

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

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

**ITA No. 6377/MUM/2019
Assessment Year: 2007-08**

**ITA No. 6378/MUM/2019
Assessment Year: 2008-09**

**ITA No. 6379/MUM/2019
Assessment Year: 2011-12**

**ITA No. 6380/MUM/2019
Assessment Year: 2012-13**

**ITA No. 6381/MUM/2019
Assessment Year: 2013-14**

**ITA No. 6382/MUM/2019
Assessment Year: 2014-15**

**ITA No. 6082/MUM/2019
Assessment Year: 2009-10**

&

**ITA No. 6083/MUM/2019
Assessment Year: 2010-11**

Manav Builders P. Limited, 2 nd Floor, 12/14, Govardhan Building II, Parekh Street, Prathana Samaj, Mumbai - 400004 PAN: AADCM8664Q	Vs.	DCIT, Central Circle – 47, Room No. 658/676, Aaykar Bhawan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Assessee by : Ms. Hema Sharma (AR)

Revenue by : Mrs. Leena Srivastava/ Shri Bharat
Andhle (DR)

Date of Hearing : 14/09/2021
Date of Pronouncement: 24/11/2021

ORDER

PER SAKTIJIT DEY, JM

Captioned appeals by the same assessee arise out of two separate orders of learned Commissioner of Income Tax (Appeals)-47, Mumbai for the assessment years 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.

2. The common dispute arising in all these appeals relates to addition made on account of alleged on money received on sale of flats.

3. Briefly the facts are, the assessee is a resident company and is stated to be engaged in Real Estate Development. A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out on 26.05.2011 in case of M/s Rohan Developers Pvt. Ltd. and other companies and entities promoted by Shri Haresh N Mehta and late Jitendra N. Mehta as well as in the residential premises of the Directors and employees of the entities being part of Rohan Group. In course of search and the seizure operation incriminating material, being page No. 114, Annexure 1-A was found and seized from Flat No. 112- 122, Hira Bhawan, Raja Ram Mohan Roy Road, Prathna Samaj, Mumbai. It is alleged, the said seized document contained entries relating to on-money received in respect of different projects being developed by various group entities. The seized document was confronted to the Directors and employees of the entities and statement under section 132(4) were recorded. It is alleged, in the statement recorded, the person concerned admitted receipt of on money. Based on the seized document and statement recorded, proceedings under section 153A of the Act was initiated in respect of the searched persons. Since, certain project developed by the assessee was also found mentioned in the

seized document, proceedings under section 153C of the Act was initiated against the assessee.

4. In course of assessment proceedings, the assessee completely denied receipt of on money and contended that it has sold the flats at the fair value and no on money was received in cash. It was further submitted, in the statements recorded under section 132(4) of the Act, no specific allegations were made against the assessee. Further, the assessee filed affidavits of Shri Haresh M. Mehta, Director of Rohan Developers Pvt. Ltd., Ms. Chaulla Joshi, Sales and Marketing Executive, Mr. Vijay Jassani Accountant, Mr. Paresh Panchlotiya, Office Assistant, retracting their statements recorded under section 132(4), wherein, they had allegedly accepted receipt of on-money. The Assessing Officer, however, did not accept the contention of the assessee. He observed, the contents of the seized document clearly indicate receipt of on money by various entities in the group. He observed, the retraction of statement after considerable time lapse is only an afterthought. Further, he observed, in case of other group entities, such as, M/s Rohan Developers Pvt. Ltd., Goodwill Properties Pvt. Ltd. and M/s Silver Arch Builders & Promoters Pvt. Ltd. receipt of on-money was also found. Thus, he ultimately concluded that the assessee had received on-money on sale of projects developed by it. Further, while rejecting assessee's contention that the seized document only mentioned one project, AO observed that when the assessee has received on money in respect of one project, it has to be assumed that it is a regular practice of the assessee. Hence, he must have receive on money in respect of all the projects. Accordingly, he estimated on money received by the assessee at

30% on the gross sales and accordingly made additions in different assessment years.

5. Contesting the aforesaid additions, assessee preferred appeals before learned Commissioner (Appeals). After considering submissions of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) observed that the document based on which addition was made in assessee's case is the same document found in search and seizure operation conducted on the Rohan Group and the additions were primarily based on the statement recorded in course of the said search and seizure operation from Haresh M. Mehta, Ms. Chaulla Joshi, Mr. Vijay Jassani. Referring to the decision of the Tribunal in case of two other group entities i.e. M/s Goodwill Properties Pvt. Ltd. and M/s Silver Arch Builders and Promoters Pvt. Ltd., learned Commissioner (Appeals) observed that statement of employees recorded in course of search and seizure operation can be used only after they supported by other corroborative evidences. However, he observed, in assessee's case the seized document viz. page No. 114 of Annexure 1-A indicated receipt of on money in respect of the project Siddhesh Jyoti E and F Wings being developed by the assessee. Thus, he observed, addition on account of on money receipt can only be made in respect of these two projects and not on all sales made by the assessee. Thus, modifying the order of the AO, learned Commissioner (Appeals) directed him to add 30% on the gross sales of Shiddhesh Jyoti E and F Wing towards on money receipt.

6. Learned counsel for the assessee submitted, based on a single seized document found in a search conducted in case of some other entity, additions

have been made in case of the assessee on account of on money. She submitted, entries in the seized document relating to assessee's project were properly explained by Ms. Chaulla Joshi, who was employee of the Rohan Group. She submitted, except the two figures of 18,000/- and 5,400/- mentioned against Siddhesh Jyoti E & F wing Project nothing else appears in the seized document. Thus, she submitted simply based on the entries found in the seized document not supported by any other corroborative evidence, no addition could have been made on account of on money receipt. She submitted, even the seized document does not mention receipt of on money. Therefore, addition has been made based on conjecture and surmises. She submitted, in course of assessment proceedings, assessee has furnished copies of affidavits of the persons from whom statements were recorded under section 132(4). She submitted, in the affidavits the concerned persons have retracted their statement on on-money. That being the case, in absence of any other evidences indicating receipt of money, no addition can be made simply based on the seized document. Finally, she submitted, in case of other group entities similar addition deleted by the first appellate authority was upheld by the Tribunal. In this context, she relied upon the following decisions:

1. *DCIT vs. M/s Sitara Builders Pvt. Ltd., ITA No. 6303-6304/Mum/2019 dated 31.05.2021.*
2. *DCIT vs. Mindset Estates Pvt. Ltd., ITA No. 5038/Mum/2016 dated 06.12.2019*

7. Learned Departmental Representative strongly relied upon the observations of learned Commissioner (Appeals).

8. We have considered rival submissions and perused the materials on record. As far as the factual aspect of the issue is concerned, undisputedly, based on search and seizure operation carried out in case of Rohan Developers Pvt. Ltd. and other group entities, proceedings under section 153C were initiated against the assessee for assessment years 2007-08 to 2012-13. Whereas, based on very same information received during the search and seizure operation, regular assessments were made under section 143(3) of the Act for assessment years 2013-14 and 2014-15. It is evident, the genesis of the additions made on account of on money received is the seized document being, page No. 114 of Annexure 1. In course of search and seizure proceedings carried in case of Rohan Group of entities, statements were recorded under section 132(4) from Directors of the Companies as well as some of the employees. On a perusal of the seized document, being page No. 114 of Annexure I, a copy of which is at page 9 of the paper book and also reproduced in the impugned order of learned First Appellate Authority, it noticed that entries relating to various housing projects, the description of flats are mentioned and against such entries certain figures and percentage figures are there. It is a fact that one of the project developed by the assessee, viz, Siddhesh Jyoti Wing E and Siddhesh Jyoti Wing E appears in the seized document.

9. It is a matter of record that based on the aforesaid seized document, additions on account of on money receipt were made in respect of various entities, forming part of Rohan Group. In some of the cases, namely, Goodwill Properties Private Limited and Silver Arch Builders and Promoters Pvt. Ltd. the

First Appellate Authority has deleted the additions on account of on money since their name did not appear in the seized document. Even in the two decisions cited before us by the learned Counsel for the assessee, factual position is similar. Learned Commissioner (Appeals) has sustained a part of the addition the addition in case of the present assessee only for the reason that Siddhesh Jyoti E Wing, and F Wing appear in the seized document. However, whether the seized document actually refers to receipt of on money has to be proved through other corroborative evidences.

10. As it appears, to prove the content of seized document, the only other corroborative evidence available with the AO is the statements recorded from the Directors and employees of the Rohan Group. It is relevant to observe, in the statement recorded from Ms. Chaula Joshi, a specific query was raised regarding the figures appearing against Siddhesh Jyoti E & F Wing. In reply, it has been stated that the figures of Rs. 18,000/- represent the quoted price for per square feet carpet area and the figure of Rs. 5,400/- represent rate per sq.ft. of built up area to arrive at the lump sum registered aggregate value. Except these evidences no other concrete evidence is available with the AO to establish on record that on money was actually received by the assessee. Therefore, proper enquiry has to be made with regard to the entries appearing in the name of Siddhesh Jyoti E & F Wing, as mentioned in seized document.

11. In course of hearing, it was brought to the notice of the Bench that based on the same seized document additions on account of on money was also made in case of Rohan Developers Pvt. Ltd. It was also brought to our notice that appeals relating to Rohan Developers Pvt. Ltd. involving identical issue have

already been heard by the Tribunal. In our view, the decision of the co-ordinate Bench in case of Rohan Developers Pvt. Ltd. will have a crucial bearing on the issue involved in the present appeals, since, the additions therein have been made based on the very same seized document. In view of the aforesaid, we are inclined to restore the issue to the AO for fresh adjudication in the light of the decision of the co-ordinate Bench in case of M/s Rohan Developers Pvt. Ltd. (supra) and other materials on record including the orders passed by the Commissioner (Appeals) and Tribunal in respect of other group entities. It is made clear, the AO must confine himself only to the extent of additions sustained by learned Commissioner (Appeals) and nothing more. Needless to mention, the assessee must be provided reasonable opportunity of being heard before deciding the issue. Grounds are allowed for statistical purposes.

12. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open court on 24th November, 2021.

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/11/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**