

**आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAM LAL NEGI, JM**

आयकर अपील सं./I.T.A. No. 5802/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Ramankumar Solanki Shop No. 9, Trimurti Market, Zaveri Bazar, Mumbai-400 002	<b>बनाम/</b> Vs.	Asst. CIT – 17(3), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AADPS 5946 C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Suchek Anchaliya
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Aarju Garodia

सुनवाई की तारीख / <b>Date of Hearing</b>	:	15.05.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	16.05.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) dated 17.06.2016 and pertains to assessment year 2007-08.

2. The grounds of appeal read as under:

1. On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer erred in re-opening the assessment u/s 147 of the Income Tax Act, 1961. The appellant prays that the re-opening of assessment u/s 147 of the Income Tax Act, 1961 may be declared bad in law and reassessment order may please be cancelled.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer by treating the payment made to developer as unexplained investment u/s 69 of the IT Act, without considering the fact and circumstances of the case.
3. Brief facts of the case are as under:

The case was reopened on the basis of information provided by the Investigation wing that the assessee Sh Ramankumar P Solanki (Prop: M/s. Sangam Chain) made payments towards booking of the flats developed by M/s Esque Finmark Private Limited in FY 2006-07 relevant to A.Y 2007-08. As per information available, the amount paid by the assessee for booking, of the flats as per allotment letter was Rs.40,25,000/- whereas the assessee could produce the proof of payment of Rs.1,00,000/- but could not explain the source of the balance Rs.39,25,000/- before the DDIT(Investigation) Mumbai. The said investments is also not reflected in the balance sheet of the assessee.

4. The assessee in this regard made the following claim before the Assessing Officer:

Your honour we would like to state that the fact that total value of the property purchased was Rs.35,00,000/- and not Rs.40,25,000/- which has been quoted by our honour and the same amount Rs.35,00,000/- was also quoted in allotment letter. Your honour of this we have paid Rs.1,00,000/- by way of cheque and remaining Rs 34,00,000/- was paid in cash , which has been wholly accepted by us in the hearing done in Scindia House"..... Your Honour all the payments made by us were made in previous year 2005-06 and relevant Assessment Year 2006-07....."

"Your honour we have to state that the assessee has made all payments as above in financial year 2005-06 relevant to A.Y 2006-07. There is no such transactions being made during the concerned financial years i.e. A.Y 2007-08 except that the cheque payments of Rs.1,00,000/-.

"..since all the above payments are not covered in the concerned period .i.e. of A.Y 2007-08 we request your honour to please drop the proceedings."

5. However, the Assessing Officer was not convinced. He held that the assessee has not furnished any details or factual evidence that support the fact that the cash was paid in

assessment year 2005-06. Accordingly, he added Rs.39,25,000/- as undisclosed income of the assessee.

6. Before the Id. Commissioner of Income Tax (Appeals) during the appellate proceedings, the Id. I of the assessee stated that the cheque of Rs.1,00,000/- has been paid in November, 2006 and the same is reflected as an advance towards booking of flat in the personal balance sheet. He also stated that cash amounting to Rs.39,25,000/- has been paid from January, 2006 to March, 2006 as per a “Kaeaha Chitti” where the person taking the cash has also acknowledged the same. He further stated that the amount of Rs.39,25,000/- is outside the books and that the same cannot be assessed in the present assessment year. he submitted that he has no source to explain cash of Rs.39.25 lakhs. The case of the assessee is that he is not denying the transaction, but states that the cheque has been paid on the stated date, i.e., in FY 2006-07. The assessee further states tha the case of Rs.39.25 lakhs has actually been paid in FY 2005-06 and therefore the same cannot be assessed in the present assessment year.

7. However, the Id. Commissioner of Income Tax (Appeals) was not convinced, he upheld the Assessing Officer’s action.

8. Against the above order, the assessee is in appeal before us.

9. We have heard both the counsel and perused the records. The Id. Counsel of the assessee submitted that on identical facts in case of flats purchased by assessee’s family members in the same property, the issue has been decided by the tribunal in favour of the

assessee, wherein the transaction has been admitted to be related to assessment year 2006-07. These decisions are as under:

1. Shri Kantilal S. Solanki vs. ITO (in ITA No. 5145/Mum/2016 dated 21.08.2017)
2. Shri Jayantilal M. Solanki vs. Dy. CIT (in ITA No. 5144/Mum/2016 dated 12.02.2018)

10. We find that in the case of Shri Jayantilal M. Solanki (supra), the Tribunal had followed the ITAT decision in the case of Shri Kantilal S. Solanki (supra). In this regard, we may gainfully refer to the finding in the case of Shri Kantilal S. Solanki (supra) as under:

7. I have heard the rival contentions and perused the record. The Assessing Officer has made addition u/s. 69 of the Act, since the payment of Rs.34 lakhs was not recorded in the books of account maintained by the assessee and further the assessee also did not specify sources thereof. Though the assessee agrees that the above said payment has been made from undisclosed resources, his only contention is that these payments were made during the financial year relevant to A.Y. 2007-08. Submissions of the assessee is that these payments have been made during the financial year relevant to A.Y. 2006-07 and hence the Assessing Officer was not right in law in making the addition in A.Y. 2007-08. In support of the submissions so made, the assessee has furnished copy of the kaccha chitti, wherein details of payment made towards flat have been noted down. In the Kaccha chitti the payments made by way of cash and also by way of cheque have been noted down. It is pertinent to note that the recipient named Mr. Paras has duly acknowledged the receipt of payments. I have noticed that the learned CIT(A) has rejected this document only on the reasoning that the identity of Mr. Paras is not established and also details of his connection with the builder is also not established. The assessee has now filed a copy of directorship details of Mr. Paras Shantilal Porwal from the website of Ministry of Corporate Affairs. Perusal of the same would show that Mr. Paras is a director of many companies and he has been a director of M/s. Esque Finmark Pvt. Ltd., to whom the impugned payments have been made, from 10.9.2001 to 2.12.2006. In my view this document downloaded from the website of Ministry of Corporate Affairs establishes the identity of Mr. Paras but also his connection with the builder M/s. Esque Finmark Pvt. Ltd. Since this document is a public document, I am of the view that the learned CIT(A) was not justified in rejecting the submissions of the assessee. In this view of the matter, I am of the opinion that the kaccha chitti furnished by the assessee cannot be

- rejected altogether. Perusal of the entries made in the kaccha chitti would show that the assessee has made payments by way of cash during the period from 9.1.2006 to 28.3.2006 aggregating to Rs.34 lakhs. Hence, in my view the submissions of the assessee should be accepted and hence cause of action, if any, would not arise in the A.Y. 2007-08 since the payment have not been made during the year relevant to A.Y. 2007-08. Accordingly, I set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to delete the impugned addition of Rs.34 lakhs. Since I have granted relief to the assessee on merits, I do not find it necessary to deal with grounds relating to validity of reopening of assessment.
11. The Id. Departmental Representative fairly agreed that in identical circumstances and on similar facts, the Tribunal has accepted the assessee's submissions that the addition in this case is not sustainable.
12. Upon careful consideration, we note that the facts and circumstances are identical, wherein such addition in hands of other family members has been deleted by the Tribunal. Respectfully, following the orders of the Tribunal, we set aside the order of the authorities below and decide the issue in favour of the assessee.
13. In the result, the assessee's appeal stands allowed.  
परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

*Order pronounced in the open court on 16.05.2018*

Sd/-

Sd/-

(Ram Lal Negi)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 16.05.2018

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**