

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI ABY T VARKEY (JUDICIAL MEMBER)**  
**AND**  
**SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA No. 7781/MUM/2019**  
**Assessment Year: 2012-2013**

Shri Rakesh Natwarlal Thakkar,  
13/5<sup>th</sup> Floor, Kashima Co-op  
Society, Opp. Damani Estate,  
LBS Marg, Thane (West),  
Pin – 400602

**Vs.**

DCIT Central Circle-1,  
6<sup>th</sup> floor, Room No. 10,  
A-Wing, Ashar IT Park,  
Road, No. 16-Z,  
Wagle Indl. Estate,  
Thane-400604

**PAN No. AANPT 8579 J**  
**Appellant**

**Respondent**

**Assessee by** : Mr. Dharan Gandhi  
**Revenue by** : Mrs. Riddhi Mishra, CIT-DR

Date of Hearing : 23/05/2023  
Date of pronouncement : 13/06/2023

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the assessee is directed against order dated 13.09.2019 passed by the Ld. Commissioner of Income-tax (Appeals)-11, Pune, [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

- 1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax erred in retaining the addition of a sum of Rs.12.83,860/- madesuby. the Deputy*



*Commissioner of Income Tax as unaccounted cash receipts from sale of flat to one Suresh A. Jadhav based merely on selective scribbings in rough note de hors any corroborative findings which is legally not justified.*

2. *Alternatively and without prejudice to the above ground it is submitted that the learned CIT(A' erred in sustaining addition of the entire sum of Rs. 12,83,860/-being alleged unaccounted cash receipts from sale of flat to Suresh A.Jadhav which is not justified, as only a reasonable percentage of such receipts should be considered as "income" and not the entire receipts as gross receipts cannot be income earned.*

2. Briefly stated, facts of the case are that during relevant assessment year, the assessee was engaged in construction of real estate project namely "Aainaz Avenue" through his proprietary concern namely M/s SV Group Builders and Developers. The assessee was also running another proprietary concern namely M/s R.N. Traders, which was engaged in wholesale trading of food grain. For the year under consideration, the assessee filed return of income electronically on 23.01.2013 declaring total income at Rs.3,11,580/-. The return of income filed by the assessee was selected for scrutiny. The Assessing Officer observed that assessee was a part of "Thakkar Group" on which a search action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 22.02.2012. The Assessing Officer, on the basis of documents seized during the course of search concluded that assessee received unaccounted cash amounting to Rs.12,93,860/-on sale of a flat. In view of no response/reply on the part of the assessee, the



Assessing Officer, after analyzing the entries referred in the seized document, made addition of Rs.12,83,860/- along with other additions as discussed in the impugned assessment order dated 31.03.2015. On further appeal, the Ld. CIT(A) in a detailed finding upheld the addition of Rs.12,83,860/-. Aggrieved with the finding of the Ld. CIT(A) on the issue in dispute, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.

3. Before us, the assessee has filed a fact sheet along with a Paper book containing pages 1 to 8.

4. The Ld. Counsel of the assessee supported the grounds raised by the assessee and submitted that the Ld. Assessing Officer has made addition on the basis of a scribbling in the loose sheet which is a rough noting of estimates. The Ld. Counsel of the assessee submitted that *dehors* any corroborative evidence, these scribbling on rough notes cannot be the sole basis for addition for undisclosed income. In support of contention of the Ld. Counsel of the assessee relied on the decisions of the ITAT in the case of Raj Homes S.V. Group in ITA no. 2408/Mum/2017 wherein the Tribunal has relied on the decision of Hon'ble Supreme Court in the case of **CIT v. P.V. Kalyanasundaram [2007] 294 ITR 49 (SC)**.

4.1 The Ld. Counsel further submitted that it is a normal practice in the case of builders that whenever a prospective buyer visits the site, an estimated value is provided on a piece of the paper and



explained to him with details of various charges for acquiring the property/flat. The Ld. Counsel submitted that when the buyer of the flat under reference i.e. Mr. Suresh A. Jadhav, visited the assessee, he explained the details of various charges for acquiring the flat. The Ld. Counsel submitted that scribbling might be one of the said papers.

