

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

1. आयकर अपील सं./ I.T.A. No.6476/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2013-14)

ITO(IT)-4(2)(1), R. No. 1728, 17 th floor Air India Building Nariman Point, Mumbai-400 021	बनाम/ Vs.	Jitendra B. Shamdasani Plot No. 463, 2 nd floor Mangal Ashish Bldg, 15 th Road, Khar Road (west) Mumbai-400 052
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. BJJPS-5665-J		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Vipul Joshi-Ld. AR
Revenue by	:	Ms. Usha Gaikwad-Ld. Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	29/07/2021
घोषणा की तारीख / Date of Pronouncement	:	01/09/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2013-14 arises out of the order of learned Commissioner of Income-Tax (Appeals)-58, Mumbai [CIT(A)] dated 29/08/2018 in the matter of assessment framed by Ld. AO u/s 143(3) r.w.s. 147 on 29/02/2016. The ground raised by the revenue read as under: -

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition of Rs.1,95,20,000/- made in the assessment order on account of "On-Money" paid to the Builder for acquiring the

flat, even though the Employee/ Director/Partner have admitted receipt of On-Money in their statements recorded during the search operation on the Builder group?"

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition on account of "On-Money" paid to the builder based on the fact that no large cash withdrawals were seen from the bank accounts of the assessee, ignoring the statements recorded during search & seizure operation, information contained in seized materials including pen drive and certain documents, on the basis of which, it was identified that the assessee had paid on-money of Rs.1,95,20,000 for purchase of flat 1102, and also the fact that the cheque amount and flat number reported by the assessee also matched the cheque amount and flat number as per the information received from the Investigation Wing?"

3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in deleting the addition on account of on-money paid by the assessee to the builder, even though Order dated 20.09.2016 has been passed by Hon'ble Settlement Commission in the group of cases including the receiver (Yojana Infratech) of on-money payment by assessee, in which the quantum and nature of transaction (on-money) has been agreed by the group of companies (including Yojana Infratech)?"

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the provisions of section 132(4A) of the IT Act can only be applied in case of assessments u/s 153A or 153C of the IT Act, and not in assessments made under other sections of the Act?"

5. Whether on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in holding that the provisions of section 132(4A) of the Act will not apply in case of assessment of income of the assessee without appreciating that clause (ii) of section 132(4A) carries a presumption that the contents of any document found in possession of the person in the course of a search are true, thereby meaning that the transaction of the assessee with the person so searched is also true?

As evident, the revenue is aggrieved by deletion of addition of Rs.195.20 Lacs as made by Ld. AO in assessment order on account of alleged *on-money* paid by the assessee to the Builder for purchasing the flat.

2. Having heard rival submissions, our adjudication to the appeal would be as given in succeeding paragraphs.

3.1 The material facts are that the assessee being non-resident was subjected to reassessment proceedings pursuant to receipt of certain information that the assessee paid *on-money* of Rs.195.20 Lacs to an entity namely M/s Yojana Infratech to purchase Flat No.1102 with two car parking facility in Nutan Yojana CHS. The said allegation were based on the fact that during search action on builder group, a pen-drive and

certain documents were seized. The pen-drive contained evidence of payment of *on-money* by buyers / prospective buyers to the developers in respect of the properties bought by them in different projects of the group. The assessee's name also figured in the list. The fact of receipt of *on-money* was admitted by the employees as well as directors / partners of the group during search operations u/s 132.

3.2 However, when confronted, the assessee denied having paid any *on-money* to the builder and submitted that all the payment for purchase of flats was through banks. The details of the payment were also submitted to Ld. AO. However, going by the information contained in the pen-drive and admissions made during search operations, Ld. AO added the amount of Rs.195.20 Lacs to the income of the assessee.

4. The assessee assailed the action of Ld.AO, inter-alia, by submitting that all the payments were made through banking channels only. The Ld. CIT(A), after due consideration of material facts, observed that the presumption of Sec.132(4A) would apply to searched person and not to a third person. To make addition on this basis, additional material evidencing unaccounted investment / payment would be required which could be direct or circumstantial. A third-party entry which is not corroborated by a single piece of supporting evidence linking the assessee, could not form the basis of addition of unaccounted income under regular assessment on a person not searched. The manner of discharging burden of proof in case of assessee and the searched person would be different. An independent inquiry by Ld. AO would be necessary to support the additions. However, there was no finding regarding flow of cash. The assessee, being non-resident of Spain, could not bring such funds in cash in India from Spain other than through

banking channel. Therefore, the additions were to be deleted. Aggrieved, the revenue is in further appeal before us.

5. Upon perusal of assessment order, it is quite evident that except for entry in the pen-drive, there is nothing in the kitty of Ld. AO to conclude that the assessee paid *on-money* to the builder. The additions were made purely on the basis of third-party entry. Except for allegation, there is nothing on record which would indicate that the assessee has paid cash to the builder. It is pertinent to note that the assessee was non-resident and residing in Spain. The assessee did not have any source of Income in India which is evident from the fact that it filed *Nil* return of income. It was not possible to bring such amount of cash from Spain to India otherwise than through banking channels. The Ld. CIT(A) has clinched the issue in right perspective. Finding no reason to interfere in the same, we dismiss the appeal.

6. The appeal stands dismissed.

Order pronounced on 1st September, 2021

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01/09/2021
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.