

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)

ITA No. 2577/MUM/2022
Assessment Year: 2008-09
&
ITA No. 2578/MUM/2022
Assessment Year: 2009-10

The Dy. CIT, Central Circle-
6(4),
Room No. 1925, 19th floor,
Air India Building, Nariman
Point,
Mumbai-400021.

Appellant

Vs.

Late Sunil Dharamvir Gulati
Legal Heir Shabnam S. Gulati,
B-2 Kaveri Co. Op. Hsg. Soc.,
Plot No. 63, Sector-17, Vashi,
Navi Mumbai-400705.

PAN No. AEHPG 8703 R
Respondent

Revenue by : Dr. Kishor Dhule, CIT-DR
Assessee by : Shri Hitesh M. Shah, AR

Date of Hearing : 22/02/2023
Date of pronouncement : 28/02/2023

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against two separate orders, both dated 28.07.2022, passed by the Ld. Commissioner of Income-tax (Appeals)-54, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09 and 2009-10 respectively.



Being common issues involved in these both appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First, We take up the appeal of the Revenue for assessment year 2008-09. The grounds raised by the Revenue are reproduced as under:

1. *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO on the account of unaccounted deposits in the bank account of the assessee on substantive basis in the hands of the assessee, ignoring that the claim of assessee that the account is related to Late Shri Sunil Gulati HUF is an afterthought as the assessee failed to produce any evidence to show that the account pertained to HUF and account was in personal name of the assessee only."*
2. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition made u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 on the account of noting of the cash payments made in the deal Wise Excel Sheets (DWES) found during the search operation after holding that there is nothing on the record to suggest that the assessee was doing the said transaction at his own without appreciation that onus lies on the assessee to produce cogent material before the AO to rebut the presumption u/s 292C and the assessee also failed to produce anything before Ld. CIT(A) that the cash payments were accounted and were part of books of account."*
3. *"On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in deleting the addition made u/s 153Ar.w.s. 143(3) of the IT. Act, 1961 on the account of unaccounted cash receipts, cash/unaccounted transaction after holding that there is nothing on the record to suggest that the assessee was doing the said transaction at his own without*



appreciating that onus lies on the assessee to produce cogent material before the AO to rebut the presumption us 292C and the assessee also failed to produce anything before Ld. CIT(A) that the cash payments were accounted and were part of books of account."

4. *On the facts and in the circumstances the Id CIT(A) erred in deleting the additions made u/s 40A(3) of the IT. Act without appreciating the facts that no details for incurring of the expenditure in cash exceeding Rs. 20,000/- was submitted by the assessee.*

3. Briefly stated facts of the case are that during the relevant year the deceased assessee had acted as real estate agent engaged in the purchase and sale of the land which were bought from villagers/farmers then sold to prospected real estate developers. A search and seizure action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was conducted in the case of Shri Madan S. Kolambekar who used to purchase land from the assessee. Subsequently, search was also conducted u/s 132 of the Act conducted at the premises of the assessee on 18.02.2009. Consequent to the search and seizure action notice u/s 153A of the Act was issued and served upon the assessee. In response the assessee filed return of income for the year under consideration on 26.02.2010 declaring income at Rs.4,50,960/-. The assessment u/s 153A r.w.s. 143(3) was completed determining total income at Rs.12,95,49,967/- after making various additions to the total income declared by the assessee.



4. On further appeal, the Ld. CIT(A) allowed part relief to the assessee. Against relief allowed, the Revenue is in appeal before the Tribunal raising grounds as reproduced above.

5. The ground No. 1 relates to the addition deleted by the Ld. CIT(A) in respect of deposits in the bank accounts related to Shri Sunil Gulati (HUF).

6. The brief fact qua the issue-in-dispute are that the Assessing Officer made addition of Rs.54,87,381/- in respect of deposits in three bank account namely Cosmo Co-operative Bank Ltd. A/no. 029204301220192, Tamilnad Mercantile Bank A/c No. 117150050800335, A/c No. 117750050800336 and A/c No. 117700480100052. The assessee contended that those accounts were related to Shri Sunil Gulati (HUF) and not to the assessee. The Assessing Officer held those accounts as belonging to the assessee and the deposits thereon were held as belonging to the assessee. The Ld. CIT(A) however after verification found that those accounts belongs to Shri Sunil Gulati HUF and therefore, no addition could have been made in the hands of the assessee. The relevant observation of the Ld. CIT(A) is reproduced as under:

“During the course of appellate proceedings, the appellant has submitted a letter from the bank pertaining to Cosmos Bank, Vashi Branch having account no 029204301220192. From the letter, it is learnt that the account pertains to M s. SadguruArts(Prop. Sunil Gulati HUF). The appellant has also submitted statement of bank account pertaining to



Tamilnad Mercantile Bank Alc. No. 117150050800335 from which it is evident that this account also pertains to MIs SadguruArts(Prop. Sunil Gulati HUF) Since the appellant has furnished the necessary evidence, addition made on this account is deleted.

As far as the deposit of Rs.97.406/- is concerned in the bank account pertaining to the bank Tamilnad Mercantile Bank Alc. No. 117700480100052, the appellant has stated that the same has been shown in the books of accounts. Since the appellant has substantiated his claim by furnishing necessary evidence during the appellate proceedings, the addition of Rs.54,87,371/- is deleted.”

7. The Ld. CIT(A) has followed binding precedent of the Tribunal in assessee’s own case for assessment year 2003-04 to 2007-08. The relevant finding of the Ld. CIT(A) is reproduced as under:

“Further, on similar ground in the appellant's own case for A.Y 2003-04 to A.Y. 2007-08 in ITA No. 3496 to 3498, 4794 & 4795//Mum/2015 the HonbleITAT vide order dated 19.08.2016 held that "there is no clarity with regard to partition of HUF, so AO was directed to intimate his counterpart having jurisdiction over the case of Late Shri Sunil. D Gulati (HUF) to initiate necessary action for assessing the said amount of unexplained bank deposits of Rs. 63.15 lakhs in the hand of said HUF by resorting to the provisions of section 148 r.w.s 150 of the Act. Therefore, the substantive addition on account of unexplained bank deposits of Rs. 63.51 lakhs made by the AO in the hands of deceased assessee is deleted". Thus, the ITAT held that the account held by Sunil D. Gulati cannot be made once the account belongs to Sunil D Gulati(HUF) and deleted the addition.”

8. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has duly verified the facts and also followed the



decision of the Tribunal in the assessee's own case. We do not find any error in the order of the Ld. CIT(A) in deleting the addition following the finding of the Tribunal (supra). Accordingly, the ground No. 1 of the appeal of the Revenue is dismissed.

9. The ground No. 2 of the appeal of the Revenue relates to deletion of cash payment appearing in the deal wise excel sheets (DWES) found during the course of search operation. The brief facts qua the issue-in-dispute are that the Assessing Officer made addition of Rs.34,92,500/- on the basis of DWES statement seized from the possession of the assessee. According to the Assessing Officer, the cash payments reflected in the said sheet is not appearing in the books of account. Therefore, he made addition u/s 69C of the Act amounting to Rs.54,92,100/-. Before the Ld. CIT(A) the assessee submitted that plots were purchased on behalf of the subsequent buyers and therefore, all the payments appearing in the said DEES were related to buyers and sellers and assessee's role was only deal maker and therefore all those payments belonging to the relevant parties.

10. The Ld. CIT(A) following the finding of the Tribunal in assessee's own case for assessment year 2003-04 to assessment year 2007-08 deleted the addition observing as under:

“During the appellate proceeding, the representative of the Appellant has stated that appellant was only coordinator between the purchasers and sellers and used to keep the



record of the receipts and payments for each deal made by/through him. The receipts and payments made in cash, mentioned in the DWES were not the payments made by the Appellant; but were paid by the buyers themselves through the appellant and paid to the farmers. The payments made by way of cheques routed through him were accounted for in accounts. The AR has stated that he was merely a real estate agent and a deal maker and hence most of the transaction happened either in cheques / cash does not belong to him but belongs to the prospective developers / investors such as Bhawarlal Chhajjar, Rakesh Surve Vinay Gosavi, Sumeel Bacchewar and others.

Further, on similar ground in the appellant's own case for A.Y. 2003-04 to A.Y. 2007-08 in ITA No. 3496 to 3498, 4794 & 4795//Mum/2015 the Honble TAT vide order dated 19.08.2016 held that "the assessee is doing agency work on behalf of other parties. There is nothing on record to suggest that the assessee was doing the said transaction at his own. Assessing Officer has not brought on record to suggest that above land transaction were done by assessee in his name. It could have been corroborated by Assessing Officer with real instances of transaction which has not been done by him. In such situation, assessee cannot be taxed on the basis of on money transaction of its client. So addition in hand of the assessee is not justified. Same is directed to be deleted"

Addition in respect of DWES, cash payment to various parties and other cash transactions has been deleted. Therefore, the alternative disallowance u.s.40A(3) is also deleted."

11. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has deleted the addition following the binding precedent of the Tribunal (supra) and therefore, we do not find any



error in the order of the Ld. CIT(A) on the issue-in-dispute. Accordingly, the ground raised by the Revenue is dismissed.

12. The ground No. 3 of the appeal of the Revenue relates to addition deleted by the Ld. CIT(A) in respect of account of unaccounted cash receipt, unaccounted cash transaction. The brief facts qua the issue-in-dispute are that the Assessing Officer made addition of Rs.3,61,91,000/- on the basis of the noting in various pages of Annexure A1 impounded from Arneja office & Page No. 11, 25 of Annexure A2 impounded from Kaveri Bldg showing date-wise details of payemtn in cash and cheques to various farmers/brokers in respect of various properties/plot.

13. Before the Ld. CIT(A) the assessee claimed that assessee was only deal maker between the purchaser and seller. The Ld. CIT(A) after considering the submission of the assessee, relying on the order of the Tribunal in assessee's own case for assessment year 2003-04 to 2007-08 deleted the addition observing as under:

“Further, from the paper book, it is seen that only Rs. 13 lakhs pertaining to ShriRakeshSurve appears to be a duplicate entry. Hence, the duplicate addition made to the extent of Rs. 13 lakhs is deleted.

In point no. (fil) above the amount of Rs. 5 lakhs is already been made at Ground no. 5(x) for A.Y. 2009-10. Since the appellant has substantiated his claim by furnishing necessary evidence during the appellate proceedings, the addition of 5 lakhs is deleted.



In point no. (v) above, the amounts. 1 lakh is already been made at Ground no 5(v) of the appeal for A.Y. 2009-10. Since the appellant has substantiated his claim by furnishing necessary evidence during the appellate proceedings, the addition of 1 lakhs is deleted.

In point no. (x) above, the addition of Rs.1,35,00,000/- & Rs.29,20,000/- is already been made at Ground no (x) & (xi) of the appeal for A.Y. 2009-10. Since the appellaht has substantiated his claim by furnishing necessary evidence during the appellate proceedings, the addition ofRs. 1,35,00,000/- & Rs.29,20,000/- is deleted

On similar grounds in the appellant's own case for A.Y.2003-04 to A.Y. 2007-08. in ITA No. 3496 to 3498, 4794 & 4795//Mum/2015 the Honble ITAT vide order dated 19.08.2016held that the Revenue has not brought on record actual transaction done by the assessee himself. As deceased assessee's consistent stand has been accepted by us that he was only a Real Estate agent or broker or deal maker and hence he used to block the plots by giving some advances to the plot owner-cum farmers on behalf of investors only. Revenue authorities had not brought anything on record to suggest that assessee himself purchased property in question from the farmers. In such a situation assessee was entitled for brokerage only. In view of the adove addition in question is not justified and directed the AO to delete the additions.”

14. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) following the binding precedent on the issue-in-dispute in the assessee's own case and therefore, we do not find any infirmity in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The ground No.3 of the appeal is accordingly dismissed.



15. The ground No. 4 of the appeal of the Revenue relates to deletion of the addition made by the Assessing Officer u/s 40A(3) of the Act for incurring expenses exceeding Rs.20,000/-. We find that the Ld. CIT(A) has deleted this alternative disallowance made by the AO u/s 40A(3) of the Act mainly on the ground that addition in respect of the cash payment of parties has already been deleted by him. Since, we have already upheld the finding of the Ld. CIT(A) deleting the addition made in respect of cash transaction and therefore, no alternative addition in respect of payment exceeding Rs.20,000/- in cash, can survive. The ground No. 4 of the appeal of the Revenue is accordingly dismissed.

16. Now we take up the appeal of the Revenue for assessment year 2009-10. The grounds raised by the Revenue are reproduced as under:

- 1. On the facts and circumstances of the case and in law, the Ld.c CIT(A) erred in deleting unaccounted cash receipt from Shri Madan Kolambekar of Rs. 2,95,00,000/- without properly appreciating the relevant documents found/ seized during the course of search action.*
- 2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO on the account of (unaccounted deposits in the bank account of the assessee onob substantive basis in the hands of the assessee, ignoring that the claim of assessee that the account is related to Late Shri Sunil Gulati HUF is an afterthought as the assessee failed to produce any evidence to show that the account pertained to HUF and account was in personal name of the assessee only."*



3. *On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in deleting the addition made u/s 153A r.w.s. 143(3) of the Income Tax Act, 1961 on the account of noting of the cash payments made in the deal Wise Excel Sheets (DWES) found during the search operation after holding that there is nothing on the record to suggest that the assessee was doing the said transaction at his own without appreciation that onus lies on the assessee to produce cogent material before the AO to rebut the presumption us 292C and the assessee also failed to produce evidence before Ld. CIT(A) that the cash payments were accounted and were part of books of account."*
4. *On the facts and in the circumstances of the case and in Law, the La. CIT(A) erred in deleting the addition made us 153A r.w.s 143(3) of the IT. Act, 1961 on the account of unaccounted cash receipts after holding that there is nothing on the record to suggest that the assessee was doing the said transaction at his own without appreciating that onus lies on the assessee to produce cogent material before the AO to rebut the presumption u/s 292C and the assessee also failed to produce evidence before Ld. CIT(A) that the cash payments were accounted and were part of books of account."*
5. *On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) erred in deleting the addition made by the AO on account of consideration received for plot 22, Airoli holding that Rs. 20,34,625/- being consideration received against the figure of Rs 1,24,18,570/- ignoring that the assessee has failed to produce evidence before Ld. CIT(A) that the consideration received for plot 22 were accounted and were part of books of account."*
6. *On the facts and in the circumstances the ld CIT(A) erred in appreciating additions made W/S 10119) of the 1.7. 16 red in g- 9 appreciating the fact that no details for incurring of the expenditure in cash exceeding Rs.20,000/- was submitted by the assessee*



