

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 7445/Mum/2016 (Assessment Year 2010-11)

Redefine Corporate Services P.Ltd. (Formerly known as Redefine Properties P.Ltd.) 701, B Wing, Godrej Colliseum Behind Everard Nagar, Off Eastern Express Highway, Mumbai-400022  PAN : AAECR0183Q (Appellant)	Vs.	DCIT,CC-2(4) Aaykar Bhawan M.K.Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Paresh Shaparia
Department by	Shri Manoj Kumar Singh
Date of Hearing	23.08.2021
Date of Pronouncement	27.10.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Assessee is directed against the order of learned CIT(A)-52 dated 13.10.2016 and pertains to Assessment Year 2010-11.

2. The grounds of appeal read as under :

**REOPENING U/S 147 IS BAD IN LAW :-**

1. The Learned CIT(A) erred in confirming the re-opening of the case u/s 147 of the IT Act, 1961 inspite of the fact there is no escapement of income or failure on the part of the appellant to disclose fully and truly all material facts.
2. The Learned CIT(A) ought not to have confirmed the re-opening of the case u/s 147 of the IT Act, 1961.
3. The reopening u/s 147 is bad in law and the order is requires to be quashed.

**CONFIRMATION OF ADDITION OF Rs. 2,98,90,000/- ON ACCOUNT OF ON-MONEY AS UNEXPLAINED INVESTMENT:**

1. The Learned CIT(A) erred in confirming the addition of Rs. 2,98,90,000/- on account of on-money as unexplained investment.

2. The Learned CIT(A) ought not to have made addition of Rs. 2,98,90,000/- on account of on-money as unexplained investment.
3. At the outset, Ld. Counsel of assessee submitted that he shall not be pressing ground No.1 to 3 relating to reopening. Hence, these grounds are dismissed as not pressed.
4. The brief facts of the case are that the appellant company filed its Return of Income for the year under consideration on 28/09/2010 declaring income at Rs. Nil, after adjustment of brought forward losses of Rs. 5,97,59,895/-. However, Book Profit u/s. 115JB was shown at Rs. 6,18,14,774/-. In the course of assessment the Assessing Officer noted that it is gathered that a search and seizure operation u/s. 132(1) of the I.T. Act was carried out in case of SIES (South India Education Society) and its management council members on 11/05/2010. Alongwith the search action, the premises of the appellant company were covered under survey u/s. 133A. During the course of survey, some documents/papers were found indicating sale of property by M/s. Silver Developers to the appellant company for a sum of Rs. 11.48 crs. As against this, the sale agreement was done only at Rs. 8,24,54,600/-. When this fact was confronted to Shri Jagshi Jethabai Chedda, proprietor of M/s. Silver Developers, in a statement recorded u/s. 131 on 17/06/2010, he had accepted that he had sold the premises to M/s. Redefine Properties P. Ltd., the assessee company and had taken approximately Rs. 2 crs. in cash from the assessee company over and above the registered value. Thereafter, a statement on oath of Shri V. Shankar, Director of the assessee company, was recorded on oath on 11/05/2010 where in response to question no. 16 he confirmed the above purchase transaction. Hence, the Assessing Officer opined that a sum of Rs. 2,98,90,000/- was paid by the assessee company to M/s. Silver Developers in lieu of purchase of the premises, sources of which were not explained. The AO, accordingly, invoked the provisions of Sec. 147 and issued a notice u/s. 148 on 12/02/2014 to tax the income of Rs. 2,98,90,000/-, which had escaped assessment. This was done after recording his reasons. A copy of the reasons

recorded for issue of notice u/s. 148 was also issued to the assessee vide letter dated 21/07/2014. Thereafter, the assessee filed objections vide letter dated 22/12/2014, which was disposed of by the AO vide a letter dated 26/12/2014, as per the guidelines laid down by Hon'ble Supreme Court in case of GKN Drive Shaft (I) Ltd. (2002) 125 Taxman 963. Consequently, the assessment was completed by the AO by adding a sum of Rs. 2,98,90,000/-. However, in the computation of income on the last page, the AO had noted a figure of Rs. 2,99,90,000/-, which appears to be a typographical mistake.

5. Upon assessee's appeal Ld.CIT(A) rejected the issue raised about challenge to reopening. He also confirmed the AO's order on merits as under:-

"I have considered the facts of the case, submissions and contentions of the assessee as also the order of the AO. It is relevant to mention over here that during the course of search and seizure action in case of SIES (Sought India Education Society) and survey in case of assessee company as on 11/05/2010, some incriminating documents were found to the effect that the assessee had purchased property at Godrej Colliseum for a sum of Rs, 11.48 crs., which was registered only for a sum of Rs. 8.24 crs. and on-money of Rs. 2,98,90,000/- was allegedly paid. The relevant paper is Page No. 9 of seized Annexure A-14 found and seized during the search/survey. In this regard, statement of Shri Jagshi J. Chheda, Prop. Of M/s. Silver Developers, was recorded on oath on 11/05/2010. The relevant portion of the statement is reproduced as under:-

*"3. What is your connection with the Redefine Properties P. Ltd.*

*Ans. I have sold 7<sup>th</sup> floor premises area 8156 sq ft. (saleable builtup area) to Redefine Properties P. Ltd. on outright basis at 7<sup>th</sup> Floor, B-Wing, Godrej Colliseum Behind Everard Nagar, Sion Chuna Bhatti, Mumbai, in F. Y. 2009.*

*4. Please give details of Transaction done between you and Redefine Properties P. Ltd.*

*Ans. I shall give you the copy of registered documents over and above I have taken approx. Two crores cash (2 cr.) from Redefine Properties P. Ltd. against the sale of premises at Godrej Colliseum, 7<sup>th</sup> Fir., B Wing, Godrej Colliseum Behind Everard Nagar, Sion Chuna Bhatti, Mumbai. I shall give you the copy of registered documents with in week.*

From the above statement of the proprietor of M/s. Silver Developers, it is clear that he received over Rs. 2 crs. in cash from the assessee company in lieu of sale of his

premises to the assessee during the year. This fact was also confronted to Shri V. Shankar, Director of the assessee company on 12/05/2010 wherein he confirmed above payment of Rs. 3 cr. in cash was demanded in lieu of sale of the property by M/s. Silver Developers in response to Q.No. 16. The relevant portion of his statement is reproduced as under:-

*Q. 16. Please confirm the transaction done between Silver Developers and Redefine Properties P. Ltd.*

*Ans. Unit in the 7<sup>th</sup> Fir., admeasuring 8150 sq.ft. was purchased from Silver Developers at a cost which is fully paid by cheque and reflected in my bank records. It is true that at the time of negotiations, they had demanded Rs. 3 crs. in cash and the balance in cheque. This property was not sold for a very long time. There are several units in this building which are not sold and this position continues even today".*

When specific query was raised in Q.No, 17 to Shri V. Shankar and the statement of Shri Jagshi J. Chheda was confronted to him, he did not own-up the transaction and was evasive in his reply. However, much Credence could not be given to his statement because nobody would own-up of paying cash of Rs. 2.98 crs. on purchase of property. However, the papers seized during the course of such survey clearly indicate the value of total transaction at Rs 11,47,94,000/- and agreement amount at Rs. 8,49,04,000/- and balance amount shown at Rs. 2,98,90,000/- which has been further rounded up to Rs. 2,99,90,000/-. The relevant details as appearing in the seized paper are reproduced as under:-

8156x 11500	<b>9,37,94,000</b>
Parking	<b>90,00,000</b>
Furnishing	<u>1,25,00,000</u>
	<b>11,52,94,000</b>
Less: Commission	<u>5,00,000</u>
	<u>11,47,94,000</u>
8156x9000	7,34,04,000
Less: Commission	<u>5,00,000</u>
	7,29,04,000
Parking	30,00,000
Furnishing	<u>90,00,000</u>
	<u>8,49,04,000</u>
	<u>2,98,90,000</u>
	2,99,00,000

The contents of this paper very clearly indicate balance of Rs. 2,98,90,000/-. It is an open secret that in real estate and property transactions, huge unaccounted money exchanges hands and therefore, the payment of Rs. 2.98 crs. in cash is only a pointer

in that direction. In any case, the seller of the property and recipient of the on-money has already confirmed this transaction and receipt of money in cash. Not only this, he has also offered this on-money received in cash to tax in his return of income. Therefore, once the seller has confirmed receipt of on-money, the buyer couldn't deny. In any case, there is specific evidence against the assessee in the seized record as reproduced above, in this regard.

In view of the above discussion, I have no doubts that on-money of Rs. 2,98,90,000/- exchanged hands on acquisition of property, sources of which are unexplained and therefore, there is no reason or occasion to interfere with the decision of the AO in adding this amount in the hands of the assessee as unexplained investment. At the same time, the assessee company has failed to furnish any credible evidence in support of its claim that this amount was not paid by him. In fact, it is gathered that Shri V. Shankar, entire SIES Group which includes the assessee company was engaged in huge scam of bogus donations, which was unearthed on account of search and seizure action on the premises of SIES simultaneously and therefore, it is not the case that the affairs of the assessee group were completely above board. In fact, the group, as such, was found to be involved in tax evasion.

In view of the above facts and discussion, the addition of Rs. 2,98,90,000/- made by the AO is confirmed. Thus, Ground 2 taken up by the assessee is rejected.”

6. Against this order, assessee is in appeal before us.
7. We have heard both the parties and perused the record. Ld. Counsel of assessee submitted his submissions on the issue of addition as under:-
  - “a) For registered purchase agreement dated 30.10.2009 the consideration paid is of Rs. 8.92 cr against stamp duty value of Rs.2.91 cr. which is over 3 times the ready reckoner market value. No additional consideration out of books could have been paid nor could have been paid.
  - b) Location of Godrej Colesium near Chunnabhatti /Wadala area having large truck trailers /container traffic movement not suitable for Commercial office premises. No restaurants within close vicinity. No railway station closed by.
  - c) There were in all 64 premises in Godrej Colessium of which 16 premises remained to be sold or even occupied for lease, 4 premises gifted to family members for giving on lease.
  - d) The Silver Developers builder sold on 26.11.2009 premises no 901A/901B with area of 16,312 sq ft (double that of appellant) for Rs. 10.50.00.000 to Mr Manjit Singh Bhatia (Refer Assessment order page no 6)

- i) Premises sold at a lower rate than that the rate at which sold to appellant
  - ii) Premises on higher floor which command floor rise.
  - iii) Subsequently premises no 901B having area of 8156 sq ft sold on 26.11.2012 (after more than 3 years) at Rs. 10.50,00.000/-.
- e) Jagshi Jethabhai Chheda - Silver Developers statement u/s 131 taken on 11.5.2010 by same DDIT (Inv Wing) wherein in reply to Q4 he has stated to have received Rs. 2.0 crores and offered the same for taxation which is relied upon by AO for addition.
- i) The statement is of only 5 questions raised by DDIT of which 4 are general in nature.
  - ii) The statement does not refer to any seized /impounded material found from appellant and its director wherein the on-money as alleged is Rs.2.08,90,000 and addition too made on said paper basis.
  - iii) Silver Developer being a builder and having various projects in Mumbai under what circumstances and on what basis have made an offer of receipt of on-money from appellant is mysterious and unbelievable. It could be purely to overcome its short falls and not to have roving investigation in its case. In its assessment no other on-money addition have been made in relation to any other property in spite of the fact the property sold on 26.11.2009 premises no 901 A/901 B with area of 16,312 sq ft to Mr Manjil Singh Bhatia is at much lower rate than that of appellant.
  - iv) The statement is very cryptic, has various ambiguities, no reference to any seized material/impounded material . amount stated to have been received is Rs.2.00 cr which do not match with any impounded / seized material nor with addition made by AO.

Summarization:

1. Impounded / seized pages were mere proposals.
2. The consideration paid by appellant is almost 3 times the Stamp Duty Ready Recokner rate.
3. Subsequent agreement at lower rates than that of appellant.
4. Office premises were not saleable lying vacant.
5. Statement of Mr Jagshi Chedda is not reliable and no cognizance of the same can be taken.
6. Contradiction - Impounded/seized material refer to Rs. 2.99 cr. and statement of Mr Jagshi Chedda refers to Rs.2.00 cr receipt.
7. No independent evidence
8. Without prejudice addition cannot exceed Rs.2.00 cr.

Proposition & Submission 2:

Appellant has no source of any cash so as to pay any on money:

a) The appellants Balance Sheet (Source and application of funds):

Source:

Share Capital	Rs. 10.00.000
Reserves & Surplus	Rs. 34,44,941
Unsecured loans	Rs. 21.10,01.000

Application:

Fixed Asset (Office Premises)	Rs. 8,68.57.893
Stock In trade	Rs. 12,88.02,209
BankFD	Rs. 16.22.609
Income (PB Pg 6)	
Dividend	Rs. 39.13.313
Bank FD Income	Rs. 50,932

From above it can be observed that there is no sale during the year. All the stock of shares is unsold in current as well as previous year. The Office premises and stock in trade is all from unsecured loans i.e from Shareholders and intercorporate loan. The appellant has no source for generating and cash for making on-money payment.

Legal Proposition- Reliance on 5 Case laws (Legal PB pages 1 to 52)

- 1) Pr CIT vs Nishant Construction P L taxmann.com 180 (SC) (PB Pg 2 to 4)  
Except for confessional statement and loose papers without independent evidence no addition on account of on-money.
- 2) CIT vs P.V Kalyanasundasram 164 Taxman 78 (SC) (PB Pg 5 to 7)  
The fact as to actual price of property, contradictory statement, no reliance can be placed on loose papers.
- 3) CIT vs Lavanya Land (P.) Ltd. 83 taxmann.com 161 (Bom) (PB Pg 41 to 52) It has been held that where the addition u/s 69C was not sustained as there was no material in the seized records to conclusively show that the amounts were actually transferred from one party to another and there should be source for the same.
- 4) Harsha land Pvt Limited vs ITO ITA No. 5666 / Mum /2015 (PB pg 35 to 40). it has been held that the additions could not be made merely on the basis of entries in loose papers without bringing on record any cogent material to substantiate the same there being no source.
- 5) Riveria Properties P L vs ITO ITA No 250/Mum/2015 (PB pg 8 to 34)  
AO to conduct independent enquiry about value of property and ascertain whether there is any under valuation.

Based on above facts, propositions and arguments made and reliance placed on judicial pronouncements, the addition of Rs. 2,98,90,000/- on account of on-money as unexplained investment requires to be deleted.”

8. We have heard both the parties and perused the records. As per the facts narrated above the addition is for on-money transaction of Rs. 2.98 crores. It has not been disputed by the Revenue that the property was registered at almost three times the stamp value. Further the basis of addition is a loose paper jotting. No case has been made out that it is in the handwriting of any authorised person of the assessee. The assessee's plea is that it is merely a proposal and cannot be an ipso facto proof of on-money transaction. Another reasoning for the addition is the statement of the seller that he has received Rs. 2 crores on-money. This is mere statement nor backed by any evidence. Even the Assessing Officer has not given full credence to it, as the same is in contradiction of the loose sheet from where the amount of on-money added by the Assessing Officer is Rs. 2.98 crores.

9. In such circumstances addition of on-money based on loose sheet entry and conflicting statement of seller is not sustainable. In identical circumstances addition for on-money transaction was deleted which was confirmed by Hon'ble Supreme Court in the case of P.V. Kalyansundaram (supra). In the said case while affirming the deletion Hon'ble Madras High Court (when the matter was before Hon'ble High Court) had observed that non-reference of the property to DVO by the revenue is also fatal. As held by Hon'ble Supreme Court in the case of K.P. Verghese Vs. ITO (131 ITR 97), in the case of on-money transaction the burden of proving actual consideration is that of Revenue. Hence addition for undisclosed on-money transaction cannot be sustained without independent inquiry and cogent material brought on record to show that the value of the property is actually transacted at a higher level than that disclosed by the assessee. Thus in the present case we find that on-money addition, based on loose sheet entry, with contradictory statement of seller, without getting the property valued and when the property has been registered at almost three times the stamp valuer action, is not at all sustainable. Other case laws referred by learned counsel of the assessee as noted above expounded the same

proposition. Hence, in the background of the aforesaid discussion and precedents, we set aside the orders of the authorities below and decide the issue in favour of the assessee

10. In the result, the assessee's appeal stands partly allowed.

Pronounced in the open court on 27.10.2021.

Sd/-  
(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 27/10/2021

*Thirumalesh, Sr.PS/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