

IN THE INCOME TAX APPELLATE TRIBUNAL ‘F’ BENCH, MUMBAI

**BEFORE SHRI PRASHANT MAHARISHI, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 3802/Mum/2013
(Assessment Year: 2007-08)

Shri Vinod K. Faria Flat No. 3, Fairy Manor, 13-Gunbow Street, Fort, Mumbai-400 706	V s.	DCIT(OSD)-II, Central Rang 7 Mumbai
PAN/GIR No. AAAPF 1045 J		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Hiral Sejpal/Sarthak
Revenue by	:	Shri Yashwant Kumar Bhaskar
Date of Hearing	:	10.01.2023
Date of Pronouncement	:	10.04.2023

ORDER

Per Kavitha Rajagopal, JM:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘Id.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Year (‘A.Y.’ for short) 2007-08. The assessee has challenged this appeal on various grounds of additions/disallowances made by the Assessing Officer and confirmed by the Id. CIT(A).

2. The brief facts of the case are that the assessee is an individual and a proprietor of M/s. Mayur Ply ‘N’ Veneers and M/s. Mahavir Glass & Aluminum and is engaged in the business of trading in plywood’s, veneers glass and aluminum. The assessee is also a director in M/s. Genelac Ltd. (a sick company as per the regulations of BIFR) and Royal

Rich Developers Pvt. Ltd. which is into investments. Pursuant to the search and seizure action u/s. 132(1) of the Act and survey action u/s. 133A of the Act carried out at the business premises and residential premises of the assessee/ Milan Dalal Group of company dated 30.05.2008, it is observed that the unaccounted cash payments for purchase of immovable property, transfer of tenancy, development rights, share investments, accommodation entries for bogus loans, misappropriation of funds of companies, unaccounted cash sales of galas of high-speed project, cash payments through hawala parties in India as well as outside India, understating value of immovable property were alleged to have been found and relevant evidences were said to be seized pertaining to the said allegations. The assessee is said to have failed to furnish the income tax return inspite of several opportunities given by the A.O. and had filed the return of income on 19.11.2010, which was after the specified period and hence the A.O. treated the returns as nonest and invalid. The A.O. passed an *ex parte* order dated 28.12.2010 u/s. 153A/144 of the Act by making various additions/disallowances and thereby determining the total income at Rs.20,19,75,000/-.

3. The assessee was in appeal before the Id. CIT(A) challenging the impugned assessment order, who confirmed the said addition made by the A.O. on the ground that the assessee has failed to substantiate his claim by way of documentary evidences.

4. The assessee is in appeal before us, challenging the order of the Id. CIT(A).

5. Ground no.1 raised by the assessee pertains to the challenging of the assessment order passed u/s. 143 r.w.s. 153A of the Act. It is observed from the records of the lower authorities that the assessee has been given several opportunities to present his case

before the lower authorities and that the assessee has failed to comply with the said proceedings. On this note, ground no.1 raised by the assessee does not hold merit and is dismissed.

6. Ground no. 2 is general in nature and requires no separate adjudication.

7. Ground no.3 pertains to the addition of Rs.6 lacs as unexplained/unaccounted investment in SRA project u/s. 69A of the Act. It is observed that the assessee had made investment in a SRA project of Sadabahar CHS at Dharavi and the evidences related to the said project was seized during the course of the search/survey as loose paper nos. 91 to 112 of Annexure 7. The A.O. contended that the assessee had made an undisclosed investment of Rs.70 lacs. The A.O. also relied on the statement of Shri Jiva Rathinam who was a power of attorney for M/s. Edwin Civil Engineering vide statement recorded u/s. 131 of the Act dated 20.06.2008 in which it was specified that the assessee had made a payment of Rs.80,11,116/- on several occasion in SRA project and Rs.6 lacs was related to the impugned year. As the assessee failed to contradict the said fact by way of documentary evidence, the impugned amount was added to the total income of the assessee and confirmed by the Id. CIT(A) u/s. 69 of the Act.

8. The learned Authorized Representative (Id. AR for short) for the assessee contended that the loose papers relied upon by the A.O. does not state that the assessee had made investment in the project. The Id. AR further contended that even otherwise the figures mentioned in the loose papers were in thousands. The Id. AR further contended that the impugned addition was made by the lower authorities without any justification and prayed that the same may be deleted.

9. The learned Departmental Representative (ld. DR for short) for the Revenue, on the other hand, controverted the said facts and stated that the statement of Shri Jiva Rathinam indicated complete details of cash payments made by the assessee which was unaccounted and unexplained investment of the assessee. The ld. DR relied on the order of the lower authorities.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the seized documents contain details of the assessee's unaccounted investment of Rs.70 lacs which was further corroborated by the statement of Shri Jiva Rathinam recorded u/s. 131 of the Act who had admitted payment of Rs.80,11,160/- in Q. No. 5 of the statement. It is also observed that the date wise details of the said payment made by the assessee was also given by Shri Jiva Rathinam vide his letter dated 19.06.2008, out of which Rs.74,11,616/- related to A.Y. 2008-09 and the balance of Rs.6 lacs related to the impugned year. The assessee's contention that the joint development agreement with Smt. Daisy Rani wife of Shri Jiva Rathinam was duly registered with Registrar and the cost for the same was paid by five parties specified in the agreement. The assessee contended that the statement of Shri Jiva Rathinam was perverse and that the A.O. has merely relied on the said statement. The assessee further contended that the figures in the loose papers are in thousands and on these grounds, the impugned addition was to be deleted. It is pertinent to point out that the assessee has not complied with the notices neither before the A.O. nor before the first appellate authority. The assessee has also failed to furnish any documentary evidences in support of his claim, nor has the assessee contradicted the statement of Shri Jiva Rathinam by any

supporting evidences. It is also observed that the assessee was given several opportunities before the A.O. and also before the Id. CIT(A) during which the assessee has failed to bring any evidences to contradict the said fact. The assessee has also failed to furnish any documentary evidences in support of its claim even before us. In the absence of any contradictory facts, we hold that the addition made u/s. 69 of the Act is to be sustained. Ground no.3 raised by the assessee is dismissed.

11. Ground no. 4 relates to the addition of Rs.72 lacs as unexplained, unaccounted investment u/s. 69 of the Act. It is observed that the assessee has acquired tenancy rights of Krishna Bunglow Natwarnagar No.2, Jogeshwari (E), Mumbai from Shri Pinakin D. Shah and others for Rs.72 lacs. The payments for the same were made by pay orders obtained by payment of cash from various banks and the details of which were given in the assessment order. The said property along with the tenancy rights were subsequently purchased by Dipti Builders dated 05.02.2008 for Rs.88 lacs. The capital gain for transfer of the said tenancy rights was worked out to be Rs.16 lacs. The assessee is said to have not accounted the sale of these rights and the same was treated as unexplained and unaccounted investment u/s. 69 of the Act for the reason that the assessee has failed to offer any explanation on the said investment and has also failed to furnish any documentary evidences pertaining to the same.

12. We have heard the rival submissions and perused the materials available on record. The assessee during the assessment proceeding has consented that the tenancy rights were acquired and pay orders for the same was obtained by four parties namely Shakti Traders, Saurabh Enterprises, Prince & Sons and Omkar Trading and that the

power of attorney was executed by these parties in favour of the assessee. It is observed that the assessee has failed to furnish any confirmation from the said parties that the pay orders had been obtained from them. The assessee has merely produced an unregistered power of attorney and nothing more to contradict the said fact. The assessee has failed to substantiate the payments received and paid to the said parties before the lower authorities. The assessee has also failed to furnish any documentary evidences to prove that the impugned amount was not unaccounted investment before us. For this reason, we hereby confirm the said addition made u/s. 69 of the Act. Hence, ground no. 4 is hereby dismissed.

13. Ground no. 5 relates to the addition of Rs.2,25,00,000/- u/s.69 of the Act as unexplained /unaccounted investment related to the payments made to Shri Milan Dalal. It is observed that the assessee has entered into a MOU dated 23.09.2016 with Shri Milan Dalal, Director of M/s. Grishma Construction and Trading Pvt. Ltd. for acquisition of the development rights and the project by name 'Nirmal Nest-II' at Borivali (W). The terms of the MOU are that the total amount payable was Rs.5.25 crores, out of which Shri Milan Dalal was to receive Rs.1.25 crores on 23.09.2006 and Rs.1 crore on 19.12.2006 and balance Rs.3 crores was to be received after obtaining IOD/CC. The A.O. stated that Shri Dilip Patel who was said to be a close friend of the assessee was the authorized signatory for the bank account of M/s. Genelec Ltd. who confirmed that the assessee had paid Rs.1.25 crores and Rs.1 crores to Shri Milan Dalal on 23.09.2006 and 19.10.2006 respectively in his presence by way of cash and the same was not recorded in the books. The assessee contended that he had not entered into any MOU with Shri Milan Dalal and that the assessee had not paid for the development rights of project Nirmal Nest and the

MOU was only a draft which was not executed. The assessee relied on the retracted statements dated 31.01.2011. The A.O. contended that the statement of the assessee was retracted after a lapse of 2 years and 8 months, which was nothing but an afterthought and further contended that the assessee has failed to contradict the impugned transaction by way of any documentary evidences.