17. The ground No. 1 of the appeal relates to addition made by the Assessing Officer of Rs.3.5 crores in respect of Shri Madan Kolambekar. The Ld. CIT(A) noted that the development charge sheet i.e. 3rd Annexure to the status report (page no. 221) Annexure A1 seized from the office of Shri Madan Kolambekar showed an amount of Rs.3.5 crores against the name of the assessee. The amount of Rs.2.71 crores had been paid through cheque and it was reflected in the bank account in Cosmos Co-op Bank Ltd. of Shri Sunil Gulati. Further, the assessee had entered into an understanding with Shri Madan Kolambekar for supply of land admeasuring Approx. 10,000 sq. metre in Vadghar Node. The assessee could supply only two plots namely Plot No. 109 Sector -2 Vadghar admeasuring 200 sq. mtr. and Plot No. 128, sector -5 Vadghar admeasuring 400 sq. mtr. totaling to 600 sq. mtr. and the balance out of 10,000 sq. mtr. was not supplied to Madan Kolambekar. It was submitted that the assessee received Rs.55,00,000/- in cash from Madan Kolambekar and Rs.2,21,00,000/- through cheques. Thus only Rs.2,76,00,000/- only was received by the assessee in respect of land to be supplied to Kolambekar in Vadghar Node Area. According to the Ld. CIT(A) sustained addition to the extent of Rs.55,00,000/- in cash payment received from Shri Madan Kolambekar.

18. The Ld.Counsel of the assessee submitted that the assessee has already disclosed a sum of Rs.55,00,000/- in the return of



income filed for the search period and therefore, the Tribunal in ITA No. 2092/M/2022 for assessment year 2009-10 has restored the issue for verification to the Assessing Officer.

19. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In our opinion, the addition for the cash transaction has already been sustained by the Ld. CIT(A) subject to verification with return of income and the balance amount has been verified from the books of account and therefore no further addition is justified. We do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly we uphold the same.

19A. The grounds No. 2 to 4 of the appeal of the Revenue are identical to the grounds raised in assessment year 2008-09. Therefore, respectfully following our finding, the grounds No. 2 to 4 of the appeal are decided *mutatis mutandis*. These grounds are already dismissed.

20. In ground No. 5, the Revenue has raised the issue of the addition of Rs.1,24,18,570/- which has been restricted to Rs.20,34,625/- by the Ld. CIT(A). We find that this issue has been raised by the assessee in its appeal in ITA No. 2092/M/2022 which has been adjudicated by the Tribunal on 02.02.2023. The relevant finding of the Tribunal is reproduced as under:



“41. The Ground No. 4 of the appeal relates to addition of ₹20,34,625/- sustained by the Ld. CIT(A), against the addition of ₹1,24,18,570/- which was made by the Assessing Officer in relation to plot No. 22, Sector Six, Airoli relying on page No. 49 of Annexure -2 from Kaveri building.

41.1 Regarding the addition, the Ld. CIT(A) has observed as under:

“13.3 The facts of the case and findings of the AO recorded in the Assessment Order and the written submissions of the appellant have been considered.

The AO observed that page no 49 of Annexure 2 seized from Kaveri Bldg showed allotment of certain properties to the assessee against part consideration of plot no.22 sector 6, Airoli. Total value of 4 flats in 'Muktai' on plot 6A, Sec.6, Koparkhairane is worked out at Rs.31,27,580/-; that of 4 flats in Raj Uday Society on plot 109, sec. 1, Sampada worked out at Rs.80,56,500/- and that of 1 flat in Sairaj Aptt on plot 83 & 84, Sec. 1, Sanpada worked out at Rs. 12,34,490/. Thus, the total value of all these properties against part consideration of plot no.22, sector 6, Airoli was Rs.1,24,18,570/-, The A made addition of Rs.1,24,18,570/- on account of unaccounted/undisclosed income of the assessee.

The appellant has stated that the A.O. has made this addition as unexplained investment, based upon Page no. 49 of Annexure-2 seized from Kaveri Building. However, it was the proposal made by the appellant to settle dispute for plot no.22 in sector-6, Airoli and such proposals did not materialized as they were not accepted by the builder. Hence, no addition could be made only on the basis of a proposal which never materialized. Further, the appellant has stated that if at all additions are to be made then addition of Rs.20,34,625/- is to be made since, the value of the flat requested to be allotted to the appellant was only Rs.20,34,625/-

It is seen from page 49 of affickale R2 that the name of Shri Suni Guata appears at sr.no 4 of the project, MIs. Raj Uday Co-operative Housing Soc. Ltd bearing flat 1001 amounting



to Rs.20,34,625/-. Thus, there was a specific reference of the name of the appellant in this loose paper. Therefore, addition of Rs.20.34.625/- is sustained. However, in respect of the remaining addition of Rs.1,03,83,945/-, the AO has not made any further inquiry about whether such flats were acquired by the appellant or not. Therefore, the addition to the extent of Rs.1.03,83,945/- is deleted.

Accordingly, the ground no.8 of appeal is partly allowed.”

42. Before us on behalf of the assessee, it has been submitted as under:

“The Appellant, in the course of his business activity, had struck an understanding for the development of a society plot at Plot No. 22 in sector - 6 Airoli, belonging to Shri. Sai Raj Co-op. Hsg. Society, around 20 years ago. Accordingly in the said proposed building flats were booked for others also i.e. for outsiders other than the members of the cooperative housing society. However, the said project did not take off for a long time. Hence, the society members approached another builder namely M/s. Raj Homes Udayvansh Builders & Developers, 425, Arenja Corner, Plot No. 71, Sector-17, Vashi, Navi Mumbai, for the development of the Society plot. That builder agreed to take over the Society plot for development but agreed to allot flats in other projects belonging to his group to persons for whom the Appellant had booked the flats. Since, the Appellant had earlier identified the members of the cooperative housing society and unified them together and convinced them for the redevelopment of the Society plot, the Appellant, as a consideration for his efforts so far made by him, had requested for an allotment of one flat for himself, in the Raj Uday Cooperative Housing Society Building, from the said builder.

It is only the said proposal of the Appellant's request that is contained in Page no.49 of Annexure-2, seized from Kaveri Building. However the builder M/s Raj Homes Udayvansh Builders & Developers had not agreed to give one flat requested for by the Appellant.



Hence, the Appellant did not receive any flat from the builder, as MIs Raj Homes Udayvansh Builders & Developers has not allotted any flat to the Appellant.

This fact can be verified from the said builder M/s Raj Homes Udavansh Builders & Developers himself or from the Housing Society concerned.

NO addition can be made in the assessment on account of the alleged purchase of the said flat, ONLY on the basis of a proposal which never materialized.

Hence. it is prayed that the addition confirmed in this regard to the extent of Rs. 20,34,625/- should be deleted.”

43. Before us the Id. Counsel of the assessee has also filed additional evidence that the allottees of said flat are different persons and not the assessee. The assessee has filed an information downloaded from the web-site of the CIDCO, which is extracted as under:



HITESH SHAH & ASSOCIATES **Hitesh Shah B. Com FCA. DISA**
CHARTERED ACCOUNTANTS **Falguni Shah B. Com DBF. FCA**
ADD: OFFICE NO : 208, 2ND FLOOR, PLOT NO : 26, SHALIMAR MIRACLE, S V ROAD, ABOVE McDONALD, JAWAHAR
NAGAR, GOREGAON (WEST) MUMBAI-400 062, MOBILE : 98211 40636
E.MAIL: hiteshshahandassociates@gmail.com / ca.hsa1988@gmail.com

24TH November, 2022

To,
The Registrar,
The Income tax Appellate Tribunal,
3rd Floor, C G O Building, M K Road, Churchgate,
Mumbai.

Respected Sir,

Re : Late SUNIL D GULATI L/H. Shabnam S Gulati
P.A.NO : AEHPG8703R
ASST. YEAR: 2009-2010

Sub: APPLICATION FOR ADMITTING FRESH EVIDENCE U/R 46A

Under the instructions from our abovementioned client we are submitting herewith, the request for admitting the fresh evidence u/r. 46A w.r.t. Ground No IV before your honour.

