

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.6479/MUM/2019  
(Assessment Year: 2015-16)**

ACIT-22(3)  
305, 3<sup>rd</sup> Floor,  
Piramal Chambers,  
Lal Baug, Parel,  
Mumbai – 400 012

Saeeda Yusuf Saikh  
Vs. A/307/308, Kailash  
Prabhat Bldg., Kuriya  
Estate, Kalina,  
Santacruz (west),  
Mumbai – 400 055

**PAN No. BCMPS5317K**

**(Revenue)**

**(Assessee)**

Assessee by : Shri Rajiv Khandelwal, A.R  
Revenue by : Shri Gurbinder Singh, D.R

Date of Hearing : 08/06/2021  
Date of pronouncement : 24/06/2021

**ORDER**

**PER RAVISH SOOD, J.M:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-34, Mumbai, dated 25.03.2019, which in turn arises from the assessment order passed by the A.O under Sec. 144 of the Income Tax Act, 1961 (for short 'Act'), dated 27.12.2017. The revenue has assailed the impugned order on the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs.6,64,12,312/- u/s 69C of the I.T. Act.

2. On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition u/s 69 of the I.T. Act, without following due process of rule and law.
3. On the facts and in the circumstances of the case and law, the CIT(A) erred in not interpreting rule 46A in letter and spirit and in not allowing the A.O to cross examine nor examine the submissions, explanations provided before the appellate authority.
4. The appellant prays that the order of the Id. CIT(A) on the above grounds be set aside and that of the assessing officer be restored.
5. The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary.”

2. Briefly stated, the assessee had e-filed her return of income for A.Y 2015-16 on 09.12.2016, declaring a total income of Rs.22,33,800/-. Subsequently, the case of the assessee was selected for scrutiny assessment under “Computer Aided Scrutiny Selection” (for short “CASS”), for the reason, that the investments in property made by her during the year were not commensurate to her returned income.

3. During the course of the assessment proceedings the A.O issued notices under Sec.142(1) on various dates, viz 21.09.2017; 26.10.2017; 09.11.2017; 17.11.2017 and 30.11.2017, wherein the assessee was inter alia called upon to furnish details of the properties that were purchased by her during the year along with the sources thereof. However, the assessee despite specific directions failed to furnish the requisite details as were called for by the A.O. In the backdrop of the aforesaid facts the A.O being left with no other alternative proceeded with the assessment on an ex-parte basis under Sec. 144 of the Act. On a perusal of the “Annual Information Return” (for short “AIR”) pertaining to the assessee, it was observed by the A.O that the assessee during the year under consideration had purchased the following immovable properties :

Sr. No.	Amount invested	Date of Transaction/Registration	Registered with
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1.	Rs. 321,95,300	05.05.2014	Jt.Sub Registrar, Andheri
2.	Rs. 136,66,512	05.05.2014	Jt. Sub Registrar, Kurla
3.	Rs. 56,07,000	07.06.2014	Jt. Sub Registrar, Kurla
4.	Rs. 53,57,500	07,06.2014	Jt. Sub Registrar, Kurla
5.	Rs. 47,93,000	07.06.2014	Jt. Sub Registrar, Kurla
6.	Rs. 47,93,000	06.06.2014	Jt. Sub Registrar, Kurla
	<b>Rs.6,64,13,312</b>		

The A.O in the course of the assessment proceedings called for the copies of the 'agreements' from the Joint Sub-Registrar(s), Mumbai. On a perusal of the aforesaid 'agreements', the A.O was of the view that the aforementioned properties were registered/acquired by the assessee during the year in question. Observing, that the assessee had failed to substantiate the nature and source of the investments made by her in the aforementioned properties during the year, the A.O treated the entire amount of the impugned investments of Rs. 6,64,12,312/- as the 'unexplained investments' of the assessee under Sec. 69 of the Act. Alternatively, it was observed by the A.O, that even if the investments in question were recorded in the books of accounts of the assessee, even then, in absence of any explanation as regards the corresponding source thereof the same could safely be brought within the meaning of Sec. 68 of the Act. Backed by his aforesaid deliberations the A.O vide his order passed under Sec. 144, dated 27.12.2017 assessed the assessee's income at Rs.7,42,91,160/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). Rebutting the addition that was made by the A.O towards 'unexplained investments' in properties of Rs.6,64,12,312/-, it was submitted by the assessee that the A.O had made the impugned addition on the basis of the 'agreements' which were obtained by him from the office of the Joint Sub-registrar(s), Mumbai, without perusing the contents of the same. It was the claim of the assessee that during the year in reference only the 'agreements' were entered into and registered with respect to the properties in question which were still under construction and full amount was not paid in any of the cases.

It was the claim of the assessee that whatever amount was paid, the same, except for an amount of Rs.13,32,000/-, pertained to the earlier years. On the basis of her aforesaid contentions, it was the claim of the assessee that the A.O without perusing the contents of the 'agreements' had simply added the stamp duty value of the properties in question as were reflected in the AIR report. In sum and substance, it was the claim of the assessee that she had only entered into the respective 'agreements' during the year in question, and except for an investment of Rs.13,32,000/- had not made any other investment during the year under consideration. Insofar the investment of Rs.13,32,000/- was concerned, it was the claim of the assessee that the same was sourced from her duly disclosed sources reflected in the return of income for the year under consideration. For the sake of clarity the submissions filed by the assessee qua the addition of Rs.6,64,12,312/- that was made by the A.O u/s 69 or u/s 68 are reproduced as under:

**“Re Ground of appeal no. 3**

2.1. The Assessing Officer has made an addition of Rs 6,64,12,312 under section 69 of the Act, observing in para. 7 that –

"In view of the failure of the assessee to produce supporting documentary evidences to prove that the investments are recorded in books and to offer any explanation with regards to sources of investments made, the total investments of Rs.6,64,12,312/- made by the assessee during the F.Y.2014-15 relevant to A.Y.2015-16 is treated as unexplained investments u/s.69 if the I.T. Act"

2.2 Further, without prejudice to the addition made under section 69 of the Act, the Assessing Officer has made the addition of the aforesaid Rs.6,64,12,312/- under section 68 of the Act, concluding that, "(even when it is considered that the investments are recorded in the books, the corresponding sources remained unexplained."

**Facts**

2.3. The AIR information suggested that the appellant has purchased immovable properties. The case was accordingly selected for scrutiny. The appellant did not respond to the various notices of the Assessing Officer, and hence, he under section 133(6) of the Act, obtained from the office of Jt. Sub

Registrar, Mumbai, copy of Agreements (6 nos) executed by the appellant during the year.

2.4. During the year under reference, the appellant has entered into the following agreements for purchase of certain immovable properties, details of which are given below (also refer para 5 of the assessment order) –

Sr. No.	Particulars	Agreement date	Agreement Value (in Rs.)	Stamp duty value (in Rs.)
1.	Flat 101 and 201- insignia	05.05.2014	2,62,00,000	3,21,95,300
2.	Flat 1806-Majestic Tower	04.05.2014	1,17,75,000	1,36,66,512
3.	Flat 903 – Premier Exotica	25.06.2014	49,41,840	56,07,000
4.	Shop E3 –premier Exotica	05.06.2014	53,35,000	53,57,500
5.	Shop E4 – Premier Exotica	05.06.2014	47,85,000	47,93,000
6.	Shop D11- Premier Exotica	05.06.2014	47,85,000	47,93,000
			5,78,21,840	6,64,12,312

2.5. The Assessing Officer has, under section 69, made addition of Rs.6,64,12,312, being the stamp duty value of the 6 agreements received by him from the Jt Sub Registrar, Mumbai.

### **Contentions**

#### **2.6. Flat 101 and 201 - Insignia – Rs.3,21,95,300**

2.6.1. Please refer the Agreement dated 5th May, 2014 for purchase of the immovable property - refer page nos. 6 to 91 of the paper book. On perusal of the same, particularly, para 1 of the agreement (page no 12 of the paper book), it can be seen that the property is under construction on execution of the Agreement.

2.6.2. Further, please refer clause 'L' (page no 12 of the paper book and receipt of the seller (page no 31 of the paper/book). It is evident that the appellant has made payments aggregating to Rs.78,30,182 till the date of execution of the Agreement.

2.6.3. The Assessing Officer has made the impugned addition on the basis of the Agreement obtained by him from the office of Jt. Sub Registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. The said Agreement specifically states, as mentioned above, that the appellant has made payments aggregating Rs.78,30,182 till the date of execution of the agreement The Assessing Officer, thus, could not have made the impugned addition of Rs.3,21,95,300 when the appellant has made investment only of a sum of Rs.78,30,182.

2.6.4. Further, the appellant submits that she has made payments aggregating Rs.64,98,182 towards purchase of the property before the commencement of the previous year relevant to the assessment year under reference and. the balance Rs.13,32,000 is paid during the year under reference and hence, the Assessing Officer could not have made addition of Rs.3,21,95,300, being the stamp duty value mentioned on the agreement, as the same is not in accordance with any provision of the Act, much less the provisions of section 69/ 68 of the Act.

In view of the above, the impugned addition ought not to have been made by the Assessing Officer.

**2.7. Flat 1806 -Majestic Tower – Rs.1,36,66,512**

2.7.1. Please refer the agreement dated 4th May, 2014 for purchase of the immovable property - refer page nos. 92 to 145 of the paper book. On perusal of the same, particularly, para 3 of the agreement (page no 95 of the paper book), it can be seen that the property is under construction on date of the agreement.

2.7.2. Further, please refer clause 'O' (page no 94 of the paper book.) and receipt of the seller (page no 110 of the paper book). It is evident that the appellant has made a payment of Rs.28,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.7.3. The appellant submits that the Assessing Officer has made addition only on the basis of agreement obtained from the office of Jt. Sub registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. On perusal of the receipt issued by the seller on the date of execution of the Agreement it can be seen that the appellant has made a payment of only Rs.28,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.7.4. Further, appellant submits that she has not made any payment towards of the property during the year under reference.

2.7.5 In view of the above, the appellant contends that the Assessing Officer ought not to have made an addition during the year under reference, much less on the basis of stamp duty value mentioned on the agreement and hence, the same needs to be deleted.

**2.8. Flat 903 - Premier Exotica - Rs 56,07,000**

2.8.1. Please refer the agreement dated 25th June, 2014 for purchase of the immovable property — refer page nos 146 to 198 of the paper book. On perusal of the same, particularly, para 4 of the agreement (page no 152 of the paper book), it can be seen that the property is under construction on date of the agreement.

2.8.2. Further, please refer clause 'P' (page no 151 of the paper book) and receipt of the seller (page no 168 of the paper book). It is evident that the appellant has made a payment of Rs 2,00,000 till the date of agreement, that too during the year ended 31st March, 2012, relevant to assessment year 2012-13.

2.8.3. The appellant submits that the Assessing Officer has made addition only on the basis of agreement obtained from the office of Jt. Sub registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. On perusal of the receipt issued by the seller on the agreement date, it can be seen that the appellant has made a payment of only Rs.2,00,000 till the date of agreement, that too during the year ended 31st March, 2012, relevant to assessment year 2012-13

2.8.4. Further, the appellant submits that she has not made any payment towards purchase of the property during the year under reference.

2.8.5. In view of the above, the appellant contends that the Assessing Officer ought not to have made an addition during the year under reference, much less on the basis of stamp duty value mentioned on the agreement and hence, same needs to be deleted.

**2. 9. Shop E3 - Premier Exotica – Rs.53,57,500**

2.9.7. Please refer the agreement dated 5th June, 2014 for purchase of the immovable property - refer page nos. 199 to 252 of the paper book. On perusal of the same, particularly, para 4 of the agreement (page no 205 of the paper book), it can be seen that the property is under construction on date of the agreement.

2.9.2. Further, please refer clause 'P' (page no 204 of the paper book) and receipt of the seller (page no 221 of the paper book). It is evident that the appellant has made a payment of Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.9.3. The appellant submits that the Assessing Officer has made addition only on the basis of agreement obtained from the office of Jt. Sub registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. On perusal of the receipt issued by the seller on the agreement date, it can be seen that the appellant has made a payment of only Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.9.4. Further, appellant submits that she has not made any payment towards purchase of the property during the year under reference.

2.9.5. In view of the above, the appellant contends that the Assessing Officer ought not to have made an addition during the year under reference, much less basis of stamp duty value mentioned on the agreement and hence, the same needs to be deleted.

**2.10. Shop E4 - Premier Exotica – Rs.47,93,000**

2.10.1. Please refer the agreement dated 5th June, 2014 for purchase of the immovable property - refer page nos. 253 to 306 of the paper book. On perusal of the same, particularly, para 4 of the agreement (page no 259 of the paper book), it can be seen that the property is under construction on date of the agreement.

2.10.2. Further, please refer clause 'P' (page no 258 of the paper book) and receipt of the seller (page no 275 of the paper book). It is evident that the appellant has made a payment of Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013 relevant to assessment year 2013-14.

2.10.3. The appellant submits that the Assessing Officer has made addition only on the basis of agreement obtained from the office of Jt. Sub registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. On perusal of the receipt issued by the seller on the agreement date, it can be seen that the appellant has made a payment of only Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.10.4. Further, appellant submits that she has not made any payment towards purchase of the property during the year under reference.

2.10.5. In view of the above, the appellant contends that the Assessing Officer ought not to have made an addition during the year under reference, much less on the basis of stamp duty value mentioned on the agreement and hence, the same needs to be deleted.

**Shop D11 - Premier Exotica - Rs.47,93,000**

2.11.1. Please refer the agreement dated 5th June, 2014 for purchase of the immovable property - refer page nos. 307 to 360 of the paper book. On perusal of the same, particularly, para 4 of the agreement (page no 313 of the paper book), it can be seen that the property is under construction on date of the agreement.

2.11.2. Further, please refer clause 'P' (page no 312 of the paper book) and receipt of the seller (page no 329 of the paper book). It is evident that the appellant has made a payment of Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.17.3. The appellant submits that the Assessing Officer has made addition only on the basis of agreement obtained from the office of Jt Sub registrar, Mumbai. Thus, copy of the Agreement is in the possession of the Assessing Officer. On perusal of the receipt issued by the seller on the agreement date, it can be seen that the appellant has made a payment of only Rs.5,00,000 till the date of agreement, that too during the year ended 31st March, 2013, relevant to assessment year 2013-14.

2.11.4. Further, appellant submits that she has not made any payment towards purchase of the property during the year under reference.

2.11.5. In view of the above, the appellant contends that the Assessing Officer ought not to have made an addition during the year under reference, much less on the basis of stamp duty value mentioned on the agreement and hence, the same needs to be deleted.”

After deliberating at length on the aforesaid contentions advanced by the assessee in the backdrop of the 'agreements' qua which the additions were made by the A.O under Sec. 69 of the Act, the CIT(A), observed, that except for an investment of Rs.13,32,000/- the assessee had not made any other investment during the year under reference. Insofar the investment of Rs.13,32,000/- was concerned, the CIT(A) was of the view that the same could safely be held to have been sourced from the income of Rs. 22,33,800/- that was disclosed

by the assessee in her return of income for the year under consideration. Backed by his aforesaid observations, the CIT(A) being of the view that no addition w.r.t the investments in the properties in question was liable to be made u/s 69 or u/s 68 of the Act vacated the addition of Rs.6,64,12,312/- that was made by the A.O.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') submitted that the assessee had purposively evaded furnishing of the copies of the 'agreements' qua the properties in question in the course of the assessment proceedings and filed the same for the very first time before the CIT(A). It was, thus, submitted by the ld. D.R that as the details of the investments were not available with the A.O, therefore, he had rightly relied on the AIR information, and in the absence of any explanation as regards the nature and source of the investments in the properties in question had made the addition u/s 69 or u/s 68 during the year under consideration. It was further submitted by the ld. D.R that though the copies of the 'agreements' were filed by the assessee for the very first time in the course of the proceedings before the CIT(A), however, the latter without calling for the objections of the A.O had in violation of Rule 46A admitted the said additional evidence.

6. Per contra, the ld. Authorized Representative (for short 'A.R') relied on the order of the CIT(A). It was submitted by the ld. A.R that except for the duly explained investment of Rs.13,32,000/- (supra), as no other investment qua the properties in question was made by the assessee during the year in reference, thus, the CIT(A) had rightly observed that no addition could have been made by the A.O either u/s 69 or u/s 68 of the Act. Rebutting the claim of the ld. D.R that the details as regards the investments qua the properties in question was

not available before the A.O, it was submitted by the ld. A.R that the A.O had in the course of the assessment proceedings called for the copies of the 'agreements' from the Joint Sub-registrar(s), Mumbai. In order to drive home his aforesaid claim the ld. A.R took us through Page 7 – Para 5.1 of the assessment order, which revealed that the copies of the agreements were called for by the A.O from the Joint Sub-registrars. Adverting to the merits of the addition made by the A.O, it was submitted by the ld. A.R that as the assessee had not made the impugned investments qua the properties in question during the year under consideration, therefore, the CIT(A) had rightly observed that no addition u/s. 69 could have been made in the hands of the assessee. It was further submitted by the ld. A.R that as it was not a case of any unexplained cash credit in the books of account of the assessee, thus, no addition u/s 68 could have been made in its hands. In order to buttress his aforesaid claim that no investment during the year in reference was made by the assessee qua the properties in question the ld. A.R took us through the relevant pages of the 'agreements' forming part of the assessee's paper book (for short 'APB'). Further, in order to support the fact that the assessee during the year under consideration had except for an investment of Rs.13,32,000/- (supra) not made any other investment qua the properties in question, the ld. A.R had placed on record a "Chart" alongwith supporting receipts. Taking us through the 'agreements' pertaining to the six properties in question, it was submitted by the ld. A.R that only part of the purchase consideration was paid by the assessee till the date of execution of the said respective 'agreements', which too, except for an investment of Rs. 13,32,000/- that was made during the year under consideration pertained to the years preceding the year under reference. In the backdrop of his aforesaid contention, it was the claim of the ld. A.R that as it was a matter of fact borne

from the records that the assessee had not made any unexplained investments during the year in question, thus, no addition either under Sec. 69 or u/s 68 was called for in its case.

7. We have heard the ld. authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Before advertng to the merits of the case, we may herein observe, that though the A.O had made the impugned addition of Rs. 6,64,12,3122/- u/s. 69 or u/s Sec. 68 of the Act, however, the revenue in its grounds of appeal had assailed the order of the CIT(A), for the reason, that he had erred in deleting the addition that was made by the A.O u/s 69C of the Act. As the aforesaid mistake appears to have inadvertently crept in on account of a typographical error while drafting the appeal, we, thus, proceed with and deal with the sustainability of the order of the CIT(A), wherein the addition made by the A.O u/s 69 or u/s 68 was vacated by him. As is discernible from the orders of the lower authorities, the case of the assessee was selected for scrutiny assessment under CASS, for the reason, that the investments in properties made by her during the year under consideration were not found to be commensurate with her returned income for the said year. Admittedly, it is a matter of fact borne from the record that despite specific directions by the A.O vide his notices issued u/s 142(1) of the Act the assessee had failed to furnish the details as regards the properties that were purchased by her alongwith the source thereof. As the requisite details qua the investments in the properties in question were not forthcoming, therefore, the A.O proceeded with the assessment on an ex-parte basis u/s 144 of the Act. In the course of the assessment proceedings the A.O called for the copies of the 'agreements' from the Joint Sub-registrar(s), Mumbai, and as per the AIR information concluded that the assessee had

during the year under consideration made ‘unexplained investments’ u/s 69 of Rs.6,64,12,312/- w.r.t the following six properties :

Sr. No.	Particulars	Payments of Properties	Amount invested	Date of Transaction /Registration	Registered with
1.	Agreement dated 5 <sup>th</sup> May 2014	Flat 101 and 201 - Insignia	Rs. 321,95,300	05.05.2014	Jt.Sub Registrar, Andheri
2.	Agreement dated 4 <sup>th</sup> May 2014	Flat 1806 – Majestic Tower	Rs. 136,66,512	05.05.2014	Jt. Sub Registrar, Kurla
3.	Agreement dated 5 <sup>th</sup> June, 2014	Flat 903 – Premier Exotica	Rs. 56,07,000	07.06.2014	Jt. Sub Registrar, Kurla
4.	Agreement dated 5 <sup>th</sup> June, 2014	Shop E3 - Premier Exotica	Rs. 53,57,500	07,06.2014	Jt. Sub Registrar, Kurla
5.	Agreement dated 5 <sup>th</sup> June, 2014	Shop E4 - Premier Exotica	Rs. 47,93,000	07.06.2014	Jt. Sub Registrar, Kurla
6.	Agreement dated 5 <sup>th</sup> June, 2014	Shop D11 - Premier Exotica	Rs. 47,93,000	06.06.2014	Jt. Sub Registrar, Kurla
			Rs. 6,64,13,312		

On a perusal of the aforesaid details in the backdrop of the contents of the ‘agreements’ pertaining to the aforesaid properties in question, we may herein observe, that as stated by the Id. A.R, and rightly so, the A.O had in the course of the assessment proceedings merely gone by the AIR information and had failed to peruse the contents of the aforesaid respective ‘agreements’ in question which were there before him. On appeal, the CIT(A) after perusing the ‘agreements’ qua the properties in question concurred with the claim of the assessee that the A.O had merely added the stamp duty value of the properties as per AIR information and had overlooked the actual transaction values. It was further observed by the CIT(A) that the actual amount that was paid by the assessee as per the ‘agreements’ was less than the stamp duty value. Further, it was noticed by the CIT(A) that all the six properties in question were under construction during the year in reference. Also, it was observed by the CIT(A) that a perusal of the ‘agreements’ revealed that the assessee had not paid any amount

during the year under reference, except for an amount of Rs.13,32,000/- that was paid by her during the year under consideration in respect of one of the property, viz. Flat Nos. 101 & 201- Insignia, vide agreement dated 05.05.2014. It was further observed by the CIT(A), that the amounts that were paid till the date of the 'agreements' qua the properties in question were paid in the earlier years and not in the year under reference. It was observed by the CIT(A) that as the assessee during the year in question had entered into the purchase 'agreements', thus, it was for the said reason that the aforesaid transactions were reflected in her AIR information. Observing, that the assessee had only invested an amount of Rs.13,32,000/- in the properties in question during the year under consideration, which was sourced from her returned income, we find, that the CIT(A) had observed that no part of the addition of Rs.6,64,12,312/- made by the A.O u/s 68 or u/s 69 could be sustained.

8. We have deliberated at length on the issue in hand, and concur with the view taken by the CIT(A) that as the assessee during the year under consideration had not made any investment qua the properties in question, except for an investment of Rs.13,32,000/- that was made by her with respect to one of the property, viz. Flat No. 101 & 201- Insignia, which too in the backdrop of her returned income could safely be held to have been sourced from her explained sources, therefore, no part of the impugned addition of Rs. 6,64,12,312/- could be sustained in the hands of the assessee. On a perusal of the order of the CIT(A), we find that he had vacated the impugned addition made by the A.O by observing as under:

“6.1 Brief facts of the case are that the appellant has entered into six agreements to purchase immovable properties during the year under reference. The same was reflected in the AIR report available with the AO. On non appearance by the appellant, the AO procured the copies of,

purchase agreements from the office of -Jt Sub-Registrar. Then the AO proceeded on the basis of material on record, which is nothing but the AIR information and the copies of agreement, which confirms the AIR information. The summary of agreements entered into by the appellant is given below

Sr. no	Amount invested	Date of Transaction Registration	Registered with
1	3,21,95,300	05.05.2014	Jt. Sub Registrar, Andheri
2	1,36,66,512	05.05.2014	Jt. Sub Registrar, Kurla
3	56,07,000	07.06.2014	Jt. Sub Registrar, Kurla
4	53,57,500	07.06.2014	Jt. Sub Registrar, Kurla
5	47,93,000	07.06.2014	Jt. Sub Registrar, Kurla
6	47,93,000	06.06.2014	Jt. Sub Registrar, Kurla
	6,64,12,312		

The AO made the addition of Rs 6,64,12,312 u/s 69 of the Act on failure of the assessee to prove the sources of investments made and held the investments to be unexplained. The AO further, without prejudice to addition made u/s 69, made addition u/s 68 stating that corresponding sources remain unexplained and corresponding credit entries are not proved by the appellant w.r.t. the investment made.

The ld. AR filed written submissions and explained each of the agreement entered into by the appellant (written Submissions reproduced above). The AR also produced the copies of each of the agreement. The submissions made by the AR can be summarized as under -

- “1 Each of the property is under construction.
2. AIR reflects stamp duty value and not the actual transaction value.
3. Actual amount paid by the assessee is less than the stamp duty \ value.
4. The appellant did not pay any amount during the year under reference, except Rs.13,32,000, in respect of first property. Whatever sum is paid by the assessee was paid in earlier years and not in the year under reference this is also evidenced by the receipt of the seller attached to each of the agreement.
5. The assessee just entered into the purchase agreements during the year under reference and hence, are reflected in the AIR.

6.2 I found the contentions of the AR to be correct. On perusal of each of the agreements, it is evident that the appellant did not make any investment during the year under reference, except for Rs.13,32,000. It is only that the agreements were entered into and registered during the year under

reference. Further, all the properties were still under construction and hence, full amount was not paid in any of the cases. Whatever amount was paid, was paid in the earlier years (except Rs.13,32,000/-). It is only that the stamp duty value of the properties were being reflected on the AIR report and only on that basis, AO has made the addition. Hence, it is a fact that appellant has only entered into the agreement in the year and not actually made investments. As such, the observation of the AO that the investment of Rs.6,64,12,312 remains unexplained is not correct for the reason that appellant has not made that kind of investment. Further, amount paid by the appellant of Rs.13,32,000 can be easily substantiated by the income declared by the appellant of Rs.22,33,800.

**6.3** Under these circumstances, I am of view that the AR has proved that the assessee has not made the investment of Rs.6,64,12,312 and hence, there is no question of making any addition u/s 68 or 69 of the Act. Therefore, I direct the AO to delete the addition of Rs.6,64,12,312. Thus, this ground of appeal is allowed.”

Before us, the ld. D.R had inter alia assailed the order of the CIT(A), on the ground, that he had in violation of Rule 46A without calling for the objections of the A.O admitted the ‘agreements’ pertaining to the six properties in question which were furnished by the assessee before him for the first time. We have given a thoughtful consideration to the aforesaid grievance of the revenue and are unable to accept the same. As observed by us hereinabove, the A.O in the course of the assessment proceedings had called for the copies of the ‘agreements’ in question from the Joint Sub-registrar(s), Mumbai. The aforesaid factual position can safely be gathered from a perusal of Page 7 – Para 5.1 of the assessment order. On being confronted with the said fact, the ld. D.R could not rebut the same. We, thus, in the backdrop of the aforesaid facts, are of the considered view, that as the copies of the ‘agreements’ in question were there before the A.O in the course of the assessment proceedings, therefore, the claim of the ld. D.R that the CIT(A) had admitted the same in violation of Rule 46A of the Income-tax Rules, 1962, is devoid of any merit, and thus, is rejected. The **Ground of appeal No. 3** raised by the revenue is dismissed.

9. We have further perused the copies of the six ‘agreements’ which form part of the assessee’s ‘Paper book’ (for short ‘APB’), and are

persuaded to subscribe to the observation of the CIT(A) that qua all the six 'agreements' the 'agreement value' was less than the 'stamp duty value'. Apart from that, we also concur with his view that though the 'agreements' were executed during the year under consideration, however, only part of the purchase consideration qua the properties in question was paid till the date of execution of the said 'agreements', and except for an amount of Rs.13,32,000/- (supra) all the remaining payments were made in the preceding years. The aforesaid factual position as gathered from the copies of the six agreements (forming part of the 'APB') and the receipts is culled out as under:

Sr. No.	Particulars	Agreement date	Agreement Value (in Rs.)	Stamp duty value (in Rs.)	Amount paid (up to date of agreement)	Amount and date of payment (as per receipt/agreements)																																		
1.	Flat 101 and 201- Insignia	05.05.2014	2,62,00,000	3,21,95,300	Rs.78,30,182 (Page 31 – backside of APB)	<table border="1"> <tr><td>21.10.2011</td><td>Rs.5,00,000/-</td></tr> <tr><td>21.10.2011</td><td>Rs.5,00,000/-</td></tr> <tr><td>09.07.2013</td><td>Rs.9,70,026/-</td></tr> <tr><td>09.07.2013</td><td>Rs.9,70,026/-</td></tr> <tr><td>16.09.2013</td><td>Rs.9,70,026/-</td></tr> <tr><td>06.11.2013</td><td>Rs.4,89,863/-</td></tr> <tr><td>06.11.2013</td><td>Rs.4,89,863/-</td></tr> <tr><td>06.11.2014</td><td>Rs. 10,000/-</td></tr> <tr><td>06.11.2014</td><td>Rs.2,91,008/-</td></tr> <tr><td>03.01.2014</td><td>Rs.6,79,018/-</td></tr> <tr><td>18.02.2014</td><td>Rs.1,94,006/-</td></tr> <tr><td>18.02.2014</td><td>Rs. 10,000/-</td></tr> <tr><td>18.02.2014</td><td>Rs.4,24,046/-</td></tr> <tr><td><b>17.04.2014</b></td><td><b>Rs.3,22,000/-</b></td></tr> <tr><td><b>25.04.2014</b></td><td><b>Rs. 10,000/-</b></td></tr> <tr><td><b>25.04.2014</b></td><td><b>Rs.10,00,000/-</b></td></tr> <tr><td>Total</td><td>Rs.78,30,182/-</td></tr> </table>	21.10.2011	Rs.5,00,000/-	21.10.2011	Rs.5,00,000/-	09.07.2013	Rs.9,70,026/-	09.07.2013	Rs.9,70,026/-	16.09.2013	Rs.9,70,026/-	06.11.2013	Rs.4,89,863/-	06.11.2013	Rs.4,89,863/-	06.11.2014	Rs. 10,000/-	06.11.2014	Rs.2,91,008/-	03.01.2014	Rs.6,79,018/-	18.02.2014	Rs.1,94,006/-	18.02.2014	Rs. 10,000/-	18.02.2014	Rs.4,24,046/-	<b>17.04.2014</b>	<b>Rs.3,22,000/-</b>	<b>25.04.2014</b>	<b>Rs. 10,000/-</b>	<b>25.04.2014</b>	<b>Rs.10,00,000/-</b>	Total	Rs.78,30,182/-
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Total	Rs.78,30,182/-																																							
2.	Flat 1806- Majestic Tower	04.05.2014	1,17,75,000	1,36,66,512	Rs. 28 lac [Page 95 (backside) of APB]	05.12.2012 :Rs.7 lac 08.12.2012 :Rs.4 lac 13.12.2012: Rs.8 lac 14.12.2012: Rs. 5 lac 14.12.2021: <u>Rs. 4 lac</u> Rs. 28 lac [Page 110 (backside) of APB].																																		
3.	Flat 903 – Premier Exotica	25.06.2014	49,41,840	56,07,000	Rs. 2 lac (Page 152 of APB- backside)	30.01.2012 :Rs. 2 lac [Page 168 (backside) of APB]																																		
4.	Shop E3 – premier Exotica	05.06.2014	53,35,000	53,57,500	Rs. 5 lac (Page 20 of APB – backside)	06.10.2012: Rs. 5 lac [Page 221 (backside) of APB].																																		
5.	Shop E4 – Premier Exotica	05.06.2014	47,85,000	47,93,000	Rs. 5 lac (page 259 of APB- backside)	03.12.2012 :Rs. 5 lac [Page 275 (backside) of APB].																																		
6.	Shop D11- Premier Exotica	05.06.2014	47,85,000	47,93,000	Rs. 5 lac (Page 313 of APB- backside)	04.10.2012 :Rs. 5 lac [Page 329 (backside) of APB].																																		
		Total	5,78,21,840	6,64,12,312																																				

On a perusal of the aforesaid details, it stands revealed beyond any doubt that as observed by the CIT(A), and rightly so, except for a payment of Rs.13,32,000/- (supra) that was made by the assessee with respect to an 'agreement' pertaining to one of the property, viz. Flat No. 101 & 201-Insignia; dated 05.05.2014, no other investment as regards either of the aforesaid properties in question was made by her during the year under consideration. We, thus, are in agreement with the view taken by the CIT(A) that as the assessee had during the year under consideration not made any investment with respect to the properties in question, except for an amount of Rs.13,32,000/- (supra) that was sourced from her returned income, thus, the addition made by the A.O u/s. 69 or u/s. 68 could not be sustained and was liable to be vacated. At this stage, we may herein observe, that neither there is anything discernible from the records nor any material has been brought to our notice by the ld. D.R which would prove that the assessee had made any investment qua the properties in question during the year under consideration. Accordingly, finding no infirmity in the view taken by the CIT(A) that no part of the addition made by the A.O either u/s 69 or u/s 68 can be sustained, we, thus, uphold his order.

9. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 24/06/2021.

Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

Mumbai;

Dated: 24.06.2021

\*PS: Rohit

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,  
//True Copy//

(Sr. Private Secretary)  
**ITAT, Mumbai**