

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 6883/Mum/2017

(निर्धारण वर्ष / Assessment Year 2007-08)

Priyank Pradeep Agarwal 1401, Wellington, Ghodbunder Road, Hiranandani Estate, Thane (West)-400607	Vs.	The Income Tax Officer, Ward-3(2), Ashar IT Park, Road No. 16Z, Wagle Industrial Estate, Thane
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN NO. AGVPA7678K		

Assessee by : Shri K. Gopal/
Neha Paranjpe, ARs

Revenue by : Shri PR Choudhary, DR

Date of hearing: 15-05-2018 **Date of pronouncement :** 31-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-2, Pune [in short CIT(A)], in appeal No. CIT(A), Pune-2/10539/2017-18 dated 24.10.2017. The Assessment was framed by the Income Tax Officer, Ward 3(2), Thane (in short 'ITO') for the A.Y. 2007-08 vide order dated 19.03.2015 under section 143(3) read with section 147 of the Income Tax Act, 1961 (hereinafter 'the Act').



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2. The first issue in this appeal of assessee is against the order of CIT(A) in confirming the reopening of assessment under section 147 r.w.s. 148 of the Act. The learned Counsel for the assessee stated that she is not pressing this ground under the instructions of the assessee and the same can be dismissed as not pressed. As the Counsel has not pressed this issue the same is dismissed as not pressed.

3. The only issue on merits is as regards to the order of CIT(A) confirming the action of the AO in making addition of unexplained cash amount paid for purchase of office/ flat based on material found during the search on Hiranandani group of cases. For this assessee has raised the following ground No.: -

“Addition on account of unaccounted investment under section 69 of the Act is unjustified - Rs.5,87,800/-

iii. The Ld. err (A) erred in confirming the addition of Rs.5,87,800/- made by the Ld. A.O. on account of alleged "on money" payment made against the purchase of flat by treating the same as unaccounted investment without appreciating that no such cash payment was made by the Appellant at any point of time. Hence, the addition of Rs.5,87,800/- under section 69 of the Act is unjustified and the same may be deleted.

iv. Without prejudice to the above the Ld. CIT (A) erred in confirming the addition of Rs.5,87,800/- made by the Ld. A.O. without appreciating that the said addition was made merely relying on the third party statements recorded under section 132(4) of the Act during the course of search action in



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Hirariandani Builders without providing cross examination of the said person and the copy of complete statement for its rebuttal. Thus, the addition of Rs.5,87,800/- made under section 69 of the Act is arbitrary in nature and the same may be deleted.”

4. Brief facts are that a search under section 132 of the Act was carried out on Hiranandani Group of cases by the Income Tax Department on 11.03.2014. During the course of search, evidence relating to assessee making cash payment i.e. on money for purchase of flat amounting to ₹5,87,800/- was found. The AO required the assessee to explain as to why the payment made in cash amounting to ₹ 5,87,800/- for purchase of said office should not be added to total income for the relevant AY 2007-08. The assessee explained before the AO that reference to computation of income, bank statement and other relevant records produced that the assessee has not made any payment of on money i.e. cash to the concern of Hiranandani groups. But the AO has not accepted the contention of the assessee and added the cash i.e. on money payment of ₹ 5,87,800/- for purchase of Flat No. 1104, Villarica in Hiranandani Estate to the returned income of the assessee. Aggrieved assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved, now assessee is in second appeal before Tribunal.

5. I have heard the rival contentions and gone through the facts and circumstances of the case. Before me, the learned Counsel for the assessee filed copy of Tribunal's order exactly on similar facts, wherein the investigation wing of the department shared information with the AO that on money paid in cash on purchase of property/ office/ flat in the said project of the group was revealed during the course of search conducted on Hiranandani Group of cases under section 132 of the Act. Genesis of



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the conclusion of AO was that the assessee has paid on money for purchase of property under consideration was based on contents of pen drive which was seized from the residence of an ex e-employee of the Hiranandani group of cases. In Similar Circumstances, according to the learned Counsel for the assessee, the Tribunal in the case of Anil Jaggi vs. ACIT (2018) 89 Taxmann.com 266 (Mumbai-Trib.) deleted the addition by observing in para 14 as under:-

“14. 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



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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. Niranjani 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. Niranjani 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



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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 concluding that the



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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."

6. I find that the facts and circumstances are exactly identical in the present case. As the issue is squarely covered by the Tribunal decision in the case of Anil Jaggi (supra), respectfully following the co-ordinate Bench decision on the same state of facts, I delete the addition and allow the appeal of the assessee.

7. In the result, the appeal assessee is partly allowed.

Order pronounced in the open court on 31-05-2018.

आदेश की घोषणा खुले मे दिनांक 31.05.2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-05-2018

Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI