

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri SHAMIM YAHYA, ACCOUNTANT MEMBER

I.T.A. No.5158/Mum/2019 (Assessment Year 2012-13)

Dilavar S Lakhani C/o Raman S. Shah & Associates A-102, InderDarshan CHSL Next to Jain Temple, Jambli Gully, Borivali(W) Mumbai-400 092 PAN : ABOPL8935G (Appellant)	Vs.	ITO, Ward-1 Palghar Circle, Palghar, Bidco Road Palghar-401 504 (Respondent)
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Assessee by	None
Department by	Ms. Smita Verma-DR
Date of Hearing	12.10.2021
Date of Pronouncement	08 .11. 2021

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, dated 13.05.2019 and pertains to assessment year 2012-13.

2. Grounds of appeal read as under:-

Ground No. 1:-

Reopening of Assessment:-

- a. The learned CIT (A) - 3 erred in considering that Assessing Officer erred in reopening the Appellant's Assessment.
- b. He erred in reopening the assessment on the grounds that:-
 - i. Based on information received from Dy. Director of Income Tax (Inv) the learned Assessing officer has reopened the Assessment u/s 143(3) r.w.s.147 of the I.T Act 1961.
 - ii. He erred in reopening assessment without any independent application of mind.

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Ground No. 2:-

The learned CIT (A) - 3 erred in considering Assessing officer erred in making addition of Rs 2,00,000/- without having conclusive evidence about unexplained Investment for which such addition is made & without stating the Section under which Addition is made under Income Tax Act 1961.

Ground No. 3 :-

Opportunity of Cross Examination was not granted to Assessee and CIT (Appeal) erred in considering the fact that AO had made addition on Lose paper found in Ameya Builder Premises without verifying the authenticity of that paper.

3. Brief facts of the case are that the AO has made addition of Rs. 2,00,000/- by noting that the appellant has paid “On-Money to M/s. Ameya Builders & Property Developers for purchase of shop No.12, at Sai Sugam and the payment of On-Money is reflected in the seized documents, Party Number-A-29, Bundle-2, Page 86 and 87 and further supported by the recorded statements u/s. 132(4) and 131 of the Act of the Directors of M/s. Ameya Builder and Property Developers.

4. The document seized was a paper maintained by the builder and not by the assessee. Upon assessee’s appeal Ld.CIT(A) concluded as under:-

“Therefore, the “On-Money” payment has to be xamined in the light of prevailing ground realities and it is a known fact that, in real estate transaction, the component of “On-Money” cannot be ruled out and in this case, relevant documentary were seized and sme was admitted by the Directors of the Group Companies and the aforesaid companies, who had received “On-Money” has offered to tax and the assessment was completed. In view of the above stated facts, the appeal of the appellant is rejected and the addition of Rs. 2,00,000/- is confirmed.”

5. Against the above order assessee is in appeal before us.

6. I have heard the Ld. DR and perused the record. I note that the on money payment added in the hand of the assessee is not based upon any incriminating material found from the assessee or his premises. It is also not the case that any material in assessee or its staff handwriting has been found. It is also not the case that

revenue has gotten the value of said premises independently valued to support the case of value more than that reflected in books. Assessee's plea of cross-examination has also been rejected. It is settled law that in allegation of on many payment , revenue is required to prove the case with convincing material. This proposition is supported by Hon'ble Supreme Court in the case of K. P. Varghese v. ITO [1981] **131 ITR 597** and Kalyansundaram in (2007) 294 ITR 49 (SC). Here revenue has failed to discharge the onus.

7. In the present case, in the background of aforesaid discussion and precedent, the addition is not sustainable. Hence, I set aside the order of authorities below and decide the issue in favour of the assessee.

8. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 08 .11 .2021.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 08 /11/2021
Thirumalesh, Sr.PS

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai