

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND SHRI
ANIKESH BANERJEE, JUDICIAL MEMBER

ITA NO.268/MUM/2024
Assessment Year :2013-14

Yash Synthetics Private Limited
Office No.2, 2nd Floor, Shah Trade Center,
Rani Sati Marg, Malad (East),
Mumbai – 400 097.
PAN:AAACY-0426-B ---- Appellant

Vs.

Assistant Commissioner of Income Tax 13(3)(2),
Room No.229, 2nd Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 020 --- Respondent

Appellant by : S/Shri Vimal Punmiya &
Rahul Punmiya

Respondent by : Shri Dinesh A. Chourasia

Date of Hearing : 30/05/2024

Date of Pronouncement : 18/06/2024

ORDER

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

The assessee has filed this appeal challenging the order dated 11/12/2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2013-14.

2. At the time of hearing the Ld.A.R did not press the grounds relating to validity of reopening of assessment. Accordingly, grounds relating thereto are dismissed as not pressed. The remaining ground relates to addition of Rs.1.61 cores made by the Assessing Officer u/s. 69A of the Act.

3. The facts relating to the aforesaid addition are stated in brief. The assessee company is engaged in the business of manufacturing of

Plastic Containers. The original assessment of the year under consideration was completed by the AO u/s. 143(3) of the Act on 04/03/2016. Subsequently, the Assessing Officer received certain information relating to survey operations conducted in the hands of M/s. Shah Housecon Private Limited. The above said company is a builder and developer. It had undertaken three housing projects. The assessee had purchased three flats/shops bearing flat numbers A

3701, A-3702 and B-3503 in one of the housing projects named "Levels" located at Malad (East). During the course of survey action certain documents were found from the Accountant of the aforesaid builder. Those documents contained the details of cash received from the buyers of the flats. In that statement, a sum of Rs.1.61 crores was found noted as cash receipts against the aforesaid flat numbers purchased by the assessee. It is also noted that the date of issue of allotment letter is 07/01/2013. Based on the aforesaid information the Assessing Officer took the view that the assessee had paid aforesaid amount in cash during the Financial Year relevant to the Assessment Year 2013-14. Accordingly, he reopened the assessment of that year by issuing notice u/s. 148 of the Act.

4. The Assessing Officer further noticed that the aforesaid document depicting cash receipts was confirmed by Shri Binesh Balakrishnan, Sr. Accountant in the statement taken u/s 133A of the Act. Further, Shri Mansukh Shah, Director of the company also agreed with the statement so given by Shri Binesh Balakrishnan. Accordingly, the Assessing Officer called explanations from the assessee with regard to the payment of Rs.1.61 crores. The assessee did not accept the entries made in the document prepared by the

Accountant. The assessee submitted that the date of allotment of flats is mentioned as 07/01/2013 in the document seized from the accountant of the builder. However, the assessee was allotted three flats on 22/03/2011 for an aggregate consideration of Rs.3.80 crores and the assessee had paid Rs.40.00 lacs on that date. The flats were finally registered in the name of the assessee in Financial Year 2016-

17. In between the periods the assessee was making payments by way of cheque only and no cash payment was made. Accordingly, the assessee refuted the entries noted down in the document.

5. However, the Assessing Officer did not accept the aforesaid explanations of the assessee on the reasoning that the document taken from the accountant clearly depicts the details of cash receipts against flat numbers and name of the assessee. Further, the veracity of the document has also been confirmed by the Accountant and Director of the builder company. Accordingly, the Assessing Officer took the view that the assessee must have made payment of Rs.1.61 crores by way of cash as noted in the document. Accordingly, the Assessing Officer assessed the aforesaid amount as undisclosed income of the assessee u/s. 69A of the Act in assessment year 2013- 14. The Ld.CIT(A) also confirmed the same and hence, the assessee has filed this appeal before the Tribunal.

6. We have heard the parties and perused the record. We notice that the Assessing Officer has placed reliance on the statement taken from Shri Binesh Balakrishnan. The statement was given u/s. 133A of the Act and it is well settled proposition that the same does not have any evidentiary value. Hence, it is imperative for the AO to bring any other corroborative material to substantiate the entries made in

the document. The responsibility of the assessing officer would go up, when the assessee denies the entries made in the document seized during the course of survey operations. However, we notice that the Assessing Officer neither made any further enquiry nor bring on record any other credible material to substantiate the entries made in the document that the assessee has made cash payment of Rs.1.61 crores.

7. Further, the entries made in the document are prone to discrepancies. The allotment letter for flats has been issued to the assessee on 22/03/2011, while the document notes down the date of allotment as 07/01/2013. This apparent contradiction brings down the reliability of the document taken during the course of survey, as the entries made therein is contrary to the actual facts. It is stated that the flats were finally registered in the name of the assessee in Financial Year 2016-17 and this fact has not been noted down in the Statement. The case of the assessee is that it has made all payments by way of cheques only and the relevant details were furnished to the AO.

8. The Ld A.R further submitted that the purchase value of flats are also supported by the valuation report issued by a registered valuer and this report support the case of the assessee that there was no necessity to pay part of consideration in cash, as the purchase was done at market rates. In the case of Shri Anil Jaggi vs. ACIT (ITA No.3049/Mum/2016 dated 20-12-2017), the co-ordinate bench examined the addition made in the hands of buyer of flat on the basis of evidence seized from the builder during the course of search operations conducted u/s 132 of the Act. The co-ordinate bench

expressed the view that the addition could not have been made on the basis of recording done at the end of builder, when the purchase consideration matches with the market rates and further no other evidence corroborating those entries are found. The relevant observations made by the co-ordinate bench in the above said case are extracted below:-

“15. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s Lakeview developers. We have perused the facts of the case and the material available on record on the basis of which the addition of Rs. 2.23 crore had been made in the hands of the assessee. We have further deliberated on the material placed on record and the contentions of the Id. A.R to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group. We have perused the print out of the pen drive (Page 42 of APB) and find ourselves to be in agreement with the view of the Id A.R that though against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is mentioned alongwith the details of the property purchased by him, viz. Flat no.2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipt of "on money", who had paid the money, to whom the money was paid, date of agreement and who had prepared the details, as a result whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under

consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjan Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjan Hiranandani in his statement recorded on oath in the course of the Search & seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on money received on sale of flats, which was offered as additional income under [Sec. 132\(4\)](#) and thereafter offered as such for tax in the petition filed before the Settlement commission. We are of the considered view that there is substantial force in the contention of the Id. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjan Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inferences as regards the investment made by the assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for purchase of the property under consideration when pitted against the "market value" fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hands of the assessee. We thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences

drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for

7

ITA NO.268/MUM/2024
Assessment Year :2013-14

concluding that the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O as regards payment of "on money" of Rs. 2.23 crore by the assessee for purchase of Flat No. 2501 from M/s Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained. We thus are unable to subscribe to the view of the lower authorities and set aside the order of the CIT(A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee.

In the case before the co-ordinate bench, the pen drive was found during the course of search operations conducted u/s 132(4) of the Act and further the builder has offered the alleged on-money receipts as its income. The co ordinate bench has held that the action taken by the builder would not automatically support the presumption that the concerned assessee has paid on money.

9. In the instant case, the facts are not in better footing at all on account of following reasons:-

- (a) The impugned document was found during the course of survey operations.
- (b) The accountant and director has admitted the entries in the statement taken u/s 133A of the Act, which does not have any evidentiary value.
- (c) The dates mentioned in the document did not match with actual dates of allotment or registration.
- (d) As observed by the co-ordinate bench in the above said case, the entries made in the document falls short of certain material facts, viz. date and mode of receipt of "on money", who had paid the money, to whom the money was

paid, date of agreement etc.

10. In view of the foregoing discussions, we are of the view that the impugned addition of Rs.1.61 crores made by the AO is not sustainable in law. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to delete the above said addition.

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

Order pronounced in the open court on 18th June, 2024.

Sd/- Sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER
Mumbai, Date : 18th June, 2024
Vm

1) The Applicant
2) The Respondent
3) The PCIT/CIT concerned 4)
The D.R, "G" Bench, Mumbai 5)
Guard file
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Copy to :

By Order

Dy./Asstt. Registrar I.T.A.T, Mumbai