

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NO. 6097/MUM/2018** : **A.Y : 2014-15**

Shree Laxmi Developers vs. DCIT, Panvel Circle, Panvel.  
511, 5<sup>th</sup> floor, Landmark, (Respondent)  
Plot No. 26A, Sector 7, Kharghar,  
Navi Mumbai 400 412.  
**PAN : ACBFS9975M** (Appellant)

**Appellant by : Shri Aditya Ramachandran**

**Respondent by : Shri Michael Jerald**

**Date of Hearing : 29/01/2020**

**Date of Pronouncement : 20/04/2020**

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER**

This appeal by the assessee is directed against order of learned Commissioner of Income Tax (Appeals) (in short "CIT(A)") dated 07.08.2018 and pertains to assessment year 2014-15.

2. The grounds of appeal read as under :

*"1. On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the addition of Rs.1,08,01,505 on account of the alleged on-money received upon sale of 10 flats."*

3. The brief facts of the case are that the appellant is a partnership firm engaged in real estate business. In this case a survey u/s 133A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was conducted on 03.12.2013. In the course of survey, incriminating documents were found and impounded showing receipt of on money on sale of flats in the project named as "Anirudha Enclave". In the course of survey the partner of the appellant firm in his statement recorded on oath has admitted additional income of Rs.10.14 crores. However, in the return filed, the additional income disclosed was restricted to Rs.8,88,05,508/- only. The Assessing Officer therefore required the assessee to explain the difference between the disclosure made in the course of survey and as shown in the return. After considering the submission made by the assessee in the course of assessment proceeding, the Assessing Officer accepted the submission partly, which were mainly in the nature of Arithmetical error or where the bookings were subsequently cancelled by the buyers. However, he did not accept the submission in respect of following 10 flats :

Unit No.	Name of the Party	Cash component as found in survey
Flat No.107	Vilas S. Pawar	6,52,620/-
Flat No.204	Pradeeo R Pawar	10,20,000/-
Flat No.208	Kishna Gowda	12,78,840/-
Flat No.303	Amar Swain	8,76,620/-
Flat No.404	Pradeep K Saxena	10,73,175/-
Flat No.401	Shrinivas Bora	14,24,000/-
Flat No.503	Pooja Sawant	7,00,000/-
Flat No.501	Varsha Motwani	13,15,250/-
Flat No.608	Kalpna	10,50,000/-
Flat No.703	Tanuja Vaity	14,11,000/-
	Total	1,08,01,505/-

4. The Assessing Officer held that the Register impounded during survey reflects agreement value as well as actual value in respect of each flat and on this basis only the disclosure was made. Assessee's argument that cash received was not mentioned in the respective pages was not accepted by the Assessing Officer and he accordingly made the addition of Rs.1,08,01,505/- to the income of the appellant.

5. Against the above order, assessee appealed before the learned CIT(A). Assessee gave submissions and reconciliations for the difference in the admission in the course of survey and the income offered. As regards the impugned specific addition, the assessee made following submission :-

*"1.8 As against this, in the impugned 10 cases, there is no mention of cash receipts at all. This is a glaring difference which can be noticed in these cases as compared to all other cases in respect of which receipt of on-money in cash has been admitted by the appellant. As a result, the receipt of cash cannot be assumed in these cases in the absence of any evidences found in that regard.*

*1.9 Further, in respect of each of these cases, the respective flats have been sold at a price which was much above the stamp duty valuation. The copies of Index No. 2 pages in respect of each of these cases are available at Page Nos. 37 to 46 of the enclosures.*

*1.10 Merely because some rates have been mentioned on the concerned pages of the register found during survey and the agreements have been made at lower rates, it cannot be presumed that the appellant has received differences in cash."*

However, learned CIT(A) was not convinced. He went by the admission of the partner during the course of survey. He referred to the admission by the partner by referring to the green colour Register. That after being confronted

with it, the assessee's partner had agreed that the total on money received was Rs.10.14 crore. Learned CIT(A) proceeded to confirm the addition.

6. Against this order, assessee is in appeal before us. We have heard both the counsel and perused the records. Upon careful consideration, we find that assessee has duly explained that cash relating to the impugned sales was not noted as having been received in the seized material. Assessee has duly given the elaborate submission in this regard. The learned CIT(A) instead of examining this facet has proceeded to rely upon the original admission and rejected this aspect of the submission. In our considered opinion, when assessee is making submissions with reference to entries in the impounded material, which according to the assessee referred to the fact that actually on money cash has not been noted as received with respect to the impugned sale of flats, the same needed to be factually examined. The same cannot be brushed aside or summarily rejected merely on the ground that assessee's partner in the course of survey has admitted. It is settled law that without corroborative material, addition, simply based upon admission during survey, is not sustainable in law. This was duly expounded by the Hon'ble Supreme Court in the case of *S. Khader Khan Son, 352 ITR 480 (SC)*.

7. Accordingly, in our considered opinion, when, with reference to the impounded material, assessee is submitting that there is no noting of actual on money cash received with reference to the said addition, the summary rejection of this contention by solely relying upon admission on survey is not sustainable in law. This results in the addition being based only upon admission on survey without any corroborative material. This, as already

referred by us, is not sustainable in light of the Hon'ble Supreme Court decision as referred above.

8. Accordingly, in the background of aforesaid discussion and precedent, we set aside the orders of authorities below and delete the addition.

9. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on 20<sup>th</sup> day of April, 2020.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 20<sup>th</sup> April, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai