

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.7726/M/2012
Assessment Year: 2009-10**

DCIT-22(2), Tower No.6, 4 th Floor, Vashi Railway Station Bldg. Complex, Vashi, Navi Mumbai	Vs.	Shri Rajmani Ramdular Singh, L/H Rajesh R. Singh, 1/1, Ghanshyam Baug, Cama Lane, Hansoti Road, Ghatkopar (W), Mumbai-86 PAN: APAPS1053E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Purushottam Kumar Sr. A.R.
Revenue by : Shri Shailesh Parmar, D.R.

Date of Hearing : 20.09.2017
Date of Pronouncement : 02.11.2017

ORDER

Per D.T. GARASIA, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 30.10.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The short facts of the case are as under:

The assessee has filed the return declaring total income of Rs.18,91,070/-. The assessee late Shri Rajmani Singh was partner in

registered firm Rajesh Builders and his main and principal source of income was only from the said firm. A survey action was carried out on 23.12.08 at the business premises of partnership firm at its offices and sites and the department had seized various documents and other books of accounts which were found during the course of such survey. The statement of assessee during the search was recorded wherein he has agreed to make disclosure of Rs.4,00,00,000/- to mitigate the discrepancies found in the seized material. However, during the time of survey as well as during the time of assessment time and again it has been categorically stated that the late assessee did not have any other source of income other than his income from the firm M/s. Rajesh Builders only. The late assessee had categorically stated that the entire impounded materials belonged to the business activity of the firm only and same should be considered accordingly. The AO has made this addition as protective basis on the ground that late late Shri Rajmani Singh has made declaration. The addition has been made in hands of the said firm M/s. Rajesh Builders.

3. The matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the appeal by observing as under:

“3.3 I have also gone through the said appellate order passed in appeal no.CIT(A)-33/504/11-12. As it is clear from the reading of the said order that out of the total amount of Rs.4,10,66,222/-, addition of Rs.23,00,0000/- was made in the hands of appellant in A.Y. 2009-10, and it was confirmed also on two counts ; firstly that this was an amount of Rs.23,00,000/- was added in the hands of appellant which pertains to him whereas the buildings pertain to partnership firm for which declaration was made of the appellant in the capacity of partner of the assessee firm. Secondly also for the reason that this amount of

Rs.23,00,000/- was undisclosed receipt in the hands of appellant added on substantive basis. Having decided that the amount of Rs.23,00,000/ only pertained to the appellant in his individual capacity same was upheld in the hands of the appellant on substantive basis in the year 2009-10. In view of this fact that the addition made of Rs.4,10,66,222/- on protective basis in the hands of appellant in A.Y. 2009-10, the subject matter in this appeal, I'm of the view that same is not sustainable and hence is deleted herewith. Ground no.1 is allowed."

4. We have heard the rival contentions of both the parties. During the course of hearing, the Ld. A.R. submitted that the similar addition has been made in the hands of M/s. Rajesh Builders and M/s. Rajesh Builders has accepted this amount. The M/s. Rajesh Builders has offered this amount in response to notice u/s 148 prior to assessment years 2002-03 to 2004-05, 2005-06 to 2008-09 and 2009-10 and all these amounts were offered to taxation. Therefore, we are of the view that this addition is not called for and the Ld. CIT(A) is justified in deleting the same. The Ld. A.R. submitted the year wise break-up of the income in tabulated form which is reproduced as under:

Period	AY	Amount Rupia	Remarks
07-06-2002 to 31-03-2004	2003-04 and 2004-05	1,01,58,050	Beyond block period
01-04-2004 to 31-03-2005	2005-06	1,29,62,000	Offered as income in return filed in response to notice u/s 148 of the Act by the partnership firm Rajesh Builders and accepted by the Ld. AO
01-04-2005 to 31-03-2006	2006-07	33,54,000	
01-04-2006 to 31-03-2007	2007-08	60,20,002	
01-04-2007 to 31-03-2008	2008-09	62,72,170	
01-04-2008 to 31-03-2009	2009-10	23,00,000	
			Addition made in the hands of Rajesh builders

			and confirmed by Ld. CIT(A). No appeal filed against the addition confirmed.
TOTAL		4,10,66,222	The entire addition made by the Ld. AO in the hands of Appellant <u>in the AY 2009-10 on Protective Basis</u>

5. In respect of the ground taken by the Revenue regarding deletion of addition of Rs.3,68,880/- made on protective basis, we find that the AO at the time of survey asked the assessee to explain about one paper which showed cash deposit of Rs.40,00,000/- in Pratap Co-op Bank Limited to which the late assessee replied that the same represented cash deposit in the bank from the income of the firm M/s. Rajesh Builders. The AO has made the interest on prorate basis which is worked out to Rs.3,69,880/-. The AO added this amount in the hands of the assessee.

6. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has allowed the claim by observing as under:

“4.1 As it is clear that addition of Rs.34,84,461/- being 40% of Rs.87,11,152/- was confirmed on substantive basis in the hands of the appellant firm M/s. Rajesh Builders, the partnership firm in A.Y. 2009-10 in the appeal bearing no. CIT(A)-33/504/11-12 dated 29.07.2012 and hence, the income by way of interest on the said amount worked out at Rs.3,69,180/- also has to be added in the hands of form only. In view of this the addition made for the interest amount in the hands of appellant is not sustainable and hence deleted herewith. The ground no.2 is allowed.”

7. We have heard the rival contentions of both the parties. We find that this substantive addition has been confirmed in case of M/s. Rajesh Builders. Therefore, we are of the view that Ld. CIT(A) is justified in his action and our interference is not required.
8. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 02.11.2017.

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 02.11.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.