The CIT(A)-54 has confirmed the addition of to the extent of Rs. 20,34,625/- in respect of one alleged undisclosed investment in a Flat no : 1001/1004 in the society plot at Plot No. 22 in sector - 6 Airoli, belonging to Shri. Sai Raj Co-op. Hsg. Society, around 20 years ago. Thee A.O. has not carried out any independent enquiry for the said alleged flat either. The widow and the legal heir of the appellant personally visited the office of the CIDCO and found out the name of the allottee of the Flat no : 1001 and 1004 which clearly denies the facts. Hence the said papers obtained from CIDCO may be admitted as fresh evidence and oblige.

We trust you will find the above in order.
Thanking you,

Yours faithfully,
For Hitesh Shah & Associates
Chartered Accountants


Partner
(CA Hitesh Shah)

Encl : As above.

Flat Master - Estate Department									
Menu Save Back Exit Cancel System									
City	101	NAVI MUMBAI (TW)	Node	SN	SANPAEA	Sector	1	Building	11790
Plot	109	Block: Street No	Village		Flat No		1004		
Building Number	1	RAJ UDAY CHS LTD				City+Node	1114	NAVI MUMBAI	
Partner	Valid From	Valid To	Share	Role	Title	First Name	Last Name		
30285687	21.11.2005	31.12.9999		TR0600	Mr.	ASHOK	CHITAMAN KHANDRE		
30285688	21.11.2005	31.12.9999		TR0600	Ms.	SHAILA	ASHOK KHANDRE		
30285689		31.12.9999		TR0600	Ms.	CHAGHUNABAI	MOTIRAM BHOIR		



Flat Master - Estate Department

Menu Save Back Exit Cancel System

City: 101 NAVI MUMBAI (TH) Node: SN SANPADA Sector: 1 Building: 11790
Plot: 109 Block: Street No: Village: Flat No: 1001
Building Number: 1 RAJ UDAY CHS LTD City+Node: 1114 NAVI MUMBAI C

Partner	Valid From	Valid To	Share	Role	Title	First Name	Last Name
30285681		31.12.9999		TR0600 Ms.	PODDA		RAJ KANDHARI
30285682		31.12.9999		TR0600 Mr.	RAJ		MOTILAL KANDHARI
30285683	12.07.2013	31.12.9999		TR0600 Mr.	NRUDELA		AGARNAL
30285684	12.07.2013	31.12.9999		TR0600 Mr.	ANUPKUMAR		AGARNAL

44. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Before us the ld. Counsel of the assessee has filed additional evidence to support that said flat was never allotted to the assessee and it was merely a proposal, which never materialized. In view of the evidence collected by the widow of the demised assessee i.e. legal heir, we feel it appropriate to admit the additional evidence and restore the matter to the file of the ld. Assessing Officer for necessary verification from the relevant authorities regarding allotment of concerned flat and then decide the issue in dispute in accordance with law after providing adequate opportunity of being heard to the assessee/legal heir of assessee. The ground of the appeal of the assessee is accordingly allowed for the statistical purposes.”

20.1 Since, the assessee filed additional evidence before the Tribunal claiming that the relevant plot was not allotted to the assessee and therefore, no addition was justified in the case of the assessee. Since, the Tribunal has already restored this issue back to the file of the Assessing Officer for verification of claim of the assessee, this ground of the Revenue is also restored to the file of



the Ld. Assessing Officer. The ground of appeal of the Revenue is accordingly allowed for statistical purposes.

21. The ground No. 6 of the appeal relates to the alternative addition made u/s 40A of the Act for cash payment exceeding Rs.20,000/-. Since the main addition for cash transactions has already been deleted, therefore this alternative claim of the Revenue for levying penalty for cash transaction exceeding Rs.20,000/- does not survive. The ground No. 6 of the appeal of the Revenue is accordingly dismissed.

22. In the result, the appeals of the Revenue are allowed partly for statistical purposes.

**Order pronounced under Rule 34(4) of the ITAT Rules,
1963 on 28/02/2023.**

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

**sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/02/2023
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,

(Assistant Registrar)
ITAT, Mumbai