

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.463/M/2020  
Assessment Year: 2010-11**

ACIT- 13(3)(1), Room No.229/219, 2 <sup>nd</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	Ms. Jayanti K. Punjabi, 6 Bhooshan Apartments, 15 Ramkrishna Mission Marg, Khar (West), Mumbai – 400 052 <b>PAN: AGGPP4222K</b>
(Appellant)		(Respondent)

**CO No.139/M/2021  
(Arising out of ITA No.463/M/2020)  
Assessment Year: 2010-11**

Ms. Jayanti K. Punjabi, 6 Bhooshan Apartments, 15 Ramkrishna Mission Marg, Khar (West), Mumbai – 400 052 <b>PAN: AGGPP4222K</b>	Vs.	DCIT- 13(3)(2) [earlier DCIT -13(3)(1)], Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Paresh Shaparia, A.R.  
Revenue by : Shri Satya Pinisetty, D.R.

Date of Hearing : 30.12.2021  
Date of Pronouncement : 25.02.2022

## ORDER

### Per Kuldip Singh, Judicial Member:

Aforesaid appeal filed by the appellant ACIT- 13(3)(1), Mumbai (hereinafter referred to as 'the Revenue') and cross objections filed by the objector Ms. Jayanti K. Punjabi (hereinafter referred to as 'the assessee') are being disposed of by way of composite order in order to avoid repetition of discussion.

2. The Revenue and the assessee by filing present appeal and cross objections sought to set aside the impugned order dated 24.10.2019 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] on the grounds inter alia that:-

#### ITA No.463/M/2020

*“1. On the facts and circumstances of the case and in law the CIT(A) has erred in deleting the addition of Rs. 2,48,00,000/- without appreciating the fact that the documentary evidence found during the search are sufficient evidence to draw a presumption regarding a transaction found entered in the seized document in terms of section 106 of the Evidence Act.*

*2. On the facts and circumstances of the case and in law the CIT(A) has erred in deleting the addition of Rs. 2,48,00,000/- without appreciating the fact that the Shri Jagdish Ahuja had admitted in his statement that the company has taken 'On Money' on account of sale of flats and such on money received has not been recorded in regular books of accounts of M/s Shree Ahuja Properties P. Ltd.*

**3. On the facts and circumstances of the case and in law the CIT(A) has failed to appreciate the settled position of law that where direct evidences is not available or possible one has to fall back on the circumstantial evidence and apply the test of human probabilities.**

**4. On the facts and circumstances of the case and in law the CIT(A) has failed to consider the provisions of the I.T. Act, 1961 that even under the Act, there is a presumption u/s 292 of the I.T. Act, 1961 that the contents of the books of account and other documents are true and such books of account/documents belongs to such person who is searched u/s 132 of the I.T. Act 1961.**

**5. The appellant prays that the order of the CIT(A)'s on the above ground be set aside and that of the Assessing Officer be restored.**

**6. The appellant craves leave to add, amend or alter all or any of the grounds of appeal which may be necessary.”**

**CO No.139 /M/2021**

**“Reopening u/s 147 is bad in law – as attached – Rs.76,64,384/-”**

3. Briefly stated facts necessary for adjudication of the controversy at hand are : on the basis of search and seizure operation carried out in the case of M/s. Ahuja Group and their associates in which pen drive and other incriminating material were found with the driver of Mr. Jagdish Ahuja, Director of Ahuja Group containing transactions pertaining to on money and cash loans which were not recorded in the regular books of account,

which facts were admitted by Shri Jagdish Ahuja in his statement recorded under section 132(4) of the Act.

4. From the pen drive it was found that one Mrs. Jayanti Kartik Punjabi has entered into unaccounted cash transactions with Ahuja Group as under:

Date	Particulars	V-Type	Debit (Rs.)
29.06.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	48,00,000
02.07.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	30,00,000
03.07.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	80,00,000
22.09.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	20,00,000
01.10.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	30,00,000
15.10.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales – Dunhill	40,00,000
		Total	2,48,00,000

5. Then proceedings under section 147 and 148 of the Act were initiated. The assessee filed reply to the notice, details, clarifications and explanation to the query raised by the AO. The assessee was called upon if he owns flat on 10<sup>th</sup> or 11<sup>th</sup> floor of Dunhill building or any other flat in the said building and also to explain source of funds for purchase of flats/other payments for

flat. The assessee also called upon to explain as to why a sum of Rs.2,48,00,000/- should not be added to her total income. Declining the contentions raised by the assessee, the AO proceeded to hold that the assessee has purchased two flats in Dunhill and paid cash amount of Rs.2,48,00,000/- out of her undisclosed income and made addition thereof to the total income of the assessee and thereby framed the assessment at the total income of Rs.2,67,49,430/- under section 143(3) read with section 147 of the Act.

6. The assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has deleted the addition made by the AO by partly allowing the appeal. Feeling aggrieved, the revenue as well as assessee have come up before the Tribunal by way of filing the present appeal and cross objections respectively.

7. The Ld. A.R. for the cross objector who has challenged the reopening under section 147 of the Act being bad in law contended inter alia; that the Ld. CIT(A) has erred in deciding the legal issue against the assessee; that the AO has reopened the assessment without applying his mind; that the assessment has been reopened on the basis of information received from investigating agencies of the Income Tax Department which does not contain the name of the

assessee but only of her husband namely Mr. Kartik Punjabi; that alleged information received in the form of pen drive data during search on 28.05.2015 alleging cash sales is qua the Dunhill projects for premises on 10<sup>th</sup> floor for Rs.1,58,00,000/-; that reasons recorded for reopening only refer to Mr. Kartik Punjabi, husband of the assessee and not the assessee herself; that neither assessee nor her husband owns any premises on 10<sup>th</sup> floor.

8. However, on the other hand, to repel the argument addressed by the Ld. A.R. for the cross objector, the Ld. D.R. for the Revenue contended that at the reopening stage Department is not to prove everything available on record; that the AO has duly disposed of the objections raised by the assessee against the reopening vide order dated 17.08.2017 available at page 41 of the cross objections and relied upon the order passed by the Ld. CIT(A) dismissing the legal ground raised by the assessee.

9. Before proceeding further, for ready perusal “reasons recorded” by the AO for the purpose of reopening of the assessment are extracted as under:

2  
**REASONS FOR REOPENING IN THE CASE OF  
SHRI JAYANTI KARTIK PUNJABI, PAN: AGGPP4222K  
A.Y. 2010-11**

In this case the assessee had filed the return of Income for A.Y. 2010-11 on 31.07.2010, declaring total income of Rs.19,49,430/- and same was processed u/s 143(1) of the IT Act on 12.07.2011.

In this connection, information has been received from the DCIT CENTRAL CIRCLE - G(2), Mumbai vide letter dated 27.03.2017 that during the course of search action u/s 132 of the IT Act in the case of M/s. Ahuja Group and their associate concerns, one pen drive was found with the Driver of Shri Jagdish Ahuja, director of Ahuja Group, which contains details of all transactions pertaining to On Money and cash loans which were not recorded in the regular books of account. The said facts were also admitted by Shri Jagdish Ahuja in his statement recorded u/s 132(4).

On perusal of the said data in pendrive, it is found that the assessee Shri Jayanti Kartik Punjabi has entered into unaccounted cash transactions with Ahuja Group. The details of the same are tabulated as under:

10th floor  
11th

Date	Particulars	V-Type	Debit (Rs.)
29.06.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	48,00,000
02.07.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	30,00,000
03.07.2009	Kartik Punjabi 10 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	80,00,000
22.09.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	20,00,000
01.10.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	30,00,000
15.10.2009	Kartik Punjabi 11 <sup>th</sup> Floor Dunhill	Cash Sales - Dunhill	40,00,000
		Total	2,48,00,000

Thus, it is clear that Shri Jayanti Kartik Punjabi has made unexplained investments. In view of the above facts, I have reason to believe that the income of at least Rs.2,48,00,000/-, chargeable to tax has escaped assessment for A.Y.2010-11 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year and it is fit case for issuing notice u/s.148 of the Income Tax Act, 1961.

Dated :29.03.2017

(PRAVEEN SHERKHAR)  
ASST. COMMISSIONER OF INCOME TAX-13(3)(1)  
Mumbai

10. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

11. Undisputedly, the AO has reopened the assessment on the basis of information received from DCIT, Central Circle, on the basis of pen drive data found and seized during the search and seizure operation carried out in the Ahuja Group of cases and on the basis of statement of Mr. Jagdish Ahuja recorded under section 132(4) of the Act. It is also not in dispute that the name of the assessee is not mentioned in the seized data rather name of her husband Mr. Kartik Punjabi is referred. It is also not in dispute that neither assessee nor her husband Mr. Kartik Punjabi own any flat on 10<sup>th</sup> floor. It is also not in dispute that assessee owned flat No.1102 and her husband Mr. Kartik Punjabi owned flat No.1101 in the Dunhill projects. It is also not in dispute that Revenue department has not initiated any reopening under section 147 & 148 of the Act against Mr. Kartik Punjabi, the husband of the assessee.

12. In the backdrop of the aforesaid undisputed facts, when we examine the reasons recorded to initiate the reopening in case of the assessee, whose name was otherwise not there in the seized pen drive, the AO has not brought on record any material, if he himself has conducted any investigation rather proceeded to initiate the reopening on the basis of information received from DCIT, Central Circle on 27.03.2017 and recorded the reasons on 29.03.2017 i.e. within two days.

12A. So it has come on record that the AO has initiated the reopening on the basis of borrowed satisfaction but has not applied his own mind. This fact is also apparent from the “reasons recorded” wherein part information is qua cash sales of property on 10<sup>th</sup> floor of Dunhill whereas no such property is undisputedly owned by assessee nor her husband. This fact shows that there was no application of mind on the part of the AO.

12B. Furthermore, the Revenue department has not brought on record any transcript of the pen drive data seized from M/s. Ahuja Group allegedly containing data relied upon to initiate the reopening in this case. As of now data contains in the pen drive is a mystery as it has not been shown to any of the quasi judicial authorities. So merely on the basis of information contained in the pen drive data which has not seen the light of the day rather its

detail has been tabulated in the reasons recorded which is also partly incorrect, reopening cannot be considered as valid in law.

13. During the recording of statement of Mr. Jagdish Ahuja under section 132(4) of the Act numerous questions are put and in none of the answer he has implicated assessee if she was having any transactions qua the alleged data contained in the pen drive.

13A. Hon'ble High Court of Bombay in the case of Akshar Builders & Developers vs. ACIT (2019) 103 taxmann.com 162 (Bombay) held that, "when assessee's return of income was accepted by the Revenue department without any scrutiny, reopening can be initiated only when the AO has reasons to believe that income chargeable to tax has escaped assessment. At the same time, the AO cannot proceed mechanically and also on the basis of erroneous information that may have been supplied to him".

13B. So in this case also the AO merely on the basis of borrowed information, without applying his mind, mechanically initiated the reopening process on the basis of partly incorrect information which is not sustainable in the eyes of law. Moreover, alleged pen drive data relied upon by the Revenue only contains the alleged transactions entered into by Mr. Kartik Punjabi, husband of the

assessee but not the assessee herself. So all these facts go to prove that the reopening has been initiated for the sake of initiation only.

14. Identical issue has also been decided by the Hon'ble High Court of Bombay in favour of the assessee in the case of Pr. CIT vs. Shodiman Investments (P.) Ltd. (2018) 93 taxmann.com 153 (Bombay) by returning following findings:

*“13. In this case, the reasons as made available to the Respondent- Assessee as produced before the Tribunal merely indicates information received from the DIT (Investigation) about a particular entity, entering into suspicious transactions. However, that material is not further linked by any reasons to come to the conclusion that the Respondent-Assessee has indulged in any activity which could give rise to reasons to believe on the part of the Assessing Officer that income chargeable to tax has escaped Assessment. It is for this reasons that the recorded reasons even does not indicate the amount which according to the Assessing Officer, has escaped Assessment. This is an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax has escaped assessment.*

*14. Further, the reasons clearly shows that the Assessing Officer has not applied his mind to the information received by him from the DDIT (Inv.). The Assessing Officer has merely issued a re-opening notice on the basis of intimation regarding re-opening notice from the DDIT (Inv.) This is clearly in breach of the settled position in law that re- opening notice has to be issued by the Assessing Office on his own satisfaction and not on borrowed satisfaction.”*

15. The Hon'ble High Court held that “when the AO has merely issued reassessment notice on the basis of intimation regarding reopening notice from DDIT, Investigation there is clearly a breach

of settled principle of law that reopening notice has to be issued by the AO on his own satisfaction and not on the borrowed satisfaction, hence not sustainable in the eyes of law.” Moreover, when name of the assessee has nowhere figured in the pen drive data rather name of her husband was there, it is beyond comprehension as to how the AO has recorded his satisfaction recording qua the assessee for making unexplained investment in the Dunhill project of M/s. Ahuja Group and not proceeded against her husband. This fact is quite apparent from the table itself given in the reasons recorded. Even during assessment proceedings this fact has not been proved on record as to how the name of the assessee has come up for initiating the reopening proceedings. So all these facts go to prove that the reopening initiated by the AO is bad in law and the Ld. CIT(A) has erred in deciding this issue against the assessee. So reopening in this case is hereby quashed being bad in law.

16. The Ld. CIT(A) deleted the additions on merits made by the AO on the basis of pen drive data for having cash transactions with Dunhill project qua flats purchased at 10<sup>th</sup> & 11<sup>th</sup> floor, which is under challenge before the Tribunal. The Ld. CIT(A) decided the issue in favour of the assessee by returning the following findings:

**“10. Decision:**

*I have carefully considered the facts of the case and submissions made by the appellant. The AO has made addition of Rs.2,48,00,000 based on the material received from DCIT, Central Circle 6(2), Mumbai in the course of search action u/s 132 in case of Ahuja Group and their associates and seized material found from the pen drive and statement recorded from director, Shri Jagdish Ahuja.*

*I*

*10.2 The case of the appellant was re-opened based on the information received from DCIT, Central Circle 6(2), Mumbai due to search action at Ahuja Group and their associates. The department has evidences in form of pen drive, statement recorded of director and other seized documents. The appellant has purchased flat at Dunhill from Shree Ahuja Properties Pvt. Ltd. as per agreement entered dated 30.04.2010 for Rs.1,95,00,000/- which is not under dispute. The contention of the appellant that the agreement value is more than stamp duty value for flat no.1102 for flat at 11<sup>th</sup> flr. Admeasuring 776.63 sq.ft. is Rs.1,84,97,000/- is also not under dispute. The Assessing Officer had made addition based on the data in pen drive of Drive of Shri Jagdish Ahuja and statement recorded of Director Shri Jagdish Ahuja who accepted that on-money was taken from buyers of the flat. As per the data in pen drive the transaction were recorded as under;*

<i>Date</i>	<i>Particulars</i>	<i>V-Type</i>	<i>Debit (Rs.)</i>
<i>29.06.2009</i>	<i>Kartik Punjabi 10<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>48,00,000</i>
<i>02.07.2009</i>	<i>Kartik Punjabi 10<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>30,00,000</i>
<i>03.07.2009</i>	<i>Kartik Punjabi 10<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>80,00,000</i>
<i>22.09.2009</i>	<i>Kartik Punjabi 11<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>20,00,000</i>
<i>01.10.2009</i>	<i>Kartik Punjabi 11<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>30,00,000</i>
<i>15.10.2009</i>	<i>Kartik Punjabi 11<sup>th</sup> Floor Dunhill</i>	<i>Cash Sales - Dunhill</i>	<i>40,00,000</i>

		<i>Total</i>	<b>2,48,00,000</b>
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**10.3** *It is observed that the seized data does not mention the name of the appellant but that of her husband, Mr Kartik Punjabi, whose name is referred in the reasons recorded who is joint holder with her in flat 1102 admeasuring; 776.63 sq. flat Dunhill. There is another aspect in the reasons as neither the appellant nor her husband Mr. Kartik Punjabi own any flat on the 10<sup>th</sup> fir., which fact is also confirmed by Shree Ahuja Properties Pvt. Ltd. vide confirmation letter dated 15.10.2018 which is forming part of the paper book wherein it is stated that in building Dunhill Co-operative Society Ltd. Flat no.1101 was sold to Mr Kartik Punjabi and flat no.1102 was sold to Mrs. Jayanti Punjabi vide Agreement dated 30.04.2010 and also confirmed that they have not sold any other floor or flat in the building to Mr. Kartik Punjabi or Mrs. Jayanti Punjabi other than flat sold as per registered agreement. The above go to prove that appellant or her husband Mr. Kartik Punjabi has not purchased any flat on 10<sup>th</sup> fir., thereby there cannot be any "On money" payment for the flat on the 10<sup>th</sup> fir. Accordingly the amount referred in reasons recorded for the said fir. of Rs.1,58,00,000/- cannot be added u/s. 69 or 69B of the Income Tax Act, 1961. Even considering the fact that the rate referred by Assessing Officer with above on money would come to Rs.57,041/- per sqft. (even after including total amount of On money at Rs.2,48,00,000/-). It is also a fact that the consideration as per agreement is higher than the stamp duty rate.*

**10.4** *The AR of the appellant contended that the appellant is 100% owner of flat no. 1102 on 11th floor of building Dunhill having 776.63 sq.ft as per registered agreement between appellant and Shree Ahuja Properties Pvt Ltd entered on 30.4.2010 for a consideration of Rs.1,95,00,000/- the rate works out to Rs.25,108/- per sq ft, whose stamp duty value is Rs.1,84,97,000/-. The appellant owns the said flat no 1102 on 11th floor jointly with her husband, Mr Kartik Punjabi. The agreement value of the property is more than the stamp duty value of the property, there are no other evidences gathered by AO to prove on money having been paid by the assessee but have relied only on the information received. The AO has added u/s 69*

*as unexplained investment a sum of Rs.2,48,00,000/- thereby determined the consideration for flat no 1102 admeasuring 776.63 sq ft at Rs.4,43,00,000/- (Rs.1,95,00,000 + Rs.2,48,00,000) the per sq. ft rate of which work out to Rs.57,041/- per sq ft. No prevailing comparative rates have been brought on record by the AO in the said area before making any addition nor any evidence is brought on record to prove payment of "on money". The AO in the assessment order at page 7 has worked out the prevailing market rate at Rs.38,120/- per sf ft by considering the assessee's flat no 1102 and that of Mr Kartik Punjabi (husband) flat no 1101 with consideration paid as per agreement respectively i.e. Rs.1,95,00,000/- + Rs.2,85,00,000/- and added thereto "on money" payment of Rs.2,48,00,000/- and determined the total consideration as Rs.7,28,00,000/- and to determine the rate per sq ft, the AO has considered the area of two flats on 11th floor i.e. 776.63 sq ft + 1133.12 sq ft aggregating to 1909.75 sq ft and accordingly determined the market rate as Rs.38,120/- per sq ft. (rs.7,28,00,000 / 1909.75) by considering the flats on 11th Floor i.e Flat no 11f1 & 1102 after including the sq. ft related to assessee's husband Mr Kartik Punjabi. The onus is on the department to prove that the appellant has paid any other consideration than that recorded in the books of accounts which is higher than the stamp duty value. The appellant also challenged that addition cannot be made u/s 69 as the said section is not applicable. The Section 69 reads as: Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year." Considering the said section as the investment in Flat no 1102 has duly been reflected by the assessee in the books of accounts the provisions of section 69 are not applicable in the case of the assessee. The AO has not made any independent inquiry to ascertain the value of the property or whether any under valuation is done than what is the correct value of the property. The additions made by the AO are only on assumptions, surmises and conjectures.*

*The contention of the appellant that the agreement value is more than stamp duty value for flat no. 1102 for flat at 11<sup>th</sup> floor admeasuring 776.63 sq. feet is Rs. 1,84,97,000/- is also not under dispute. It is observed that the seized data does not mention the name of the assessee but that of her husband, Mr Kartik Punjabi, whose name is referred in the reasons recorded, who is joint holder with her in flat 1102 admeasuring 776.63 sq. ft at Dunhill. There is another fallacy in the data which is referred in the reasons as neither the assessee nor her husband Mr. Kartik Punjabi own any fiat on the 10<sup>th</sup> floor of Dunhill for which on money is referred. Based on the seized material the addition was made by the AO of Rs.2,48,00,000/-, whereby the per sq ft rate works out to Rs.57,041/- per sq ft which is not the rate prevalent in the area.*

*10.5 The Hon jurisdictional Mumbai Tribunal in the case of Anil Jaggi vs ACIT 89 taxmann.com 266 (Mum) have held that genesis of conclusion of Assessing Officer that assessee had paid 'on money' for purchase of property under consideration was based on contents of pen drive which was seized from residence of an ex-employee of Hiranandani group. Whether mere admission of amounts recorded in pen drive as additional income by falling short of any such material which would inextricably evidence payment of 'on money' by assessee would not lead to drawing of adverse inference as regards unexplained investment made by assessee for purchase of property. Also in the case of ACIT vs Ms. Katrina Rosemary Turcotte 87 taxmann.com 116 (Mum) have held that Assessing Officer on basis of documents seized in course of search carried out in case of 'S', an employee of 'Matrix, made addition to assessee's income on account of cash expenditure incurred in purchase of house. On facts, in absence of any direct and clinching evidence indicating incurring of cash expenditure for purchasing house, impugned addition could not be made on mere presumption and surmises.*

*10.6 The facts of the assessee are similar and identical to the two Mumbai Tribunal judgements referred above, where based on search in the case of Ahuja Group there was seizure of pen drive from which information was gathered of receipt of on money for which there are no material evidence nor direct clinching evidence indicating*

***payment of on money, rather assessee has pointed out certain anomalies like assessee nor her husband had any flat on 10th floor, the prevailing market rate was much less than the Assessing Officer's estimated figure and that of addition made does not evidence payment of on money and the consideration paid is higher than the Government market value as per stamp duty reckoner rate, no proceedings initiated or additions have been made in case of the husband of the assessee who is the owner of flat no 1101 and whose name is referred in the information received based on which reopening has been made.. Considering all the above facts and relying on the jurisdictional Tribunal orders the addition made by the AO of Rs.2,48,00,000/- under section 69 is deleted."***

17. Challenging the impugned findings returned by the Ld. CIT(A), the Ld. D.R. relied upon the order passed by the AO. Undisputedly, the assessee is owner of flat No.1102 and her husband Mr. Kartik Punjabi is joint owner along with assessee of flat No.1101 to the extent of ½ share, both situated at 11<sup>th</sup> floor of Dunhill project.

18. We have perused the aforesaid finding returned by the Ld. CIT(A) who has thrashed the facts in entirety and reached the conclusion that when undisputedly assessee has entered into an agreement with M/s. Ahuja Properties Pvt. Ltd. on 30.04.2010 for a consideration of Rs.1,95,00,000/- i.e. @ Rs.25,108/- per sq. ft. as against the stamp duty value of Rs.1,84,97,000/-, it is beyond comprehension as to how the AO has determined the market rate of the flat at Rs.38,120/-per sq. ft. and by also considering the sale

consideration of another flat owned by husband of the assessee against whom reopening has not been made, to the tune of Rs.2,48,00,000/-. There is not an iota of evidence on the file collected by Revenue if assessee has paid any consideration other than recorded in the books of account which is higher than the stamp duty value.

19. So far as applicability of section 69 of the Act to the facts and circumstances of the case, when investment qua flat No.1102 has been duly reflected by the assessee in the books of account the provisions contained under section 69 of the Act are not attracted. When the AO has not made any investigation to determine the value of the property to reach the conclusion that the value shown of the property in question in the books of account is not correct being undervalued, the entire addition made by the AO appears to be made on the basis of assumptions.

20. The AO instead of ascertaining the market value of property in question by making comparative study picked up the rates from “Magic Bricks Portal”, which are the current rates and not the actual rate on which the assessee has purchased the same, by doing a desk job instead of making physical enquiry. Moreover, when there is no evidence on record if the assessee has paid cash amount

over and above the stamp value of the property in question the addition made by the AO on the basis of assumptions is not sustainable in the eyes of law. So in the entirety of facts, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A) deleting the addition made by the AO on merits. Hence, deletion of addition made by the AO on merits by Ld. CIT(A) is hereby upheld.

21. In view of what has been discussed above, the present appeal filed by the Revenue is hereby dismissed and cross objections filed by the assessee are allowed.

**Order pronounced in the open court on 25<sup>th</sup> Feb.2022.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

Mumbai, Dated: 25.02.2022.

\* 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.