

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "C", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 4793/Mum/2019 (A.Y. 2016-17)

Chouhan builders India Housing Development P. Ltd.

104A, Sajid Tower, Amboli, Andheri (W),

Mumbai-400058

**PAN: AACCC1839Q**

..... Appellant

Vs.

DCIT -9(2)(1),

R.nO. 665A, Aayakar Bhavan,

M.K. Road, Mumbai-400020.

..... Respondent

Appellant by

: Sh. K. Shivram with

Ms. Neelam Jadhav

Respondent by

: Sh. Pankaj Kumar

Date of hearing : 10/06/2022

Date of pronouncement : 13/06/2022

ORDER

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-16, Mumbai [hereinafter referred to as 'the CIT(A)'] vide order dated 31.05.2019 for the Assessment Year (AY) 2016-17. The assessee has raised the following grounds of appeal:

*"1. The learned CIT (A) 16 (hereinafter referred to as the CIT (A)) erred in law and on facts in confirming the assessment of the total income of the Appellant at Rs.15,00,000/- as against loss of Rs. 89,84,401.24 returned by the Appellant.*

*2. Order dt.31/05/19 passed by Ld. CIT(A) as well as order dt.27/12/18 passed by Ld. AO were bad in law as the same were not based on facts but were based on assumptions or surmises or erroneous findings and has not considered submissions made by appellant or authorities cited by appellant.*

3. The Ld. CIT (A) has erred in law and on facts in not adjudicating ground No.2 that Reopening of assessment u/s 147 and issue of Notice u/s 148 of 1.T.Act was illegal, bad in law and therefore both reassessment proceedings as well as notice be quashed and the same be treated as null and void ab initio on following grounds:

3.1 Notice issued u/s 148 on 27/02/18 without obtaining prior sanction of authorities prescribed under section 151(2) of IT Act is bad in law and void ab initio.

3.2 On the facts and circumstances of the case, the Ld. AD erred in law in solely relying on the information of the investigation wing, Mumbai. The AO had not conducted any independent enquiry either before issue of Notice u/s 148 of the Act or during reassessment proceedings, hence the AO has no reason to believe that any income chargeable to tax has escaped assessment.

3.3 On the facts and circumstances of the case and in law the Ld. AO erred in solely relying on the statement of one Mr. Akshay Doshi without having the copy of entire said statement in his possession and more so, in the said statement no where name of appellant company appears.

3.4 Ld. AO has no reasons to believe that income has escaped assessment for A.Y. 16-17 in view of fact that in alleged part Statement, Akshay J. Doshi has admitted that no data belongs to any period from 2012 onwards therefore question of any escapement of income for A.Y.16-17 do not arise.

4. The Ld. CIT (A) has erred in law and on facts in not adjudicating ground No.3 that Reassessment Order passed on 27/12/18 u/s 143(3) r.w.s. 147 was bad in law on following grounds and therefore is liable to be quashed

4.1 On the facts and circumstances of the case the Ld. AD erred in law in making the addition u/s 69A solely on the basis of the statement of the third party and that too without giving any opportunity to the Appellant to cross examine him.

4.2 Without prejudice to appellant above The Ld. AO erred in law in relying on the laptop data from the premise of other party Mr. Akshay Doshi without appreciating the fact that alleged data have not been found from the premises of the Appellant Company and did not contain name of appellant company and did not belongs to AY 2016-17.

*4.3 The Ld. AO erred in law in making addition based on statement of third party and based on report of investigation wing or unknown materials without giving entire copy of the same to the Appellant Company thereby violating principle of Natural justice.*

*4.4 The L. AD has erred in law in proceeding with assessment without waiting for 4 weeks from service of order on 26/11/18 disposing off objection raised by appellant in total violation of principle laid down by Hon'ble Bombay HC in the case of Asian paints Ltd. v DCIT in WP. No. 91 of 2007 reported in (2007) 39 E BCAJ 35.*

*5.1 Le CIT (A) in para 4.3 erred in law and on facts in giving erroneous findings which are not based on facts and relied upon the alleged statement of Shri Akshay Doshi which do not form part of assessment order but td. CIT (A) gave wrong finding that alleged statement form part of assessment order. Ld. CIT (A) gave wrong finding that Copy of entire statement was given to the appellant*

*5.2 Ld. CIT (A) has erred in law and on facts in giving wrong finding in para 4.3.2 of his order wrongly alleging that that Ld. AD has asked for basic financial documents like cash books and bank book and the same were not produced where as fact is that no such documents were ever demanded by Ld. AO as alleged by Ld. CIT (A).*

*5.3 Ld. CIT (A) has erred in law and on facts in not appreciating the submission made by the Appellant that they have not received alleged cash of Rs. 15 lacs therefore question of recording the same in cash book of the appellant do not arise.*

*6. The Ld. CIT (A) has erred in law and on facts in confirming addition of Rs. 15 lacs u/s 69A as unexplained money of Appellant Company and on the alleged ground that unexplained money was received by the Appellant Company without providing to the Appellant Company any concrete or positive evidence or material in support of said allegations and for rebuttal of Appellant Company.*

*7. The Lat CIT (A) has erred in law and on facts in not adjudicating ground No 5 that loss for the year of Rs. 89,84,401.24 be adjusted against alleged income of Rs. 15 lacs.*

