

आयकर अपीलीय अधिकरण “एफ ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJI SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No. 7143 to 7147/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2009-10 to 2013-14)

M/s Millennium Associates 211, Concorde Premises, Plot No. 66A Sector-11, CBD-Belapur Navi Mumbai-400 614	बनाम/ Vs.	DCIT CC – 1(1), 9 th floor, Pratistha Bhavan, Old CGO Annexe M.K.Road, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAPFM-3953-K		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Ms. Hiraj Sejal– Ld. AR
Revenue by	:	Shri Narendra Jangpangi– Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	27/07/2021
घोषणा की तारीख / Date of Pronouncement	:	06/08/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2009-10 to 2013-14 arises out of common order of learned Commissioner of Income-Tax (Appeals)-47, Mumbai [CIT(A)], dated 12/09/2019 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 153A of the Act. The facts as well issues are substantially the same in all the years. For the purpose of adjudication, facts from AY 2009-10 are taken. The grounds raised by the assessee read as under: -

Ground No. 1

1. On the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals)-47 Mumbai ['the CIT(A)'], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle -1(1) ('the AO') amounting to Rs.6,66,500/- u/s 68 of the Income Tax Act, 1961 ('the Act') in respect of alleged unsecured loans received by:

- Invoking the presumptions u/s 292C of the Act without providing an opportunity of being heard;
- Not considering the submission made by the Appellant.

The Appellant prays that the AO be directed to delete the aforesaid additions amounting to Rs. 6,66,500/-.

Ground No. 2

1. On the facts and circumstances of the case and in law, the Hon'ble CIT (A) erred in upholding the addition of Rs.10,50,000/-made by the AO with respect to the alleged parking charges.

2. The CIT(A) further erred in:

- Not giving an opportunity to cross examine Shri Kulwinder Singh Narula before relying on his statement;
- Not considering the documents filed during the course of assessment and appeal.

3. The Appellant prays that AO be directed to delete the addition amounting to Rs. 10,50,000/-

Without prejudice to Ground No. 2 Ground No. 3;

1. On the facts and circumstances of the case and in law and without admitting that the amount is received towards allotment of parking space, the Hon'ble CIT (A) erred in assuming jurisdiction u/s 145(3) of the Act and rejecting the books of accounts of the Appellant.

2. He further erred in not considering the alleged amount of Rs.10,50,000 received towards parking space be considered a part of the total project receipt and that percentage of profit be applied to the total parking receipts.

3. The Appellant prays that the addition be restricted to Rs. 66,990 being 6.38% (Net profit ratio as per tax audit report) to the total receipts.

The assessee, vide letter dated 24/05/2021 has filed an additional ground of appeal which read as under: -

1.1 On the facts and circumstances of the case and in law, the Hon'ble Commissioner of Income Tax (Appeals)-47 Mumbai ['the CIT(A)'], erred in upholding the additions made by the Deputy Commissioner of Income Tax, Central Circle -1(1) ('the AO') by invoking the provisions of Section 153A of the Income Tax Act, 1961 ('the Act') and making additions amounting to Rs.6,66,500/- u/s 68 of the Act in respect of the advances received against sale of flat without appreciating the fact that no incriminating material was found or seized during the search.

1.2 Therefore, based on the facts placed on record, the appellant prays that the AO be directed to delete the aforesaid additions amounting to Rs.6,66,500/-.

Since the additional ground is only a legal ground which do not require appreciation of new facts, the same is admitted.

2. We have carefully heard the rival submissions and perused relevant material on record including the documents placed in the paper-book. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The material facts are that pursuant to search action on Balaji Group on 28/01/2015, the premises of the assessee were also covered under the search. In response to notice u/s 153A, the assessee offered returned income of Rs.34 Lacs. The original return of income was already assessed u/s 143(3) on 20/12/2011. Accordingly, at the time of search, the assessment proceedings had already culminated u/s 143(3) and no proceedings were pending against the assessee. Thus, this was a case of non-abated assessment. During the course of assessment proceedings, the assessee was saddled with various additions which are adjudicated as under: -

4. Unsecured Loans

4.1 The assessee obtained unsecured loans from various lenders which have already been enumerated in the assessment order. The loans of Rs.74.69 Lacs were held to be unexplained cash credit u/s 68 and added to the income of the assessee. Consequently, the interest paid on loans for Rs.1.94 Lacs was also added back to the income of the assessee. Upon further appeal, Ld. CIT(A) retained the addition of Rs.6.66 Lacs but deleted the remaining addition in view of the fact that no incriminating material was found during the course of search operations. The details of addition of unsecured loans as retained by Ld. CIT(A) are as follows: -

No.	Name of the lender	Amount (Rs.)
1.	Shri Rajeshbhai Thummar	Rs.1,65,000/-
2.	Shri Jitendrabhai Thummar	Rs.1,65,500/-
3.	Shri Niteshkumar Thummar	Rs.1,70,000/-
4.	Shri Dalsukhbhai Thummar	Rs.1,66,000/-
	Total	Rs.6,66,500/-

4.2 The additions were made by Ld. AO since the passbook of above stated persons were found from the premises of the assessee. It was noted that these persons had advanced unsecured loans to the assessee. Upon perusal of passbook, it was noted that the grant of loans was preceded by immediate cash deposit in the bank account. Therefore, holding that the genuineness of the transactions and the creditworthiness of the lenders could not be proved satisfactorily, these loans were added to the income of the assessee.

4.3 During appellate proceedings, the assessee explained that the amounts were received in AYs 2009-10 & 2010-11 against sale of flats. The Ld. AO wrongly assumed that amount received were unsecured loans whereas these were sale proceeds / advances for purchase of flats.

4.4 The Ld. CIT(A), invoking the presumption of Sec.292C, held that contents of the seized documents were to be assumed to be true and these documents would be deemed to be belonging to the assessee. There was no necessity of any independent enquiry or further enquiry for corroborating the contents of the documents. The presumption was rebuttable presumption which stands to be true until it is proved otherwise. Placing reliance on various judicial pronouncements, the additions were confirmed. Aggrieved, the assessee is in further appeal before us.

4.5 Upon perusal of relevant material on record, we find that the aforesaid persons have invested in the projects of the assessee and paid certain amounts by way of bank transfer and cheques to purchase the flats from the assessee. The same is evident from the allotment letters dated 12/03/2008 issued by the assessee in favor of these persons. The advances so received was against sale of stock-in-trade and not as unsecured loans as held by Ld. AO. These advances were reflected as advance against booking in assessee's financial statements. Proceeding further, a perusal of the seized material would reveal that xerox copies of bank passbooks of these persons has been found from the possession of the assessee and not the original passbooks as alleged by Ld. AO. In these bank accounts, certain cash deposits have been found which has been assumed to be assessee's own money and accordingly, the loans have been added as unexplained cash credit. However, it could be gathered that these were merely booking advances received through banking channels. The bookings have subsequently been cancelled and the amounts have been refunded to these persons along with compensation. The compensation amount has duly been offered to tax by these persons in their return of income. This being so, the amount could not be held to be unexplained cash credit in the hands of the assessee. There is no material on record to prove that the assessee deposited its own money in these accounts and later on transferred it in the garb of booking amount or as loans. Moreover, the passbooks are not in respect of assessee's own bank account rather the accounts are third-party bank accounts. No explanation has been sought by Ld. AO from any of these persons and no enquiry whatsoever is shown to have been done in the assessment order to sustain the addition. It is trite law

that no addition could be made merely on the basis of assumptions and presumptions. Hence, we are inclined to delete this addition. This ground stands allowed.

5. Parking charges.

5.1 During the course of search action u/s 132 at 1st floor, B-wing, Millenium Avanish, Plot No. 11, Sector-10, Airoli on 28/01/2015, certain loose papers were seized which revealed the details of parking lot allotted by the assessee in the projects to various customers. Since the receipts of sale of parking lots were not reflected in the regular books, the assessee was show-caused as to why the same be not treated as undisclosed income of the assessee.

5.2 The assessee refuted the allegation by submitting that originally the cheques were taken from flat purchasers for allotment of the parking. Similarly, the cheques were also taken for development charges, club membership etc. However, subsequently, it was decided not to collect these amounts from the flat purchasers and therefore, the said cheques were not deposited in the bank. The buyers did not collect their cheques which were found during the course of search. Regarding statement taken from one Shri Kulvinder Singh Arora, it was submitted that no amount was charged from him.

5.3 However, the assessee's submissions were rejected by Ld. AO with following observations: -

4.3. The above reply of the assessee is considered carefully, but not found to be acceptable. It is seen from the papers seized that the assessee during the year has accepted parking charges as per the following details: -

Parking No.	Flat No.	Customer Name	Date of Agreement	Payment
10	402	Mr. Muttukumar T. Pillal	18.08.2008	2 OK
28/28A	1503	Mr. Jagdish Shivdas Bhavsar	09.09.2008	3.5 OK
14	603	Mr. Mukesh Tiwary	16.03.2009	2 OK
21	903	Mr. Vinod Metha	12.09.2008	2 OK
115/11	603	Mr. Mukesh Tiwary	16.03.2009	1 OK
Total				10.5

4.4. The above list clearly shows that the assessee has received certain parking charges and has also acknowledged the receipts of the same by writing 'OK'. The amount is written in short form and represents amount in lakhs which matches with the prevailing market rates for parking. The assessee has not been able to show with documentary evidence if these proceeds were included in the agreement value of the flats sold and consequently declared in the profit and loss account or included in its receipts. The claim of the assessee that the checks recovered from its premises were against parking charges also does not carry any weight as the assessee has not reconciled the payments recorded in the above sheet and the checks recovered. Further, the assessee's claim that it decided to offer the parking lot to its customers without any charges also cannot be accepted as it is a known fact that builders charge the customers for parking and the assessee's claim that it suddenly decided to allot parking to its customer free of cost is without any basis. The explanation of the assessee is only an afterthought. Therefore, the amount of Rs. 10,50,000/- received by the assessee on account of parking charges is hereby treated as its undisclosed income and added back to the total income.

Accordingly, the amount of Rs.10.50 Lacs was added to the income of the assessee.

5.4 The Ld. CIT(A) held that the assessee denied the contents of the incriminating loose papers without adducing any material evidence on record. The statement of Shri Kulvinder Singh Narula was brushed aside without giving any plausible reasons, The incriminating seized material gave complete detail of car parking no., flat no., customer name, mobile number and amount of payment and this document clearly reveal that the assessee received car parking charges which were acknowledged by writing OK against each entry. The contention that no parking charges were taken were not borne out of record. The alternative contention that only unaccounted car parking charges should be taxed on percentage completion method of accounting, was also rejected since these were unaccounted receipts which never travelled into the books of accounts. Finally, the additions were upheld. Aggrieved, the assessee is in further appeal before us.

5.5 We find that certain loose papers were found during the course of search on the assessee which form the basis to make the impugned additions in the hands of the assessee. The same are placed on page nos. 89-91 of the factual paper-book. Upon perusal of the same, it could be seen that page number-89 contains parking no., flat no., customer name, mobile no. and payment. In the payment column, only a numeric figure viz. 2, 3, 3.5 has been written which is suffixed by 'OK'. However, the document does not contain any date or the fact that so much amount has been received by the assessee in cash from these persons during the year. The Ld. AO has interpreted the numeric figures as amounts in Lacs and suffix 'OK' to mean that so much of amount has been received by the assessee in cash against sale of parking charges. The conclusion is sought to have been corroborated by Ld. AO on the strength of recorded statement of one of the flat owner Shri Kulvinder Singh Narula on 30/01/2015. In reply to question no.4, it was admitted by him that no amount was paid as development charges or club fees but parking charges of Rs.4-5 Lacs has been paid from time to time in cash, the exact dates of which could not be remembered by him.

5.6 As against this, it is the stand of the assessee that initially at the time of agreement, it was decided not to sell the parking. However, subsequently the assessee decided to charge the flat owners for parking, development charges & membership fees etc. The flat buyers giving consent for the same were noted as OK in the list. Thus, this paper was nothing but a mere proposal to collect the aforesaid charges. Accordingly, blank cheques were obtained from customers in lieu of the same, few of which were found at the time of search. During 2012, while obtaining occupancy certificate, it came to notice that the project was

covered under the restricted area as declared by the Coastal Zone Regulation (CRZ) and therefore, NOC could not be obtained from appropriate authority. Resultantly, the assessee decided not to go ahead with the proposal to collect the aforesaid charges. Accordingly, the buyers were requested to come and collect back the blank cheques. At the time of search, only those cheques were found which were not collected back by the flat owners. Thus, loose papers were mere proposal which never materialized and therefore, the additions are unsustainable in law.

5.7 After due consideration of material on records and arguments adduced by both the sides, we are of the opinion that loose papers were merely a dumb document and nothing could be conclusively inferred upon perusal of the same. The explanation of the assessee was a plausible one and we concur that merely on the basis of this paper, the addition could not be sustained. So far as the statement of Shri Kulvinder Singh Narula is concerned, we find that he has filed another affidavit dated 21/01/2020 wherein it has been admitted by him that the earlier statement was taken under undue pressure and the fact of having paid cash towards parking was not true. Thus, the statement of this person could not be relied upon and the same alone was not sufficient enough to make the additions particularly in the background of the fact that the assessee filed affidavit of 5 more flat owners (placed on page nos. 96 to 105 of the paper-book) wherein these persons have denied having paid any cash to the assessee. It is pertinent to note that no independent enquiry has been conducted by Ld. AO from any flat owners to corroborate the additions. This being so, the impugned addition could not be sustained. By deleting the same, we allow ground no. 2 which makes

ground no.3 *infructuous*. The appeal stands partly allowed in terms of our above order.

6. Assessment Years 2010-11 to 2013-14

The assessment for all these years is on similar lines. In AY 2010-11, the addition u/s 68 has been confirmed along with additions of parking charges. In AYs 2011-12 to 2013-14, the assessee is aggrieved by confirmation of addition of parking charges. Facts being *pari-materia* the same as in AY 2009-10, our findings as well as adjudication, to the extent applicable, shall *mutatis-mutandis*, apply to all these appeals. Accordingly, the impugned additions, in all these years, stands deleted. All the appeals stand partly allowed, in similar manner.

Conclusion

7. All the appeals stand partly allowed in terms of our above order.

Order pronounced on 6th August, 2021.

Sd/-
(Amarjit Singh)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 06/08/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.