4.2 The Ld. Counsel further submitted that no defect whatsoever, has been found in the books of accounts of the assessee in the preceding year and the succeeding year and the profit offered by the assessee has been accepted.

4.3 Further, the Ld. Counsel of the assessee submitted that no evidences have been found in the search or later and the addition has been made on the presumption. The Ld. Counsel of the assessee further submitted factual information and written arguments as under:

1. *“A sum of Rs.3,55,000/- was only received from Suresh Jadhav upto 31<sup>st</sup> March, 2012 as evident in the final accounts filed with the return of income and hence on 08/11/2011 the paper was not written or date is immaterial.*
2. *The paper also contains date 19th March, 2012 and hence it was not written on 8th November, 2011*
3. *Area of the flat is 303.40 sq feet carpet and salable area given is 493.sq feet. The flat has a terrace of 330*



*sg. feet and accordingly by adopting 50% area for the terrace area worked out is 658 sq. feet.*

*It is difficult to get a price of 50% of sale price for terrace on 1st floor and hence it was merely a quotation given and working was done. Actual realization appears in books. Such quotation does not indicate any receipt or commitment.*

4. *The learned CIT(A) on page 6 of his order states as follows :*

*"The first cash payment shown is Rs. 1,50,000/- and subsequently it is shown that 8 drafts of Rs.49,000/- each totaling Rs.3,92,000/- has been paid leaving a balance of Rs.7,41,860/- to be paid and subsequently 5 drafts of Rs.49,000/- totaling Rs.2,45,000/- has been paid and another 4 drafts of Rs.49,000/- each totaling Rs. 1,96,000/- has been paid leaving a balance of Rs.3,00,860/ - which is again paid by 4 drafts of Rs.49,000/- each totaling Rs. 1,96,000/- leaving a balance of Rs. 1,04,860/"\_*

*From above conclusion arrived at it is evident that payments are made by draft. In such a case the payment cannot be said as unaccounted or in cash. The conclusion arrived at is totally incorrect as there can not be payment by draft and same is unaccounted. The projections/ estimates/jottings made if any can not lead to a conclusion that payment was made by bank draft*



*and that to unaccounted. Hence there was no cash payment as presumed.*

- 5. It may further be noted that the appellant has merely received booking amount for some flats agreed to be sold and construction has just commenced. Sales have been effected in A.Y.2014-15, A.Y.2015-16 and hence there was no sale made in this year and hence there can not be any income which had arisen in this year as consideration for sale to said Mr.Suresh Jadhav has been received in F.Y.2011-12, 12-13 and 13-14 by cheques on various dates. Therefore presumption that sum of Rs. 12,83,860/- was received in this year can not be true.*
- 6. Your attention is drawn to the attached judgment in the case of CIT V. P.V.Kalyansundaram (2007) reported at 294 IT 49 which makes it clear that the addition solely based on loose paper scribbling de hors any corroborate finding is not justified.*
- 7. Moreover as evident in the order of CIT(A) a declaration was made by uncle of the appellant of Rs.5,00,000/- on behalf of appellant. Appellant noticed that there was no such discrepancy in his records. He therefore did not offer any additional income and addition of Rs.5,00,000/- made by A.O was directed to be deleted by CIT(A) in his order. This also establishes that there was no cash consideration.”*

5. On the contrary, the Ld. Departmental Representative (DR) referred to the said seized document, which was inventoried by



the search team at **page No. 9 of Bundle No. 1 seized from party TB-2**, which contains details of cash receipts of on money of Rs.12,83,860/- for flat No. 1, Ground floor having area of 658 sq. ft. and sold @ Rs.3800/- per sq feet; and therefore, sale amount was computed at Rs.25,00,400/-. The Ld. DR submitted that this page contains details of ratio of 60:40 and accordingly, the sale amount has been bifurcated into category "A" i.e. by cheque, of Rs.15,00,240/- and category "B" i.e. by cash, of Rs.12,83,860/- (40% sale amount + development charge, legal charge, parking etc. mentioned on the page). The Ld. DR submitted that there are following corroborative evidences:

- *Page No. 7 of loose paper bundle No.1 is the saleable area statement. Area of 658 sq.ft. mentioned therein matches with the area mentioned in Page No. 9 referred above for Flat No. 1, Ground Floor.*
- *The amount under 'A' matches with the actual agreement value for the flat, clearly showing that the amount under 'B' is on money received for the same.*
- *As per calculation under 'A', it reduces 551 written below the digits '500' of 1500240/-, resulting in balance amount of 949240/-. Thereafter, there is an entry of Rs. 1,96,000/- with before it and remark 'Ret by chq' (implying return by cheque), resulting in balance amount of 11,45,240/-. This shows receipt of an amount of Rs.551000 - Rs. 196000 (which has been returned) = Rs.355000/- which is the same as what has been claimed to have been received from Suresh Jadhav as per assessee's submission (refer pt 1 on pg 2 of the Fact Sheet filed by the assessee before the Hon ble ITAT on 26.07.2021).*

5.1 The Ld. DR further submitted that the document is dated 08.11.2011 as noted on the document itself and there has been



regular reduction in the amounts mentioned under category “B”, which implies receipt of cash against “B” category in installments. Further, she refuted the claim of the assessee that the document also contains date of 19.03.2012 and hence it was not written on 08.11.2011. The Ld. DR submitted that the date 19.03.2012 is the date of the seizure of the document and date has been marked below the signature of the witnesses of the search.

5.2 Further refuting the arguments of the Ld. Counsel of the assessee that there was no corroborative evidence, she submitted that the document is a self-contained live document showing the entire transaction in clear term. The noting on the documents is clear evidence of receipt of cash against sale of property for which the cheque amount mentioned on the page matches with the actual agreement value of the flat G-1. The total sale amount inclusive of cheque and cash amount equals the rate per sq. ft. mentioned on the page for an area of 658 sq. ft. which also tallies with the saleable area mentioned in the saleable area statement seized at page No. 7 of the bundle No. 1 seized from the assessee. The noting clearly shows receipt of Rs.3.55 lakhs against the cheque component i.e. Rs.5.51 laksh – 1.96 (cheque returned) = 3.55 lakhs and this is same as the amount stated to have been received by the assessee in his submission. She further submitted that the assessee has not refuted the documents and its contents either before the AO or before the Ld. CIT(A). As regards the decision in




the case of P.V. Kalyanasundaram (supra) and Raj Home (supra), the Ld. DR submitted that same are distinguishable on facts. Further, the Ld. DR submitted that the Ld. Counsel of the assessee submitted that assessee follows completed contract method therefore no addition could have been made for the year under consideration, she submitted that neither any such ground was raised before the Assessing Officer or the Ld. CIT(A) nor has been filed before the Tribunal and therefore, the Ld. Counsel of the assessee cannot surprise the respondent by way of raising a fresh argument suddenly. She further submitted that the onus was on the assessee to make such claim before the AO that said amount was not taxable in the year under consideration and same should have been taxed into the year of the completion of the project. The Assessing Officer could have added the addition on protective basis if so required in the year of completion also. As during assessment, the assessee has not taken any such stand of completed contract method and therefore now assessee cannot be allowed to take such an argument to defeat the provisions of law when he is caught, as now such an action in the hands of the assessee would be barred by limitation.

6. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. The issue in dispute involved is whether the assessee has received cash component on sale of flat No. 1 at ground floor , which was sold to



Shri Suresh Jadhav. The Ld. Assessing Officer has relied on the seized document found from the assessee. The Ld. Assessing Officer asked the assessee to explain the contents of the said seized paper but no reply/response filed by the assessee before the Assessing Officer. The Ld. Assessing Officer analyzed all the entries appearing in the said seized papers. For ready reference a scan copy of the said seized paper is reproduced as under:

FL-4 NO-1 Ground FLR		
60+40		08/11/11
658 X 3800		25,00,000
20/2/01	DEV charge	98,700
19-3-2012	SOC	30,000
	Logis charge	5000
	parking	1,50,000
	10,83,860/-	5,00,240/- ✓
2 Mike shahy	8,50,000/- ✓	551
19/3/12	11,33,860/-	9,49,240/- ✓
	3:92,000/- 49X8 ✓	+ 1,98,000/- ✓
	7,41,860/- ✓	11,65,240/-
	2,45,000/- 49X5	
	1,96,000/- 49X4	
	3,00,860/-	
	1,36,000/- 49X3	
	1,04,860/- Bal	

  
 (N. VENKATESWARLU)  
 INCOME TAX OFFICER  
 (INVESTIGATION) & DDO  
 KALYAN.



6.1 The typed version of the seized document is also reproduced as under:

<b>Flat No. 1</b>	<b>Ground FLR</b>
60+40	08/11/11
658 x 3800	25,00,400
Dev. Charge	98,700
R.C.	30,000
Legal Charge	5,000
Parking	1,50,000
 B	 A
12,83,860/-	15,00,240/-
50,000	55/-
<u>11,33,860/-</u>	9,49,240/-
3,92,000      49x8	+ 1,98,000
<u>7,41,860/-</u>	11,45,240/-
2,45,000/-      49x5	
<u>1,96,001/-</u> 49x4	
3,00,860/-	
<u>-196,000/-</u> 49x4	
1,04,860/-      Bal	

6.2 According to the assessee, the above entries are rough scribbling noted at the time of inquiry by the buyer and same are only estimate explained at the time of meeting with the buyer. Whereas, the lower authorities have analyzed the above documents and observed that the total amount of sale recorded in the registered sale agreement is matching with the amount mentioned against "A" category of amount. The area of the flat noted in the seized document also matches with the registered sale document. The Ld. DR further submitted that amount of Rs.3.55 lakhs claimed to have been received by the assessee from the said customer by way of cheque and referred in books of accounts also matches with the working of balance amount explained by her as under:



- *The noting clearly shows receipt of 3.55 L against the cheque component i.e Rs.5.51 L - 1.96 L (Chq Returned) = 3.55L. This is same as the amount stated to have been received by the assessee in his submission.*

6.2 Further, the ratio of the amount to be received by cheque and cash ( i.e. 60:40) has also been recorded in said seized paper and accordingly, the total sale price of the flat has been bifurcated in category “A” and category “B” payments. The Assessing Officer has concluded that category “A” amount, is amount to be received way of cheque and category “B” amount, is the amount to be received or received by way of cash. The area of the flat recorded in the registered sale deed agreement i.e. 658 sq. ft., also matches with the area of the flat recorded in the seized paper. Further the component of “B” category of the payment i.e. cash payment, has been reduced after making each installment of payment. The analysis of seized paper gets corroborated with the registered sale agreement of the flat, which goes to prove that the amount recorded under “B” category i.e.12,83,860/- is in the nature of the cash component on the sale of the flat received by the assessee.

6.3 Before us, the Ld. Counsel of the assessee submitted that during the course of search no statement u/s 132(4) of the Act has been recorded and assessee has not been questioned and therefore no addition could have been made on the basis of the assessment proceedings. We are unable to agree with the Ld. Counsel of the assessee on this aspect. During the course of the assessment



proceedings, the Assessing Officer has duly provided opportunity to explain the entries, however the assessee did not respond. So it is not a case where the assessee has not been provided any opportunity to explain before the Assessing Officer. It may not be mandatorily question the assessee on each and every paper during the during the statement u/s 132(4) of the Act in course of search proceedings and non-recording of statement u/s 132(4) of the Act, does not debar the Assessing officer for making assessment on the basis of the documents seized during the course of the search.

6.4 Further, the Ld. Counsel of the assessee submitted that the Assessing Officer has not cross examined the purchaser and therefore, no addition could have been made relying on the decision in the case of Hon'ble High Court of Gujarat **CIT v. Maulikkumar K. Shah [2008] 307 ITR 137 (Gujarat)**. But we note that the facts of the said case are distinguishable as in said case the paper in question did not indicate any transaction, whereas in instant case referred transaction in respect of flat has been duly recorded in the seized document. Further in support of claim that no addition could have been made on the basis of seized paper without any corroborating material, the Ld Counsel relied on the decision of the Punjab and Haryana High Court in the case of **Navneet Jhamb v. ACIT [2020] 120 taxmann.com 314 (Punjab and Haryana)**. However, the facts of the said case are also distinguishable. In said case, the assessee was broker only and no addition was made in the



hand of the seller or the managing director of the seller company. In the said case, the seller was M/s Indo American Electricals Ltd. and purchaser was Shri G.L. Verma and no profit or loss was shown by the assessee arising from those transactions in his return of income, whereas, in case before us, the registered sale amount matches with the cheque component noted in seized paper. The facts in the case of Raj Homes SV group (supra) wherein the Tribunal has relied in the case of P.V. Kalyanasundaram (supra) are also distinguishable as in the instant case registered sale agreement is one of the corroborative pieces of evidence which establish the cheque component of the same amount as well as other details of the property i.e. flat sold by the assessee. The said registered agreement being one of corroborative evidence, decisions relied by the Ld. Counsel of the assessee are distinguishable. The Ld. Counsel further submitted that no cash was found during the course of search at the premises of the assessee. We reject this contention of the Ld. Counsel of the assessee because as per noting of seized material, cash has been received in installments, which is prior to the date of seized paper i.e. 18/11/2012. It is not necessary that same should be found from the assessee during the course of search. Further, the Ld. Counsel of the assessee submitted that the said paper is not in the hand writing of the assessee. This argument of the Ld. Counsel of the assessee is contradictory to his own submission that there was a practice of making such noting on estimate basis during booking of sale of flat. Further, per the



provisions of section 132(4A) of the Act any document found during the course of the search from the premises of the assessee is presumed to be belonging to him and in his hand writing. The relevant provision is reproduced as under for ready reference:

*“(4A) <sup>2</sup> Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed-*

*(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*

*(ii) that the contents of such books of account and other documents are true; and*

*(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.]”*

6.5 This presumption is rebuttable and onus was on the assessee to produce a report from hand writing expert that said paper is not in his hand writing and provide name of the person who has written the said paper, but no such documentary evidences have been filed



except this argument, hence same is rejected. Further, the Ld. Counsel of the assessee submitted that the assessee is following project completion method so no business income can be assessed in this assessment year as the project was completed in subsequent years. We are of the opinion that no such ground has been raised by the assessee and therefore, the Ld. Counsel of the assessee cannot surprise the respondent i.e. the ld. DR by way of raising this arguments at last moment. The Ld. Counsel has not filed any documentary evidence in support of his contention also. This argument was not raised at the stage either of the Assessing Officer or the Ld. CIT(A). The Ld. DR submitted had such an argument was raised by the assessee before the Assessing Officer, the Revenue could have taken care of the argument and could have assessed the addition in the year of the completion on the basis of the protective basis. We agree with the contention of the Ld. DR and therefore, we reject this contention of the Ld. Counsel of the assessee. The Ld. DR has submitted that this document is not a dumb document and has been properly analysed with supporting corroborative evidence. The amount recorded under category 'B' is conclusive to be cash component on sale on flat at ground floor, which has been registered in favor Shri Suresh Jadhav. In our opinion, not recording any statement or any inquiry from the buyer, also cannot render the addition as not in accordance with law, particularly when the entries recorded in the seized documents are corroborated with registered sale agreement. In view of the above discussion, we



uphold the finding of the Ld. CIT(A) on the issue in dispute. Accordingly, the grounds raised by the assessee are dismissed.

7. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 13/06/2023.**

**Sd/-**  
**(ABY T VARKEY)**  
**JUDICIAL MEMBER**

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

Mumbai;

Dated: 13/06/2023

Rahul Sharma, Sr. P.S.

**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,

(Assistant Registrar)  
**ITAT, Mumbai**