

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAVAN KUMAR GADALE, JM

ITA No. 859/Mum/2022
(Assessment Year 2010-11)

ITA No. 860/Mum/2022
(Assessment Year 2011-12)

Dy. Commissioner of Income
Tax

Central Circle 6(2)
Room No.1903,
19th Floor,
Air India Building
Nariman Point,
Mumbai-400 021

(Appellant)

Samira Construction India
Ltd.

G-8, Shrikant Chambers
Next to R.K. Studio,
Sion-Trombay Road,
Chembur,
Mumbai-400 071

Vs.

(Respondent)

PAN No. AALCS6406L

Assessee by : Ms. Vinita Shah, AR

Revenue by : Shri H.N. Singh, CIT DR

Date of hearing: 18.10.2022

Date of pronouncement : 29.12.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. These are two appeals filed by the Id. Assessing officer against the consolidated order of the Id. CIT [A] for two years where the addition made by the Id. AO in the hands of assessee on protective basis is deleted.
02. ITA No. 859/Mum/2022 for A.Y. 2010-11 is filed by the Dy. Commissioner of Income Tax, Central Circle-6(2), Mumbai, (the Assessing Officer) against the appellate order passed by the Commissioner of Income-tax



(Appeals)-54, Mumbai [The Id. CIT (A)] for A.Y. 2010-11 on 25thFebruary 2022 and appellate order passed on the same date for A.Y. 2011-12.

03. The learned Assessing Officer has raised following grounds of appeal:-

"1. On the facts and circumstances of the case and in law, whether the learned CIT (A) is justified in deleting the addition made on protective basis in the hands of the assessee , even though the sustentative addition has not reached finality."

04. In both the appeals, the grievance of the learned Assessing Officer is that the learned CIT (A) has deleted the addition made in the hands of this assessee on protective basis even though the substantive addition has not reached finality.

05. The brie fact of the case shows that for A.Y. 2010-11 the assessee filed its return of income on 14thOctober 2010 at ₹ nil. Search under Section 132(1) of the Income-tax Act, 1961 (the Act) on 21st March, 2013 was conducted on Samira group. Notice under Section 153A was issued on 2nd May, 2014, in response to which the return at ₹ nil was filed on 9th December, 2014. The assessment order under Section 143(3) read with section 153A of the Act was passed on 15th March, 2014 assessing the total income of the assessee at ₹1,12,57,000/-. The learned Assessing Officer made an addition of ₹1,12,57000/- on protective basis in the hands of the assessee and substantively in the hands of the sisters concern i.e. Samira Habitats India Ltd.



06. On appeal before the learned CIT (A), the addition related to interest paid on cash loan and unexplained expenditure of ₹1,12,57,000/- was deleted because of the reason that the learned CIT (A) vide order dated 30th December, 2021 upheld the same addition on substantive basis in case of Samira Habitats India Ltd. As the substantive addition was made in the case of other assessee, the protective addition in the hands of the assessee was deleted.
07. Similarly, for A.Y. 2011-12, the addition of ₹2,07,78,750/- was deleted as substantive addition in the hands of Samira Habitats India Ltd. was confirmed. The learned Assessing Officer is aggrieved with the same.
08. At the time of hearing, the learned Counsel submitted that in case of Samira Habitats India Ltd. in ITA No.393,395 to 397 and 532/Mum/2022 for A.Y. 2008-09, 2010-11 to 2013-14, the orders of the learned CIT (A) were contested and by order dated 19th July, 2022, the co-ordinate bench has set aside the issue back to the learned CIT (A) for fresh adjudication. Therefore, the substantive addition has also gone back to the learned CIT (A) and therefore, the protective additions should also go back to the learned CIT (A).
09. The learned Departmental Representative vehemently supported the order of the learned Assessing Officer. However, he contested that the learned CIT (A) has wrongly deleted the addition on protective basis, despite substantive addition has not reached the finality.



010. We have carefully considered the rival contention. The only issue in this appeal is that the learned CIT (A) has deleted the protective addition in the hands of the assessee after confirming the addition on substantive basis in case of Samira Habitats India Ltd. When the orders of the learned CIT (A) in case of Samira Habitats India Ltd. were challenged before the co-ordinate Bench by the assessee, the co-ordinate Bench vide order dated 19th July, 2022 has set aside the orders of the learned CIT (A) in case of that assessee back to his file. Therefore, now the substantive addition is also sent back to the file of the learned CIT (A), therefore in all fairness the order of the learned CIT (A) in case of the assessee are also required to be sent to the file of the learned CIT (A). Accordingly, we restore both these orders back to the file of the learned CIT (A) and direct him to decide the issue along with the appeal of Samira Habitats India Ltd.

011. In the result, both the appeals of the learned Assessing Officer are allowed for statistical purposes.

Order pronounced in the open court on 29.12.2022.

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29.12.2022

Sudip Sarkar, Sr.PS

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.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai