

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

BEFORE SHRI RAJESH KUMAR, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos.2521, 2522 & 2523/Mum/2019
(निर्धारण वर्ष / Assessment Years: 2012-13, 2013-14 & 2014-15)

Aarav A. Muchhala 75, Bombay Mutual Bldg, 293, DR. D.N. Road, Fort, Mumbai-400001.	बनाम/ Vs.	ITO Ward-11(3) 201 2 nd Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AGDPM8372J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Y. P. Trivedi/ D. C. Jain / Ms. Usha Dalal (AR)	
Revenue by:	Shri Michael Jerald (DR)	

सुनवाई की तारीख / Date of Hearing: 16/03/2020

घोषणा की तारीख /Date of Pronouncement: 20/03/2020

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals) -18, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2012-13 to 2014-15.

ITA. NO.2521/Mum/2019

2. The assessee has filed the present appeal against the order dated 28.02.2019 passed by the Commissioner of Income Tax (Appeals) -18, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2012-13.



3. The assessee has raised the following grounds: -

“1. Under the facts and circumstances the learned CIT (Appeals) erred in confirming the order of reopening, the assessment by issue Notice u/s. 148 of I.T. Act passed by the learned Assessing officer.

2 Under the facts and circumstances the learned CIT (Appeals) erred in confirming the addition of Rs. 8450000/- as an unexplained expenditure u/s. 69C of I.T. Act made by the learned Assessing officer basis on the information from third party without providing an opportunity for cross examination and/or without conducting independent inquiry.

2(a) The information gathered by the department from the pen-drive on the basis of which payment of on-money' by the assessee for purchase of flat was being inferred, has not been made available to the appellant, to find out the details as regards to whom the money was paid, who has paid the money and who has prepared the details and date and place where the money was paid etc. etc.

B the appellant agreed to purchase a week end cottage for a price of Rs. 1,65,00,000/- vide Agreement for sale dated 20/01/2014 from Cosmos Infrastructure, registered with sub-Registrar. if added with the stated on money payment of Rs. 1,34,50,000/- the total consideration would be at Rs.29950000/- whereas the value of the flat as per stamp duty valuation is only at Rs. 2,01,15,000/-.

3 The Appellant craves leave to add, amend, alter, delete the ground/s of appeal at or before the hearing of appeal.”

4. The brief facts of the case are that the assessee filed his return of income on 14.03.2017 declaring total income to the tune of Rs.18,95,621/- for the A.Y.2012-13. Subsequently, an information was received from the DDIT (Inv.), Unit 1(4), Mumbai that a search action was conducted on the Cosmos Group on 24.09.2014 which was engaged in the business of building and construction. During the search proceedings, incriminating material was found that the Cosmos Group was in the practice of accepting on money towards sale of flats/offices/shops. The details of on money received was maintained at g-mail and yahoo accounts belonging to the Cosmos Group. The above data of the unaccounted money of the Cosmos



Group was analyzed by the Investigation authorities and a cash book of the on money received by the Cosmos Group from various persons towards purchase of flats/shops/offices were prepared and it was seen that the assessee, Aarav Muchhala had paid on money amounting to Rs.1,34,50,000/- towards purchase of bunglow from Cosmos Group as under.:-

Sr. No	Date of transaction	Amount
1	26.04.2011	25,00,000
2	11.06.2011	25,00,000
3	18.08.2011	25,00,000
4	15.06.2011	5,00,000
5	21.06.2011	4,50,000
6	09.05.2012	25,00,000
7	19.07.2013	25,00,000
	Total on money paid to Cosmos Group	1,34,50,000/-

It was noticed that the Aarav Muchhala had paid on money amounting to Rs.1,34,50,000/- during the F.Y.2011-12 relevant to A.Y.2012-13 towards on money for purchase of bunglow to the Cosmos Group. Thereafter, the case of the assessee was reopened u/s 148 of the Act. Subsequently, the reasons for reopening was issued by letter dated 04.08.2017. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. Statement of Ms. Karuna Suresh Khambayat, Mrs. Minal Ramesh Patil & Mr. Suraj Parmar and Mr. Manish Mehta were recorded. Thereafter, an opportunity of being heard was given to the assessee. The assessment was completed by raising the addition u/s 69C of the Act in sum of Rs.84,50,000/-. The total income of the assessee was assessed in sum of Rs.1,03,45,620/-. Feeling aggrieved, the assessee filed an appeal before the



CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

ISSUE NO.1

5. This issue has not been pressed by the Ld. Representative of the assessee, therefore, this issue is being decided in favour of the revenue against the assessee being not pressed.

ISSUE Nos. 2 & 3

6. The facts in this case are not in dispute. In brief, a search action was taken on Cosmos Group 24.09.2014 which was engaged in the business of building and construction. It was noticed that the Cosmos Group was in the practice of accepting on money towards sale of flats/offices/shops. A Pen-drive was recovered in which such type of data was maintained. Moreover, the said data was also maintained in g-mail and yahoo account of the company. It was noticed that the Aarav Muchhala had paid on money amounting to Rs.1,34,50,000/- towards purchase of bungalow from Cosmos Group as under.:-

Sr. No	Date of transaction	Amount
1	26.04.2011	25,00,000
2	11.06.2011	25,00,000
3	18.08.2011	25,00,000
4	15.06.2011	5,00,000
5	21.06.2011	4,50,000
6	09.05.2012	25,00,000
7	19.07.2013	25,00,000
	Total on money paid to Cosmos Group	1,34,50,000/-



7. In the relevant assessment order, the assessee paid cash in sum of Rs.84,50,000/-. Thereafter, on the basis of the said facts, the case of the assessee was reopened u/s 147/148 of the Act. Necessary notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. At the time of search action, the statement of Ms. Karuna Suresh Khambayat, Mrs. Minal Ramesh Patil & Mr. Suraj Parmar and Mr. Manish Mehta were recorded which confirmed on money transactions belonging to the assessee. The contention of the assessee is that the material if any was found with the Cosmos Group and nothing was found with the assessee. No corroborative piece of evidence was found. Moreover, the statement of four persons were not confronted with the assessee nor opportunity of cross-examination was also given, therefore, the addition is not liable to be sustainable in the eyes of law. It is specifically argued that the name of the assessee was not mentioned in the seized material also. Therefore, the addition is not liable to be sustainable. It is specifically argued that on money transaction if any speaks about the on money payment in sum of Rs.1,34,50,000/- in three different years and if the said amount was added to the purchase amount then the total consideration would be in sum of Rs.2,99,50,000/- whereas the stamp duty value of the banglow was of Rs. 2,01,15,000/- which was highly improbable, hence, the addition which is based on surmises and conjecture, is not liable to be sustainable in the eyes of law. In the regard, the Ld. Representative of the assessee has placed reliance upon the decisions of **ITAT Mumbai Bench in ITA. No.6752/M/2008 dated 20.10.2014 and in the case of Anil Jaggi Vs. ACIT (2018) 89 taxmann.com 266**. However, on the other hand, the Ld. Representative of the Department has refuted the said contention and argued that an opportunity of being heard was given to the assessee and at the time of



assessment there was no specific demand of the assessee for cross-examination of the persons whose statement were recorded and no material was demanded at the time of completion of the assessment, therefore, the contention of the Assessee is not liable to be sustainable. The factual position is not in dispute. In brief, a search action was initiated against Cosmos Group where the some material was found belonging to the assessee i e Pen-drive which speaks about the payment of on money by assessee while purchasing the Bunglow. The statement of the four persons namely Ms. Karuna Suresh Khambayat, Mrs. Minal Ramesh Patil & Mr. Suraj Parmar and Mr. Manish Mehta was recorded. Subsequently, notices u/s 143(2) & 142(1) of the Act were given. However, the assessee also filed the reply dated 07.12.2017. We nowhere found that an opportunity of being heard was given to the assessee. The recovered data was not confronted with the assessee. The statement of four person was relied upon before raising the addition but nowhere an opportunity of being heard was given to the assessee. Copy of Pen-drive was also not given to the assessee. Moreover, the relevant material if any was not confronted with Assessee.. The statement of the above said person is not liable to be relied upon to raise the addition with the Assessee being the same was not confronted to the assessee. Moreover, the material recovered from the Cosmos Group nowhere corroborative by the independent piece of evidence if any with the assessee's account/ record. However, the Ld. DR has raised the contention that the Assessee nowhere demanded any material from the AO as well as CIT(A) but the copy of letter dated 21.08.2012 and 07.12.2017 are on the file in which the para no. 4 speaks about the demand of relevant material as well as cross-examination of the persons whose statements were used against the assessee. Moreover, if we treat on money paid by assessee in



sum of Rs.1,34,50,000/- then the value of Bunglow would become in sum of Rs.2,99,50,000/- whereas the stamp duty value of the property was of Rs. 2,01,15,000/- at the relevant time which seems very high value in comparison to the market rate. In the relevant facts and circumstances, the Hon'ble ITAT has given the finding in the case of **M. A. Textiles Pvt. Ltd.** (*supra*) in para no. 8 & 9 which is hereby reproduced as under:-

“8. Having heard the rival submissions, we have carefully perused the orders of the authorities below and the relevant documentary evidence brought on record before us. The addition has been made u/s 69-C of the Act which read as under:-

“Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.”

9. A perusal of the loose sheet on page 1 of the paper book does not show whether Shri Mahesh Agarwal has received interest or he has paid interest. Merely mention of certain figure with a prefix “Int” would not conclusively prove that Shri Mahesh Agarwal has received interest from the assessee. It can be other way round also. There is no corroborative evidence on record to prove that the assessee has actually paid interest which is the sine qua non for the applicability of section 69-C of the Act. The burden of proof is on the Revenue to prove the assessee has incurred any expenditure during the year under consideration. In the case in hand, the Revenue has failed to discharge this burden of proof. The order of the authorities below, nowhere mentioned that Shri Mahesh Agarwal has accepted of having received any interest from the assessee. The entire addition has been made solely on the basis of presumption and surmises. In our understanding of law, addition made on the basis of conjunctions and surmises cannot be sustained. We, therefore, set aside the findings of the Id. CIT(A) and direct the A.O. to delete the addition of Rs. 1874,029/-.”

8. In the case of **Anil Jaggi Vs. ACIT (2018) 89 taxmann.com 266.**
The relevant finding is hereby reproduced as under:-



“12. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We shall first take up the objection raised by the ld. A.R as regards the validity of the jurisdiction assumed by the A.O in reopening the concluded assessment of the assessee in the absence Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 14 ITA No. 3049/Mum/2016 of sanction of the appropriate authority contemplated in Sec. 151(1) of the Act. We find that it is a matter of a conceded fact that the assessment in the case of the assessee was earlier concluded under Sec. 143(3), vide order dated. 19.11.2009. That as per the mandate of Sec. 151(1) as was applicable to the year under consideration, viz. A.Y. 2007-08, in a case where an assessment under sub-section (3) of [section 143](#) or under [section 147](#) had been made for the relevant assessment year, no notice shall be issued under sec. 148 after the expiry of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner was satisfied, on the reasons recorded by such Assessing Officer, that it was a fit case for the issue of such notice. We find that in the case of the assessee before us, as the assessment for the year under consideration already stood framed under Sec. 143(3) on 19.11.2009 and the period of four years from the end of the assessment year, viz. A.Y. 2007-08 had expired on 31.03.2012, therefore, any reopening of the said concluded assessment of the assessee was thereafter permissible only after obtaining the approval of either of the aforesaid authorities as contemplated in the proviso of Sec. 151(1), viz. the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. However, we find that in the case before us the A.O had concededly issued the notice under Sec. 148 after obtaining the approval of the Joint Commissioner of Income-tax-24(1), Mumbai. The ld. D.R on being confronted with the fact that as conceded by the A.O in his letter dated 28.06.2017 addressed to the assessee the approval for reopening the case was taken from the Joint Commissioner of Income Tax-24(1), Mumbai, the ld. D.R. though duly conceded that the A.O had erred by failing to take approval of the appropriate authority, however, averred that the same being a bonafide mistake Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 15 ITA No. 3049/Mum/2016 would thus be cured under Sec. 292B and the assessment would not be rendered as invalid on the said ground. We have given a thoughtful consideration to the facts of case in the backdrop of the settled position of law and are unable to persuade ourselves to accept the aforesaid contention of the ld. D.R. We are of the considered view that the legislature in all its wisdom in order to ensure finality to assessments and to leave no room for abuse of powers in the garb of reassessment, had thus in all fairness specified the authorities with whose approval alone the cases could be reopened by the A.O. We find that as a precautionary measure the time limit for reassessing a concluded assessment after the lapse of a period of four years from the end of the assessment year had been subject to the condition that the Principal Chief Commissioner or Chief Commissioner or Principal



Commissioner or Commissioner is satisfied, on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice. We are unable to persuade ourselves to subscribe to the view of the ld. D.R that failure on the part of an assessing authority to take the approval of the appropriate authority while assuming jurisdiction under Sec. 147 and issuing a notice under Sec. 148 can be given a go by as being a technical mistake which would be curable under Sec. 292B of the Act. We are of the considered view that the failure on the part of the A.O to take the sanction of the appropriate authority contemplated under Sec. 151(1) would go to the very root of the validity of assumption of jurisdiction by the A.O. We are further of a strong conviction that issuing of notice under Sec. 148 by the A.O after taking approval from the wrong authority would in no way be better than a case where no approval had been sought, as in either case the obtaining of the sanction of the appropriate authority is found to be missing. We thus are of the considered view that as the A.O had issued notice under Sec. 148 without taking the approval of Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 16 ITA No. 3049/Mum/2016 the appropriate authority, therefore, the very assumption of jurisdiction under Sec. 147 by him is devoid of any force of law and cannot be sustained. We find that our aforesaid view is fortified by the judgment of the Hon'ble High Court of Bombay in the case of Ghanshyam K. Khabrani Vs. Assistant Commissioner of Income-tax (2012) 346 ITR 443 (Bom), wherein the High court deliberating on the scope of Sec. 151 held that powers which are conferred upon a particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We find that a similar view was once again taken by the High court in the case of DSJ Communication Vs. DCIT (2014) 222 Taxman 0129 (Bombay), wherein the reassessment proceedings were held to be invalid for the reason that the A.O while issuing the notice under Sec. 148 failed to comply with the statutory requirement of taking the approval under Sec. 151 of the appropriate authority, viz. the Joint Commissioner of Income-tax and had rather sought the approval of the Commissioner of Income-tax. We have deliberated on the validity of the reassessment proceedings in the backdrop of the settled position of law, and are of the considered view that as the notice under Sec. 148 in the case before us had been issued by the A.O without obtaining the approval of the appropriate authority, therefore, in the absence of valid assumption of jurisdiction on his part, the reassessment framed by him cannot be sustained and is thus liable to be quashed.

13. We shall now advert to the validity of the reopening of the concluded assessment of the assessee after a period of four years from the end of the assessment year. We find that the A.O taking recourse to the first proviso of Sec. 147 had initiated reassessment proceedings, for the reason that the income of the assessee chargeable to tax had escaped assessment because of failure on the part of the assessee to Shri Anil



Jaggi Vs. ACIT - A.Y. 2007-08 17 ITA No. 3049/Mum/2016 truly and fully disclose all the material facts necessary for his assessment. The ld. A.R had assailed before us the validity of the reassessment proceedings for the reason that the reasons recorded by the A.O for reopening the case of the assessee does not make any mention of escapement of the income of the assessee for failure on his part to fully and truly disclose all material facts necessary for his assessment. We have perused the copy of the „reasons to believe“ on the basis of which the case of the assessee was reopened by the A.O (Page 31 of „APB“). We find that nowhere in the reasons to believe there is any mention by the A.O that the case of the assessee had been reopened for the reason of the failure on the part of the assessee to fully and truly disclose all material facts necessary for his assessment. We find that the assessee by challenging the validity of the reopening of the concluded assessment in his case on the present ground, had sought our indulgence for adjudicating as to whether in the absence on the part of the A.O to make a mention in the „reasons to believe“ that the case of the assessee had been reopened for the reason of the failure on the part of the assessee to fully and truly disclose all material facts necessary for his assessment, the assumption of jurisdiction by him to frame the reassessment can be held to be valid, or not. We have given a thoughtful consideration to the issue before us and find that as per the mandate of first proviso of Sec. 147, a concluded assessment can be reopened after a period of four years from the end of the assessment year, subject to the condition that the income of the assessee chargeable to tax had escaped assessment for the reason of the failure on the part of the assessee to fully and truly disclose all material facts necessary for his assessment. We are of the considered view that failing satisfaction of the aforesaid condition, the reopening of a concluded assessment after a period of four years from the end of the assessment year cannot be justified. We find that the Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 18 ITA No. 3049/Mum/2016 „reasons to believe“ on the basis of which the case of the assessee before us was reopened, does not refer to any such ground for reopening the case of the assessee. We are unable to gather from the „reasons to believe“ which form the very foundation for assumption of jurisdiction for reopening the case of the assessee, that the jurisdiction for reassessing the income of the assessee after lapse of a period of four years from the end of the assessment year was assumed by the A.O because of the failure on the part of the assessee to fully and truly disclose all material facts necessary for his assessment. We find that the validity of the reopening of a concluded assessment which had been reopened after a lapse of a period of four years from the end of the assessment year, in the absence of mention of such a fact in the „reasons to believe“ is no more res integra in light of the judgment of the Hon'ble High Court of Bombay in the case of Nirmal Bang Securities (P) Ltd. Vs. ACIT (2016) 382 ITR 93 (Bom), wherein the Hon'ble High Court taking cognizance of the fact that there was no allegation in the reasons recorded that there was any failure on the part of the assessee to disclose fully and truly all material



facts necessary for framing of assessment in the hands of the assessee, had quashed the reassessment proceedings by observing as under:-

"24. In view of the aforesaid well settled legal position and there admittedly being not even an allegation in the reasons recorded that there was any failure on the part of the Petitioner to disclose truly and fully any material fact necessary for assessment, let alone the details thereof, the impugned notice dated 30th March, 2007 and the impugned order dated 5th December, 2007 are liable to be quashed and set aside on this ground alone".

We thus in the backdrop of the facts involved in the present case read with the settled position of law as had been deliberated at length hereinabove, being of the considered view that now when there is no allegation in the reasons recorded as regards the failure on the part of Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 19 ITA No. 3049/Mum/2016 the assessee to disclose fully and truly all material facts necessary for framing of assessment in the hands of the assessee, therefore, following the judgment of the Hon'ble High Court of Bombay in the case of Nirmal Bang Securities (supra) are of the view that the reassessment proceedings in light of the aforesaid jurisdictional defect in the assumption of jurisdiction cannot be sustained. We thus in the backdrop of our aforesaid observations, therefore, hold that the reassessment proceedings initiated by the A.O beyond a period of four years from the end of the assessment year, without making a mention in the „reasons to believe“ that the income of the assessee chargeable to tax had escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for framing of assessment, cannot be sustained and on the said count too is liable to be vacated.

15. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s Lakeview developers. We have perused the facts of the case and the material available on record on the basis of which the addition of Rs. 2.23 crore had been made in the hands of the assessee. We have further deliberated on the material placed on record and the contentions of the ld. A.R to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group. We have perused the print out of the pen drive (Page 42 of APB) and find ourselves to be in agreement with the view of the ld A.R that though Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 20 ITA No. 3049/Mum/2016 against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is



mentioned alongwith the details of the property purchased by him, viz. Flat no.2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipt of „on money“, who had paid the money, to whom the money was paid, date of agreement and who had prepared the details, as a result whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjani Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjani Hiranandani in his statement recorded on oath in the course of the Search & seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on-money received on sale of flats, which was offered as additional income under Sec. 132(4) and thereafter offered as such for tax in the petition filed before the Settlement commission. We are of the considered view that there is substantial force in the contention of the ld. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjani Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse Shri Anil Jaggi Vs. ACIT - A.Y. 2007-08 21 ITA No. 3049/Mum/2016 inferences as regards the investment made by the assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for purchase of the property under consideration when pitted against the „market value" fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hands of the assessee. We thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for concluding that



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the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O as regards payment of "on money" of Rs. 2.23 crore by the assessee for purchase of Flat No. 2501 from M/s Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained. We thus are unable to subscribe to the view of the lower authorities and set aside the order of the CIT(A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee."

9. Taking into account all the facts and circumstances and on relying the law mentioned above, we are of the view that it is a case of clear violation of the principle of natural justice, therefore, the addition is not liable to be sustainable, hence, we set aside the finding of the CIT(A) on these issues and allowed the claim of the assessee.

ITA. NOS. 2522 & 2523/M/2019

10. Since the appeal of the assessee bearing ITA. No.2521/M/2019 for the A.Y.2012-13 is having similar controversy, therefore, the finding above is quite applicable to the facts of the present cases also as mutatis mutandis, therefore, these appeals are hereby also allowed accordingly.

11. In the result, the appeals filed by the **assessee are hereby ordered to be partly allowed.**

Order pronounced in the open court on 20/03/2020

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20/03/2020

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai