

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "SMC", MUMBAI

Before Shri B.R. Baskaran, Accountant Member

ITA No. 3935/Mum/2018  
Assessment Year: 2007-08

Shri Ashok Omprakash Chaudhari Flat No. 202, White Field CHS, Glady Alwares Road, Hirandani Meadows, Thane (W), 400 601. PAN: ACBPC 4037G	Vs.	I.T.O., 8(2)(3), Mumbai
(Appellant)		(Respondent)

Appellant by: Shri Jitendra Jain, ld.AR  
Respondent by : Shri Chaitnya Anjaria, ld.DR

Date of Hearing : 17.07.2019	Date of Pronouncement : 17 -07-2019
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**ORDER**

**Per B.R. Baskaran, Accountant Member**

The appeal filed by assessee is directed against the order dated 13-03-2018 passed by Ld CIT(A)-14, Mumbai and it relates to the assessment year 2007-08. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.9.00 lakhs made by the Assessing Officer u/s. 69B of the Income Tax Act, 1961.

2. I heard the parties and perused the record. The Assessing Officer received an information that the assessee has paid 'on money' of Rs. 9,00,000/- to Hiranandani Group on purchase of flat. It came to the notice of the Revenue during the search proceedings conducted in the hands of

Hiranandani Group that they have received on-money from flat buyers. Before the Assessing Officer, the assessee denied having paid the sum of Rs.9,00,000/- as 'on money'. The Assessing Officer rejected the said contention of assessee by observing that the assessee has not furnished any contradictory statement from the builder or any documentary evidence to prove that the payment was not actually made. Accordingly, he assessed the above said amount of Rs.9,00,000/- as income of the assessee towards unexplained investment u/s. 69B of the Income Tax Act, 1961. The Ld CIT(A) confirmed the same.

3. The Ld. AR submitted that the assessee, during the course of assessment proceedings, requested the Assessing Officer for copies of evidences on which the Assessing Officer had placed his reliance and also requested the Assessing Officer to provide an opportunity to cross examine the witness, who has deposed against the assessee.

4. The Ld. AR submitted that the assessee has made similar requests before the ld. CIT(A) and also filed a letter before the AO also during the course of appellate proceedings asking for above said details of evidences.

5. The Ld. AR submitted that the assessee has not been provided the copies of such evidences and the opportunity to cross examine the witness was also not provided. By placing reliance on the decision rendered by the Hon'ble Supreme Court in the case of Kishan Chand Chellaram Vs. CIT, reported in(1980) in 125 ITR 713(SC), the ld.AR submitted that the Assessing Officer could not have placed reliance on any material, which was not confronted to the assessee.

6. The ld.AR submitted that on identical issue, i.e., addition on account of alleged on-money payment to Hiranandini group, was considered by the

co-ordinate bench of ITAT, Mumbai in the case of Sachin Kumar Surya Vs. ITO, (ITA No. 6237/Mum/2016 dtd. 25/07/2017) and the Tribunal has deleted the addition by following the decision rendered by the Hon'ble Supreme Court in the case of Andaman Timber Industries reported in 281 CTR 241 (S.C) on account of non-providing of opportunity to cross examine. Accordingly, the Id.AR submitted that the impugned addition of Rs.9.00 lakhs is liable to be deleted.

7. I heard Ld D.R and perused the record. I noticed that the Assessing Officer has reopened the assessment on the basis of material found during the course of search in the case of Hiranandani Group and also deposition made during the course of search. Admittedly, the copies of evidences and copies of statement were not furnished to the assessee despite requests from the assessee to supply them. An opportunity to cross examine of the witness was also asked/requested by the assessee and the same was also not provided. The Hon'ble Supreme Court in the case of Kishan Chand Chellaram (supra) has held that the Assessing Officer could not place reliance on any material, which was not confronted to the assessee and the Hon'ble Supreme Court in the case of Andaman Timber Industries has held that for not providing of any opportunity to cross examine the witness on the basis of addition was made would violate the principle of natural justice. I noticed that the co-ordinate bench (ITAT, Mumbai) in the case of Sachin Kumar Surya (supra) has deleted the addition made on the basis of identical set of facts.

8. In the instant case, since the evidences were not furnished to the assessee and the opportunity to cross examine witness was also not provided, following the case laws discussed (supra) I am of the view, impugned addition of Rs.9,00,000/- is not sustainable. Accordingly, I set

aside the impugned order passed by the Id. CIT(A) on this issue and direct the Assessing Officer to delete the addition of Rs.9,00,000/- referred above.

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

Order pronounced on 17-07-2019

Sd/-  
(B.R. Baskaran)  
ACCOUNTANT MEMBER

Mumbai, Dated : 17<sup>th</sup> July,2019

**Copy of the Order forwarded to :**

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai BY ORDER

(AssistantRegistrar)  
Income Tax Appellate Tribunal, Mumbai

		Date	Initial	
WHETHER DICTATION PAD ENCLOSED WITH THE FILE : Yes/No.				
1.	Draft dictated on	17.07.2019	Yes	Sr.PS
2.	Draft placed before author	17.07.2019 Matter Typed	P.P	Sr.PS
3.	Draft proposed & placed before the second member	17.07.2019	P.P	JM/AM
4.	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS	17/7 18/7	PP	Sr.PS
6.	Date of pronouncement	17/7		Sr.PS
7.	File sent to the Bench Clerk	18/7	PP	Sr.PS
8.	Date on which file goes to the Head Clerk			
9.	Date of dispatch of Order			