14. Having heard the rival submissions and perused the materials on record. It is observed that the statement of Shri Dilip Patel was not rebutted by the assessee and also the fact that the assessee has not produced any documentary evidences to rebut the stand of the A.O. that the impugned amount is unexplained and unaccounted investment made by the assessee as per section 69 of the Act. The assessee has failed to substantiate his contention by way of any supporting evidences even during the second appellate proceeding. Hence, we are inclined to dismiss ground no. 5 raised by the assessee.

15. Ground no. 6 pertains to the addition of Rs.1,05,08,000/- as unexplained income relating to unsecured loans taken from various parties. It is observed that as per the seized documents from the assessee's premises, the assessee is said to have obtained accommodation entries by payment of amount in cash as per loose paper nos. 12, 31 and 32 of Annexure A1 seized from Fern Hill House, Bazargate, Fort, Mumbai-400 001. The assessee has failed to prove the genuineness of the said loan by producing the loan creditors before the lower authorities nor have the assessee filed any documentary evidences to show that these were not bogus unsecured loans. The assessee is said to have filed loan confirmations before the first appellate authority which had sent the same for verification to the A.O. The A.O. observed that the xerox copies of the confirmation letter

was defective either without the address and some without PAN numbers and all these letters had no bank details, copy of IT acknowledgment, balance sheet of the loan depositors, etc. were not furnished. The assessee is also said to have not filed the original copies of the loan confirmation from around 25 parties. The lower authorities have confirmed the said addition on the ground that the assessee has failed to prove the genuineness, identity and creditworthiness.

16. We have heard the rival submissions and perused the materials available on record. It is evident that the assessee has not discharged his onus by proving the identity, genuineness and creditworthiness of the creditors which is mandated under the provisions of the law. The assessee has not filed any additional evidences before us to substantiate her claim. We hereby confirm the said addition on the ground that the assessee has failed to prove the genuineness of the loans, identity and creditworthiness of the creditors. Hence, ground no. 6 raised by the assessee is dismissed.

17. Ground no. 7 relates to the addition of Rs.34,20,000/- made u/s. 69 of the Act as unexplained and unaccounted investment. It is observed that from the seized materials, the assessee has made payments in cash amounting to Rs.17.10 lacs for acquiring of the land at CTC No. 235 at Mogra Village. It is also observed that the assessee had made another payment of Rs.17.10 lacs in cash for acquiring land at CTC NO.233, Mogra Village. The assessee contended that he had entered into an agreement with Shri Peter Joseph Gomes for purchasing land at Jogeshwari but had not paid anything and that the entire amount was paid by Shri Keshavji Bera and Shri Khimji Narshi Bera. The lower

authorities have confirmed the addition for the reason that the assessee has failed to furnish any confirmation from the alleged two parties specified by the assessee.

18. Having heard the rival submissions and perused the materials available on record. It is pertinent to point out that the assessee has failed to furnish any confirmation letter from the alleged parties whom according to the assessee had made the impugned payment. The assessee has failed to substantiate both the payments amounting to Rs.17,10,000/- each, thereby confirming the same to be as unexplained and unaccounted income as per section 69 of the Act and hence the impugned addition of Rs.34,20,000/- is to be added as unexplained and unaccounted investment u/s. 69 of the Act. Hence, ground no. 7 is dismissed.

19. Ground no. 8 pertains to an addition of Rs.1,70,000/- as undisclosed and unexplained investment as cash payment made to M/s. Genelec Ltd. and it is observed that during the search/survey in the premises of M/s. Royal Rich Developers, M/s. Genelec Ltd. it was found that the assessee had paid an amount of Rs.1,70,000/- to M/s. Genelec Ltd. by way of cash which the assessee was unable to explain the source of the said cash. The assessee contended that the said amount was returned to M/s. Genelec Ltd. after incurring expenses on behalf of the company out of the advances received for the said purpose and stated that the same was not unexplained or unaccounted. The lower authorities confirmed the said addition on the ground that the assessee has failed to prove his claim.

20. We have heard the rival submissions and perused the materials available on record. Even before us, the assessee has failed to furnish documentary evidences to show

that the impugned amount was out of the advance received from M/s. Genelec Ltd. Since the assessee has failed to substantiate his claim, we hereby confirm the impugned addition. Hence, ground no. 8 raised by the assessee is hereby dismissed.

21. Ground no. 9 relates to the addition of Rs.4,41,00,000/- as unaccounted, undisclosed income on the basis of the seized loose papers. It is observed that the loose paper no. 32 of Annexure A1 seized during the search/survey at the business premises of the assessee reveals cash payments to various parties namely Rs.2,12,00,000/- to Shri Chetan, Rs.72,00,000/- to Salim Chawl and Rs.1,57,00,000/- for obtaining demand drafts. The lower authorities had confirmed the said addition on the ground that the assessee has failed to substantiate his claim by any documentary evidences.

22. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has contended that the payment for Salim Chawl amounting to Rs.72 lacs made out of the funds of Vinod Faria HUF and payment of Rs.2,12,00,000/- to Chetan was towards repair work at M/s. Genelec Ltd. out of the advance received from the said company and payment for demand draft was under instruction from Dilip Patel.

23. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has failed to explain the sources of payment to the above mentioned parties neither before the lower authorities nor before us. Hence, we find no infirmity in the order of the lower authorities in upholding the impugned addition. Hence, ground no. 9 raised by the assessee is dismissed.

24. Ground no. 10 relates to the cash payment made to Shri Milan Dalal amounting to Rs.10 lacs as per the loose papers no. 43 & 44 of Annexure A1 seized from the business premises of the assessee. The lower authorities have confirmed the said addition on the ground that the assessee has failed to furnish any supporting evidences to substantiate his claim.

25. We have heard the rival submissions and perused the materials available on record. The assessee has contended that the impugned payment was made on behalf of M/s. Genelec Ltd. to Shri Milan Dalal for providing consultancy services which was out of the advances received from M/s. Genelec Ltd. It is pertinent to point out that the assessee has failed to substantiate the fact that the impugned payment was made on behalf of M/s. Genelec Ltd. to Shri Milan Dalal for providing consultancy services. The assessee has also failed to corroborate the fact that the said payment was made from the advance received from the M/s. Genelec Ltd. We do not find any infirmity in the order of the Id. CIT(A) in upholding the impugned addition. Hence, ground no. 10 raised by the assessee is dismissed.

26. Ground no. 11 relates to the addition of Rs.2,56,15,000/- as unexplained and undisclosed income based on the seized loose papers pertaining to the alleged payments made to Salim Chawl. It is observed that the assessee has made a payment of Rs.80 lacs against Salim Chawl and Rs.1,76,15,000/- as cash payment as per loose paper no. 19 to Annexure A4. The assessee contended that the said payment was made for vacating the shed built on the land at Jogehswari out of the funds of Vinod Faria HUF. The impugned amount was added to the total income of the assessee for the reason that the assessee has

failed to substantiate his claim and has failed to explain the source of the cash payment made against Salim Chawl.

27. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has failed to substantiate his claim during the assessment proceeding. Even before us the assessee has not filed any supporting documents to substantiate the fact that the said alleged payments was made for vacating the shed at Jogeshwari and that the source of the same was from the funds of the HUF. We do not find any infirmity in the order of the Id. CIT(A). Hence, ground no. 11 raised by the assessee is dismissed.

28. Ground no. 12 relates to the addition of Rs.30 lacs being the payment made to Shri Jivan and Architect Shri Hingu. It is observed that from the seized loose paper nos. 21 and 22 to Annexure A4, the assessee has made unaccounted cash payments to Shri Jivan and Shri Hingu. Since the assessee has failed to explain the said source, the same was added to the total income of the assessee.

29. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has contended that the loose papers related to expenditure incurred on behalf of M/s. Genelec Ltd. for which the assessee has received an advance from the said company. The assessee has failed to substantiate his claim that the impugned expenditure was incurred by Genelec Ltd. for which the assessee had received an advance from the said company. The assessee has not furnished any documentary evidence to show that it belong to M/s. Genelec Ltd. From the above

observation, we find no infirmity in the order of the Id. CIT(A). Hence, ground no. 12 raised by the assessee is dismissed.

30. Ground no. 13 relates to the addition of Rs.25 lacs as unexplained and unaccounted investment u/s. 69 of the Act in respect of copies of bankers cheque. The A.O. observed that the loose paper no. 144 of Annexure A4 which was impounded from Bhupen Chambers revealed bankers cheques dated 31.07.2006 to Dena Bank, account of M/s. Genelec Ltd. amounting to Rs.25 lacs. The lower authorities confirmed the said addition on the ground that the assessee has failed to explain the source of the payment and held the same to be unaccounted and unexplained.

31. We have heard the rival submissions and perused the materials available on record. The assessee contended that the said loose papers belong to M/s. Genelec Ltd. in which the assessee was a director and that the same does not relate to the assessee in any manner. Since the assessee has failed to furnish any supporting evidences to show that the impugned transaction pertain to M/s. Genelec Ltd. during the assessment proceeding, the remand proceeding or before us we hold that the addition made by the lower authorities has to be sustained. Hence, ground no. 13 is dismissed.

32. In ground no. 14, the assessee has challenged the addition of Rs.50 lacs as unexplained and unaccounted transaction u/s. 69 of the Act on the basis of the loose papers which indicate alleged payment made to Shri Raja Rancchod Patel. It is observed that the assessee has made cash payment to Shri Raja Rancchod Patel specified as work at Jogeshwari property as per the loose paper no. 20 of Annexure A4 seized from the assessee's business premises during the search operation. The assessee has contended that

the loose papers relied on by the A.O. pertains to M/s. Genelec Ltd. and the expenditure was reimbursed to Shri Raja Rancchod Patel after receiving the impugned amount from M/s. Genelec Ltd. The lower authorities have confirmed the impugned addition on the ground that the assessee has not explained the sources of the impugned cash payments before the lower authorities. In our considered view, the assessee has also failed to substantiate his claim even before us. From the said observation, we find no infirmity in the order of the Id. CIT(A). We hereby dismiss ground no. 14 raised by the assessee.

33. Ground no. 15 relates to an addition of Rs.20 lacs as unexplained unaccounted investment u/s. 69 of the Act on the basis of the loose papers reflecting alleged payment made to Shri Salim Babaji. The assessee contended that the said payment was brokerage charges paid in respect of purchase of land out of funds from Vinod Faria HUF. The assessee has failed to explain the source of the expenditure incurred by way of brokerage charges paid to Shri Salim Babaji either before the A.O. or during the remand proceeding and even before us. The assessee has failed to furnish the details of Shri Salim Babaji to prove the identity, genuineness and creditworthiness mandated as per the provisions of the law. Hence, we hereby confirm the impugned addition made by the A.O. and upheld by the Id. CIT(A). Hence, ground no. 15 raised by the assessee is dismissed.

34. Ground no. 16 relates to an addition of Rs.8 lacs as unexplained and unaccounted investment u/s. 69 of the Act in relation to the acquisition of tenancy rights of Room No. 3, Sunita Chambers. The assessee has contended that the said payments were made by Shri Mahesh Faria HUF which has been accounted for in his books of accounts. The assessee has failed to prove the source of the said payments either before the lower

authorities nor before us. It is also observed that the assessee in his statement u/s. 131 of the Act dated 27.06.2008 has admitted that the impugned payment was made by the assessee out of his cash resources which were not shown in the books of accounts. The assessee has failed to prove that the said funds were paid out of Shri Mahesh Faria HUF by way of any supporting documents. Hence, we hereby dismiss this ground of appeal raised by the assessee.

35. Ground no. 17 pertains to the addition of Rs.6,80,00,000/- as unexplained and unaccounted cash transaction on the basis of the loose papers at page no. 4 of Annexure A4 seized from the assessee's business premises. Though the assessee has contended that the loose papers related to expenditures incurred on behalf of M/s. Genelec Ltd. and Royal Rich Developers Pvt. Ltd. out of the advance received from these companies, the assessee has failed to substantiate this fact by way of supporting documentary evidences during the assessment proceeding, the remand proceeding or before us. Hence, we dismiss this ground of appeal raised by the assessee.

36. Ground no. 18 – this ground of appeal pertains to addition of Rs.21 lacs as unexplained and unaccounted investment u/s. 69 of the Act. It is observed that page no. 5 of Annexure A4 seized from the assessee's business premises reflects cash transaction including cash investment of Rs.21 lacs for the purpose of acquisition of land at Kandivali. The assessee is said to have confirmed the said payment which had been made for BMC work for D. P. Remark and property card. Since the assessee has failed to explain the source of the said payment, the lower authorities have held the same to be unexplained and unaccounted investment u/s.69 of the Act. As the assessee has failed to

furnish any evidences in support of its contention, we are inclined to dismiss this ground of appeal raised by the assessee.

37. Ground no. 19 relates to an addition of Rs.15,70,000/- as unexplained investment on account of bogus loans. The assessee has contended that the impugned amount was received from various loan creditors whose confirmation letters were said to be produced during the assessment proceeding by the assessee. On perusal of the records, it is observed that the assessee has not furnished the original copies of the loan confirmations and even otherwise the confirmation letters were filed without the address and PAN of the creditors. Since the assessee has failed to prove the loan transaction to the satisfaction of the A.O., the same was added as unexplained income in the hands of the assessee. The assessee has also failed to furnish the relevant documentary evidences neither before the first appellate authority nor before us and, hence, we do not find any infirmity in the order of the Id. CIT(A). We hereby dismiss this ground of appeal raised by the assessee.

38. Ground no. 20 relates to an addition of Rs.19 lacs as additional business income. It is observed that the assessee had filed return of income declaring taxable income of Rs.9,75,800/- which was treated as invalid by the A.O. for the reason that the return was not filed in the due course of time. The assessee is said to have not filed any documents in support of the returned income, pertaining to the total sales, purchase and expenses, etc. The A.O. proceeded to estimate the assessee's income from business at Rs.19 lacs and added the same to the total income of the assessee. The assessee relied on the decision of the Tribunal in the case of *Anil Kumar Bhatia* (1 ITR 484), wherein it was held that the income is to be assessed only on the basis of the material found during

search. The assessee has contended that the A.O. had estimated the income from business on an arbitrary basis. The Id. CIT(A), on the other hand, relied on the decision of *Gopal Lal Bhadraka vs. DCIT* 346 ITR 106, wherein the Hon'ble Andhra Pradesh High Court has said to have overruled the proposition laid in *Anil Kumar Bhatia* (supra) case and held that the A.O. can consider even materials available other than the search for the purpose of assessing the income of the assessee. The Id. CIT(A) upheld the addition made by the A.O.

39. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has not substantiated the fact that the estimation done by the A.O. has no nexus with the search materials. The assessee has not furnished any contradictory evidences to rebut the estimation of the A.O. in determining the business income of the assessee. We, therefore, find no infirmity in the order of the Id. CIT(A) and hereby dismiss ground no. 20 raised by the assessee.

40. The Id. AR for the assessee has submitted that she will not press the additional ground raised before us. It is also pertinent to point out that the additional evidences filed by the Id. AR were also not relied upon by her during the appellate proceeding. The Id. AR merely relied on the decision of the co-ordinate bench in the case of *Shri Milan B. Dalal* in ITA No. 6762/Mum/2014 vide order dated 23.03.2017. On perusal of the said decision, it is observed that the Tribunal has deleted the addition on the basis that the entries found in the loose papers are figures written in thousand such as "10.00" which has to be interpreted as 'Rs.10,000/-' and not Rs.10,00,000/-. In our considered view, the figures representing 1000's in code words especially in loose papers which are intended

solely for the purpose of evading tax involving business transaction. Considering the nature of business of the assessee, these cannot be meager transaction of 1000's for high value properties involved in the transaction between the assessee and Shri Milan Dalal. We have another reason to disagree that loose papers denominate figure in thousands. The last figure on page no. 16 is '0.40', if we considered it to be thousands, then it would be Rs.500/- only. It is beyond justification that a person will write down a figure of Rs.500/- in the seized documents, which was in possession of the assessee. Even otherwise the facts are distinguishable to the present case where the quantum is not in dispute. The primary onus is casted upon the assessee who in the present case has failed to discharge his onus by contradicting the facts found during search proceedings and it is also pertinent to point out that the said facts found in the loose papers was also corroborated by the statement of the assessee though was retracted after a period of 2 years 8 months. From the above, we are of the considered opinion that the assessee has failed to substantiate his claim neither before the lower authorities nor before us inspite of several opportunities being rendered to the assessee.

41. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 10.04.2023

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai; Dated : 10.04.2023
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai