

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Hon'ble Accountant Member & Sri S.S. Viswanethra Ravi, Hon'ble Judicial Member]

**I.T.A. No. 702/Kol/2015**  
Assessment Year: 2010-11

**DCIT, CC-3 (4), Kolkata.....Appellant**  
**110, Shantipally**  
**Aayakar Bhawan Poorva**  
**Kolkata – 700 107**

**M/s. Utkal Builders Ltd.....Respondent**  
**777, Saheeh Nagar**  
**Virayataan**  
**Bhubaneshwar – 751 007 (Orissa)**  
**[PAN : AAAACU 5502 C]**

**Appearances by:**

*Shri S.M. Surana, Advocate, appeared on behalf of the assessee.*  
*Shri Goulen Hansing, CIT, DR, appearing on behalf of the Revenue.*

Date of concluding the hearing : November 29<sup>th</sup>, 2017

Date of pronouncing the order : December 21, 2017

**O R D E R**

**Per J. Sudhakar Reddy :-**

This appeal filed by the revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-21, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 26/03/2015, for the Assessment Year 2010-11, on the following grounds:-

"1. *The facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition on account of garage/car parking amounting to Rs. 40,00,000/- without considering the facts that the assessee failed to explain all the entries appeared in the seized materials which is required to be explained as per section 292C of I.T. Act 1961.*

2. *That in the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition in respect of unaccounted payment received in cash amounting to Rs. 13,00,000/- without considering the facts that the assessee failed to explain all the entries*

*appeared in the seized materials which is required to be explained as per section 292C of I.T. Act 1961.*

*3. That in the facts and circumstances of the case and in law, the Id. CIT(A)'s observation is not based on facts or documentary evidences.*

*4. That the department craves leave to add, modify or alter any of the grounds of appeal and/or adduce additional evidence at the time of hearing of the case.”*

2. The assessee is a Private Limited Company and is in the business of Civil Construction. A search and seizure operation was carried out on the premises of the assessee u/s 132 of the Act, on 23/07/2009, onwards.

3. The issue before us, is whether the addition made on account of carriage and parking charges collected of Rs.40 Lakhs, made by the Assessing Officer, based on certain materials seized during the course of search, was rightly deleted by the Id. CIT(A). The seized material was placed at pages 1 to 4 and pages 37 to 38 of the paper book filed by the assessee.

4. After hearing rival contentions, we find that the Id. CIT(A), has recorded that there is no evidence on record which suggests that the assessee has received cash of Rs.13 Lakhs, which was not accounted for in the books of account of the assessee. The factual matrix is brought out at para 5 of the Id. CIT(A)'s order, which is extracted for ready reference:-

*“5. I have considered the submission of the appellant and perused the assessment order. I have also gone through the seized documents relied upon by the AO to make additions, the assessment record and the appraisal report. The facts of the case have already been discussed as above that in the 'BGS Group' of cases search operation u/s 132 of the Act was conducted on 23.07.2009. The appellant company is one of the entities of that group which is engaged in the business of civil construction in Bhubaneshwar. During the course of search at the business premises of the appellant company certain books of account and other documents were found and seized. It is observed that in the F.Y. 2009-10 relevant to the A.Y. 2010-11, the appellant company had launched a residential project at Gautam Nagar, Bhubaneshwar on 07.05.2009 and up to 31.03.2010, agreements of 80 flats along with car parking space were executed. The sizes of the flats were ranging from 1200*

to 3568 sq. ft. It is observed that in the course of search certain loose papers and documents were seized which were bunched under different identification numbers. Some of such documents were page no. 10 of UB/29 and page no. 40, 41 and 42 of UB/29. The AO has placed specific reliance on page no. 41 of UB/29 to make an addition of Rs.13 lakhs as undisclosed income of the appellant being the amount of cash received on booking of flat no. C-102 from Shri S. Mohapatra. On perusal of the page no. 41 it is observed that it is a hand written and unsigned page and the page no 40 is in its continuation. On the top of the page name 'S. Mollapatra' is written. Below that the flat cost of C-102 is written at Rs.48,07,700/-. Under this amount, a figure of Rs.91,200/- is written with the heading 'Discount 2% on car parking'. The discount amount is reduced from the cost and the remaining figure is written as Rs.47,16,500/-. Again, from this amount a sum of Rs.25,200/- has been reduced under the narration 'Discount Floor Premium' leaving the balance amount of Rs.46,91,300/-. In the right hand side corner of the page this figure of Rs.46,91,300/- is written. Below this figure two figures are written. First figure is of Rs.1,47,080/- under the narration 'Early Payment' and another figure is of Rs.23,720/- with the narration 'Round Off'. These two figures are reduced from the figure of Rs.46,91,300/- leaving balance of Rs.45,20,500/-. Under this figure a sum of Rs.13 lakhs is written as 'Cash' and figure of Rs.32,20,500/- as 'Cheque'. The total discount has been mentioned at Rs.2,87,200/-. Thereafter, on this page details are written in a tabular form having Date, Amount Due, Amount Paid, Excess/Short, Interest @ 15% etc. The dates are from 01.06.2009 to 30.09.2011. It is observed that on the basis of aforesaid noting on the seized paper no. 41 of UB/29, the AO was of the opinion that the appellant had received cash of Rs.13 lakhs from S. Mohapatra on the sale of flat no. C-102 and that the said cash amount was not reflected in the books of account. However, in the course of assessment proceedings it was submitted before the AO that the noting on the page no. 41 of UB/29 were the rough working jotted down to make an offer to S. Mohapatra. However, it was not finalized and no such cash of Rs.13 lakhs was received by the appellant from the client. It was also explained to the Assessing Officer that though Shri Mohapatra had made deposit of certain initial amount in cash in the month of May, 2009 pending final negotiation and such cash amount received by the appellant has been duly accounted for in the books of account. It is observed that the seized paper no. 42 of UB/29 is also a letter addressed to S. Mohapatra dated 01.06.009 having subject 'Provisional Allotment of Flat NumberC-102 and One Car Parking Space'. As

