

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.328/Mum/2023
(Assessment Year :2007-08)**

Shri Rajesh Ravjibhai Patel 2703, Glen Classic Hiranandani Gardens Powai, Mumbai-400 076	Vs.	Asst. CIT Cir 26(2) Kautilya Bhavan BKC, Bandra (E) Mumbai - 400 051
PAN/GIR No.AAAPP5172E		
(Appellant)	..	(Respondent)

Assessee by	Ms. Kiran Vadher
Revenue by	Smt. Mahita Nair
Date of Hearing	10/05/2023
Date of Pronouncement	19/05/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 16/01/2023 passed by CIT(A)-47, Mumbai for the quantum of assessment passed us/143(3) r.w.s. 147 for the A.Y.2007-08.

2. The assessee is an individual having income from business, capital gains and other sources. The return of income was filed

on 31/10/2007 declaring total income of Rs.24,77,806/- Later on assessee's case was reopened u/s.147 on the basis of information received from Investigation Wing. Later search and seizure operation was conducted on the Hiranandani group of builders and developers on 11/03/2014. The reasons recorded by the ld. AO reads as under:-

“Information has been received from DIT(I)-II vide letter No DITII-II/T baring/2013-14 dated 27-03-2014 that a search was conducted on the Hiranandani Group Builders and Developers on 11-03-2014 During the course of search proceedings evidences related to inter alia, payment of an money (cash) by venous flat purchasers has been found. When the evidences were confronted to the directors and promoters of the Hiranandani Group they accepted the fact that on money was received an sale of venous flats. The identification of the buyers who have paid On money (cash) for purchase of flats from the Hiranandani Group had been made.

On perusal of the information, it is noticed that the assessee Shri Rejesh Ravjibhai Patel has purchased flat from Hiranandani Group by paying on money (cash) to the tune of Rs 1,11,89,600/- during the Financial Year 2006-07 relevant to the AY.2007-08.

S. No.	Name of the Concern of Hiranandani Group to whom “On Money” is paid	Amount
1	Crescenda Associates	Rs.1,11,89,600/-
	Total	Rs.1,11,89,600/-

In view of the above, I have reasons to believe that the income of the assessee of Rs 1,11,89,600/- has been escaped assessment within the meaning of the provisions of Section 147 of the IT Act, 1961.

3. Accordingly, notice u/s.148 was issued to the assessee on 28/03/2014. In response to the notices, assessee had filed return of income on 10/04/2014 stating that return filed earlier should be treated as 'return filed' in response to Section 148 and also filed objections for reopening which has been disposed of by the ld.AO vide order dated 09/02/2015. The ld. AO noted that as per the details filed, it is seen that assessee had acquired following flats from Hiranandani group of builders and developers during the assessment year under consideration.

Flat No	Name Of The Building	Name Of The Builder	Amount /Date Of Registration
2402/A	Glen Dale, Hiranandani Gardens, Powai	Crescendo Associates	39,32,500 02-02-2007
2402/B	Glen Dale, Hiranandani Gardens, Powai	Crescendo Associates	39,05,000 02-02-2007
2402 /C	Glen Dale, Hiranandani Gardens, Powai	Crescendo Associates	38,50,000 02-02-2007
3604/A	Torino, Hiranandani Gardens, Powai	Crescendo Associates	23,22,000 19-12-2009
3604/B	Torino, Hiranandani Gardens, Powai	Crescendo Associates	38,70,2000 19-12-2009

4. He further noted that during the course of search and seizure operation carried out in the Hiranandani group of cases on 11/03/2014, a pen drive was seized containing “running cash ledger” reflecting the On-money receipts of the group during the different financial years from the buyers in different projects of the group. The said pen drive contained date wise entry of receipt of cash. The said information gave following transactions relating to the assessee.

