

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI MAHAVIR SINGH, VP

&

SHRI M.BALAGANESH, AM

**ITA No.2977/Mum/2019
(Assessment Year :2013-14)**

&

**ITA No.2978/Mum/2019
(Assessment Year: 2014-15)**

M/s. Bhalchandra Trading P. Ltd., Gr. Floor, Rajpipla Opp. Standard Chartered Bank Santacruz (W) Mumbai – 400 004	Vs.	Dy. CIT, Central Circle-6(2) Mumbai
PAN/GIR No.AAECA4138L		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Oommen Tharian
Date of Hearing	08/02/2021
Date of Pronouncement	25/02/2021

आदेश / ORDER

PER BENCH:

These appeals in ITA No.2977/Mum/2019 & ITA No.2978/Mum/2019 for A.Y.2013-14 & 2014-15 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-54, Mumbai in appeal Nos.CIT(A)-54/IT-10394/DCCC-6(2)/2017-18 & CIT(A)-54/IT-10397/DCCC-6(2)/2017-18 respectively dated 18/02/2018 & 13/02/2019

respectively (Id. CIT(A) in short) against the order of assessment passed u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/12/2017 by the Id. Dy. Commissioner of Income Tax, Central Circle 6(2), Mumbai (hereinafter referred to as Id. AO).

Since identical issues are involved in both the appeals, these appeals are taken up together and disposed off by this common order for the sake of convenience.

2. The first identical issue to be decided is as to whether the Id. CIT(A) was justified in confirming the addition of Rs.5,34,819/- as income from inflation of expenses in the facts and circumstances of the case for the A.Y.2013-14.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the material available on record. We find that the search operation u/s.132 of the Act was conducted in the Ahuja group of cases on 25/06/2015 and certain loose papers and digital forms were found and seized. Pursuant to the said search, the assessee was issued notice u/s.153A of the Act for A.Y.2013-14 on 24/08/2016. The assessee filed return in response to notice u/s.153A of the Act on 29/12/2016 declaring income of Rs.2,11,77,461/-.

3.1. We find that the Id. AO had mentioned in the assessment order that parallel books of accounts maintained by the assessee evidenced booking of expenses in the form of cheque payment and receiving back cash for the same. The Id. AO even tabulated year wise inflation of expenses where cheque payments were made and cash was received back as under:-

Sr. No.	AY	Amount
1.	2011-12	14,51,660
2.	2012-13	8,00,000
3	2013-14	21,39,275
4.	2014-15	79,37,000

3.2. The inflation of expenses for each of these years has been accepted by the assessee group and the assessee group concerns had approached the Hon'ble Income Tax Settlement Commission wherein 12% of this expenditure has been offered by them as income. We find that the Id. AO had sought to add a sum of Rs. 21,39,275/- towards inflation of expenses for the A.Y.2013-14. In response, the assessee stated that no addition towards inflation of expenses could be made on mere allegation of suspicion. However, on without prejudice basis, the assessee submitted that 8% of such expenditure could be added as undisclosed income of the assessee. We find that the Id. AO had rebutted this plea of the assessee by stating that the fact of maintaining parallel books of accounts was accepted by the assessee's group even before the Hon'ble Income Tax Settlement Commission and 12% of the expenditure was offered as income. The Id. AO also observed that the fact of handing over of all the seized documents was also accepted by the assessee's group before the Hon'ble Income Tax Settlement Commission. Accordingly, the Id. AO sought to add the entire amount of Rs.21,39,275/- on account of inflation of expenses for A.Y.2013-14. We find that the assessee had pleaded on without prejudice basis before the Id. CIT(A) that additional income offered by the assessee's group before the Hon'ble Income Tax Settlement Commission at 12% of inflation of expenses has been accepted by the Settlement Commission vide its order dated

28/06/2018 and requested the Id. CIT(A) to follow the same in assessee's case also. This was made on the plea that the cash which was received back by the assessee after issuance of cheque payments was utilised for incurring various business related expenses. The Id. CIT(A) however, ignored this submission of the assessee and proceeded to make an adhoc disallowance at 25% of inflated expenses for the assessment year under consideration after accepting to the contentions of the assessee that cash received back was indeed utilised for certain business related expenses which were kept outside the books.

4. Aggrieved, the assessee is in appeal before us.

5. We find the facts prevailing in assessee's case and facts prevailing in assessee's group cases who had preferred application before the Hon'ble Income Tax Settlement Commission are identical. There is no dispute on this aspect. It is not in dispute that assessee had resorted to inflation of expenses by making certain cheque payments and receiving back cash in return. It is not in dispute that the said cash had already also been utilised for the purpose of meeting business related expenses by the assessee. In this background what is to be taxed is only the left over portion of the cash remaining with the assessee on this subject mentioned transaction , being the profit element, which has been already accepted by the Hon'ble Income Tax Settlement Commission at 12% vide its order dated 28/06/2018 in assessee's group company cases. We held that the Id. CIT(A) ought to have followed the same in view of identical facts in the assessee herein also. Accordingly, we direct the Id. AO to make an addition @12% of inflation of expenses for the relevant assessment year in line with the direction of the Hon'ble Income Tax Settlement Commission in assessee's group company cases. Accordingly,

the ground No.1 raised by the assessee is partly allowed and ground No.2 raised by the assessee is allowed.

6. The ground Nos.3 & 4 raised by the assessee for A.Y.2014-15 are exactly identical to AY 2013-14 which was adjudicated hereinabove and the decision rendered thereon would apply with equal force for this assessment year also except with variance in figures.

7. The last issue to be decided in appeal for A.Y.2014-15 is with regard to addition of Rs.55 lakhs towards on-money.

7.1. We have heard Id. DR and perused the materials available on record. We find that the Id. AO had proceeded to make an addition u/s.68 of the Act towards on-money received by the assessee for sale of flats. It was also submitted by the assessee before the Id. AO that there were certain unaccounted business expenses made by the assessee out of the on-money received and hence, only profit element thereon could be added and not the entire on-money receipts. We find that the Id. AO ignoring the entire contentions of the assessee proceeded to tax the net on-money received of Rs.2,20,00,000/- in the A.Y.2014-15 by applying the provisions of Section 68 as unexplained cash credit. The Id. AO also observed that assessee has not provided the party-wise details of on-money receipt. The details of on-money received and on-money reversal for various assessment years are tabulated as under:-

Asst. Year	On Money Received	On Money Reverse	Net On Money
2009-10	5,70,67,250/-	22,50,000/-	5,48,17,250/-
2010-11	2,52,54,500/-	4,81,50,000/-	(2,28,95,500)/-

2011-12	Nil	1,21,17,250/-	(1,21,17,250)/-
2014-15	3,35,00,000/-	1,15,00,000/-	2,20,00,000/-
2015-16	38,80,000/-	65,00,000/-	(26,20,000)/-
TOTAL	11,97,01,750/-	8,05,17,250/-	3,91,84,500/-

7.2. We find that the assessee's group concerns also had offered 12% of on-money receipts as its income before the Hon'ble Income Tax Settlement Commission. The Id. CIT(A) categorically admitted in his order that the said receipt represents on-money received on sale of flats from which certain expenses were also incurred by the assessee and hence, only the profit element thereof could be brought to tax and not the entire on-money receipts. We find that the Id. CIT(A) accordingly estimated the profit element to be at 25% and restricted the addition to Rs.55 lakhs as against Rs.2,20,00,000 made by the Id. AO. Against this finding of the Id. CIT(A), the revenue is not in appeal before us.

7.3. It is not in dispute that assessee had indeed received on-money for sale of flats to the tune of Rs.2,20,00,000/- during the year under consideration. It is not in dispute that the assessee had incurred certain business expenses out of such on-money which are kept outside the books of accounts. Hence, it will be just and fair that only the profit element embedded on any such undisclosed transaction could be brought to tax on an estimated basis. The assessee had already pleaded that on-money transactions were offered by the assessee's group concerns @12% of on-money receipts before the Hon'ble Income Tax Settlement Commission and the same has been accepted by the Settlement Commission. Hence, the data and information was indeed available with the Id. CIT(A) to have some rational basis to make profit estimation in the

hands of the assessee herein by following 12% thereof from the order of Hon'ble Income Tax Settlement Commission. Accordingly, we direct the Id. AO to add only 12% of on-money receipts as undisclosed income of the assessee for the year under consideration. Accordingly, the ground No.1 & 2 raised by the assessee is partly allowed.

8. In the result, appeals of the assessee are partly allowed.

Order pronounced on 25/02/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 25/02/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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