

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND  
Dr. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.518/PUN/2022

निर्धारण वर्ष / Assessment Year : 2019-20

M/s. Mittal Projects Mittal House, 2095, Vijaynagar Colony, Nilayam Theatre Chowk, Sadashiv Peth, Pune – 411030 PAN : AAPFM6955K	Vs.	The DCIT, Central Circle 2(2), Pune
Appellant		Respondent

ITA No.519/PUN/2022

निर्धारण वर्ष / Assessment Year : 2019-20

M/s. Jindal Mittal Griha Nirman Pvt. Ltd. Mittal House, 2095, Vijaynagar Colony, Nilayam Theatre Chowk, Sadashiv Peth, Pune – 411030 PAN : AABCJ3501F	Vs.	The DCIT, Central Circle 2(2), Pune
Appellant		Respondent

Assessee by Shri Vinod Gupta

Revenue by Shri Ramnath P. Murkude

Date of hearing 06-06-2023

Date of pronouncement 12-06-2023

आदेश / ORDER

PER S.S. GODARA, JM :

These twin assessees' as many instant appeals; both for A.Y. 2019-20, arise against the CIT(A)-12, Pune's separate orders dated 31.05.2022 passed in case Nos.PN/CIT(A)-12/10454/2018-19 and PN/CIT(A)-12/10459/2018-19 in proceedings under Section 153A r.w.s. 143(3) and u/s. 143(3) of the Income Tax Act, 1961, in short 'the Act', respectively.

Heard both the parties. Case files perused.

2. The former assessee herein M/s. Mittal Projects is ITA No.518/PUN/2022 raises the following substantive grounds:

*The following grounds are taken without prejudice to each other -*

*On facts and in law,*

1. *The order of the Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
2. *The learned Commissioner of Income-tax (Appeals) grossly erred in upholding the addition made by Assessing Officer, DCIT, Central Circle 2(2), Pune to the extent of Rs.3,00,000/- towards the alleged on-money receipts.*

*Tax Effect; Rs.1,04,832/- (Tax 30% + SC 12% + Cess 4%)*

3. *The learned Commissioner of Income-tax (Appeals) grossly erred and failed to appreciate that the so-called additions were made by AO relying only upon the statements of employees' and What's App chat and without having any other corroborative evidences.*

4. *The learned Commissioner of Income tax (Appeals) erred and failed to appreciate the fact that all the flats were sold along with parking spaces which are clearly the part of registered sale agreement and Index 2 and the buyers were under no obligation to pay any amount over and above the consideration specified in the registered sale agreements.*
5. *Without prejudice to the aforementioned grounds and assuming without admitting that alleged on money of Rs.3,00,000/- has been received towards parking space/flat consideration, the Authorities below should have determined the net income after giving deduction of proportionate expenses on construction of such Areas and added only net profit from the receipts instead of total receipts. The total receipts added is wholly unjustified.*
6. *The learned Commissioner of Income-tax (Appeals) grossly erred in not giving due importance to the evidences adduced by the Assessee in the form of copy of agreements, confirmation letters, affidavits, statement of account, Statement of Mr Naresh Mittal and other related papers.*

3. The latter assessee M/s. Jindal Mittal Griha Nirman Pvt. Ltd. in ITA No.519/PUN/2022 pleads the following substantive grounds:

*The following grounds are taken without prejudice to each other -*

*On facts and in law,*

1. *The order of the Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
2. *The learned Commissioner of Income-tax (Appeals) grossly erred in upholding the addition made by AO to the extent of Rs.7,53,000/- towards the alleged on-money receipts.*

*The DCIT, Central Circle 2(2), Pune made total additions of Rs.12,53,000/- while passing order u/s 143(3) of the Act towards the alleged on-money receipts comprising in 4 cases. The Ld. Commissioner of Income-tax (Appeals) considered only one case involving Rs.5,00,000/- in favour of Assessee and confirmed the remaining 3 comprising total sum of Rs.7,53,000/- against the Assessee.*

*Tax Effect: Rs. 2,19,274/- (Tax 25% + SC 12% + Cess 4%)*

3. *The learned Commissioner of Income-tax (Appeals) grossly erred and failed to appreciate that the so-called additions were made by AO relying only upon the statements of employees' and without having any other corroborative evidences.*
4. *The learned Commissioner of Income tax (Appeals) erred and failed to appreciate the fact that all the flats were sold along with parking spaces which are clearly the part of registered sale agreement and Index 2 and the buyers were under no obligation to pay any amount over and above the consideration specified in the registered sale agreements.*
5. *Without prejudice to the aforementioned grounds and assuming without admitting that alleged on money of Rs.7,53,000/- has been received towards parking space/flat consideration, the Authorities below should have determined the net income after giving deduction of proportionate expenses on construction of such Areas and added only net profit from the receipts instead of total receipts. The total receipts added is wholly unjustified.*
6. *The learned Commissioner of Income-tax (Appeals) grossly erred in not giving due importance to the evidences adduced by the Assessee in the form of copy of agreements, confirmation letters, affidavits, statement of account. Statement of Mr Naresh Mittal and other related papers.*

4. Suffice to say, both these assessees propose their identical substantive grounds that the learned lower authorities have erred in law and on facts in adding the alleged on-money receipts of Rs.3 lakhs in former and Rs.7,53,000/- in the latter taxpayer's case, respectively. Learned counsel vehemently argued in light of assessee's pleadings that the impugned on-money additions

deserves to be deleted since not substantiated by way of any cogent evidence in the lower proceedings.

5. The Revenue has placed strong reliance on the learned CIT(A)'s action upholding the impugned additions in both these cases.

6. It is in this view of the rival pleadings that we proceed to deal with the relevant facts in both these cases. There is hardly any dispute that the department had carried out section 133A survey on 19.11.2018. It found cash of Rs.1,15,39,550/- at the office premises of M/s. Mittal group. Learned departmental authorities converted the above "survey" to a "search" therefor on 20.11.2018. The former assessee thereafter filed its original return on 26.09.2019 for the impugned assessment year declaring total income at Rs.7,43,02,010/-. The Assessing Officer took up scrutiny. Coming to the impugned on-money addition of Rs.3 lakhs, we note that the same is based on "whatsapp" chat(s) indicating the above stated amount to have been received from Dr. Anita Deshmukh and Dr. Ravindra Deshmukh regarding unit

no.102 in 'Q' building. We are of the view in this factual backdrop that not only section 2(12) duly includes such seized material in the definition of "books or books of account" being in digital form but also the same carries presumption of correctness regarding the contents thereof u/s 292C of the Act. We make it clear that the assessee itself is fair enough in not disputing correctness of above stated whatsapp chat throughout. This is indeed coupled with the fact that its authorized person(s) Mr. Mangesh Nipunge as well as Smt. Mohini Shripad had also confirmed the fact that they had been collecting cash payments from purchasers.

7. Faced with the situation, learned counsel quoted a catena of case laws that such search statements recorded u/s 132(4) hardly carry any significance in light of CBDT's landmark circular dated 10.03.2003. We, however, note that the exception herein is the assessee's "whatsapp" chats seized from its authorized staff accounts which have been nowhere disputed. And also that the said chats as well as learned lower authorities duly corroborates the fact that the corresponding heads therein in lieu of on-money

payment is allotment of parking space only. We, thus, invoke the statute presumption u/s 292C in the facts and circumstances to confirm the impugned on-money addition of Rs.3 lakhs in very terms. This former assessee's appeal ITA No.518/PUN/2022 fails therefore.

8. This leaves us with the latter assessee M/s. Jindal Mittal Griha Nirman Pvt. Ltd.'s appeal ITA No.519/PUN/2022 raising its sole substantive ground seeking to delete the on-money addition of Rs.7,53,000/-. A perusal of the case files reveals that these three parties *inter-alia* are Smt. Anu Kumari regarding flat No."F-705" for Rs.1 lakh, Smt. Ruchera in flat No.B-102, Gloria project, Shri Mangesh Nipunge in flat No.A-301 in 'Sun Sapphire' Project for Rs.2.5 lakhs, regarding flat No.D-1204 for Rs.5,53,000/- and Shri Harshvardhan Chalukya for flat No.C-404 for Rs.1 lakh, respectively, out of which the assessee has already been granted relief to the tune of Rs.5 lakhs in CIT(A)'s order as per ground No.2 extracted in the preceding paragraphs. Learned counsel could hardly dispute that all these on-money payments have emerged

from seized material found at assessee's premises by the departmental authorities during the course of survey / search.

9. We make it clear that the learned counsel vehemently argued in light of assessee's pleadings that the impugned additions deserves to be deleted since made in the absence of any supportive evidence. The fact however remains that it is the assessee's than the Assessing Officer's burden to rebut the statutory presumption u/s 292C regarding contents of seized documents which already form the case records before us. We thus find no merit in assessee's instant sole substantive ground. Its appeal ITA No.519/PUN/2022 fails therefor. Ordered accordingly.

10. These assessee's twin appeals ITA Nos.518/PUN/2022 and 519/PUN/2022 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the Open Court on 12<sup>th</sup> June, 2023.

Sd/-  
**(DIPAK P. RIPOTE)**  
**ACCOUNTANT MEMBER**  
पुणे Pune; दिनांक Dated : 12<sup>th</sup> June, 2023  
GCVSR

Sd/-  
**(S.S. GODARA)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-12, Pune
4. The Pr.CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "A" /  
DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

**आदेशानुसार/ BY ORDER,**

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-06-2023	Sr.PS
2.	Draft placed before author	07-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		