*per this letter the cost of flat has been worked @ Rs.2,400/- per sq. ft. at Rs.29,88,000/- and car parking space for Rs.1,09,000/-. In these figures further amounts were added for electrical installation, municipality and other charges and deposit for society formation. The total cost excluding registration charges and surcharge etc. had been worked out at Rs.31,84,125/-. Thereafter, the schedule of payment is given. It is an accepted fact by the Assessing Officer that none of these seized papers bear any signature etc. of any person. It is observed that in the course of assessment proceedings it was explained before the AO that the page no. 42 of UB/29 was a proposal prepared to be given to Sidhartha Mohapatra. It was prepared because he had made an initial deposit of Rs.4,90,575/- in the month of May, 2009 in cash Without settling the rate. However, the said proposal was not given to him and finally across the table the rate was finalized @ Rs.2,750/-. It was contended before the Assessing Officer that the page no. 41 and 42 of UB/29 were the rough proposals jotted down to have negotiation with the buyer and did not involve any financial transactions. The initial amount of cash received from Shri Mohapatra against the booking pending finalization of rate have accounted for in the books of account. It was submitted by the assessee that this fact may be verified from the buyer of the flat. It is observed that in the course of assessment proceedings the assessee submitted the copies of all the agreements and details of rate of booking of various flats depending on the size, location and floor etc. The rate of booking varies from Rs.2,300/- sq. ft. to Rs3,541/- per sq. ft. as admitted by the Assessing Officer in the assessment order. However, it is observed that after verification of all the facts and figures from the books of account, the AO held that whatever may be the rate or the assessee could argue the nature of the documents but the fact is that the sum of Rs.13 lakhs in cash had not been accounted for in the books of account and it was also not reflected in the agreement with S. Mohapatra. The AO was of the view that in view of the provisions of section 292C of the Act it is presumed that the content of the seized paper are true and the appellant had received cash of Rs.13 lakh which has not been accounted for and hence added to the income of the assessee."*

5. The copy of the seized documents relatable to the addition are at pages 38 & 39 of the paper book and a perusal of the same demonstrates that it was recorded on 20/02/2009 and it is a rough noting of project revenues. In our view, the Id. First Appellate Authority, was right in observing that this is a dumb document.

6. On the addition of Rs.40 Lakhs for 80 garages/car parking at Rs.50,000/-, per car parking, this was made based on seized material page no. 10 of UB/29 and page no. 41 of UB/29. These are placed at page no. 1 to 4 of the assessee's paper book. The dates on these papers are recorded as 31/07/2011, 30/09/2011 and other dates of 2010 & 2011. This clearly proves that what is recorded is the projection only as the search had taken place in July, 2009. The Id. CIT(A), in our view has rightly deleted the addition by giving his detailed finding of facts in the assessment order. This factual finding could not be controverted by the Id. D/R. Accordingly, we uphold this order of the Id. First Appellate Authority.

7. In the result, appeal of the revenue is dismissed.

***Kolkata, the 21<sup>st</sup> day of December, 2017.***

***Sd/-***

**[S.S. Viswanethra Ravi]**  
Judicial Member

Dated : 21.12.2017  
{SC SPS}

***Sd/-***

**[J. Sudhakar Reddy]**  
Accountant Member

*Copy of the order forwarded to:*

**1. DCIT, CC-3 (4), Kolkata  
110, Shantipally  
Aayakar Bhawan Poorva  
Kolkata – 700 107**

**2. M/s. Utkal Builders L  
777, Saheeh Nagar  
Virayataan  
Bhubaneshwar – 751 007 (Orissa)**

3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary  
Head of Office/ D.D.O. ITAT, Kolkata Benches