

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

**BEFORE SHRI G. S. PANNU, PRESIDENT &
SHRI AMIT SHUKLA, JM**

आयकरअपीलसं./ I.T.A. No. 236/Mum/2015
(निर्धारणवर्ष / Assessment Year: 2009-10)

DCIT Cen. Cir.- 8(3), R. No. 659, 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400020	<u>बनाम/</u> Vs.	M/s Lokhandwala Infrastructure Pvt. Ltd. 54A, Jindal Mansion, Dr. G. Deshmukh Marg, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAACE1568L		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Smt. Shailja Rai, Ld. DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Vijay Mehta & Shri Mani Jain, Ld. ARs
सुनवाईकीतारीख/ Date of Hearing	:	01.06.2022
घोषणाकीतारीख / Date of Pronouncement	:	15.06.2022

आदेश / O R D E R

Per AMIT SHUKLA, Judicial Member:

The aforesaid appeal has been filed by the revenue against the impugned order dated 28.08.2014, passed by Ld. CIT (Appeals)-38, Mumbai for the quantum appeal of assessment passed u/s 143(3)

for AY 2009-10. The revenue has taken the following grounds of appeal:-

1. *"Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 4,28,300/- on account of cash seized during the course of search."*

2. *"Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the administrative expenses amounting to Rs. 8,20,24,611/-."*

3. *"Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 3,12,00,000/- based on rough noting in page No. 11 of Annexure-2 of the seized material as per para 8.1 to para 8.7 of impugned order."*

4. *"Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the addition of Rs. 8,40,000/- based on rough noting in page No. 11 of Annexure-2 of the seized material as per para 8.9 of the impugned order."*

2. The facts in brief are that, the assessee company has filed its return of income on 29.09.2009 declaring total income of Rs. 4,00,97,375/-. A search and seizure action u/s 132(1) was carried out in the case of Lokhandwala Group of companies and other cases on 23rd December 2008. The present assessee was also

covered under the search action. During the course of search and seizure proceedings, the assessee company had offered an additional income of Rs. 13 crores which included cash found from one of the Director, Shri Mohd. Lokhandwala of Rs. 1 crore. The said additional income of Rs. 13 crores, included 1 crore out of cash which was shown as additional income in the return of income for assessment year under consideration.

3. Ld. AO noted that in fact total cash found during search was Rs. 1,04,28,300/-. However, the AO observed that the entire amount was seized which fact has been clarified during the course of appellate proceedings and before us that only of Rs. 1 crore was seized which has been offered for taxation. The relevant observation of the AO for making addition is as under:-

6.2. It is also seen that the assessee company has offered an amount of Rs,1,00,000,000/- for taxation in the return filed for the assessment year 2009-10. During the course of search and seizure proceedings, total cash was found at Rs. 1,04,28,300/- which was not recorded in the books of accounts of the assessee. The assessee has shown an additional income of Rs. 1,00,00,000/- for the assessment year 2009-10, but the assessee failed to furnish the source of Rs.4,28,300/- (difference of Rs. 1,04,28,300 (-) Rs.

1,00,00,000/- = 04,28,300/-) and thus an addition of Rs.4,28,300/- is made to the total income of the assessee U/s 69A of the I.T. Act 1961.

4. Before Ld CIT(A), detail submissions were made and it was brought to his notice that, there was cash-in-hand shown in the books of accounts of all the 4 family members aggregating to Rs 7,32,606/- as on 23.12.2008 (i.e. date of search). The relevant submission of the assessee reads as under:-

b. The Honorable CIT(A) is kind enough to direct the Assessing Officer to verify the cash in hand of all the assessees residing in Tez Zahra Bungalow as on the date of search and submit the report.

Your Honor, in Tez Zahra Bungalow, four assessee are residing, namely Mr. Mohammed A. Lokhandwala, Mrs. Zohra M. Lokhandwala, Mr. AliasgarM. Lokhandwala and Mrs. JumanaA. Lokhandwala.

Pursuant to the inventory of cash found dated 23.12.2008 (copy enclosed), it found that the sum of Rs.1,00,54,500/- was found from the bedroom of Mr. Mohammed A. Lokhandwala & Mrs. Zohra M. Lokhandwala, Rs.3,43,300/- was found from the bedroom of Mr. Aliasgar M. Lokhandwala and Mrs. Jumana A. Lokhandwala and Rs.30,500/- was found from the briefcase of Mr. Mohammed A. Lokhandwala.

As on the date of search, the following are the cash balance of all the four assessee.

Sr. No.	Name of the Director	Cash in Hand as on 23.12.2008 (Rs.)
1	<i>Mohd. Lokhandwala</i>	1, 78,815/-
2	<i>Zohra M. Lokhandwala</i>	1, 19,44/-
3	<i>Ali Lokhandwala</i>	1,68,802/-
4	<i>Jumana Lokhandwala</i>	2, 65,548/-
	<i>Total</i>	7,32,606/-

c. Your Honor may appreciate the fact that, we have submitted all the relevant ledgers of the cash balance during the course of investigations. After ascertaining the cash balance of assessee residing in Tez Zahra, only a sum of Rs.1,00,00,000/-, which was unexplained was seized by the department and the remaining Rs.4,28,300/-, which was explained was released.

d. The cash balance of the assessee residing in Tez Zahra Bungalow was submitted before the Ld. AO during the course of remand proceeding and has also been duly verified by him

e. In view of the above, we plea before your Honor, to delete the addition of Rs.4,28,300/- vide Para Wo.6.2 of the assessment order made by the assessing officer.

5. Ld. CIT(A) after considering the submission and the remand report of the AO, observed that there was a cash balance in the books of the family members to the tune of Rs. 7,32,606/- which has not been disputed by the AO in his remand report. He has also reproduced the statement of Shri Mohd. Abdul Hussain Lokhandwala on 24.12.2008 and 04.02.2009 wherein he has only mentioned about offering of additional cash of Rs.1 crore towards unaccounted scrap sale. Thus, he held that balance cash cannot be considered as unexplained money considering the fact that members of the family who are residing in the same place of search had sufficient cash balance in the books of account. Accordingly, he has treated the amount of Rs. 4,28,300// - as explained and addition was deleted.

6. After hearing both the parties and on perusal of the submission of assessee and the impugned orders, we find that during the course of search, cash amounting to Rs. 1,04,28,300/- was found and assessee had clearly stated that sum of Rs. 1 crore was received from various scrap traders for demolishing of existing buildings and structure at the construction site and the same was

offered as additional income in the hands of the company for AY 2009-10. There was no seizure of the amount of Rs. 4,28,300/-. Though, this fact has been disputed by the AO, however, be that as it may, the crucial point for consideration is, whether the amount of Rs. 4,28,300/- stood explained before the authorities below or not. As noted above, Ld. CIT(A) has directed the AO to verify the cash balance shown in the books of the directors and the family members residing in same residence and it was found to be verifiable from the respective cash book /cash balance of all 4 family members. As noted by the Ld. CIT(A), an amount of Rs. 7,32,606/- was cash in hand on the date of search and therefore, we do not find any infirmity in the findings of Ld. CIT(A) that the amount of Rs. 4,28,300/- stood explained from such cash balance which fact has not been disputed by the AO during the remand proceedings. Accordingly, the addition of cash amount of Rs. 4,28,300/- has rightly been deleted by Ld. CIT(A). Consequently, Ground no. 1 of the revenue stands **dismissed**.

7. In so far as the facts regarding administrative expenses amounting to Rs. 8,20,24,611/-, Ld. AO noted that, assessee had

offered income from projects on percentage completion method and has recognized revenue for 3 projects, namely, i) Lokhandwala Residency Project, ii) Empress Court Project & iii) Kohinoor Project. However, the assessee had debited an amount of Rs.9,45,21,495/- as administrative expenditure in the Profit & Loss Account. The assessee had also submitted project-wise details of expenditure based on the closing work in progress (W.I.P.) of the various projects which has been reproduced by the AO in para 7.3 of his order. In response to the show cause notice as to why the expenses of Rs.9,45,21,495/- should not be disallowed when no profit was offered for taxation during the year under consideration, the assessee submitted that, it is following the practice of capitalizing all the direct expenses to the specific project account and the indirect expenses were claimed in Profit & Loss Account. These expenses aggregating to Rs. 9.45 crores which were in the nature of indirect expenses which have been claimed in the Profit & Loss Account and it is not required to be capitalized to any specific project. However, A.O noted that the profit in Victoria and Andheri Kurla project was not offered for taxation and the assessee had incurred huge expenses on both these projects and claimed these

expenses against the profit shown as per percentage completion method. Ld. AO held that following expenses were required to be capitalized by the assessee, which are as under:-

<i>Description of expenses</i>	<i>Victoria Project (Tokarshi Chawl)</i>	<i>Andheri Project Kurla</i>
<i>Marketing expenses</i>	1,35,86,309	1,57,45,721
<i>Salary expenses</i>	17,60,540	20,40,361
<i>Professional fees</i>	4,72,983	5,48,159
<i>Director's remuneration</i>	36,51,720	42,32,125
<i>Travelling expenses</i>	17,12,765	19,84,993
<i>Telephone expenses</i>	6,20,126	7,18,689
<i>Repairs & maintenance</i>	22,19,209	25,71,931
<i>Stamp duty charges</i>	9,16,591	10,62,274
<i>Vehicle expenses</i>	11,42,936	13,24,595
<i>Audit fee</i>	4,10,514	4,75,761
<i>Other operating expenses</i>	1,14,99,303	1,33,27,006
<i>Sub-Total</i>	3,79,92,996	4,40,31,615
	<i>Total</i>	8,20,24,611

8. AO further observed that income offered for taxation under percentage completion method on the projects was set off heavily by allocating the administrative expenses completely. Thus, he held that only corresponding expenses should be deducted against the income offered for taxation and accordingly, he worked out disallowance of Rs. Rs.8,20,24,611/- being capital expenditure.

9. Before the Ld. CIT (A), assessee had duly clarified with all the documentary evidences of the expenses claimed which were verified by the AO in the remand proceedings and AO did not found any expenses which were related to any specific projects. It was stated that the assessee has incurred a sum of Rs. 14,61,60,989/- as indirect expenses, out of which Rs. 5,16,39,493/- were related to specific projects and capitalized under the respective project heads. The remaining balances were not related to any specific project and hence were claimed as administrative expenses. It was also stated that as per the Accounting Standard 2 & Guidance Note in para 13 and para 19 Accounting Standard -7, the indirect cost which is not related to any project should be debited to Profit & Loss account.

The detail submission of assessee is incorporated from page 10-12 of its order.

9.1 Ld. CIT (A) noted that the contention of AO that no income was offered from Victoria Project and Andheri Kurla Project is incorrect as assessee had offered a sum of Rs. 4 crores from Victoria Project and 1 crore additional for Andheri Kurla Project towards scrap sales. He also noted that there were some discrepancies and mistakes in the matching principle as held by AO and found that AO was incorrect in holding that there was no income from these 2 projects. The relevant observation in this regards of Ld. CIT(A) in para 8.1 read as under:-

It is seen from the assessment order that the appellant offered Rs. 4 crore from the Victoria Project. In paragraph number 1, 2 and 9.7 of the assessment order it is very clearly mentioned that the appellant offered Rs. 4 crore for the A.Y 2009-10 out of the profit from Victoria Project. Therefore the argument of the A.O that no profit is offered from Victoria project is factually incorrect. Similarly the appellant also offered Rs. 1 crore as additional income on account of unaccounted scrap sales from both Victoria Project and the Andheri Kurla Project. However the profit of Rs. 1 crore is not out of the profit earned out of the project but from the scrap sales out of demolition of existing buildings and structures at the

construction site in both the projects. The appellant also offered Rs. 1,08,22,359/- as income from electricity generation, however this income is also not received from the profits earned from the sale of flats at Andheri Kurla Project. Therefore the project expenses relating to the Andheri Kurla Project will be taken into account only when the corresponding income from the said project is offered for taxation. At the same time the argument of the appellant that the administrative expenses relating to scrap sales and electricity generation also forms part of the expense debited cannot be ruled out. Considering the facts of the case 20% of the administrative expenses debited on account of Andheri Kurla Project is estimated to be attributable towards scrap sales and electricity generation.

8.2 In view of the above, expenses of Rs.3,79,92,996/- debited towards Victoria project is allowed since corresponding income to the tune of Rs. 4 crore is offered for taxation. In respect of Andheri Kurla Project, 20% of the administrative expenses being Rs.88,06,323 on Rs. 4,40,31,615/- is allowed as attributable to scrap sales and electricity generation. The balance sum of Rs.3,52,25,292/- (Rs.4,40,31,615 - Rs.88,06,323) is required to be disallowed but the appellant sought for the set off benefit against the offer of undisclosed income of Rs.4.78 crore.

10. Ld. CIT (A) further noted that assessee had offered additional income of Rs. 13 crores out of which Rs. 4.78 crores was opened offer and has not been quantitatively linked to any of the

discrepancies, for which AO has not given the set off or benefit of Rs. 4.78 crore against any of the additions made by him. He further held accepting the assessee's contention in the following manner:-

8.4. The above surrender of Rs. 4.78 crore is open ended and has not been quantitatively linked to any of the discrepancies. The AO also has not given the set off benefit of Rs. 4.78 crore against any of the additions made by him. The admission of the appellant is subject to the possible discrepancies. Since the sum of Rs. 3,52,25,292/- is not allowed to be the expenses for the relevant year in accordance with the matching principle, the same is required to be set off against the offer of undisclosed income of Rs. 4.78 crore and accordingly no addition is required to be confirmed in this regard.

11. After hearing both the parties and on perusal of material placed on record, we find that AO has disallowed the expenditure which were in the nature of indirect expenses debited to the Profit & Loss account, holding that the same needs to be capitalized, because assessee is following percentage completion method and no profits from 2 projects namely, Victoria Project and the Andheri Kurla Project has not been offered for taxation during the year under consideration. The nature of these expenses has already been incorporated above. The fact of the matter is that the AO's

contention /observation has been found to be incorrect, because the assessee has offered income of Rs. 4 crores from Victoria Project and additional 1 crore as income for both the projects the Andheri Kurla Projects through scrap sales. Accordingly, the expenses aggregating to s. 3,70,92,996/- towards Victoria project was clearly allowable, since there was corresponding income to the tune of Rs. 4 crores which was offered for taxation.

11.1 With regard to other project, 20% of the administrative expenses have not held to be allowable by the Ld. CIT (A) attributable to the scrap sales and electricity generation. Thus, according to Ld. CIT (A), only balance of Rs. 3,52,25,292/- is disallowable, however he has given benefit of set off against the offer of undisclosed income of Rs. 4.78 crores. Therefore, we do not find any infirmity if the benefit of additional income of Rs. 4.78 crores is treated as income from the project, then disallowance of indirect expenses cannot be made on the ground that there is no corresponding income from the project. Otherwise also, indirect expenses which are not directly related to any project are allowable as revenue expenditure debited to the Profit & Loss account as per

AS-7. Accordingly, we uphold the order of Ld. CIT(A) in deleting the aforesaid addition and dismiss the ground no. 2 raised by revenue.

12. Coming to the addition of Rs. 3.12 crores and 8.40 lakhs based on rough notings at page no. 11, AO noted that the seized material indicates certain cash received of Rs. 3.12 crores for cash transactions, scan copy of the documents has also been incorporated in the assessment order and also the type version in para 8.5. The details of transactions as per seized documents are as under:-

Shri Ravi Bhushan

	Total Commission on payment received	CH Lakhs	CA Lakhs	Remarks	
				CH-cheque CA - cash	
		35.19	2.55		
Less		25.00	2.00		
		10.19	0.55		
	Flat value	62.06	78.00	140 lakhs	
	To collect	51.81	77.45	1.40 lakhs commission	"A"
	2%	CH Lakhs	CA Lakhs		
		70.38	5.10		
Less		25.00	2.00		
		45.38	3.10		
		62.00	78.00	140 lakhs	
	To collect	16.62	74.90	2.80 lakhs	'B'

				commission	
	<i>Full Value %</i>	<i>CH Lakhs</i>	<i>CA Lakhs</i>		
		99.36	2.55		
<i>Less</i>		25.00	2.00		
		74.36	0.55		
		63.00	78.00	140 lakhs	
		12.36	77.45	1.40 lakhs commission	"C"
	<i>On Full Value 2 %</i>	198.72	5.10		
<i>Less</i>		25.00	2.00		
		173.72	3.10		
		62.00	78,00	140 lakh	
		111.72	74.90	2.80 lakhs commission	"D"
	<i>Total</i>	248	312	560 Lakhs	

13. From the perusal of the assessment order, it is seen that the page contains rough calculation of commission on different rates payable to one, Mr. Ravi Bhushan, a commission agent. He noted that this document was found and seized at the premises of assessee in handwriting of Shri M. A. Lokhandwala, CMD, which mentions the detail about commission agent and the figures inferred is in lakhs and finally, AO has made addition in the following manner:-

8.7 Thus, from the detailed study and analysis of document, it is revealed that out of total value of flat of Rs. 1.48 Crore, the cheque component is Rs.62 Lakhs and cash component is Rs.78 Lakhs totaling Rs.1.48 Crores. Thus, it is crystal clear that the cash component of Rs.78Lakhs is not recorded in the books of accounts of the assessee company. Moreover, on the facts and circumstance of the case and the various evidence found during the course of search and seizure proceedings, it is established fact that the assessee is regularly made various transaction in cash and such transaction are not recorded in the regular books of accounts. Thus, it is clear that the cash accepted out of the transactions recorded on this page which worked out at Rs.3,12,00,000/- are not recorded in the books of account of the assessee. Accordingly, an addition of Rs. 3,12,00,000/- is made to the total income.

14. Ld. CIT(A) held that the multiplier effect by four times as made by the AO is incorrect. The CIT(A) found that the cash portion of the 88 Lakhs (78 lakhs for flat + 10 lakhs for amenities) has already been was offered to tax in the hands of the group company of the assessee, M/s. Lokhandwala Shelter (I) Pvt. Ltd. in which the relevant project was undertaken. Ld. CIT (A) further held that the calculation made by AO regarding the commission is incorrect. AO has added sum of Rs. 8.4 Lakh on wrong presumption. AO has calculated commission on the amount of Rs. 140 lakhs, which Ld.

CIT (A) held that the calculation of commission on Rs. 140 Lakhs is incorrect. The total value of flat was Rs. 175 lakhs, out of which 35 Lakhs was paid in cheque, while the balance sum of Rs. 140 lakhs represent the balance amount to be received. The Ld. CIT (A) held AO has made the addition of commission on wrong presumption and accordingly deleted the same.

15. Ld. Counsel for the assessee submitted before us that, Mr. Ravi Bhushan was a commission agent and had sold flat to ten various parties in different projects for an aggregate consideration of Rs.101.91 crores, out of which the agreement value receivable by cheque was Rs.99.36 crores and the amount receivable towards other amenities in cash was Rs.2.55 crores, which is duly recorded on Page no.99 of Annexure A-1 of the seized material. The said page is placed at page nos. 95 of the assessee's paper book. Against the aggregate consideration of Rs.101.91 crores, the assessee has received Rs.35.19 crores in cheque and Rs.2.55 crore against the other amenities. The same is also appearing on page no.99 of Annexure-A1 of the seized material. Thus, page no. 11 of Annexure - A2 is the rough working of commission payable to Mr. Ravi

Bhushan at the rate 1% and 2%, based on the aggregate consideration and the amount received as on the date of working.

16. In so far as entries appearing in the said seized document at page no. 11 of Annexure A-2, the following explanation was given by Ld. Counsel which was also given before Ld. CIT(A):-

Combination -A

a. On Page no.11 of Annexure -A2 under the head 'A', there is working of commission to Mr. Ravi Bhushan @ 1 % on amount received. On the day of working the appellant has received Rs.35.19 crores through cheques against the agreement value and Rs.2.55 crores in cash against the other amenities to be provided as mentioned in page no.99 of Annexure A1.

b. The Commission @ 1%, based on the amount received is Rs.35.19 lakhs on the cheque amount and Rs 2.55 lakhs on the cash component.

Combination-B

a. On Page no.11 of Annexure -A2 under the head 'B', there is working of commission to Mr. Ravi Bhushan @ 2% on amount received. On the day of working the appellant has received Rs.35.19 crores through cheques against the agreement value and Rs.2 55 crores in cash against the other amenities to be provided as mentioned in page no.99 of Annexure A1.

b. The Commission @ 2%, based on the amount received is Rs. 70.38 lakhs on the cheque amount and Rs.5.10 lakhs on the cash component.

Combination-C

a. On Page no.11 of Annexure -A2 under the head 'C. there is working of commission to Mr. Ravi Bhushan @1 % on total consideration amount. On the day of working the total amount of agreement sold by Mr. Ravi Bhushan. amenities to be provided as mentioned in page no.99 of Annexure A1. Rs.99,36 crores and Rs.2 55 crores is towards the other

b. The Commission @ 1%, based on the total consideration amount is Rs.99.36 lacs on the agreement amount and Rs.2.55 lacs on the other amenities amount

Combination -D

a. On Page no.11 of Annexure -A2 under the head 'D', there is working of commission to Mr. Ravi Bhushan @ 2% on total consideration amount. On the day of working the total amount of agreement sold by Mr.Ravi Bhushan is Rs.99.36 crores and Rs.2.55 crores is towards the other amenities to be provided as mentioned in page no.99 of Annexure A1

b. The Commission @ 2%, based on the total consideration amount is Rs.195.72 lacs on the agreement amount and Rs.5.10 lacs on the other amenities amount.

17. Further, it was submitted that the assessee has sold Flat No.2D in Project Harmony to Mr. Ravi Bhushan for a total consideration of Rs.175 lakhs, out of which Rs. 87 lakhs is the agreement value and Rs.88 lakhs to be adjusted against the other amenities. Assessee had received Rs.10.00 lakhs in cash against other amenities and Rs. 25.00 lakhs in cheque against the agreement value. Therefore, the appellant has received total Rs.35.00 lakhs. These notings are also appearing on Page No.99 of Annexure-A 1.

18. In the working of Page No. 11 of Annexure -A2, the cheque amount of Rs.62 lakhs (Total Agreement Value Rs 87lacs less Collected Rs.25 lakhs) is mentioned as amount to be collected against the sale of flat in Harmony in the cheque column. Similarly, the amount of Rs.78 lakhs (Amount against other amenities Rs.88 lacs less collected Rs.10 lakhs) is mentioned as amount to be collected against other amenities.

19. The amount of Rs.88.00 lakhs for the flat sold to Mr. Ravi Bhushan is already offered to tax in the hands of M/s. Lokhandwala Shelters India Private Limited in which Project

Harmony was undertaken. The copy of the assessment order reflecting the above fact is placed at page nos. 85-93 of the assessee's paper book. The said fact was duly accepted by the CIT (A) in its order and accordingly, the impugned addition was deleted. Therefore, the above clearly shows that the notings made at page nos. 11 are mere rough in nature. Moreover, the quantum of on money has already been offered by the assessee group. Therefore, it was submitted that the order of the Id. CIT (A) be upheld.

20. Further, with regards to the addition of commission of Rs.8.40 Lakhs, it was submitted that the calculation of the commission itself is erroneous. The figure of commission is only coming out of the remarks column which has been estimated by the AO on its own. It was submitted that the originally there is no such commission column in the seized paper. Further, Ld. CIT (A) in its order has stated that the calculation of commission alleged to have been made in cash itself is incorrect.

21. On the other hand, Ld. CIT-DR submitted that, once the seized document clearly indicates that there was cash received, the onus on the assessee to explain the same and AO has rightly held

that the same was not recorded in the books of account in absence of any explanation, accordingly the order of AO should be upheld.

22. We have heard the rival submissions and also perused the relevant findings and material placed on record. We find that both the additions in ground no. 3 & 4 are based from seized documents at page no. 11 of Annexure A-2. As culled out from the findings as well as material placed on record that the said seized documents in fact is a working of commission payable to Mr. Ravi Bhushan, which was commission payable who had sold flat to 10 various parties in different projects for aggregating Rs. 101.91 crores, out of which agreement value receivable by cheque was Rs. 99.36 crores and amount receivable towards other amenities in cash was Rs. 2.55 crores which is also duly recorded at page no. 99 of the seized material of the documents. Against the said consideration of Rs. 101.91 crores, the assessee has received Rs. 35.19 crores through cheque and Rs. 2.55 crores against other amenities which has been duly recorded. It has been stated that this page is rough working of commission payable to Mr. Ravi Bhushan @ 1 & 2% based on aggregate consideration and the amount received from the date of

working which has been explained before the CIT (A) and before us as incorporated above. This fact has been noted by Ld. CIT(A) in detail from para 10.1 to 10.13. The contents of the seized material right from Combination A to Combination D is nothing but commission payable to Shri Ravi Bhushan ranging from 1% to 2%. The relevant observation and findings of Ld. CIT(A) after analyzing each and every contents of the seized material relating to Combination A to D, reads as under:-

10.13 The above explanation of the appellant during the course of appeal proceedings is convincing. As explained Combination 'A' is 1% of working of commission on the sums received out of sales made to 10 parties by Shri Ravi Bhushan. Combination 'B' is 2% of working of commission on the sums received out of sales made to 10 parties by Shri Ravi Bhushan. Combination 'C' is 1% of working of commission on the total consideration (received and receivable) out of sales made to 10 parties by Shri Ravi Bhushan. Combination 'D' is 2% on the total consideration (received and receivable) out of sales made to 10 parties by Shri Ravi Bhushan. There is nothing brought on record by the AO to show that the above sums are not the working of various combinations of commission payable to Shri Ravi Bhushan whereas on the contrary the AO has brought to tax Rs 312 lakhs being four separate transactions of Rs 78 lakhs of cash receipt (78 X 4). It is true that the appellant group had sold a

flat for a sum of Rs. 175 lakhs to Shri Ravi Bhushan which includes cheque portion of Rs 87 lakhs being the agreement value and cash portion of Rs 88 lakhs against other amenities. As stated earlier, Rs 10 lakhs of cash was received against other amenities and Rs 25 lakhs was received in cheque against the agreement value. Therefore, the balance receivable prior to adjustment of commission is Rs. 140 lakhs which includes Rs 62 lakhs by cheque towards agreement value and Rs 78 lakhs by cash towards other amenities. The AO has taken the figure of Rs. 78.00 lakhs for four times and arrived at the figure of Rs. 312.00 lakhs and assessed the same as transactions not recorded in the books of account. Though the multiplier effect by four times as done by the AO is not correct, however, it is required to be seen whether at all the cash portion of Rs. 88.00 lakh is accounted in the books of account of the appellant group. When this issue was raised in the appeal proceedings, the appellant brought to my notice a copy of the assessment order in the case of M/s Lokhandwala Shelters (I) Pvt. Ltd. for the A.Y. 2009-10 wherein the cash portion of Rs. 88.00 lakhs was offered to tax (see paragraph No. 6.2, 6.3 and 6.4 of the assessment order in the case of M/s Lokhandwala Shelters (I) Pvt. Ltd.). Similarly, the same facts are also discussed vide paragraph no. 9.2 and 9.3 of the assessment order in the case of the appellant company for the A.Y. 2009-10. Since the cash portion which was not accounted originally has been offered to tax in the case of M/s Lokhandwala Shelters (I) Pvt. Ltd., no separate addition on this ground in the case of the appellant company is necessary. Since

the AO has proceeded to make addition of Rs 312 lakhs (78 X 4) on a wrong presumption, the addition made is hereby deleted.

10.14 Similarly, the AO also worked out commission of Rs.8,40,000/- on the assumption that Rs.140 lakhs (cheque of Rs.62 lakhs and cash of Rs.78 lakhs) is the sum received against the sales made to third parties on which the commission is due to Shri Ravi Bhushan. While working out Rs 8,40,000/- the AO has taken commission Rs. 1.40 lakhs each being @1% of Rs. 140 lakhs in Combination 'A' as well as in Combination 'C' and Rs. 2.80 lakhs each being 2% commission on Rs. 140 lakhs in Combination 'C' as well as in Combination 'D'. The conclusion drawn by the AO is erroneous. First of all, as explained earlier the sum of Rs. 140 lakhs is the balance sale consideration receivable from Shri Ravi Bhushan by M/s Lokhandwala Shelters (I) Pvt. Ltd. on account of sale of flat to him. The total sale consideration of the flat sold is Rs 175 lakhs and a sum of Rs. 35 lakhs (Rs.25 lakhs in cheque and Rs. 10 lakhs in cash) was received and the balance receivable is Rs 140 lakhs. Working of commission on the fiat sold to Shri Ravi Bhushan does not arise. If at all commission is to be worked out, it has to be only on the sales made by Shri Ravi Bhushan to third parties. In this case, since the AO has added a sum of Rs. 8,40,000/- on the wrong presumption that the commission was paid against Rs 140 lakhs which is the balance consideration for a property sold to the commission agent, Shri Ravi Bhushan, the same is hereby deleted.

23. The aforesaid finding of Ld. CIT (A) and the explanation given by the assessee has not rebutted and in fact it has nothing but working of commission payable to the commission agent and therefore, the amount mentioned in the seized material cannot be treated as unexplained money to be added as undisclosed income. Accordingly, order of Ld. CIT (A) is upheld and ground no. 3 & 4 is hereby dismissed.

24. In the result, the appeal filed by the revenue stands **dismissed.**

Orders pronounced in the open court on 15th June, 2002.

Sd/-
(G. S. Pannu)

President

मुंबई Mumbai; दिनांक Dated : 15/06/2022

Sr.PS. Dhananjay

Sd/-
(Amit Shukla)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai