

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.2767/Mum/2018
(Assessment Year :2007-08)**

DCIT, Cent. Cir-5(1) R.No.1928, 19 th Floor Air India Building Nariman Point Mumbai – 400 021	Vs.	M/s. Ackruti City Ltd. (now known as Hubtown Ltd.) Akruti Trade Centre 6 th Floor, Road No.7 Marol-MIDC, Andheri(E) Mumbai – 400 093
PAN/GIR No. AAACA6101D		
(Appellant)	..	(Respondent)

Revenue by	Shri Michael Jerald
Assessee by	Shri Vijay Mehta
Date of Hearing	07/01/2020
Date of Pronouncement	19/02/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2767/Mum/2018 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-53, Mumbai in appeal No.CIT(A)-53/IT-74/2013-14 dated 12/02/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 148 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/03/2013 by the Id. Dy. Commissioner of Income-Tax, Central Circle-36, Mumbai (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in directing the Id. AO to reduce the amount of Rs.100 Crores being provision for Debenture Redemption Reserve (DRR) while calculating book profits u/s.115JB of the Act in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee had issued Rs.100 Crores of debentures on 14/11/2006. Redemption of Rs.50 Crores each was made on 13/10/2007 and 13/11/2007. Debenture Redemption Reserve of Rs.100 Crores was created on 31/03/2007. This Debenture Redemption Reserve created was utilised in the subsequent year as is seen from balance sheet as on 31/03/2008. On redemption of the debentures in November 2007, the amount lying on any debenture redemption reserve was transferred to general reserve as on 31/03/2008. These are reflected in the audited financial statements as on 31/03/2007 and 31/03/2008.

3.1. We find that the assessee did not make any claim for reduction of Debenture Redemption Reserve (DRR) while computing book profits u/s.115JB of the Act while filing its original return of income. However, in the re-assessment proceedings, the assessee made claim for the same by placing reliance on the decision of the Hon'ble Supreme Court in the case of National Rayon Ltd., reported in 227 ITR 764 wherein it was held that the amount set apart in the accounts of a company to redeem the debentures must be treated as moneys set apart to meet a known liability. The assessee also placed reliance on the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Raymond Ltd. reported in 209 Taxman 65 in support of its proposition that DRR created would be eligible for reduction while computing book profits u/s.115JB of the Act.

We find that the similar issue had arose in assessee's own case for A.Yrs 2010-11 and 2011-12. We find that for the A.Y.2011-12 in assessee's own case in ITA No.7696/Mum/2014 dated 30/06/2017 by placing reliance on the decision of Raymond Ltd. referred to supra and the Co-ordinate Bench decision of this Tribunal in case of JSW Energy Ltd. reported in 150 ITD 406 (Mumbai Tribunal), it was held as under:-

“6. We have carefully considered the rival submissions. In our considered opinion, having regard to the judgment of the Hon'ble Bombay High Court in the case of Raymond Ltd. (supra) as well as the decision of our coordinate Bench in the case of JSW Energy (supra), the impugned issue is no longer res integra. In the case of JSW Energy (supra), the Tribunal was considering the deductibility of the amount set apart as Debenture Redemption Reserve for the purposes of computing the book profits u/s 115JB of the Act. After detailed discussion, it has been held that adjustment of the amount of Debenture Redemption Reserve made while computing the book profits u/s 115JB of the Act is permissible and is within the purview of the law. The decision of CIT(A) is in consonance with the aforesaid legal position and even before us, no contrary decision has been brought out by the Revenue and as a consequence, we hereby affirm the decision of CIT(A) on this aspect. Thus, the Revenue fails in its appeal.”

3.2. Respectfully following the aforesaid decision, the ground No. 1 (a) & 1(b) raised by the revenue are dismissed.

4. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made in the sum of Rs.1,28,15,000/- which was alleged to be cash portion received on sale of flats in the facts and circumstances of the case.

4.1. We have heard rival submissions and perused the materials available on record. At the outset both the parties stated that there was a typographical error in the grounds raised by the revenue wherein the wrong figure of Rs.3,28,15,000/- was mentioned as against correct figure

of Rs.1,28,15,000/-. The Id. AR did not object for the same and accordingly, the Bench decided to consider the correct figure of Rs.1,28,15,000/- with the consent of both the parties and take up the issue for adjudication.

4.2. We find that in the assessment framed u/s.143(3) of the Act dated 30/12/2008, certain additions were made in respect of notings found in the papers seized during the course of search proceedings u/s.132 of the Act on 10/08/2006 in the case of assessee. This matter travelled in the first round of proceedings up to this Tribunal and this Tribunal in ITA No. 4875/Mum/2009 dated 21/10/2011 restored the issue to the file of the Id. AO for fresh adjudication by observing as under:-

“26. After hearing rival contentions, we find that the seized documents in question, on which these additions are made, are the papers containing mere arithmetical rough workings and jottings. For e.g., at Page-1 of the paper book-4, which is Page-46 of seized papers Annexure-A(1), only some figures appear and no name or date is written. It is not clear as to who had written the paper and which is the transaction that can be connected with this sheet of paper. This is nothing but a dumb paper. No inference can be drawn based on this material document. Unless the Assessing Officer gathers corroborative evidence by way of examining the purchaser, no addition can be made on this account. Similarly, Page-48 of Annexure-A (1) contains certain jottings without any narration. In our opinion, the Assessing Officer ought to have confronted the assessee as well as the purchaser with these seized documents. He should have examined the purchaser of the property and draw inferences only thereafter. It is well settled that no addition whatsoever can be made based merely on arithmetic workings, jottings, notings, etc. on some papers without any corroborative material. In any event, as both parties have agreed that these grounds may be set aside to the Assessing Officer for fresh adjudication, after examining the purchasers of the properties, and other enquires etc. we do not go into the merits of the additions.”

4.3. The break-up of the addition of Rs.1,28,15,000/- based on various loose papers found during the course of search are as under:-

- (a) Addition of Rs.19,00,000/- towards the sale of flat no.403 in the project Akruti Erica as per para 8 of the assessment order.
- (b) Addition of Rs.18,15,000/- towards the sale of unit no.402 in the project Akruti Orion as per para 9 of the assessment order.
- (c) Addition of Rs. 14,50,000/- as undisclosed sales on the basis of seized paper no. 44 of Annexure A1 as per para 12 of the assessment order.
- (d) Addition of Rs.37,50,000/- as undisclosed sales on the basis of seized paper no.46 of Annexure A1 as per para 13 of the assessment order.
- (e) Addition of Rs.39,00,000/- as undisclosed sales on the basis of seized paper no.48 of Annexure A1 as per para 14 of the assessment order.

4.4. It is not in dispute that assessee is engaged in the business of real estate development and had filed its original return of income on 15/04/2007 declaring total income of Rs.3,32,22,900/- and revised return on 04/08/2008 declaring total income of Rs.5,13,97,000/-. The original assessment was completed u/s. 143(3) of the Act on 30/12/2008 determining income at Rs.93,70,34,096/-. Notice u/s.148 of the Act was issued to the assessee on 16/03/2012 and it has been noted by the Id. AO in the final computation sheet that assessee had filed return in response to notice u/s.148 of the Act declaring total income of Rs.91,48,51,366/- on 20/04/2012.

4.5. With regard to the addition made in the sum of Rs.1,28,15,000/- by the Id. AO based on the loose sheets in the re-assessment proceedings, we find that the Tribunal had directed the Id. AO to make independent

enquiries by way of linking the contents found in the loose paper with some corroborative evidence. We find from the observation of the Id. AO in the re-assessment order, the Id. AO was not able to bring on record any such corroborative evidence linking the loose sheets with the assessee. We find that the assessee had made the following submissions before the Id. CIT(A) in detail in respect of each of the loose sheets found in the course of search as under:-

"Loose Paper Explanantion:

Loose paper Ground 1: Addition of Rs. 19,00000/- towards the sale of flat No. 403 in the project of Akruti Erica

1. *Pages 404 to 407 of paper book (Pages 12 to 15 of loose paper annexure) contain the booking form, details of payments received by cheque, etc. in respect of Flat no. 403 in the Project "Akruti Erica" constructed by the assessee-company at Ville Parle (E).*
2. *The sale booked by the assessee in its books is of Rs.46,75,000/-*
3. *In the original assessment order, the LAO has stated that as per these pages the flat was finally sold to one, Smt. Kobita Shukla, for Rs.70,56,880/- on 20-01-2006. However, the same was registered showing the sale consideration at Rs.46,75,000/- on 07-06-2006.*
4. *Appellant has already explained the facts about booking the sale at Rs. 46,75,000/-. Its reply is reproduced on pages 35-40 of the original assessment order.*
5. *The LAO had, however, held that Rs.19,00,000/- (difference of Rs.65,75,000/- (Page 12) and Rs.46,75,000/- (Page 15) is undisclosed sales.*
6. *We respectfully submit that buyer originally had confusion as to whether to buy flat 403 or flat no. 504. Negotiations were going on between the parties in respect of both the flats. Negotiation started from 21.04.2005 as evident from the booking form being pg 13 and 15 of the seized papers. The building at that time was still under construction and though Mrs. Shukla had appreciated the proposed plans final agreement was not made.*
7. *Buyer did not make the payments for 6-7 months and thereafter the buyer asked for quotes both the flats i.e. flat No. 504 and flat no.403 (page no. 10 and 12 of A-2)*

8. In the completed Assessment, the LAO had failed to appreciate that Document (Pg 12 / Pg 404 of PB) which he relied on read as "OFFER FOR AKRUTI ERICA". This means it was just an offer made by Akruti.

9. Booking form in respect of flat no.403 which buyer decided to buy is duly signed by the buyer and authorized signatory of Akruti Nirman Limited and cost of flat is mentioned at Rs.42,75,000/- and car parking amount is stated at Rs.4,00,000/-.

10. Word "CASH", "RECEIVED", "PAID" is not mentioned on any of the seized papers. None of the papers contains any scribbling, jottings etc.

11. Agreement is registered, and market value is stated by the Stamps Authority at Rs.52,09,880/-. This Agreement is registered on 7/06/06. The Stamps Authority charges based on the value prevalent in the year of registration and not on the basis on which the parties had agreed to a particular price. The rate changes every year and the rate for 2005 is different from the rate of 2006. Moreover, the authorities decide on the price irrespective of the location and the stages of completion of the building. Copy of Agreement with Stamp Duty valuation - Exhibit 1

12. The LAO has further stated to have sent a notice u/s 133(6) which was unanswered. The appellant states that it was not aware as well as not informed about the LAO having sent any notice u/s 133(6) of the Act or that the Said Mrs. Shukta not having replied to the notice. All details in possession of the appellant company is already submitted and available on record with the LAO. Considering the overwhelming evidence submitted, appellant pleads that a non response to a notice by a party not in control of the appellant cannot be a basis for an unfair addition.

13. Appellant states that the allegation of booking flat no.504 by the assesses that too at Rs.65,75,000 is totally baseless.

Loose Paper around 2: Addition of Rs. 18,15,000/- toward the sale of unit No. 401 in the project of Akruti Orion:

2.1 Pages 19 to 21 of annexure (pages 408 to 410 of paper book) was seized from the 6th floor, Akruti Trade Centre and contain the booking form and other details in respect of Unit no.401 in the Project "Akruti Orion" constructed by the assessee-company. As per these pages the office no. 401 was sold to Smt Sushma A. Sanghvi for a sale consideration of Rs. 41,10,000/-.

2.2 Pages 19 to 21 of Annexure (Pages 408 to 410 of PB) seized from Mayur D Shah's residence at Akruti Nova-B also pertain to the sale of office unit no. 401 by the assessee to Smt Sushma A. Sanghvi.

2.3 LAO has referred to Page 19 (pg 408 of PB) and stated that total cost of the flat comes to Rs.59,25,000 of which Rs.40,59,000/- was paid by the buyer by cheque till 30th of June 2006 and Rs.18,15,000/- was paid otherwise.

2.4 Assessee's submission is reproduced on pages 38-39 of the assessment order.

2.5 The LAO treated Rs.18,15,000/- as undisclosed sales of the assessee for the year under consideration.

2.6 We respectfully submit that seized papers are the scribbling of break-up of cost of office at Akruti Orion sold to Sushma Sanghvi. Page wise explanation which was also given to the LAO during the assessment proceedings is as under:-

Pg 19 (pg 408 of PB)	This page shows the cost of the unit at Rs.41.08 lacs and cost of amenities at Rs. 18.15 lacs.
Pg 21 (pg 409 of PB)	This page shows breakup of price at which flat in Akruti Erica was offered to Ms. Sanghui. The same shows Cost of flat at Rs. 45.00 lacs and amenities at Rs. 19.25 lacs.
Pg 20 (pg 408 of PB)	This page shows a summary chart of pgs 19 & 21.

M/s Astha Enterprises, wherein the Sanghvis are managing partners in a civil contract of the Company and were also the contractors of Akruti Orion and Akruti. Erica. The Company has taken into consideration the business relations with the firm and its partners, offered the residential and commercial premises to them at a special rate by not providing amenities. Offer regarding residential premises was not accepted whereas office premises was agreed to be purchased by the buyer at an agreed value of Rs.41,10,000/-.

2.7. In the assessment order, the following was not appreciated:

(i) Sanghvis are the civil contractor of the above said building and hence, she did not opt for the amenities as she herself could get it done at reduced price than what appellant company offered the same at extra money of Rs.18,15,000/- and she decided to buy the flat without amenities.

(ii) The cancellation of figure of "1815816" stated against "amenities" and circle around the jotting "18.5" on page 19 of A-1 proves the fact that the buyer did not take the amenities.

(iii) Page 19 (pg 408 of PB) and 21 (pg 410 of PB) clearly mentions "Agreement cost" and "amenities" and sum total of these two figures are stated on

page 20 (pg 409 of PB). Words RR Valuation "on page 19 and 21 proves that buyer was given estimate offer of cost of bare flat, cost of amenities and its total if they wish to buy amenities alongwith the bare flat. Corresponding stamp duty values stated as "RR valuation" was given to buyer for its comparison with the offer made by the assessee company.

(iv) None of the papers contains the word "CASH", "PAID", "RECEIVED", "EXTRA MONEY", "ON MONEY". Jottings on the page 19 are in respect of cheque payments which are duly entered in the books of accounts.

(v) "Amenities" is a commercial term commonly used by the builders in respect of various facilities to be provided in the flat or in relation to flat to buyers at the option of buyers for additional consideration to be paid towards such amenities. Separate agreement styled as "Amenities agreement" is entered where buyer decide to purchase flat with amenities as in the case of Akruti

(vi) Word "CASH", "RECEIVED", "PAID" is not mentioned on any of the seized papers.

(vii) The stamp duty valuation of the flat would show that the flat is sold at market value.

(viii) Addition cannot be made merely on surmises and presumptions without having any concrete material. The allegation, that cash component in respect of these two units is mentioned at Rs. 19,25,000/- and Rs.18,15,000/- respectively is totally incorrect in view of the fact that words "amenities are categorically mentioned against these jottings and "CASH" is not mentioned anywhere.

(ix) Apart from relying on such scribbling on the seized papers none of which bears the word "CASH", there is no cogent and reliable evidence to establish that the assessee received any amount as per said offer. There is no evidence for the payment of money to the assessee by the buyer other than amount entered in the books of accounts. The books of accounts maintained by the assessee shows sales consideration of Rs.41,10,000/- and this has properly tallied with the agreement executed with buyer and registered, with stamp duty authority. Moreover, there is no cross examination of the party from which it is alleged that she has paid cash.

Loose Paper ground 3: Addition of Rs.14,50,000/- as undisclosed sales on the basis of seized paper no. 44 (Pg 411 of Paper book)

During the course of search, page no. 44 of annexure A-1 (Page 411 of PB) was seized, which contained some working in regard to flat to be sold to Mr. Hemant Bhide in the project 'Akruti Erica' constructed by appellant at Vile Parle (E).

According to the LAO, as stated in the original Assessment order, page 44 of annexure A-1 shows a sale of flat at Akruti Erikafor a total consideration of Rs.81,53,750/-. The notings on the page also show that the agreement value of the flat was considered at Rs.67,03,750/- and the balance amount of Rs. 14.50

lacs was received in cash. Out of the total cash received, Rs.5,00,000/- was received as down payment.

In response the assessee at the time of assessment proceedings had submitted as under:-

"The same paper is a costing of the flat No 804 at Akruti Erica, Vile Parle, worked out for the client, Mr. Hemant Bhide, as per the Ready Reckoner issued by the stamping authorities. The same paper mentions the cost of the flat as per the Ready Reckoner and the stamp duty payable thereon.

The lower portion of the paper denotes break up of flat in case the client wants extra amenities, including the down payment of Rs. 5 lacs towards the same that he would have to make.

The client, Mr. Bhide has not opted for the extra amenities".

The LAO did not consider the submission of the appellant by stating that the assessee has taken the plea of amenities for the sales consideration received out of its regular books of accounts as an afterthought. The LAO further stated that, had it been that extra sale consideration was for amenities and the buyer did not opt for the extra amenities then the fact that the money amounting to Rs.5.00 lakhs received clearly shows that the same was towards the cash component of the sale consideration.

Accordingly, the LAO treated Rs.14,50,000/- as undisclosed sales of the assessee under the head 'Income from Business'.

In assessment u/s 148 the LAO has reiterated the above. In response to the above the appellant submits as follows:

a) *The lower portion of the seized paper shows an amount of Rs.81,53,750 as cost of the flat No 804 at Akruti Erica, Vile Parle, worked out for the client, Mr. Hemant Bhide, as per the Ready Reckoner issued by the stamping authorities. The amount is worked out as follows:*

- 1. Total cost of the flat along with amenities Rs. 81,53,750/-*
- 2. Cost of the flat without amenities Rs. 67,03,750/-*
- 3. Cost of amenities(optional) Rs. 14,50,000/-*
- 4. Down payment to be made if the extra amenities were to be taken by the other party Rs. 5,00,000/-*

Thus the other party (Mr. Hemant Bhide) was given an option to purchase aflat whether at Rs. 67,03,750 without any extra amenities or at Rs. 81,53,750 with the extra amenities by paying an extra down payment of Rs. 5,00,000.

b) *Mr. Hemant Bhide opted for buying aflat without the extra amenities. This is proved from the fact that Mr. Bhide purchased flat no. 804 at Akruti Erica vide agreement dated 30.12.2005 by paying Rs. 67,03,750/-. Copy of agreement with stamp duty valuation - Exhibit 2*

- c) *Page no G7/14 of the paper book shows the normal amenities which are given to the buyers. If the buyer wants extra amenities then a separate agreement is entered into. On comparison of which Your Honour can see the difference between the normal amenities and the extra amenities that is provided.*
- d) *The LAO has alleged that the notings on the page also show that the agreement value of the flat was considered at Rs.67,03,750/- and the balance amount of Rs. 14.50 lacs was received in cash. The appellant submits that there is nowhere mentioned on the seized paper that the amount of 14.5 is "Paid", "Payable" or in "Cash". An assumption has been made that the amount may be in cash without any concrete evidence or proof.*
- e) *The appellant submits that there is no mention on the document that the amount of Rs.5.00 lakhs was "received" by the appellant There is no mention of words like 'Received' or 'Paid' or 'Cash' or anything that suggests that Rs.5.00 lakhs was received by the appellant Further, no conclusive evidence has been found confirming the receipt of cash by appellant. The addition has been made on presumption that appellant must have received the cash.*
- f) *The contention of the LAO of Shri Bhide having purchased a flat at near stamp duty valuation (similar to the present flat purchased by him) only strengthens the argument of the appellant that the flat has been purchased at the market rate of the Area. There ought not be any doubt where two unrelated transactions are compared and prove the case of the appellant.*
- g) *Moreover, appellant states that there has been no cross examination of the party from which it is alleged that cash is received by appellant.*

Loose Paper ground 4 &5: Addition of Rs.37,50,000/- as undisclosed sales on the basis of seized payer no. 46 of Annexure A 7 (pg 412 of PB) & Addition of Rs.39,00,000 on the basis of seized paper no 48 (pg 413 of PB) of annexure A

During the course of search, page no. 46 and 48 of A-I was seized which contained some workings and rough jottings.

In response to the above, the appellant submits the following :

- a) *The document solely shows some Arithmetical workings and jottings.*
- b) *No name of any Building/Flat is stated on the document on the basis of which the LAO has made the inference that the paper pertains to some flat at Akruti Erica/Orion.*
- c) *No name of any person is stated on the document. Hence it is not known as the payment (if any) is made by whom?*
- d) *There is also no mention that the payment (if made) is for what.*
- e) *The word "CASH" is not stated anywhere on the document.*

f) *The alleged amount could have been received by cheque and it could well be the sum total of certain cheque payments.*

g) *In the absence of specific nature of "Received" and absence of name of the payer, these are mere working paper and to be considered a "dumb" document.*

h) *Attention is also invited to the views of the Hon'ble ITAT on the above papers and the appellants submissions on the same*

Page 46 (pg 412 of PB)-Addition of Rs. 37,50,000/-

I. *Attention is invited to the Hon'ble ITAT's observation about page 46 on which the present addition is based; "For e.g., at Page-1 of the paper book - 4, which is Page-46 of seized papers Annexure-A(1), only some figures appear and n name or date is written. It is not clear as to who had written the paper and which is the transaction that can be connected with this sheet of paper. This is nothing but a dumb paper. No inference can be drawn based on this material document. Unless the Assessing Officer gathers corroborative evidence by way of examining the purchaser, no addition can be made on this account."*

II. *A glance at the above observation in the appeal order the Hon'ble ITAT would reveal that the Hon'ble ITAT agrees with the appellants contention that the papers on which the present addition is based are nothing but "dumb papers" on which no can be drawn, Infact, the Hon'ble ITAT has gone as far as to observe that "no addition can be made on this account".*

i. *The LAO has simply relied on the observations given by the predecessor LAO for the purpose of making the addition. The addition is thus based on borrowed satisfaction and no investigation has been made by the LOA himself. The LAO has not explained as to what corroborative evidence he relies on to substantiate the reasons given by him to effect the addition of the loose paper.*

ii. *Appellant states that the whole of the addition is based on wild assumptions and guesswork and not on the basis of irrefutable facts. The addition is made without considering that any noting or scribbling has no evidence value unless it is supported by an underlying transaction/ event.*

iii. *The LAO has not understood and followed in word or spirit the direction of the Hon'ble that the LAO would need collaborative evidence for the addition to sustain and in the absence of the same the same has to be considered as dumb papers on which no inference or addition can be made.*

iv. *Appellant requests relief.*

Page 48 (page 413 of PB): Addition of Rs.39,00,000/-

i. *Attention is invited to the Hon'ble ITAT's observation about page 48 on which the present addition is based; Similarly, Page-48 of Annexure-A (1) contains certain jottings without any narration. In our opinion, the Assessing Officer ought to have confronted the assessee as well as the purchaser with these seized documents. He should have examined the purchaser of the property and draw*

inferences only thereafter. It is well settled that no addition whatsoever can be made based merely on arithmetic workings, jottings, notings, etc. on some papers without any corroborative material."

ii. A glance at the above observation in the appeal order the Hon'ble ITAT would reveal that the Hon'ble ITAT agrees with the appellants contention that the papers on which the present addition is based are nothing but "dumb papers" on which no can be drawn. Infact, the Hon'ble ITAT has gone as far as to observe that "no addition can be made on this account".

v. The LAO has simply relied on the observations given by the predecessor LAO for the purpose of making the addition. The addition is thus based on borrowed satisfaction and no investigation has been made by the LOA himself. The LAO has not explained as to what corroborative evidence he relies on to substantiate the reasons given by him to effect the addition of the loose paper.

vi. Appellant states that the whole of the addition is based on wild assumptions and guesswork and not on the basis of irrefutable facts. The addition is made without considering that any noting or scribbling has no evidence value unless it is supported by an underlying transaction.

vii. The LAO has not understood and followed in word or spirit the direction of the Hon'ble that the LAO would need collaborative evidence for the addition to sustain and in the absence of the same the same has to be considered as dumb papers on which no inference or addition can be made.

viii. Appellant requests relief.

In view of the above it can be seen that the conclusion drawn by LAO is merely based on presumption that suits him. Addition cannot be made on such basis.

It may be noted, that the seized paper does not bear any date, unit / flat no., and name of person purchasing the unit / flat. Therefore, we would like to mention that vague figures noted on loose papers cannot be treated as undisclosed income and addition thereof cannot be made without proving that the alleged receipt is income of the assessee particularly when even the date of receipt is not known.


The document which was seized was just a rough jotting. In terms of legal terminology the document which was found was a "dumb" document i.e. document which do not speak for themselves. No inference can be made just by reading them. They can be subject to various interpretations. The documents is being interpreted according to what he felt was correct

Similarly the appellant had submitted the actual meanings of the jottings which were not accepted by the LAO.

