

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA No. 7215/Mum/2019
(A.Y: 2009-10)

M/s. Shree Ahuja Properties & Developers A/201, Rajpipla, Opp Standard Chartered Bank, Santacruz(W), Mumbai - 400054.	Vs.	DCIT - CC - 6(2) Room No. 1903, 19 th Floor, Air India Bldg, Nariman Point, Mumbai - 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABEFS2387M		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Ms.Kavita Kaushik.DR

Date of Hearing	07.06.2022
Date of Pronouncement	13.06.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals) 54 Mumbai passed u/s 143(3) r.w.s 147 and 250 of the Act. The assessee has raised the following grounds of appeal:

A. Reopening of assessment is bad in law and liable to be quashed

1. The Ld. CIT(A) erred in upholding the reopening of the assessment without appreciating that-

a) reopening of assessment was carried out on the basis of information from DDIT (Inv), Unit 5(4) as observed in the reasons recorded, however there is no such letter in the file as confirmed by the AO in the remand report, which itself proves that there is no basis for reopening;

b) the reasons recorded are factually incorrect since there are no transactions in respect of cash sales of Rs.26 lakhs with Ahuja Group and no such benefit is derived by assessee from Ahuja Group and no such addition is made in the reassessment order towards any benefit derived from any transaction/s with Ahuja Group;

c) when no addition is made in reassessment order for which the assessment was reopened as per reasons recorded, then no further /other additions could be made in reassessment order;

d) the reasons recorded are vague and general in nature without giving any specific transaction/s or detail/s of any income escaping assessment;

e) the reasons, even if held to be valid, are recorded upon borrowed satisfaction i.e. on the direction of the third party i.e. DDIT (Inv.) and not on the basis of reason to believe of the AO himself; and hence, the reopening of the assessment is bad in law and liable to be quashed.

Without prejudice to above, on merits:

B) Addition confirmed of Rs.4,75,000/- may be deleted

2. The Ld. CIT(A) erred in confirming the addition of Rs:4,75,000/- being 25% of on money of Rs.19,00,000/- without appreciating that

a) the income, if any, quantified on the amount of on money ought to be taxed only in the year in which project is completed since the appellant herein followed project completion method of accounting;

b) the project of the appellant was completed in AY 2012-13 and entire profits earned from the project was offered in that year and hence, the income, if any, quantified in respect of on money could Not be taxed in the relevant year as the project was under construction;

and hence, the addition made in the impugned assessment year is without any justification and liable to be deleted.

3. Without prejudice to the above, the Ld. CIT(A) has erred in estimating the income @25% of on money received without appreciating the fact that as per parallel books of account, the group had incurred overall huge loss and income from on money was estimated @12% in other group entities before the Hon'ble Settlement Commission and the Settlement Commission accepted income @12% and hence, the income from on money may be estimated @12% as against estimated @25% by the Ld. CIT(A) and accordingly, relief may be given to the appellant.

4. The Appellant craves leave to add, alter, amend all or any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business of real-estate and filed the return of income for the A.Y 2009-10 on

25.09.2009 with Rs. Nil income and the assessment was completed u/s 143(3) of the Act dated 20.12.2011 assessing the total income of Rs. Nil. Subsequently the case was reopened u/s 147 of the Act and the A.O. has recorded the reasons for reopening of the assessment as under:

"The assessee has filed return of income for the assessment year 2009-10 on 25.09.2009 declaring total return of income as NIL. The return was processed u/ s 143(1) on 03.11.2010.

2. Information was received from Dy. Director of Income Tax (Investigation), Unit 5(4), Mumbai vide letter No. DDIT (Inv) / Unit 5(4) / Information / Ahuja Group/ 2015-16 dated 23.03.2016 that the assessee has benefitted by entering into transaction with Ahuja Group in respect of cash sales amounting of Rs. 26,00,000/- " during the F.Y. 2008-09 relevant to assessment year 2009-10. In the search & seizure action it was found that the Ahuja Group had maintained unaccounted parallel books of account not forming part of the regular books of accounts. The unaccounted parallel books of Ahuja Group revealed cash transaction of unaccounted money in respect of purchases, sales, loan transaction, accommodation entries, expense inflation etc. therefore, there is a reason to believe that income to the extent of amount exceeding Rs. 1,00,000/- has escaped assessment because of undisclosed cash income obtained by the assessee.

