

आयकर अपीलिय अधिकरण “B” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 6426/Mum/2014

(निर्धारण वर्ष / Assessment Year 2008-09)

Milan B Dalal 42, Chitrakoot, 4 th Floor, Altamount Road, Mumbai-400 026	Vs.	The Dy. Commissioner of Income Tax, Aayakar Bhavan, 4 th Floor, 101 M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AAUPD0935H		

अपीलार्थी की ओर से / Appellant by : Shir Vipul Joshi, AR

प्रत्यर्थी की ओर से / Respondent by : Shri Santanu Kumar Saikia,
DR

सुनवाई की तारीख / Date of hearing:	15.10.2018
घोषणा की तारीख / Date of pronouncement :	29.10.2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-40, Mumbai [in short CIT(A)], in appeal No. CIT(A)-40/DCIT(OSD-II) C.R.7/326/2010-11 dated 08.07.2014. The Assessment was framed by the Dy. Commissioner of Income Tax (OSD)-II, Mumbai (in short 'DCIT/ AO') for the A.Y. 2008-09 vide order dated 31.12.2010 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of assessee is against the order of CIT(A) restricting the addition of ₹ 69.55 lacs out of the total addition of ₹ 88.50 lacs made by the AO under the head cash payments to tenants. For this assessee has raised the following three grounds: -

“1. On facts and in law, the commissioner of Income Tax (Appeals)-40, Mumbai [CIT(A)] erred in confirming the addition to the extent of ₹ 69,55,000/- out of the total addition of ₹ 88,50,000/- made under the head ‘cash payments made to the tenants’

2. On facts and in circumstances and in law the CIT(A) failed to appreciate that no such addition was called for.

3. The CIT(A) failed to consider oral and written submission filed before him fully and thereby erred in confirming addition to the extent of Rs. 69,55,000/-.”

3. Brief facts are that the assessee a Director of Grishma Constructions & Trading Pvt. Ltd and also proprietor of M/s S Ramdas is engaged in business of construction and trading of shares etc. Search and seizure operation under section 132 of the Act was carried out on the premises of the assessee along with Shri Vinod Faria on 30.05.2008 and consequently the AO issued a notice under section 153A of the Act. In response, the assessee filed return of income declaring total income of ₹ 19,49,789/-. During the course of assessment proceedings, the AO relied upon page No. 102 of Annexure A-1 seized during the course of search from the office premises of the assessee at Bombay Mutual Chambers. The AO going through the page No. 102 back side of the page, which reflected payments of ₹ 88.55 lacs to various tenants, noted that the



source of this expenditure remains unexplained and being unaccounted made addition under section 69C of the Act by observing as under: -

“The loose paper No 102 of Annexure A-1 seized from the office premises the assessee at Bombay Mutual Chambers. The front side of this page reflected rough working and steps for the project. The back side of this page reflected the names and figures of the tenant parties. The assessee, in his statement recorded under section 131 dated 24.06.2008, admitted that these are the details of payments made to the tenants who were occupying the Ram Panchayat Temple property. The assessee, vide query No 31 of the questionnaire already issued, was requested to explain the contents on these seized papers. The assessee’s representative, vide letter dated 08.12.2010 field the explanation for seized papers (Annexure-1 of the letter) submitted before the DDIT (Investigation). As per the serial No 26 of this Annexure, the assessee has explained this seized paper No.102 as related to project Pluto. However, he has failed to explain the contents mentioned on the back side of this paper. These are the cash payment made to the tenants occupying the property and the assessee has paid amounting to ₹ 88.55 lacs to vacate the premises of the project these cash payments are unaccounted and unexplained expenditure. Therefore, an addition of ₹ 88.55 lacs is made under section 69C of the IT Act 1961.”



Aggrieved, assessee preferred the appeal before CIT(A),

4. The CIT(A) restricted the addition of Rs. 69.55 lacs paid in respect to RN, Jitubhai, Vinu Bhai, Bandu and Paresh and balance ₹ 19 lacs paid to Shri Prasad is deleted. For this CIT(A) has observed in Para 17 as under: -

“17. In view of the above discussion, out of the total amount mentioned in this page at 88.55 lakhs, a sum of ₹ 69.55 lakhs, in respect of R. N. Jitubhai, Vinu Bhai, Bandu and Paresh, is confirmed and balanced amount of ₹ 19 lakhs to Shri Prasad is directed to be deleted. This ground of appeal is, accordingly, partly allowed.”

Aggrieved, assessee came in appeal before Tribunal.

5. We have heard rival contentions and gone through the facts and circumstances of the case. Before us Ld Counsel explained that page No.102 (front page) indicates certain workings in respect of acquisition of property by Grishmo Constructions & Trading Pvt. Ltd., a group concern of the assessee for redevelopment purposes in Borivali for a sum of Rs.1.88 crores. He explained that an agreement dated July 2004, as per which the development rights of this property were transferred to Grishma Constructions & Trading Pvt. Ltd, there were only two tenants of this property namely M/S S. Ramdas proprietor Sh Millan Dalal and Sh Pramod Desai. It was further contended that to both of them, amounts of Rs54 lakhs and Rs. 14 lakhs, respectively were paid through cheque in the following manner: -

Payment of ₹ 54 lakhs to M/s S. Ramdas:

a) *Cheque No. 807616 dt. 31/03.2004 of Rs.20,00,000/-*



b) Cheque No. 995872 dt. 12/02/2005 of Rs.9,50,000/-

c) Cheque No. 219520 dt. 29/2/2005 of Rs.4,50,000/-

d) Cheque No.995884 dt. 3/3/2005 of Rs.10,00,000/-

e) Cheque No.995891 dt.30/3/2005 of Rs.4,50,000/-

f) Cheque No.502077 dt.30/03/2005 of 5,50,000/-

Payment of Rs.14 lakhs to Shri Pramod Desai:

(i) Vide ceque No. 502058 dt. 10.03.2005 Rs.1,00,000/-

(ii) Vide cheque No. 502060 dt.12/3/2005 Rs.13,00,000/-

6. When attention of Ld Counsel was brought to the payments to other parties, he stated that as of now he is not sure whether Vinubhai and Bandu were tenants, but even if it is taken that they were also tenants, the payment made to them is only Rs.14 laths and Rs.3.50 lakhs respectively. Regarding other parties, it was mentioned that Sh R N. and Jitubhai stood for Shri Ramchandra Nair and Jitubhai Kinkhabwala, who were investors of assessee group, and, therefore, there was no question of making any payments to them on account of tenancy. The learned AR in this regard emphasized that this project was being undertaken by Grishrna Construction & Trading P Ltd and not by the assessee in his individual capacity. Therefore, the payments, if any, in this regard would have been made only by Grishma Constructions & Trading Pvt. Ltd. and the



assessee could not be held liable for any such payment. It was further emphasized that the agreement with Ram Panchayat Temple Trust was entered into in the year 2004 and therefore the normal logic would say that these payments, if at all made, would have been made around the same time, in the year 2004, and, therefore, no addition in this regard could be made during the year.

7. We have gone through the seized document backside of page no 102. This addition has been made on the basis of certain payments appearing on the back side of page No.102 of Annexure A-I seized during the course of search. The AO has held that these payments had been made to the tenants of Ram Panchayat Temple Trust, apparently, for vacation of property, and sources of the same had not been explained by the assessee, resulting into addition u/s.69C of the Act. We find from records of the case that the facts are clear that these payments, if at all, have been made or are received by Grishma Constructions & Trading Pvt. Ltd and not by the assessee, as the front side of the same page has got details relating to the project being undertaken by Grishma Constructions on the land owned by Ram Panchayat Trust. We have noted that the CIT(A) has observed this fact but noted that Grishma Constructions also not owned up these transactions and these transactions have not been considered in its hands during the assessment made in its case. He further noted that the additions made by the AO, as of now, unless and until the assessee group owns up such transactions elsewhere is to be added here.

8. We find that as for as payment to Shri Desai is concerned, the CIT(A) partly rejected this page by observing that sufficient evidence has been made available by the assessee, as this payment has been made through cheque and an agreement in this regard has been entered into between Shri Desai and Grishma Constructions & Trading Pvt. Ltd. However, as regards payment to other parties, namely R.N. (Rs.25 lakhs).



Jitubhai (Rs.27 lakhs). Vinubhai (Rs.14 lakhs). Bandu [Rs.3.50 laths) and Paresh (Rs.0.05 lakhs), totaling to Rs.69.55 lakhs, is concerned, sufficient clarification has not been given by the assessee as to whether these payments have been made through cheque and if so, by whom, whether by the assessee or by Grishma Construction. But the facts of the case are that these payments pertains to Grishma Constructions or are received by Grishma Construction. Hence, we are of the view that this paper belongs to Grishma Constructions & Trading Pvt. Ltd and not the assessee even though they are closely related parties. We find that these payments had been made to the tenants of Ram Panchayat Temple Trust, apparently, for vacation of property of Grishma Constructions & Trading Pvt. Ltd whose project was going to start. Further it is also a fact that the Pluto Project was undertaken by Grishma Construction & Trading Pvt. Ltd. by entering into MoU for development of property of Ram Panchayat Temple Trust, Borivali Mumbai dated 02.07.2004. These facts also confirm that only interested party for vacation of property from tenants was Grishma Construction & Trading Pvt. Ltd and not the assessee. Hence, we delete the addition and allow this issue of assessee's appeal.

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

Order pronounced in the open court on 29-10-2018.

आदेश की घोषणा खुले मे दिनांक 29-10-2018 को की गई ।

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

Mumbai, Dated: 29-10-2018

Sudip Sarkar /Sr.PS



ITA No. 6426/Mum/2014

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