Date of payment of on-money	Amount	Flat No.	Name of building	Business Concern
04/01/2007	Rs. 22,43, 700/-	2402	Glendale	Crescendo Associates
24/01/2007	Rs.40,00,000/-	2402	Glendale	Crescendo Associates
31/01/2007	Rs.13,87,500/-	2402	Glendale	Crescendo Associates
11/04/2006	Rs.21,16,800/-	3604	Torino	Crescendo Associates
11/04/2006	Rs.14,41,600/-	3604	Torino	Crescendo Associates
Total	Rs. 1,1 1,89,600/ -			

5. The ld. AO has also noted the statement of Shri Ranjan Hiranandani was recorded u/s.132(4) on 14/03/2014, wherein he has accepted that total On-money cash received by him for

various flats was more than Rs.475.60 Crores. However, the assessee denied having taken any On-money in cash. AO has made the addition after observing as under:-

9.5 The following facts emerge in this case which establish the payment of on-money to the tune of Rs.1,11,89,600/-by the assessee in connection with the purchase of flats:

i. It is an undisputed fact that the assessee booked flat no 2801 A in Torino Building. These flats appear in the contents of the pen drive seized during the search and seizure in the Hiranandani group of cases. It proves that the contents of the pen-drive were true.

ii. It is also a fact that the assessee made payment and acquired the flats from Crescendo Associates (a concern of Hiranandani Group). The employees and promoters of the Hiranandani group have admitted the receipt of 'on-money' from buyers of the different projects of the group. Therefore, the fact of payment of on-money by assessee as recorded in the contents of pen-drive cannot be untrue.

iii. No businessman will record any receipt of 'on-money' without receiving it. Therefore the contents of pen drive cannot be doubted.

iv. It is a common knowledge that 'on-money' is paid/received in purchase and sale of flats. However, in these cases, no receipt is issued for the 'on-money' received. In such cases the direct evidence is difficult to find. However, in the instant case, concrete evidence is found in the form of the contents of the pen-drive. Contents have been accepted as correct by the owner of the pen drive in his sworn statement. Therefore the contents of the pendrive are a piece of good evidence regarding payment of on money by the assessee.

v. Without prejudice to the iv' above, it is a settled law that in civil proceedings issues can be decided on preponderance of probabilities and circumstantial evidences, where direct

evidence is not available. In view of the facts narrated in preceding paragraphs it can be inferred that the assessee paid on money to the tune of **Rs. 1,11,89,600/-** for acquisition of flats during the FY 2006-07 relevant to A.Y 2007-08.

9.6 The aforesaid amount is **treated as undisclosed investment and added to the total income u/s 69B** of the Act as the assessee failed to furnish any explanation about such payment of 'on-money'.

6. Before the ld. CIT (A) apart from challenging the validity of notice u/s.148, it is also submitted that since assessment has been made on the basis of documents found during the course of search in the case of Hiranandani group, same documents can only be used by resorting to computation contained in Section 153C. The ld. CIT (A) dismissed the assessee's contention after observing as under:-

“7.21 In view of the above binding judicial precedents, I am of the considered view that the AO had valid reasons to initiate the reassessment proceedings, which were duly recorded and communicated to the appellant. Thus, the A.O. has rightly assumed Jurisdiction and correctly initiated proceedings u/s 148 of the Act. Further, the argument of the appellant that the A.O. should have issued notice u/s 153A/1530 of the Act instead of 148 has no merit. No search took place at the premises of the appellant. Further, the search proceedings at the premises of the Hiranandani group revealed the "on-money" payment by the appellant. The information was passed over by the concerned A.O. Hence, the proceedings u/s 148 was validly initiated in this case. Accordingly, the Ground of Appeal No. 2 of the present appeal is dismissed.”

7. In so far as merits are concerned, Ld. CIT(A) has confirmed the action of the ld. AO on the ground that there was direct

evidence in the form of pen drive which is found and seized and the content of which were never doubted at any stage.

8. Before us, ld. Counsel submitted that the reasons recorded are based on information received from Investigation Wing and it is based on borrowed satisfaction and there is no independent application of mind by the ld. AO. Secondly, she submitted that once any document or material is found in the course of search and if anything pertaining to or relating to other person is found then only recourse is to acquire jurisdiction u/s.153C.

9. After hearing both the parties on the legal ground, we find that first of all, in so far as reasons recorded are concerned, there was a categorical information found during the course of search proceedings that payment of On-money was made by cash by various persons and this information was based on incriminating material in the form of pen drive found from the search in Hiranandani group; and that pen drive also contained the details of the assessee wherein during the F.Y.2006-07, it was shown that assessee had paid cash of Rs.1,11,89,600/- for purchase of certain flats from Crescendo Associates. Once there is tangible material like this, then prima facie any prudent mind will entertain reasons to believe that this amount of On-money which is shown by the assessee for the purchase of flats in the return of income amounts to escapement of assessment when same has not been declared in the return of income. Therefore, to this extent, it cannot be held that reasons recorded are vague or there is no application of mind by the ld. AO. What is required

to be seen is that, is there any prima facie material and such material can lead to formation of belief or not. At this stage AO doesn't have to establish the factum of escapement which he can only after calling for assessee's explanation and conduct inquiry.

10. In so far as the argument of the ld. Counsel that jurisdiction should have been acquired u/s.153C, however, at a threshold such a plea cannot be entertained for the reason that here the search has taken place on 11/03/2014 and the clause 'previous six assessment years' start from A.Y.2008-09 and this assessment year 2007-08 falls beyond the period of six years and as mentioned in Section 153A. Moreover, the amendment brought by way of *fourth proviso* in Section 153A extending the abatement till 10 years, has come w.e.f. 01/04/2017 which is applicable on searches conducted after 01/04/2017. Therefore, the ld. AO could not have acquired the jurisdiction u/s.153C. Thus, this plea taken by the ld. Counsel is rejected.

11. Now coming to the merits of the case, we find that the entire premise of the ld. AO is based on pen drive seized from the search carried out on Hiranandani group and the statement of Shri Ranjan Hiranandani taken on 14/03/2014, wherein he has just simply stated that he is confirming having taken On-money. This information of material can be sufficient for acquiring the jurisdiction u/s.147 and formation of reason to believe that prima facie income chargeable to tax for escaped assessment. But that alone is not sufficient while making the addition in the assessment order. The assessee before the ld. AO had submitted

the details of purchases and source of purchase of flats and has categorically denied that he has made any payment of cash as On-money. It was submitted that he has made certain advances to the builder in the A.Y.2007-08 and possession was received in the F.Y.2011-12. All the advance payments were out of borrowed home loan from ICICI bank for sum of Rs.1,31,81,250/- which was paid in installment to the builder. Once assessee has submitted the documents for the payment and has denied the payment of any cash, then it was incumbent upon Assessing Officer to carry out some enquiry from the builder (Crescendo Associates, part of Hiranandani group) to get further details as to when and how the cash payment was made by the assessee. If the ld. AO is relying heavily on the statement of Shri Ranjan Hiranandani, then he should have been put to cross examination if his statement was the sole basis for drawing adverse inference because his statement merely states that he has received On-money in cash and nowhere has he given any specific name of any person or name of the assessee. Ld. Counsel has also pointed out that it is a matter of record that even Shri Ranjan Hiranandani had retracted from the statement and nowhere has it been stated in their proceedings that they have taken any unaccounted On-money cash specifically from the assessee. Nor anywhere there is any finding that assessee has paid any on-money and veracity of the pen-drive has been established.

12. Be that as may be, whether statement has been retracted or not, however, the ld. AO simply based on an information found from the possession of a third party cannot make an

addition and draw adverse inference without carrying out further enquiry and rejecting the assessee's explanation. In so far as the burden cast upon the assessee, the same has been duly discharged and then it was upon the ld. AO to bring material on record after some enquiry that assessee's explanation is incorrect and there was any material found that other party has given details for the payment of cash paid by the assessee. If any entry by a third party of cash received has been recorded then presumption is it his unaccounted money and burden is upon that person to explain that this money has come from the other person and has to substantiate that. It is then the burden shifts upon the other person, i.e., assessee here to prove that he has not given any money. Thus, uncorroborated information cannot lead to addition in the hands of the assessee, specifically when nothing has been brought on record as to what was the fate of that information or material found and what inference in the case of the searched person has been made; and whether that person has accepted as his own undisclosed income or as stated that all these on-money have come from respective persons specifying the details. Unless something is brought on record or AO conducts inquiry that the said person in whose possession it was found has given the details or has confirmed or AO finds some other information or material, addition cannot be made simply relying on uncorroborated data or entry in third party books. Thus, on merits, we do not find any justification for making an addition u/s.69B for alleged payment of On-money in cash without any material evidence brought on record by the ld.

AO during the course of assessment proceedings. Accordingly, on merits additions are deleted.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced on 19th May, 2023.

**Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER**

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai; Dated 19/ 05/2023

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai