

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1474/Mum/2020
(निर्धारण वर्ष / Assessment Years : 2009-10)

Shri Chimanlal Mehta 1, Gokul Plaza, Opp. Mumlijibhai Mehta International School, Gokul Township, Virar (West) – 401303	बनाम/ Vs.	ACIT, Circle – 4 Room No. 2, A-Wing, Ashar IT Park, Wagle Indl Estate, Ambika Nagar, Thane – 400604.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ADMPPM3186A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Mr. Romit Jain
प्रत्यर्थी की ओर से/Respondent by :	Mr. B.K. Bagchi, Sr. AR

सुनवाई की तारीख / Date of Hearing	28.04.2022
घोषणा की तारीख /Date of Pronouncement	28.04.2022

आदेश / ORDER

PER SHRI OM PRAKASH KANT, AM:

This appeal has been preferred by the assessee against the order dated 09.01.2020 of Learned Commissioner of Income Tax (Appeals) – 3, Thane (in short ‘Ld. CIT(A)) for the A.Y 2009-10. The assessee has raised the following grounds of appeal.

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1. The learned CIT(A) erred in upholding the validity of reassessment when the assessment framed by the learned Assessing Officer was diametrically opposite from the reasons recorded for reopening the assessment.

2. The learned CIT(A) erred in disregarding the grave mistake committed by the Assessing Officer in making addition of Rs. 25,06,000/- to the income of the appellant on account of cash received from sale of FSI to the builder when in fact the reason recorded for reopening stated that the appellant had paid cash to the builder for purchase of the property. The learned CIT(A) thus failed to appreciate that the reassessment is void ab initio.

3. The learned CIT(A) erred in inferring that reasons recorded and assessment framed are congruous despite admitting that there is infirmity in the reasons recorded. The learned CIT(A) failed to appreciate that the infirmity is so material which goes to the root of the reassessment and is fatal invalidating the assessment.

4. The learned CIT(A) erred in not following the decision of the jurisdictional High Court which has held that if no addition is made in respect of issue which formed the basis for reopening, no other addition is permissible.

5. The learned CIT(A) erred in concluding that the common element in the recorded reasons and assessment framed is unaccounted cash element involved in the transaction and hence the addition is exactly what was perceived in the recorded reasons. The learned CIT(A) failed to appreciate that if wrong facts forms the foundation of reassessment, the entire assessment collapses.

6. The learned CIT(A) erred in upholding the stand of the

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Assessing Officer in completely relying on the inferential evidence such as statement of the partner of the searched party.

7. The learned CIT(A) erred in concluding that the loose papers found during the search operations in case of third party are sufficient to establish the nexus with the appellant.

8. The learned CIT(A) failed to appreciate that apart from the statement and material found during the search of the developer, the Assessing Officer could not adduce any cogent corroborative evidence in support of his contention that the appellant had in fact received cash in the transaction.

9. The learned CIT(A) erred in brushing aside the appellant's contention that he was not afforded the opportunity to cross-examine the deponent on the basis of whose statement the addition was made.

10. The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing.

2. At the outset, the Ld. Counsel of the assessee submitted that the assessee has settled the disputed issue under 'Vivad Se Vishas Scheme 2020' and already filed the Form No.5, prescribed under 'Vivad Se Vishwas Scheme 2020' Rules.

3. Contra, the Ld. DR has no serious objection for withdrawal of such appeal.

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4. In view of the above, the assessee is permitted to withdraw its appeal. Accordingly, the appeal is dismissed as withdrawn.

5. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court 28.04.2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai, Dated 28.04.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai