



आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ ITA No.7060/Mum/2016
 (निर्धारणवर्ष / Assessment Year: 2007-08)

DCIT-Central Circle-8(4) 6th Floor. Room No. 658 Aaykar Bhawan M.K.Road Mumbai – 400 020	बनाम/ Vs.	Shri Nathamal M.Sharma (Prop. Of Shree Maruti Mishthan Bhandar) Baba Bhagwandas Ka Akhada Banganga, Walkeshwar Road Mumbai – 400 006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. APMPS-2091-E		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकरअपील सं./ ITA No.7061/Mum/2016
 (निर्धारणवर्ष / Assessment Year: 2007-08)

DCIT-Central Circle-8(4) 6th Floor. Room No. 658 Aaykar Bhawan M.K.Road Mumbai – 400 020	बनाम/ Vs.	Amrut Hotels Private Limited C/o Hanuman Mishthan Bhandar Baba Bhagwandas Ka Akhada Banganga, Walkeshwar Road Mumbai – 400 006
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACA-4801-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee By	:	Shri S.C.Tiwari & Ms. Rutuja Pawar-Ld. ARs
Revenue By	:	Shri Satish Chandra Rajore- Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	06/08/2019
घोषणाकीतारीख / Date of Pronouncement	:	21/08/2019



आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeals by Revenue for Assessment Year [AY] 2007-08 with respect to different assessee's contest separate orders of Ld. first appellate authority on certain common grounds of appeal. Since the grievance of the revenue arises out of common set of facts and circumstances, both the appeals are disposed-off together by way of this common order for the sake of convenience and brevity.

ITA No.7060/Mum/2016

2.1 Aggrieved by the order of Ld. Commissioner of Income Tax (Appeals)-50, Mumbai [CIT(A)], the revenue is under appeal with following grounds of appeal: -

On the facts and in the circumstances of the case and in law the Id CIT(A) erred in deleting the addition of Rs.2,00,00,000/- on account of surrender of tenancy rights without appreciating the fact that during the course of assessment proceedings, the assessee could not produce any evidence to establish that the contents of the e-mail were not true.

2.2 Facts in brief are that the assessee being resident individual was assessed for impugned AY u/s 143(3) read with Section 147 on 27/01/2015 wherein the income for the assessee was determined at Rs.405.99 Lacs after certain additions of Rs.2 Crores under the head capital gains on account of surrender of tenancy right in a certain property.

2.3 The reassessment proceedings got triggered pursuant to search and seizure action u/s 132 of the Income Tax Act, 1961 on Phoenix Group on 20/02/2008 wherein an email print-out was found which was seized and inventorized as Page No. 145 of Annexure-1 of *Panchnama* dated 21/02/2008. As per the document, the assessee along with



another entity namely M/s Amrut Hotel Private Ltd. agreed to surrender tenancy rights in favour of M/s Phoenix mills Limited for consideration of Rs.8 Crores and agreed to vacate the premise on or before 30/06/2006 under certain terms. However, the said transaction was recorded in the books of the two entities at Rs.4 Crores. The said fact led the learned AO to trigger reassessment proceedings against the assessee as per due process of law by issuance of notice u/s 148 on 25/07/2014.

2.4 During reassessment proceedings, the assessee defended its stand by submitting that the email document did not pertain to him and at the same time, pleaded for examination of the persons on whom the department was relying upon to make the addition of Rs.2 Crore. However, not convinced with assessee's submissions, Ld. AO invoking the presumption of Section 132(4A) against the assessee, rejected the plea of cross-examination as raised by the assessee. Finally, the differential amount of Rs.2 Crore, being alleged cash component pertaining to assessee, was added to the income of the assessee for surrender of tenancy rights under the head Capital Gains.

3. Aggrieved, the assessee, while challenging the legality of reassessment proceedings, contested the additions on merits before Ld. first appellate authority vide impugned order dated 24/08/2016. Although Ld. CIT(A) upheld the reassessment proceedings, however, deleted the quantum additions by following the decision of Tribunal in the case of M/s Phoenix Mills Limited deleting the addition of Rs.4 Crores made u/s 69C, by observing as under: -

6.4.1 It can be seen from the order of the Hon'ble ITAT in ITA No.7271/M/2012 in the case of PML that the Hon'ble ITAT has held that the assessing officer in the case of PML could not bring sufficient material on record to justify the addition in the



case of PML and therefore, the addition made in the case of PML was not sustainable.

6.4.2 I find that the Assessing Officer in the case of the appellant relied on exactly the same piece of evidence and the same reasoning for making the addition which is the subject matter of this appeal. I also find that the AO has not even brought on record who was the sender of the e-mail and to whom it was sent. Further, the e-mail was found in the premises of PML and therefore, its evidentiary value is much more when used against PML than its evidentiary value when used against a third party (appellant).

6.4.3 In view of the finding of the Hon'ble ITAT in the case of PML, I hold that the addition made in the case of the appellant is not sustainable. Accordingly, I delete the addition of Rs.2,00,00,000/-. In the result, the 2nd ground of appeal is allowed.

The operative part of the Tribunal's decision in the case of M/s Phoenix Mills Limited has already been extracted in the impugned order and therefore, not extracted here to avoid duplication and repetition. Aggrieved, the revenue is in further appeal before us.

4. After hearing rival submissions, the undisputed position that emerges is the fact that addition of Rs.4 Crores made u/s 69C in the hands of payer i.e. M/s Phoenix Mills Limited stood deleted by the Tribunal for want of requisite evidences / material vide ITA No. 7271/Mum/2012 order dated 19/08/2015. This being the case, the addition in the hands of the payee also could not be sustained. Nothing on record would suggest that the aforesaid ruling is not applicable or the same has been reversed in any manner, by any higher judicial authority. Therefore, the stand of Ld. first appellate authority, in our considered opinion, was quite logical one and we find no reason to interfere with the same. In the result, we dismiss the appeal.

ITA No. 7061/Mum/2016

5. Facts are *pari-materia* the same for this assessee wherein similar addition of Rs.2 Crores has been made in an assessment framed u/s 143(3) read with Section 147 on 28/01/2015. The learned first appellate



authority has deleted the addition, *inter-alia*, by relying upon the decision of this Tribunal in the case of the payer. Therefore, facts and circumstances being identical, our finding and conclusion, shall *mutatis mutandis* apply to this appeal also. Accordingly, by confirming the stand of learned CIT(A) in the impugned order, we dismiss the appeal.

Conclusion

6. Both the appeals stand dismissed.

Order pronounced in the open court on 21st August, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 21/08/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.