3. in view of the above facts and after perusal of available records and duly applying my mind, I have reasons to believe that the income chargeable to Income Tax has escaped assessment within the meaning of

section 147 of the Act for Assessment Year 2009-10, due to the omission and failure on the part of the assessee to disclose fully and truly all material facts necessary for the purpose of its income assessable for above Assessment year."

3. In compliance to the notice u/s 148 of the Act, the assessee has submitted the letter dated 11.05.2016 to treat the return of income filed under 139(1) of the Act dated 25.09.2009 as a return filed in response to notice u/s 148 of the Act. Subsequently the assessee has filed the revised return of income and the copy of reasons for reopening of the assessment was provided to the assessee. The AO has referred to the notices issued u/s 142(1) of the Act and there was no compliance by the assessee. Finally the A.O has received the reply from the assessee vide letter dated 14.12.2016 referred at Para 4 of the assessment order. The A.O was not satisfied with the explanations as the name of the assessee appeared in the parallel books maintained and the assessee is one of the group concern of Ahuja Group. Since the assessee has failed to provide material information/ evidence the A.O. has made an addition U/sec69 of the Act of Rs. 26,00,000/- and assessed the total income of the assessee of Rs. 26,00,000/- passed the order u/s 143(3) r.w.s 147 of the Act dated 26.12.2016.

4. Aggrieved by the order the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeals, submissions of the assessee, findings of the AO and relied on the order of the Hon'ble Settlement commission. The CIT(A) considered the submissions dealt at Para 5.5 read as under:

5.5 The submissions of the Learned Counsel have been carefully considered. After verifying the records, it is accepted that the net on money received by the assessee during the year is Rs.19,00,000/- (Rs.16,50,000/- from Rajendra Laheja and Rs.2,50,000/- from Vidya Bhojwani). The Learned Counsel requested that the appellant group had approached the Settlement Commission with respect to the other companies of the group wherein the Settlement Commission has accepted 12% of the on money received as the income of the assessee. Therefore, the Learned Counsel requested to adopt the same percentage of on money as the income of the appellant for the relevant assessment year. However, the acceptance by the Settlement Commission of 12% of on money as reasonable may be relevant to the facts of the cases before the ITSC. This cannot be blindly applied to all the other cases. At best the decision of the Settlement Commission can only be a guiding factor and not a binding factor.

Subsequently, the CIT(A) has estimated the income @ 25% of the on money received and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

5. We heard the Ld. DR Submissions and none appeared on behalf of the assessee and perused the material on record. The sole disputed issue ventilated by the assessee that the CIT(A) erred in confirming the addition @ 25% of on money without considering the facts that the amount has to be taxable only in the year in which the project is completed as the assessee is following the project completion method. Further the assessee has completed the project in the A.Y 2012-13 and the entire profits were offered for tax in that year hence no income should be taxable in the hands of the assessee during the year. Further, the assessee contested that the CIT(A) has erred in estimating the income @ 25% of on money received without appreciating that the assessee group concerns/entities has incurred huge losses and the income was estimated @ 12% before the Hon'ble Settlement Commission and was accepted. We are of the opinion that the Honble Settlement Commission has already accepted the facts of the assessee group entities and project completion method applicability. Therefore estimating the income @ 25% by CIT(A) is on the higher side and we follow the similar orders of group entities restricting addition@12% based on the Settlement Commission order. Accordingly, we sustain and restrict the addition to the extent @ 12% and modify the CIT(A)

order and partly allow the grounds of appeal of the assessee.

Since the appeal was decided on merits, therefore the legal issue of validity of reassessment proceedings are left open.

6. In the result the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 13.06.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 13.06.2022

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//

1.

(Asst. Registrar)

ITA No. 7215/Mum/2019
M/s Shree Ahuja Properties and Developers, Mumbai

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ITAT, Mumbai