Assessee states that any additions cannot be made on the basis of rough jottings and notings which do not give a conclusive evidence of any money actually received. The additions are made only on the basis of conclusions drawn

according to the LAO's interpretation of the documents seized and not on the basis of any corroborative evidence or any other cogent material which proves that money had actually been received."

4.6. We find that the Id. CIT(A) called for a remand report from the Id. AO and the Id. AO had submitted the remand report on 29/01/2018 through the Additional CIT by observing as under:-

 सत्यमेव जयते	GOVERNMENT OF INDIA कार्यालय आयकर उपायुक्त (कें.मं.)- 5(1) OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX (CENTRAL CIRCLE) -5 (1) कक्ष सं. 1928, उन्नीस मंजिल, एयर इंडिया बिल्डिंग, नरीमन पॉइंट, मुंबई ROOM No.1928, 19 th FLOOR, AIRINDIA BUILDING, NARIMAN POINT, Mumbai -400021 e-mail: mumbai.dcit.cen5.1@incometax.gov.in , दूरभाष(Phone No.): (022)22040610(Fax)
	No. DCIT(CC)5(1)/MUM/DRI /2017-18/ Date : 29.01.2018

To
The CIT(A)-53,
Mumbai



Sir,

(Through Proper Channel)

Sub: Appeal in the case of M/s Hubtown Ltd. for A.Y 2007-08 -Reg.
Ref: No. CIT(A)-53/IT-74/2013-14/2017-18 dated 05.01.2018

Kindly refer to the above.

Your goodself has directed undersigned to submit the case records and copy of the seized material in above case. Hence as per directions, the undersigned is submitting the brief facts of the case on which the addition was made by the AO, given as under:-

In the assessment order u/s 143(3) of the Act, 1961 dated 30.12.2008 various additions were made based on notings found in the papers seized during the course of search proceedings u/s 132 on 10.08.2006. However Hon'ble ITAT set aside these additions to the AO for fresh adjudication.

The total additions of Rs 1,28,15,000/- which have been set aside are as under:-

- a) Addition of Rs 19,00,000 towards the sale of flat No. 403 in the project Akruti Erica as per para 8 of the assessment order u/s 143(3).

As per assessment order u/s 143(3) r.w.s 148 , in respect of Flat No. 403, Akruti Erica, the purchaser is Smt. Kobita Shukla, however she has not responded to notices u/s 133(6).

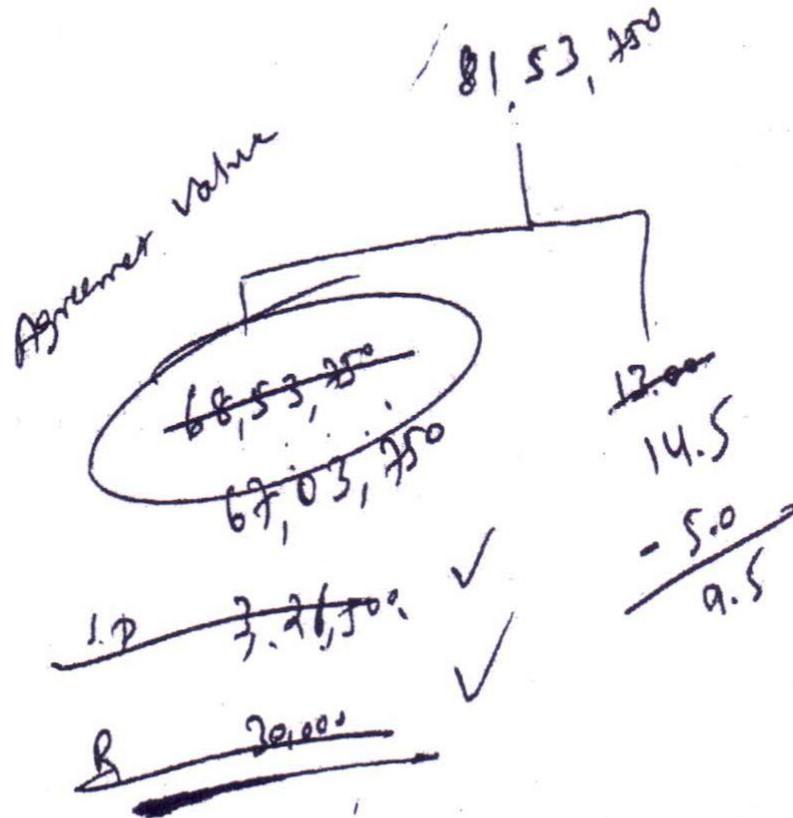
- b) Addition of Rs 18,15,000 towards the sale of flat No. 402 in the project Akruti Erica as per para 8 of the assessment order u/s 143(3).

As per assessment order u/s 143(3) r.w.s 148 , Unit No. 402, Akruti Orion, has been purchased by Smt Sushma sangvi. Her husband of Shri Ashwin Sanghvi, is one of the contractor of M/s Akruti City Ltd and majority of work for the assessee. Needless to say that bread and butter of this party is dependent on the assessee

company. It is evident that the assessee and the company are very closely linked with each other and therefore the company will definitely oblige his party by taking on-money on sale of this unit.

- c) Addition of Rs 14,50,000/- as undisclosed sales on the basis of seized paper No. 44 of annexure A1.

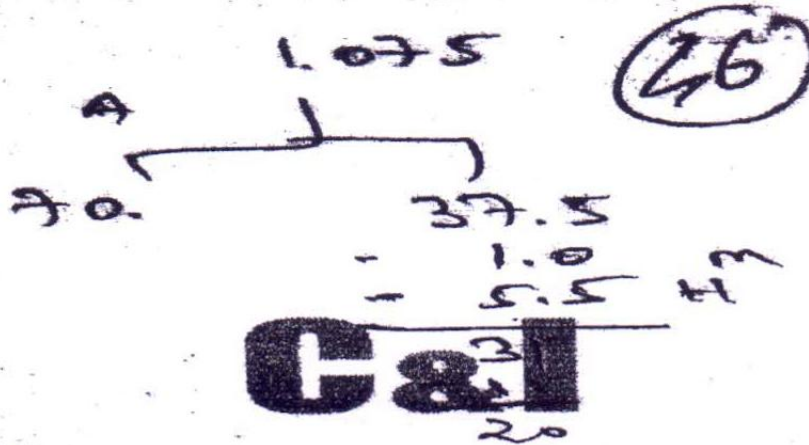
Page 44 of Annexure A1 is as follows (Copy enclosed):



As per assessment order u/s 143(3) r.w.s 148, this loose paper reveal that stamp value of flat is Rs 67,03,750/- and hence balance amount Rs 14,50,000 is added as undisclosed sales.

- d) Addition of Rs 37,50,000/- as undisclosed sales on the basis of seized paper No. 46 of annexure A1.

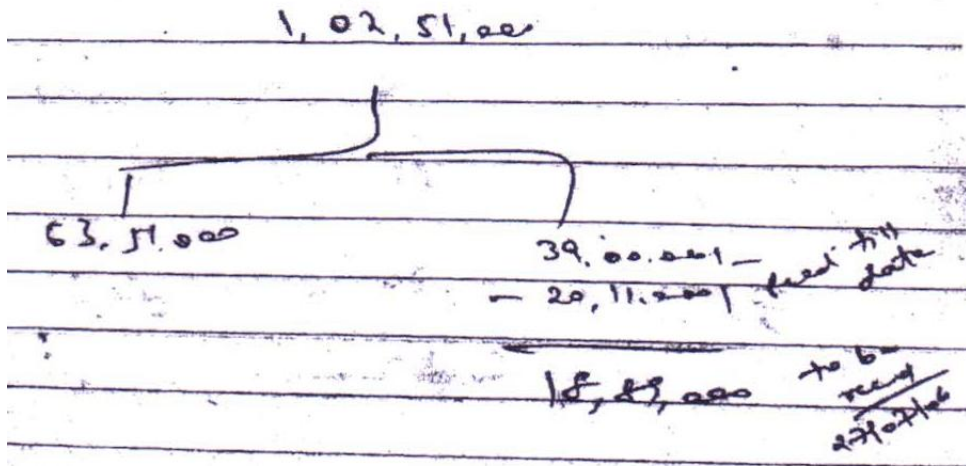
Page 46 of Annexure A1 is as follows (Copy enclosed):



As per assessment order u/s 143(3) r.w.s 148, this loose paper reveal that agreement value of Flat is rs 70,00,000/- and the balance amount of Rs 37,50,000/- was received in cash. Out of the total cash received, an amount of Rs 1,00,000/- was received 'M' (presumably Mayur D Shah), an amount of Rs 5,50,000 was received by "H" (presumably Hemant Shah) and another payment of Rs 11,00,000/-.

- e) Addition of Rs 39,00,000/- as undisclosed sales on the basis of seized paper No. 48 of annexure A1.

Page 48 of Annexure A1 is as follows (Copy enclosed):



As per assessment order u/s 143(3) r.w.s 148, this loose paper reveal that agreement value of Flat is rs 63,51,000/- and the balance amount of Rs

4.6. From the aforesaid remand report, it could be safely concluded that the Id. AO had merely reported the same observations which was made in original assessment proceedings and had not resorted to make any further enquiries as was directed to be done by this Tribunal in the first round of proceedings in ITA No.4875/Mum/2009 dated 21/10/2011. As stated earlier, the Id. AO had not brought any corroborative evidences on record linking the contents of the loose paper with the alleged cash transactions carried out by the assessee. Accordingly, the Id. CIT(A) proceeded to consider the entire evidences on record together with the explanations offered by the assessee and held in respect of each of the additions as under:-

Addition of Rs.19,00,000/- towards sale of Flat No.504 & 403, in the project of Akruti Erica – Rs.19,00,000/-

“9.8 As regards Flat No, 403 in the project of Akruti Erica, the appellant had submitted that negotiations were going on in respect of Flat No. 403 and 504 when the building was still under construction. The buyer wanted quotation for both the Flat No. 504 & 403 as is seen from Page No. 10 & 12 of seized papers A-2. Page No. 12 relied upon by the AO was clearly only an offer for Ackruti Erica. The actual facts can be seen from the buying form in respect of Flat No. 403 which is what was agreed to by the buyer. The words "Cash", "Received", "Paid" is not mentioned on any of the seized papers and, therefore, such presumption by the AO is without any basis. Agreement is registered on 07-06-2006 whereas the booking was done earlier. A notice u/s. 133(6) not being replied to in no way corroborates the assumption that there was any cash payment made in respect of Flat No. 504. The assessing officer did not carry out and verification before passing re-assessment order.”

Addition of Rs.18,50,000/- based on loose paper towards sale of unit was 401 in the project of Ackruti Orion:-

9.9 As regards Unit No. 401 in the project of Akruti Orion based on Pages 19 to 21 of the documents seized from the residence of Shri Mayur D. Shah, the Assessing Officer has concluded that the total cost of the flat is Rs.59,25,000/- of which Rs.40,59,000/- was paid by cheque till 30-06-2006 and Rs. 18,15,000/- was not accounted for his income. The appellant has explained that the purchaser of this property had business relation with the appellant and, therefore, was offered the property at special rates. Both office property and residential property was offered but only residential property was purchased by the buyer at the agreed value of Rs.41.10 lacs. It was pointed out that the amenities were not provided. The paper does not mention any words such as "Cash", "Received", "Paid", etc and, therefore, the presumption made by the AO does not have any basis. The word "amenities" is clearly mentioned and not the word "Cash". The assessing officer did not carry out and verification before passing re-assessment order.

Addition of Rs.14,50,000/- towards undisclosed sales on the basis of loose paper No.44 :-

“9.10 Similarly, as regards Page No.44 of Annexure A-1, the appellant has explained that the flat was sold to Shri Hemant Bhide in the project Ackruti Erica. The appellant has explained that the paper is a costing estimate of the Flat No.804 at Ackruti Erica. The offer was also made regarding additional amenities if not taken by the purchaser. The total W cost of the flat alongwith amenities was Rs.81,53,750/- and the cost without amenities was Rs.67,03,750/-. In case of extra amenities to provide, the party had to make a payment of Rs.5,00,000/-. Shri Hemant Bhide opted for buying a flat without amenities and the agreement was registered dated 30-12-2005 for Rs.67,03,750/-. There is no mention of the word "Paid", "Cash", etc. on the documents seized. The assessing officer did not carry out and verification before passing reassessment order.”

Addition of Rs.37,50,000/- as undisclosed sales on the basis of loose paper No.46 of Annexure A1 and Rs.39,00,000/- on the basis of loose paper No.48 of Annexure A1.

9.11 As regards loose paper Page 46 & 48 of Annexure A-1, it has been submitted that these are some jottings and workings. There is no name of any person mentioned nor is there any mention that it is a cash payment.

Perusal of the same shows that no discernable link to any specific transaction can be found.

9.12 From a perusal of the explanation filed by the appellant and the view taken by the AO, it is clear that the documents did not have any mention of the word "Cash". Such payments presumed by the AO has not been confirmed by any party nor corroborated with any other evidence. No attempt was made by the assessing officer to allow the directions of the Hon'ble ITAT and conduct fresh investigation to gather relevant facts.

4.7. From the aforesaid detailed findings given by the Id. CIT(A), it could be safely concluded that assessee had given proper and cogent explanation with regard to the certain jottings made in the loose sheets wherever it was able to get linked with the sale of flat made by the assessee. These explanations offered by the assessee have not been controverted by the Id. AO with corroborative evidences by way of making any external verification from the concerned flat purchasers to bring out the fact of on-money transactions thereon. We have already stated that the Id. AO had not carried out any verification in the re-assessment proceedings and had not carried out any enquiries pursuant to the directions of this Tribunal vide order dated 21/10/2011. Even in the remand report, as is reproduced hereinabove, it could be seen that the Id. AO had not carried out any enquiries corroborating contents of the loose sheets vis-à-vis on-money transactions, if any, carried out by the assessee. It is pertinent to note that on the seized documents there is no mention regarding "cash", "received", "paid" etc. It was only a mere noting down of figures. Hence, we have no hesitation in upholding the

action of the Id. CIT(A) in deletion of addition of Rs.19,00,000/- and Rs.18,15,000/- and 14,50,000/-.

4.8. With regard to the addition made in the sums of Rs.37,50,000/- and Rs.39,00,000 based on page 46 & 48 of the Annexure-A1 of loose sheets found during the course of search, we find that these were mere jottings without any narration. Hence, we hold that the Id. CIT(A) had rightly classified the said jottings of the loose papers as dumb documents. The law is very well settled that no addition could be made merely based on dumb documents without bringing any corroborative evidence on record. Hence, the Id. CIT(A) was rightly justified in deleting the additions made in the sums of Rs.37,50,000/- and Rs.39,00,000/-. Accordingly, the ground Nos.2(a) & 2(b) raised by the revenue are dismissed.

5. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 19/02/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 19/02/2020
KARUNA, sr.ps

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,

(Asstt. Registrar)
ITAT, Mumbai