

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**  
**BEFORE SHRI AMARJIT SINGH, JM AND SHRI AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. No.447/Mum/2021  
(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT-32(1) Room No.702, 7 <sup>th</sup> Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	<b>बनाम/</b> Vs.	Mangesh Tukaram Sawant A-04, Prathmesh Horizon New MHB Colony, Borivali (W), Mumbai-400092.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGPS0518M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Jeetendra Kumar (Sr. AR)	
Assessee by:	Shri Rajiv Khandelwal	

सुनवाई की तारीख / Date of Hearing: 11/01/2022  
घोषणा की तारीख /Date of Pronouncement: 31/01/2022

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 06.02.2020 passed by the Commissioner of Income Tax (Appeals) -44 Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2008-09.

2. The revenue has raised the following grounds: -

*"1. "Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs.4,38,37,691/- u/s.68 of the Income Tax Act, 1961, without appreciating the fact that the legal heir of lender has ststed that amount was paid as advance for buying land development instead of loan."*



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2. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.4,38,37,691/- u/s.68 of the Income Tax Act, 1961, without appreciating the fact that the assessee had not shown the loan amount in balance sheet as unsecured loans.”*

3. *“Whether on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.4,38,37,691/- u/s.68 of the Income Tax Act, 1961, without appreciating the fact that the assessee has neither paid any interest nor principal.”*

4. *“The appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.”*

5. *“The appellant craves leave to amend or to alter any ground or add a new ground ‘which may be necessary.’”*

3. The brief facts of the case are that the assessee filed his return of income on 29.09.2008 declaring a total income to the tune of Rs.3,45,37,790/- for the A.Y.2008-09. The return was processed u/s 143(1) of the Act and thereafter, the case was selected for scrutiny. The assessment u/s 143(3) of the Act was completed on 31.12.2010 by accepting the return of income of Rs.3,45,37,790/-. Thereafter, on verification of the record, it was noticed that the P & L account and balance-sheet were maintained in the name of Mangesh Construction (Prop. Mangesh T. Sawant). It is seen from the assessee’s account that figure of current as well as previous year of Capital A/c. of the assessee was of Rs.78,67,072/- as on 31.03.2007 which was increased to Rs.7,32,67,352/- as on 31.03.2008. As seen from the capital A/c. of the assessee, the increase in capital account of the assessee was mainly on account of current assessment year’s profit of Rs.3,46,18,975/- and capital introduced of Rs.4,38,37,691/-. It was further



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observed that the capital introduced of Rs.4,38,37,691/- was not supported by corresponding changes/reduction in existing assets of the assessee. As no other individual account of the assessee was maintained, the introduction of capital of Rs.4,38,37,691/- was to be taxed. Thereafter, the notice was given and after the reply of the assessee, the AO raised the addition of Rs.4,38,37,691/- u/s 68 of the Act and the total income of the assessee was assessed to the tune of Rs.7,83,75,480/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the said addition, therefore, the revenue has filed the present appeal before us.

### **ISSUE NOS. 1 TO 3**

4. We have heard the arguments advanced by the Ld. Representative of the parties and perused the record. The Ld. Representative of the revenue has argued that the CIT(A) has deleted the addition of Rs.4,38,37,691/- u/s 68 of the Act wrongly and illegally, therefore, the order of the CIT(A) is liable to be set aside in the interest of justice. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record.:-

*“5.4 I have considered the Submissions made by the appellant and also perused the materials available on record. The appellant has requested to delete the impugned addition made u/s 68 of the Act at Rs.4,38,37,691. The appellant's main contentions are that the source of said capital introduction is amount received from Late Shri Harshad P Doshi during the relevant assessment year at Rs.5 Crores. The appellant has also submitted that during the course of remand proceedings, Smt. Madhu Harshad Doshi, spouse of late Shri Harshad Doshi has confirmed said transactions and she*



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*has submitted before the AO that till date an amount of Rs.9,30,00,000 has been paid to the appellant, including Rs.5,00,00,000 in FY 2007-08 as an advance for buying of development rights. The appellant has further submitted that some negotiations are going on with Shri. Karshad 'Doshi/his legal heir' for transfer of Development Rights, however, due to disputes over the property and amount of development, these negotiations have not been finalized till date and hence since has been treated in his books as loan.*

*5.5 In her above referred remand report, after making necessary inquiry/verification with Smt. Madhu Harshad Doshi, spouse of late Shri Harshad Doshi, the Ld. AO has confirmed the receipt of Rs.5 crores during the relevant financial year by the appellant from late Shri Harshad P Doshi. Further, the Ld. AO has not made any adverse comments on the details/submissions made by the appellant and on the information received from Smt. Madhu Harshad Doshi, spouse of late Shri Harshad Doshi and also confirmed that Smt. Madhu Harshad Doshi is assessed with her i.e. Circle-32(2) with PAN: AEMPD0391K. From the facts discussed above, it is evident that the appellant has duly explained the Sources of sum of Rs.5 crores received during the relevant financial year from late Shri Harshad P Doshi. In view of the facts & circumstances of the case and keeping in view of the remand report submitted by the AO. I am of the considered opinion that the Ld. AO was not justified in making addition of Rs.4,38,37,691/- u/s 68 of the Act. Hence, the Ld. AO is directed to delete the impugned addition made at Rs.4,38,37,691/-. Accordingly, the Ground No.1 raised in appeal allowed."*

**5.** On appraisal of the above mentioned finding, we noticed that the source of the said capital introduction has properly been explained. The amount 5 crores was received from late Shri Harshad Doshi during the relevant assessment year. The said transaction was confirmed by Smt.



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Madhu Harshad Doshi spouse of late Shri Harshad Doshi during the remand proceeding. It was also explained that an amount of Rs.9,30,00,000/- was paid to the appellant including 5,00,00,000/- in the F.Y.2007-08 as an advance for buying of development rights but negotiations was going on. However, the transaction was treated as loan in the books of account. The AO nowhere raised any adverse remark to the details submitted by the assessee. Late Shri Harshad Doshi was assessed I Circle -32(2) with PAN AEMPD0391K. The transaction has been explained, therefore, the CIT(A) has allowed the claim of the assessee. We nowhere found any illegality and infirmity of the order passed by CIT(A) in question. We affirm the finding of the CIT(A) on this issue and decide these issues in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 31/01/2022

Sd/-

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2022

Vijay Pal Singh (Sr. P.S.)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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**आदेश की 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**