*The Ld. CIT(A) has directed AO to rectify mistake apparent from records by allowing ground No.6 to 8."*

2. At the outset, the Id. Authorized Representative (AR) of the assessee Mr. Akshay Doshi submitted that the entire addition which has been made against the

assessee is based on statement supposed to have been recorded by the Department of one Mr. Akshay Doshi which has been placed at page no. 24 to 28 of the Paper Book (PB). The Id. AR took us to the statement to show that the assessee's name/director's names were mentioned by Mr. Akshay Doshi. According to Id. AR based on the statement of Mr. Akshay Doshi which has been pursuant to search/survey dated 05.10.2015 in the premises of Bhoomi Group. The addition of Rs. 15,00,000/- has been made in the AY-2016-17. According to Id. AR, if this statement of Mr. Akshay Doshi is removed, there is no any evidence against the assessee. According to him even his plea that there is no such cash transaction between Bhoomi Group and the assessee, still the Assessing Officer (AO) wanted to assessee the amount against the assessee, he should be given an opportunity to cross-examine Mr. Akshay Doshi. The Id. AR drew our attention to page no. 6 of the assessment order in para-10 wherein the fact of assessee requested for cross-examination of Mr. Akshay Doshi has been acknowledged by the AO but he has brushed aside the issue on the ground that the assessee is try to derail the assessment. According to Id. AR, since Mr. Akshay Doshi has not been cross-examined the whole assessment on the basis of statement of Mr. Akshay Doshi is unsustainable. No addition can be made as held by the Hon'ble Supreme Court in the case of Andaman Timber Industries v. CCE (2015) 127 DTR 241 / 281 CTR (SC) wherein the Hon'ble Supreme Court has held that if any adverse view is being taken solely on the basis of statement and opportunity to cross-examine that statement is not given to the person affected then statement is a nullity. Therefore, according to the Id. AR, the sole foundation on the basis of which the addition has been made being illegal and unsustainable and the addition should be deleted.

2. Per contra, the ACIT, Sh. Pankaj Kumar representing the Department vehemently opposing the statement of the Id. AR submitted that the AO has

specifically stated at page no.6 wherein he has recorded the entry of ledger wherein the payment of Rs. 10,000/- and Rs. 5,000/- dated 08.05.2015 and 11.06.2015 has been recorded by the AO in the assessment. According to the Id. DR as per the statement of Mr. Akshay Doshi of M/s Bhoomi Group is Rs. 100/- should be added which make it Rs. 15,00,000/- (refer para 12 of the assessment order). According to him, the ledger of aforesaid entry were found in the ledger maintained in the electronic data seized from the search/survey carried out at the premises of M/s Bhoomi Group on 15.10.2015. According to Id. DR names of the Director's of the assessee-company which in fact has been found by the AO/Investigation Wing, therefore, according to him, AO has rightly added Rs. 15,00,000/- as well as Id. CIT(A) confirmed and therefore there is no interference is warranted in the case. He also pointed out that in the earlier years i.e. 2015-16 Rs. 3.5 crores and for AY 2010-11 Rs. 2.65 crores where such transaction taken place between the Bhoomi Group and assessee. Therefore, according to him, we should not interfere in this action of Id. CIT(A).

3. We have heard both the parties and perused the records. We note that the assessee-company is in the business of construction of real estate. The assessee has filed return of income showing total income of Rs. (-) 89,84,400/-. The AO on receipt of certain information from the Investigation Wing after the search/survey has happened on M/s Bhoomi Group on 05.10.2015 based on the statement recorded by one of its Directors Mr. Akshay Doshi has made an addition of Rs. 15,00,000/- against the assessee even though the Id. DR has pointed out at page no. 6 of the assessment order to show that the ledger entry pertaining to the assessee-company/Director received payment of Rs. 15,000/- (Rs. 15,00,000/-), the assessee having not admitted such a transaction has pleaded for cross-examination of Mr. Akshay Doshi. The AO has not accepted the assessee's submission and requested for cross-examination of Mr. Akshay Doshi because

other than the statement in the name of the assessee-company/Directors have been mentioned, there is no evidences brought to our notice. The Id. DR for the Revenue had pointed out that the full statement of Mr. Akshay Doshi enclosed in the Paper Book.

4. Taking into consideration the aforesaid facts which has been brought to our notice, we note that the AO's action of not permitting the assessee to cross-examine Mr. Akshay Doshi would fall in the teeth of Hon'ble Supreme Court's decision in Andaman Timber Industries (supra). Therefore, we are of the considered opinion that since there is violation of Natural Justice, the proceedings should start from where there is violation. Therefore, in the light of the aforesaid discussion, we set-aside the impugned order of the Id. CIT(A) and remand the matter back to the file of AO and direct the AO to summon Mr. Akshay Doshi and permit the assessee to cross-examine of Mr. Akshay Doshi and after cross examination, then re-examination by the AO, let the AO frame the assessment in accordance with law. Needless to say the assessee should be given opportunity of hearing as well as liberty to file written submission as well as documents relevant to its case.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 13<sup>th</sup> day of June, 2022.

Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 13/06/2022

SK, Sr.PS

**Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant ,
2. प्रतिवादी / The Respondent.

3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**