

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.283/SRT/2022

Assessment Year: (2017-18)

(Physical Hearing)

The ACIT, Central Circle-4, Surat.	Vs.	Naresh Bhikhabhai Savaliya, 2, Sargam Society, Katargam Siganpore Road, Katargam, Surat – 395004.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKRPS3049Q		
(Appellant)		(Respondent)

Appellant by	Shri Vinod Kumar, Sr. DR
Respondent by	Shri Nitin Gheewala, AR
Date of Hearing	26/04/2023
Date of Pronouncement	23/05/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the Revenue, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-4, Surat [in short “the Id. CIT(A)”] in Appeal No. CIT(A), Surat-4/10530/2018-19, dated 25.07.2022 which in turn arises out of an assessment order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 29.12.2018.

2. Grounds of appeal raised by the Revenue are as follows:

“(1) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.74,06,250/- made by the Assessing Officer on account of unaccounted income derived from the partnership firm M/s. Platinum Developers by observing that the income including undisclosed income, if any, has to be brought to tax in the hands of the said firm only ignoring the fact that the share of profit derived from the partnership firm is exempt from taxation in the case of the partners only when the partnership firm has paid taxes on such income before distribution of the same.

(2) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.74,06,250/- made by the Assessing Officer on account of unaccounted income derived from the partnership firm

M/s. Platinum Developers by considering the submission that the said partnership firm has filed an application for settlement before the Hon'ble Settlement Commission, Mumbai in which the undisclosed income, as apparent from the seized material, has been offered for taxation in the hands of the firm, without appreciating the fact that the partnership firm has offered only 20% of Rs.5,30,00,000/- (sales of Rs.4,93,57,292/- and some other expected sales of Rs.29,66,250/- totaling to Rs.5,23,23,542/-) as profit for taxation and not disclosed the amount of Rs.2,96,25,000/- 'Partner divided', appearing in the document in question.

(3) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has not appreciated the fact that, as per the incriminating document, the total receipts were appearing at Rs.7,53,45,167/- whereas the partnership firm has considered only an amount of sales of Rs.4,93,57,292/- in its settlement application for disclosing the profit and the net amount of Rs.2,96,25,000/- appearing on the payment side was shown as "Partners Divided" which means that the said amount have already been divided amongst the partners.

(4) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.74,06,250/- made by the Assessing Officer on account of unaccounted income earned from the partnership firm M/s. Platinum Developers by considering the submission that the said partnership firm has filed an application for settlement before the Hon'ble Settlement Commission, Mumbai in which the undisclosed income, as apparent from the seized material, has been offered for taxation in the hands of the firm, without appreciating the fact that the Hon'ble Settlement Commission has not yet passed any final order in the case of the partnership firm and the matter is still pending for consideration.

(5) In addition to and without to prejudice to Grounds No. 1 to 4, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) has not appreciated the fact that the entries on the receipt side of the incriminating document in question was showing Rs.2,56,50,000/- being the amount received "from partners" and hence the balance net amount of Rs.2,96,25,000/- shown as "Partners Divided" were inclusive of the unaccounted investment of Rs.2,56,20,000/- made by the partners and hence, the addition the extent of Rs.64,12,500/- (25% share of the assessee of Rs.2,56,50,000/-) in the hands of assessee was clearly sustainable, being unaccounted contribution to the firm by the assessee.

(6) On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has not appreciated the fact that in case, the incriminating document was pertaining to the partnership firm as claimed by the assessee, the entries on the receipt side of the said documents was showing Rs.2,56,50,000/- being the amount received from partners and hence there was unaccounted investment to the tune of Rs.64,12,500/- (25% share of the assessee of Rs.2,56,50,000/-) in the hands of assessee and the Id. CIT(A) ought to have confirmed the addition to that extent as this unaccounted contribution has been received back with part of some profit as 25% of total unaccounted income of Rs.2,96,25,000/-.

(7) It is, therefore, prayed that the order the Ld. CIT(A)-4, Surat may be set aside and that of the assessing officer may be restored to the above extent.

(8) The assessee craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal.”

3. Succinct facts are that assessee is engaged in the Proprietary business of trading of embroidery machines in the name of Pearl Overseas and also partner in the firm of M/s Akshar Associates, Hariom Corporation and Platinum Developers. According to the assessing officer, during the course of search in the premises of K-Star Group at Katargam, Surat some incriminating documents marked as Annexure A-485 page Nos.76-79 were found and seized. They were relating to Project Himgiri developed by the assessee and three other partners namely Mr. Kishore Koshiya, Mr. Bharat Gadhiya and Mr. Vishrambhai. The said papers are reproduced by the assessing officer on pg. Nos. 2 & 3 of the assessment order. Page No. 79 of the seized material shows that an amount of Rs.2,96,25,000/- was divided between the said, four partners up to 15.04.2016. The paper showed that the amount of Rs.2,96,25,000/- was the 'partner divide' which was held to be the profit from the project of the firm to be divided amongst the partners of the firm. The assessing officer further held that the share of profit from the firm is exempt in the hands of the partners if the taxes are paid in the hands of the firm. But in the instant case, the income being unaccounted and the taxes are not paid by the firm, the income has to be brought to tax in the individual hands of the partners. Therefore, assessing officer made addition of Rs.74,06,250/- in the hands of the assessee.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has deleted the addition made by the Assessing Officer. The ld CIT(A) observed that income of the firm especially when assessed to tax cannot be brought to tax in the hands of the individual partners. Therefore, the addition made by the assessing officer towards the income of the partnership firm M/s Platinum Developers in the hands of the assessee in the profit- sharing ratio cannot be sustained. Aggrieved by the order of Ld. CIT(A), the Revenue is in appeal before us.

5. The Learned Departmental Representative (Ld. DR) for the Revenue argued that Page no. 79 (seized by the Department) reveals that an amount of Rs.2,96,25,000/- has been divided between the partners up to 15.04.2016. During the assessment stage, the assessee was requested to produce relevant ledger/books of account showing the transaction, however assessee did not produce them before assessing officer. As per page no.79, a 'partner divided' amount of Rs.2,96,25,000/- is appearing on this page. The word 'partner divided' as mentioned in the document on page no.79 means the profit from the project which needs to be divided amongst the partners of the firm. In normal course the share of profit is exempt from tax when the taxes are paid by the firm. Here it is clear that the unaccounted income on which taxes has not been paid by the firm and which does not form part of the books of accounts of the firm, is being divided amongst the partners, therefore addition made by the assessing officer may be sustained.

6. On the other hand, Ld. Counsel for the assessee pleaded that seized page no. 79 of Annexure A-485 is in relation, to the project 'Hingiri' carried out by the partnership firm M/s Platinum Developers, wherein assessee is a partner. Thus, it gets clear that the assessee has not carried out the said project in his individual capacity but the same is carried out by his partnership firm, M/s Platinum Developers which, is separately assessed to tax and hence, there is no question of the assessee earning any unaccounted income for the same in his individual capacity and even the seized document does not show any income received by the assessee for the same. Further, the learned assessing officer has also erroneously treated the 'partner divide' as the profit of the project and accordingly, made an addition of Rs.74,06.250/- u/s 69A of the Act taking 25% share of the assessee, which is absolutely erroneous.

7. This way, ld Counsel reiterated the submission made before the ld CIT(A) and stated without prejudice to the aforesaid contention, that even otherwise, the assessing officer has grossly erred, in making the subject addition of Rs.74,06,250/- in the hands of the assessee u/s 69A of the Act alleging

unaccounted income of the assessee, without appreciating that the said project viz. 'Himgiri' as carried out by M/s Platinum Developers, a partnership firm, is duly covered in the petition filed by the said firm viz. M/s Platinum Developers before the Hon'ble Settlement Commission u/s 245C of the Act. Before the Settlement Commission M/s Platinum Developers has disclosed additional income taking into consideration the seized records on the basis of which the assessing officer has made the alleged addition in case of the assessee. As the seized papers under reference belongs to M/s Platinum Developers and income as per the same has been declared before the Settlement Commission on which due tax plus interest is paid by the assessee and the final order has also been pronounced by the Settlement Commission u/s 245D(4) of the Act therefore the addition of Rs 74,06,250/- is not justified and Id CIT(A) has rightly deleted the same. Hence, Id Counsel prays the Bench, that findings of Id CIT(A) may be upheld.

8. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. The Id CIT(A) observed that project Himgiri is the project executed by M/s Platinum Developers, a partnership firm in which the assessee is the partner alongwith Mr Kishore Koshiya, Mr Bharat Gadhiya and Mr Vishrambhai. All the four partner's are having equal share of profit and hence, the assessee has 25% share in the said firm. The said firm has been assessed to tax from the period prior to the date of Search, and was assessed to tax with the assessing officer of the assessee. It was submitted by Id Counsel that the details relating to the said firm and 'the' books of accounts and statements of the said firm were submitted before the assessing officer vide submissions in response to notice u/s 153C of the Act issued to the said firm. Similar submissions dated 25.12.2018 were made in the case of the assessee as well. However, the assessing officer did not take cognizance of the said submissions. The Id CIT(A) also observed that M/s Platinum Developers has filed application before Hon'ble Settlement

Commission, Mumbai in which the undisclosed income which is part of the seized material referred to above has been offered to tax in the hands of the said firm. Therefore, Id CIT(A) held that the “Himgiri Project” belonged to M/s Platinum Developer and income including undisclosed income, if any, has to be brought to tax in the hands of the said firm only. The income of the firm especially when assessed to tax cannot be brought to tax in the hands of the individual partners. Therefore, the addition made by the assessing officer towards the income of the partnership firm M/s Platinum Developers in the hands of the assessee in the profit sharing ratio cannot be sustained. Accordingly, the addition of Rs.74,06,250/- made by the assessing officer was deleted by Id CIT(A). We have gone through the above findings of Id CIT(A) and noted that conclusion arrived by Id CIT(A) is correct. That being so, we decline to interfere with the order of Id. CIT(A) in deleting the aforesaid additions. His order on this addition is, therefore, upheld and the grounds of appeal of the Revenue are dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order is pronounced on 23/05/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 23/05/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat