

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1476/MUM/2020
Assessment Year: 2009-10**

Shri Hemant Agarwal,
9, Gokul Annexe, Agarwal Gardens
Phase II, Gokul Township, Bolinj,
Virar West,
Palghar-401303.
PAN No. ABAPA 3617 J
Appellant

ACIT Circle-4,
Room No. 2, A Wing, Ashar IT
Park, Wagle Indl. Estate, Ambika
Nagar,
Thane-400604.
Respondent

Assessee by : Ms. Mayuri Kulkarni, AR
Revenue by : Mrs. Smita Nair, DR

Date of Hearing : 22/06/2022
Date of pronouncement : 27/07/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 10.01.2020 passed by the Ld. Commissioner of Income-tax (Appeals)-3, Thane [in short 'the Ld. CIT(A)'] for assessment year 2009-10, raising following ground:



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 ₹6,26,400/- 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 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.*

2. At the outset, the Ld. Counsel of the assessee submitted that assessee has opted for Vivad Se Vishwas Scheme, 2020 and settled its dispute and paid the taxes due under the said scheme and therefore, the assessee wishes to withdraw the captioned appeal. The Ld. Counsel has also filed Form Nos. 3, 4 & 5 prescribed under the Vivad Se Vishwas Act, 2020. The relevant part of Form No. 5 is reproduced as under:

“Now, therefore, in exercise of the powers conferred by sub-section (2) of section 5 read with section 6 of the Act, it is hereby certified that -



(a) a sum of Rs. 2797 has been paid by the declarant towards full and final settlement of tax arrear determined in the order No 110504910060121 dated 06/01/2021 and

(b) the immunity is granted subject to the provisions contained in the Act, from instituting any proceeding for prosecution for any offence under the Income-tax Act or from the imposition of penalty under the said enactment[as per section 6 of the Act], in respect of the tax arrear as detailed in the table below:

Sl No.	Assessment Year/Financial Year	Details of dispute settled (Appeal reference number)	Nature of arrear (disputed tax/disputed penalty/disputed interest/disputed fee)	Amount of tax arrear
1.	2009-10	1	Disputed Tax	422250

It is hereby clarified that making a declaration under this Act shall not amount to conceding the tax position and it shall not be lawful for the income-tax authority or the declarant being a party in appeal or writ petition or special leave petition to contend that the declarant or the income-tax authority, as the case may be, has acquiesced in the decision on the disputed issue by settling the dispute.”

3. In view of withdrawal of the appeal by the assessee, the same is dismissed as infructuous.

Order pronounced in the Court on 27/07/2022.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(OM PRAKASH KANT)
ACCOUNTANT MEMBER**



Mumbai;

Dated: 27/07/2022

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai