

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.2966/M/2019  
Assessment Year: 2012-13**

M/s. Sai Ashray Developers Pvt. Ltd., A/201, Rajpipla, Opp. Standard Chartered Bank, Santacruz (W), Mumbai - 400 054 <b>PAN: AAQCS4670P</b>	Vs.	DCIT CC-6(2), Room No.1903, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Anuj Kisnadwala, A.R.  
Revenue by : Ms. Smita Verma, D.R.

Date of Hearing : 28.06.2021  
Date of Pronouncement : 05.07.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 12.02.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The issue raised in ground No.1 is against the confirmation of addition of Rs.7,25,000/- by Ld. CIT(A) being 25% of the on money received as against the addition of Rs.29,00,000/- made by the AO. The assessee also challenged the order of Ld. CIT(A) on the issue of upholding the order of AO whereby the Ld. CIT(A) has affirmed the order of the AO that this on money is to be taxed in the year of receipt and not as per the method of

accounting followed by the assessee. Ground No.2 & 3 are in support of ground No.1.

3. The facts in brief are that a search action under 132 of the Act was carried out on the Ahuja Group of cases on 25.06.2015. The assessee being a group company was also centralized in the central circle No.6(2), Mumbai. A notice under section 153C was issued to the assessee after recording satisfaction and duly served upon the assessee which was complied with by the assessee by filing return of income declaring nil income. During the course of search operation on Ahuja Group incriminating material was found containing loose papers and also digital papers in the form of pen drive relating to tax evasion. It was found that parallel books of accounts of were maintained with the driver which were also found and seized during the course of search. Statements were also recorded under section 132 of the Act. On the basis of these records it was found that assessee was receiving on money on the flats sold and addition on account of on money was made to the tune of Rs.29,00,000/- in A.Y. 2012-13, Rs.33,10,34,600/- in A.Y. 2013-14 and Rs.25,91,94,000/- in A.Y. 2015-16. In the current year the AO added Rs.29,00,000/- to the income of the assessee under section 68 by framing assessment under section 143(3) read with section 153C of the Act dated 19.12.2017. The similar addition was also made in the other assessment years as stated hereinabove. The Ld. A.R., at the outset, submitted that the issue is squarely covered by the decision of the co-ordinate bench of the Tribunal in assessee's own case in ITA No.2967/M/2019 A.Y. 2013-14 & ors. The Ld. A.R. submitted that similar additions were made in A.Y. 2013-14 & 2015-16 by

the AO which were sustained by the Ld. CIT(A) and the co-ordinate bench of the Tribunal has set aside the order of Ld. CIT(A) by directing the AO to assess this income @ 12% of the on money and that too as per system of accounting followed by the assessee. The Ld. A.R., therefore, prayed that the current year may also be decided on the same lines.

4. The Ld. D.R., on the other hand, fairly conceded that similar issue has been decided in assessee's own case in the above appeals for A.Y. 2013-14 & 2015-16 and however relied strongly on the grounds of appeal.

5. We have heard the rival submissions of both the parties and perused the material on record. We find that the identical issues have been decided by the co-ordinate bench of the Tribunal in A.Y. 2013-14 & 2015-16 which were part of the same search and similar addition on account of on money made in those years, the co-ordinate bench of the Tribunal directed the AO to apply 12% on money and assess the income as per the system of accounting followed by the assessee. The operative part is reproduced as under:

"13. Considered the rival submissions and material on record. We noted that in these appeals the issue of on money received by the assessee is proved beyond doubt from the records found during search proceedings and subsequent acceptance by the key personal of the Ahuja group. The issue before us is only consideration of the above said on money to be taxed under section 68 of the Act or Based on the findings of the learned CIT(A) that receipt of on money has to be taxed only on net income and estimated net income @25% of the gross on money received. We notice from the submissions of the learned Counsel for the assessee that the above said issues are already considered by the Co-ordinate Bench in Tulip Land And Developers (supra) and Bhalchandra Trading P. Ltd. (supra) and decided the issue in favour of the assessee in the appeal filed by the assessee and dismissed the issues raised by the Revenue. For the sake of clarity, it is reproduced below:

"Bhalchandra Trading Pvt. Ltd. v/s DCIT  
ITA no.2977-2978/Mum./2019

Order dated 25.05.2021

“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 onmoney 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:-

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 onmoney 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.

14. With regard to grounds no.4 and 5, raised by the assessee in its appeal in assessment year 2015–16, this issue also considered by the Co–ordinate Bench in Bhalchandra Trading Pvt. Ltd. (supra) in favour of the assessee. Accordingly, the grounds raised by the assessee in assessment year 2013–14, 2015–16 and 2016–17 are allowed in favour of the assessee. Therefore, the appeals filed by the assessee are allowed.”

6. Since the issue in the current year is identical to the above case, following the decision of the co-ordinate bench of the Tribunal in the case of assessee’s own case, we allow the appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 05.07.2021.**

**Sd/-  
(Saktijit Dey)  
JUDICIAL MEMBER**

**Sd/-  
(Rajesh Kumar)  
ACCOUNTANT MEMBER**

Mumbai, Dated: 05.07.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.