has come up in appeal against the addition of Rs. 74 lacs sustained by the learned Commissioner (Appeals). On the other hand, the revenue has come up in appeal against the deletion of Rs. 12 lacs made by the Commissioner (Appeals).

11. Shri C.S. Agarwal, learned counsel, appeared for the assessed and submitted that the revenue has grossly erred in initiating the proceedings under Chapter XIV-B of the Income Tax Act. According to him the search under section 132(1) was conducted at the premises of Shri Arvind Seth on 1-2-1999 and thereafter a similar search was conducted in the case of the assessed on 2-2-1999. At the time of the search itself, the assessed had admitted that he had entered into agreement of sale for and on behalf of himself, his wife and his HUF in respect of house property bearing No. C-104, Naraina Vitiar, New Delhi for a sum of Rs. 86 lacs. This aspect was admitted by Shri Arvind Seth himself in the statement at the time of search wherein he admitted that he received Rs. 12 lacs paid by cheque as follows

Rs. 4,45,000 by Shri Harjeev Aggarwal,

Rs. 3,85,000 by Smt. Anita Aggarwal, and

Rs. 3,70,000 by Harjeev Aggarwal HUF.

He also admitted the payment of Rs. 74 lacs in cash. This aspect is duly recorded in the statement vide pp. 38 to 44 of the paper book. It is also submitted that Snit. Anita Aggarwal admitted on 2-2-1999, that she too had purchased the said property Along with her husband as per her statement appearing at pp. 45 & 46 of the paper book. In such a case', it is submitted that the assessing officer grossly erred in initiating the proceedings under Chapter XIV-B of the Income Tax Act in respect of the investment made in the said property by treating the amount invested in the purchase of property as unexplained and thus representing the undisclosed income of the assessed. Shri C.S. Agarwal submitted that the said

amount was invested by (assessed) himself, his wife and the HUF out of explained sources and cannot be regarded as undisclosed income of the assessed for assessment year 1999-2000.

12. It is further submitted that for financing the aforesaid investment the assessed had made investment out of the sale proceeds of the stocks and also by arranging funds which have been duly entered in the books of account and on the basis whereof returns of income for the assessment year 1999-2000 had been filed by these assessed's and have been duly accepted. The learned counsel drew our attention to the details of the returns filed by (assessed) himself, his wife Smt. Anita Aggarwal and M/s Harjeev Aggarwal HUF appearing at pp. 2 to 15 of the paper book.

13. The learned counsel further submitted that the undisclosed income as per the provisions of section 158BB(d) contemplates such income on the basis of evidence found as a result of search. The Hon'ble Delhi High Court in the case of CIT v. Raid Kant Jain (2001) 167 CTR (Del HI) 566 : (2001) 250 ITR 141 observed that 'the special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and rarebit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the assessing officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A.'

14. Shri C.S. Agarwal, the learned counsel, further submitted that no incriminating material was found at the time of search on the basis of which the assessing officer could validly conclude that there was undisclosed income pertaining to transaction of the property to be acquired by the assessed and others. There was no denial by the assessed or his wife that the aforesaid property had (sic not) been acquired by them for Rs. 86 lacs. It is only for the assessed and others to explain

the source of such investment.

15. Shri C.S. Agarwal, the learned counsel further submitted that no addition can be made as undisclosed income on the basis of presumption and assumptions as held by the Tribunal, Bombay Bench, in the case of *Sunder Agencies v. Dy. CIT* (1997) 59 ITD 610 (Bom) : (1997) 63 ITD 245 (Bom). It is not a license to revenue to make roving enquiries, or to draw any presumption in regard to other matters and that the assessing officer could proceed only on the basis of materials detected at the time of search and the evidence gathered. Reliance also is placed on the decision of the Honble Calcutta High Court in the case of *Bhagwati Prasad Kedia v. CIT* : [2001]248ITR562(Cal) for the proposition that block assessment is not a substitute for regular assessment and the details of creditors furnished in the regular assessment itself should be considered only in regular assessment and not in block assessment. It is, therefore, submitted that the transaction which is otherwise admitted and has been duly recorded in the books of account before finalizing of the accounts in respect of assessment year when the accounting year has not ended cannot be regarded as undisclosed transaction. If at all, such transaction should be considered in the regular assessment as held by the Hon'ble Calcutta High Court in the case of *Bhagwati Prasad Kedia* (supra). Reliance also is placed on the decision of the Tribunal, Chennai Bench, in the case of *P.K. Ganeshwar v. Dy. CIT* (2002) 80 ITD 429 for the proposition that the addition of amounts recorded in the books of account is outside the pale of Chapter XIV-B of the Income Tax Act. Shri C.S. Agarwal further submitted that the addition made as a result of follow up investigation after search is outside the pale of Chapter XIV-B of the Income Tax Act and for this proposition, reliance was placed on the following decisions

1. *CIT v. Ravi Kant Jain* (2001) 167 CTR 566 (Del HI): (2001) 250 ITR 141 ,
2. *CIT v. Vinod Danchand Ghodawat* : [2001]247ITR448(Bom) ,
3. *CIT v. Ralendra Prasad Gupta and*
4. *CIT v. Smt Usha Tripathi* : [2001]249ITR4(All) .

Since the assessed in this case admitted at the time of the search itself that it has paid Rs. 74 lacs in cash and a further sum of Rs. 12 lacs by cheque, there is no question of any undisclosed income, particularly when the parties admitted the payment as follows :

Shri Harjeev Aggarwal

Rs. 37.35 lacs for the ground floor,

Smt. Anita Aggarwal

Rs. 29.00 lacs for the first floor, and

Harjeev Aggarwal (HUF)

Rs. 19.65 lacs for the 2nd floor.

16. With regard to the merit and the sources of the investment, the learned counsel submitted the following sources :

Sl. No.

Source

Refer page 120 of the Paper book

Refer page 121 of the Paper book

Harjeev Aggarwal

Srnt. Anita Aggarwal

Harjeev Aggarwal (HUF)

Total

1.

Earnest money received (as per details in Point No. 7.7)

20,00,000

15,00,000

10,00,000

45,00,000

2.

Withdrawn by Mr. Harjeev Aggarwal From his sole Proprietorship Business.

12,90,000

-

-

12,90,000

3.

Cheques issued saving bank (un-cashed till date)

4,45,000

3,85,000

3,70,000

12,00,000

4.

From income declared during asst. year 1999-2000.

9,05,000

5,95,000

15,00,000

5.

Accumulated personal saving of Mrs Anita Aggarwal

-

1,10,000

-

1,10,000

Total

37,35,000

29,00,000

19,65,000

86,00,000

It is further submitted that to finance the purchase of the above property the assessed, his wife and the HUF entered into back-to-back three agreements with three parties for sale of their respective floors and received Rs. 45,00,000 in cash as earnest money from these parties as under

SL. No.

Name of person who received earnest money against proposed sale of their floor

Name of party making payment of earnest money

Date of receipt of earnest money and and amount of receipt

proposed sale amount

1.

Mr Harjeev Aggarwal

M/s Penguin chits (P) Ltd

20,00,00 dt. 22-1-99

45,00,00

2.

Mrs Anita Aggarwal

M/s Parmeshwar Chits (P) Ltd.

15,00,000 dt. 25-1-99

40,00,000

3.

M/s. Harjeev Aggarwal (HUF)

M/s. Jai & Associates

10,00,000 dt. 27-1-99

25,00,000

Total

45,00,000

1,10,00,00

17. Shri C.S. Agarwal further submitted that even in any case, the amount of investment made by Shri Harjeev Aggarwal, the assessed, is to the tune of Rs. 37.55 lacs. Out of the same Rs. 12.90 lacs paid by him was withdrawn from his sole proprietary business and another sum of Rs. 12 lacs paid by issue of cheques has not yet been encashed. In such a case, even if any addition is to be made, the

addition should only be limited to the unexplained investment of the assessed.

18. Shri C.S. Agarwal further submitted that the amount taken from these three parties were returned by the assessed, his wife and the HUF as follows

Shri Harjeev Aggarwal :

Sl. No.

Date of payment

Amount Rs.

1.

3-3-2000

2,50,000

2.

23-3-2000

3,50,000

3.

24-4-2000

3,00,000

4.

4-5-2000

3,00,000

5.

16-6-2000

4,00,000

6.

28-6-2000

4,00,000

Smt. Anita Aggarwal:

1 .

9-12-1999

3,00,000

2.

27-12-1999

4,00,000

3.

10-1-2000

2,50,00

4.

20-1-2000

3,00,000

5.

3-2-2000

2,50,000

Harjeev Aggarwal (HUF)

1.

13-10-1999

2,50,000

2.

16-10-1999

2,50,000

3.

28-10-1999

2,50,000

4.

12-11-1999

2,50,000

19. Insofar as the credibility of the parties from whom the advances were obtained, Shri C.S. Agarwal submitted that the advance paid by them was admitted by each of the parties. The AQ in the report submitted before the Commissioner (Appeals) clearly indicated that these parties duly reflected the loan in their books of account as per remand report dated 24-1-2000. In case the assessing officer could not further verify the genuineness of the deposits in the books of account of these parties, it is not the liability of the assessed to explain the source of investment in the hands of third parties. Insofar as the assessed is concerned, the advances have been duly proved and there is no question of treating the said amount of advance as undisclosed income of the assessed. It is, therefore, submitted that viewed from any angle, there is no reasonable ground for treating the investment in the property as undisclosed income of the assessed. Firstly, it is not undisclosed

income and cannot be assessed under Chapter XIV-B of the Act. Even if it is to be considered on merit, it is submitted that the sources of the investment have been duly explained and there is no reasonable ground for making any addition on this account. It is, therefore, submitted that the addition is liable to be deleted.

20. On the other hand, Smt. Pratima Kaushik, learned senior departmental Representative, strongly supported the order of the learned Commissioner (Appeals). According to her, Shri Arvind Seth was subjected to search and seizure operation under section 132 of the Act. On the basis of the information collected by the Investigation Wing, it was found that a property deal had been made to sell property No. 104, Naraina Vihar, Delhi. The property was being sold for Rs. 86 lacs out of which only Rs. 12 lacs were paid by cheque and balance was to be paid in cash. The search resulted in a recovery of Rs. 42.50 lacs and 30,000 US Dollars from Shri Arvind Seth and Nalini Seth, N-29, Green Park, New Delhi. Copy of the agreement to sell, the part payment receipt, etc. were found and seized from Shri Arvind Seth. It was admitted by him that he received a consideration of Rs. 86 lacs out of which Rs. 12 lacs were received by cheque. From the above facts, it is clear that there was intention to suppress the actual amount of the sale consideration and there was an attempt not to disclose the entire sale proceeds. The assessing officer examined Shri Arvind Seth, the seller of the property and his agent Shri, J.K. Gulati. Harjeev Aggarwal, the assessed also was duly examined. After careful consideration of all these statements and the evidences produced before him, he further examined the sources of the investment claimed to be from some chit fund companies like M/s Penguin Chits (P) ITD., M/s Parmeshwar Chits (P) ITD and also M/s Jai & Associates. These parties also could not properly explain the sources of the deposits in their accounts. He, therefore, eventually came to the conclusion that the actual amount of the sale consideration was paid by Shri Harjeev Aggarwal out of undisclosed income and the same was correctly assessed as undisclosed income. In coming to this conclusion, the assessing officer looked into the various stands taken by the assessed at different stages of the proceedings. At the time of the search, the assessed stated that a sum of Rs. 74 lacs was paid in cash to Shri Arvind Seth out of which Rs. 60 lacs was paid out of sale proceeds of unaccounted stocks (tax-free) sold in cash. In these statements, the assessed admitted that Rs. 60 lacs represented his unaccounted

money and he would be paying the tax at the appropriate time. However, by 16-4-1999, the assessed by his letter to DIT (Investigation) changed his stand and claimed that the amount had been paid by him out of his known sources, borrowings and advance against future commitments, etc. In another letter dated 28th June, 1999, the authorized representative of the assessed again reiterated that the amount was invested out of the known sources. From the above facts, it was held by the assessing officer that the subsequent stand and the evidence produced before him were fabricated to explain the sources of the amount invested by the assessed in the purchase of the property,

21. When the matter came up to the Commissioner (Appeals), the learned Commissioner (Appeals) fully considered the Explanationns reiterated by the assessed. The learned Commissioner (Appeals) further directed the assessing officer through a remand report to verify the correctness of the claim of advance received from three parties amounting to Rs. 45 lacs. There was no compliance to the notice. The assessing officer, thereforee, reported the matter on the basis of the impounded books of account wherein it was found that just before the amount was advanced on 22-1-1999, M/s Penguin Chits (P) ITD. received deposit by cash from Shri Rajinder Prasad Sharma amounting almost Rs. 15 lacs on various dates. Similarly, in the books of M/s Parmeshwar Chits (P) ITD. which is claimed to have advanced Rs. 15 lacs on 25-1-1999 in cash, the opening balance as on 1-12-1998 was Rs. 12,17,842 and the closing balance as on 31-12-1998 was Rs. 22,85,025. The balance in the hands of M/s Parmeshwar Chits (P) ITD. consist of cash received from Shri Sanjay Sharma, from the directors of the company and the remaining amount from different parties as temporary accommodation.

22. In the case of M/s Jai & Associates, withdrawals from the bank on different dates have been shown. As the concern did not comply with the summons, the assessing officer, thereforee, submitted that no further enquiry could be made as there was no compliance from these parties. The learned Commissioner (Appeals), thereforee, held that the alleged amount received from these parties was only a paper transaction and the accounts were fabricated to explain the source of cash paid by the assessed. He, thereforee, rightly rejected the Explanationn furnished by the assessed for the source of payment of Rs. 45 lacs

in cash.

23. Coming to the amount of Rs. 12.90 lacs claimed to have been withdrawn by the assessed from his proprietary concern M/s Machine Tools & Hardware Store, it was found by the learned Commissioner (Appeals) that the withdrawals of Rs. 4 lacs were made from the bank on 26th Nov., 1998 and 7th Dec., 1998. In such a case, credit could not be given as the withdrawals were made much prior to the date of payment and no nexus could be established. The learned Commissioner (Appeals), however, allowed relief of Rs. 12 lacs claimed to have been made by cheque on the reasoning that the amount was not in cash.

24. With regard to the investment in the name of Smt. Anita Aggarwal, the learned Commissioner (Appeals) fully examined the same and held that though the assessed claimed to have paid a sum of Rs. 1,10,000 out of her accumulated savings and Rs. 9,05,000 out of her income, there was no evidence to support the availability of such amount including the income declared of Rs. 9,05,000. The learned Commissioner (Appeals) further looked into the alleged investment in the name of the HUF shown at Rs. 6,60,310 and it was his finding that the assessed could not establish the availability of such amount. In view of the above findings, the learned Commissioner (Appeals) upheld the addition to the extent of Rs. 74 lacs and allowed a relief of Rs. 12 lacs on the reasoning that the cheque issued by the assessed was not encashed.

25. Having regard to the sequence of events and the change of the stand by the assessed from time to time, it is apparently clear that the claim of investment by his wife and the HUF and the alleged sources of money received from M/s Penguin Chits (P) ITD., M/s Parmeshwar Chits (P) ITD. and M/s Jai & Associates are only paper documents fabricated for explaining the source of investment. The learned Commissioner (Appeals) therefore, rightly rejected the claim and sustained the addition which calls for no interference.

26. We have carefully considered the rival submissions in the light of the material on record. The assessed in this case is an individual. The block period is from 1-4-1988 to 25-2-1999. For the purpose of regular assessment, the accounting year of the assessed is the financial year i.e., 1-4-1998 to 31-3-1999. The search was

conducted on 1-2-1999, at the premises of Shri Arvind Seth and on 2-2-1999, at the premises of the assessed. The fact that there was a sale agreement for the sale of property bearing No. C-104, Naraina Vihar, New Delhi, was admitted and the sale consideration of Rs. 86 lacs also was admitted. It is the case of the revenue that the assessed is not likely to declare the said transaction and, therefore, the search and seizure operation was conducted on the basis of the information collected by the Investigation Wing of the department.

27. It is also the case of the revenue that the assessed admitted having paid the sum of Rs. 60 lacs in cash and offered the said amount for taxation at the time of the search and in the subsequent letter written to the DIT (Investigation). The assessed, thereafter contended that the agreement was entered into by him Along with his wife and the HUF and the investment was made by each of the parties and further contended that the sources of the investment were fully explained. This claim of the assessed was rejected by the assessing officer and the learned Commissioner (Appeals) and it was further held that the subsequent evidences produced were fabricated by the assessed for the purpose of explaining the source of investment. The same was accordingly rejected.

28. It is the contention of the learned counsel of the assessed that there was no element of concealment and the full facts have been disclosed and reflected in the books of account of the assessed. According to the learned counsel the sale consideration of Rs. 86 lacs was admitted by Shri Arvind Seth as well as by the assessed. Shri Arvind Seth admitted the amount received from the parties in the statement given by him at the time of the search which shows that Rs. 4,45,000 were paid to him by Shri Harjeev Aggarwal by cheque and a sum of Rs. 3,85,000 were paid by Smt. Anita Aggarwal by cheque and Rs. 3,70,000 by the HUF making it a total of Rs. 12 lacs. Shri Arvind Seth also admitted payment of Rs. 53 lacs in cash and another sum of Rs. 13 lacs by means of cheque which makes the total of Rs. 66 lacs. therefore, the amount of Rs. 20 lacs is stated to remain unpaid.

29. Shri C.S. Agarwal further submitted that Shri Harjeev Aggarwal, his wife and the HUF fully disclosed these details in the return of income filed for assessment

year 1999-2000, the details of the investment including the various amounts received from the intending purchasers were duly reflected. Smt. Anita Aggarwal also reflected the income from other sources amounting to Rs. 9,05,000 in the accounts filed Along with the return. The returns of income for these years in all the cases have been duly accepted

30. On these facts, it is the case of the learned counsel of the assessed that the investment made by the assessed cannot be said to be undisclosed income for the purpose of block assessment under Chapter XIV-B of the Income Tax Act. Reliance also was placed on the decision of the jurisdictional High Court in the case of CIT v. Raid Kant Jain (supra) and the decision of the Tribunal in the case of Sunder Agencies v. Dy. CIT (supra) as also of the Hon'ble Calcutta High Court in the case of Bhagwati Prasad Kedia v. CIT (supra). Having regard to the above decisions, we have to hold that the undisclosed income, if any, has to be considered in the regular assessment on the basis of the books of account and the returns filed by the parties. There is, therefore, no justification for considering the investment in the block assessment under Chapter XIV-B of the Income Tax Act. We hold accordingly.

31. With regard to the merit of the case also, it is seen that the assessed initially gave some statements admitting that part of the investment was made out of undisclosed stock held by him and sold tax-free. This initial statement of the assessed was rescinded with effect from 16th April, 1999, i.e., about two months after the date of the search and seizure operation under section 132 of the Act. That the assessed's normally made confessions during the search and seizure and survey operations and such confessions about the undisclosed income during the course of such search and seizure operations have often been rescinded by the parties contending that they were forced to confess such undisclosed income, came to the notice of the CBDT. The Board, therefore, issued letter dated 10th March, 2003, F. No. 286/2/2003-IT(Inv) to the officers of the department that such confessions during the course of search and seizure and survey operations do not serve any useful purpose and, therefore, it was advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before

the IT department.

It was further desired that while recording statement during the course of such operations no attempt should be made to obtain confession as to the undisclosed income. In view of the above instructions it is necessary to look into the facts of the case and examine the evidences in the instant case so as to find out whether there is any undisclosed income invested by the assessed in the purchase of the property.

32. The learned counsel before us stated that the agreement to purchase the property No. C-104, Naraina Vihar, New Delhi was entered into by three different individuals, namely, the assessed himself, his wife and the HUR. The assessing officer stated to have discovered copy of the agreement to sell at the time of the search. However, his order is totally silent as to the nature of the agreement. The assessed supported his claim by referring to the statement of Shri Arvind Seth wherein these three persons made cheque payments amounting to Rs. 12 lacs. The assessed paid Rs. 4,45,000, Smt. Anita Aggarwal paid Rs. 3,85,000 and Harjeev Aggarwal & Sons HUF paid Rs. 3,70,000 as admitted by Shri Arvind Seth on 1st Feb., 1999. It is also seen from the copy of the income-tax return of these persons and the copy of the balance sheet that the amounts advanced by them for the purchase of the property have been reflected in the balance sheet for the year ending 31st March, 1999. In the case of Shri Harjeev Aggarwal, the investment was shown at Rs. 37.35 lacs. In the case of Smt Anita Aggarwal, the investment was shown by her at Rs. 29 lacs. In the case of Harjeev Aggarwal & Sons HUF, the investment was shown at Rs. 19.65 lacs. Against these investments Shri Harjeev Aggarwal reflected a liability of Rs. 20 lacs to M/s Penguin Chits (P) ITD. Smt. Anita Aggarwal declared Rs. 9,05,000 as income from other sources and Rs. 15 lacs as loan and advances from M/s Parmeshwar Chits (P) ITD. The HUF M/s Harjeev Aggarwal & Sons shows a loan of Rs. 10 lacs from M/s Jai & Associates. The returns of income of these assessed's were duly accepted by the assessing officer vide the intimation issued under section 143(1) of the Income Tax Act. It is, therefore, too late in the day to say that these amounts were invested out of the undisclosed income of the assessed, particularly in the case of Shri Harjeev Aggarwal when part of C these investments have been accepted in the hands of

the other parties.

33. Secondly, with regard to the advances received from M/s Penguin Chits (P) ITD., M/s Parmeshwar Chits (P) ITD. and M/s Jai & Associates, it is seen that these amounts were duly reflected in the books of accounts impounded by the assessing officer. These parties received deposits from various parties and later on the amounts were advanced to the assessed as part of back-to-back agreement with these parties. If the assessing officer could not verify the genuineness of the deposits in the books of private limited company, the normal presumption would be that the deposits were undisclosed income of the companies. It will be too far-fetch to say that these amounts deposited in the books of the private companies belong to the assessed. The assessing officer did not establish any nexus of the assessed with these companies. It is not the case of the revenue that the assessed is having controlling power over these chit fund companies. In such a case, the deposits in the books of these chit fund companies have to be explained by the chit fund companies and it cannot be co-related with the investment made by the assessed in the form of advance received from these parties. We hold accordingly.

34. Having regard to the above facts and circumstances of the case, we are of the view that the assessing officer did not make out any valid case for treating the investment as the undisclosed income of the assessed for the block assessment. Even if there is any doubt about the genuineness of the investments, they have to be considered in the respective hands of the persons who made the investment in the regular proceedings as held by the jurisdictional High Court in the case of CIT v. Ravi Kant Jain (supra). We hold accordingly and delete the addition.

35. With regard to the appeal of the revenue, it is seen that the learned Commissioner (Appeals) deleted the addition to the extent of Rs. 12 lacs on the specific finding that the cheque amount of Rs. 12 lacs was not encased in the instant case. In such a case, the cheque issued does not have any real value as the amount represented by the cheque has not been encashed. The learned Commissioner (Appeals) has rightly appreciated the same and deleted the addition. There is, therefore, no infirmity in the order of the learned Commissioner

(Appeals) on this point. It is accordingly upheld.

36. In the result, the appeal of the assessed stands allowed and that of the revenue is dismissed.

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