

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 70/Ind/2022**  
**(Assessment Year:2014-15)**

ACIT (Central)-2 Bhopal	vs.	Soumya Homes Pvt. Ltd. T-4 City Centre, Zone-1 M.P. Nagar Bhopal
(Appellant / Revenue)		(Respondent/ Assessee)
<b>PAN: AAFCS 3503 C</b>		
Revenue by	Shri Ashish Porwal, Sr. DR	
Respondent by	Shri Ashish Goyal AR	
Date of Hearing	08.06.2023	
Date of Pronouncement	04 .08.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the Revenue is directed against the order dated 07.01.2022 of Commissioner of Income Tax(Appeal), for Assessment Year 2014-15. The revenue has raised following grounds of appeal:

*“1. Whether or not on the facts and in the circumstances of the case, the Ld CIT(A) is justified in deleting the addition of Rs 1,90,75,498/- on account of suppression of receipts for A.Y 2014-15.*

*2. Whether or not on the facts and in the circumstances of the case. CIT(A) is justified in ignoring the fact that the addition is based on the findings that establishes suppression of sale receipts in the same project.”*

2. The assessee company is engaged in the business of Real Estate developer and builder. He had filed its return of income for the year under

consideration on 29.11.2014 declaring total income of Rs.1,58,21,800/-. The case was selected for scrutiny through CASS. The AO in the scrutiny assessment made an addition of Rs.1,90,75,498/- on account of suppressed receipts as a similar addition was made by the AO in the preceding assessment years and particularly for A.Y.2007-08 to 2013-14 u/s 153A r.w. section 143(3) in pursuant to the search and seizure u/s 132 of the Act carried out on 31.11.2012. On appeal the Ld. CIT(A) deleted the addition by following the order of this Tribunal for A.Y.2007-08 to 2013-14.

3. Before the Tribunal Ld. DR submitted that the addition has been made by the AO on the basis of seized material showing in suppressed receipt in respect of the ongoing projects from A.Y.2007-08 till the assessment year 2014-15. The AO applied the same ratio of suppression of receipts as found during the search and seizure action in respect of those three projects namely; Soumya Estate, Soumya Park and Soumya Privilege. The AO has not made any addition on this account in respect of the new project started by the assessee during the year under consideration namely Soumya Evergreen. Ld. DR has submitted that the AO has discussed the fact as detected during the course of search and seizure action and reflected in the seized material LPS-25 and FS-4. The details found in the seized material were reflecting total receipts, taxable receipts and unaccounted receipts and accordingly the AO has applied the same proportion of the unaccounted receipts or suppressed receipt for the year under consideration as it was found during the course of search and seizure action. He has relied upon the order of the Assessing officer.

4. On the other hand, Ld. AR has submitted that this issue is now covered by the decision of this Tribunal in assessee's own case for A.Ys.2007-08 to 2013-14 on the basis of which AO has made the addition for the year under consideration. Ld. AR has pointed out that the Ld. CIT(A) has deleted the addition by relying upon the decision of this Tribunal for A.Ys.2007-08 to 2013-14. He has supported the impugned order of the Ld. CIT(A).

5. We have considered the rival submissions as well as relevant material on record. The AO made the addition on the basis of the seized material found during the course of search and seizure carried out on 31.12.2012 and consequential assessment order framed u/s 153A of the Act for A.Ys.2007-08 to 2013-14. The AO has reproduced the assessment order passed u/s 153A r.w. section u/s 143(3) for A.Y.2007-08 to 2013-14 and based on the said composite assessment order for the block of six years the AO extra-polated the amount of suppressed sale in the same ratio as it was taken while passing the assessment order u/s 153A of the Act. The relevant part of the assessment order is as under:

*“(iv) At the time of search action i.e. as on 30/11/2012, the following three projects are under progress (a) Soumya Estate (b) Soumya Park Land and (c) Soumya Privilege. During the year under consideration, the assessee company has started new project namely Soumya Evergreen. The assessee company has shown total sales of Rs 19,22,71,592/- which includes sales of Rs 4,05,06,319/- in respect of new project Soumya Evergreen. Therefore, excluding the sales of this new project started during the year, the total sales of the projects which are continued project from last years, works out to Rs 15,17,65,273/-. These sales represent the sales of projects in which the suppression of receipts was established in the assessment order of earlier years, on the basis of seized documents. In view of the above facts and findings of the suppression of receipts for A. Y. 2011-12, it is held that the books of account of the assessee company for the year under consideration are not correct and therefore the same are rejected U/s 145(3) of the I.T. Act. The assessee company has suppressed its receipts by 10.35% as discussed in above para (iii). While working of suppressed receipts, the advances received during the year to the extent of Rs 3,25,39,054/- (advances for current year at Rs 21,47,62,857/-) advances for last year Rs 18,22,23,803/-) is also considered as these advances represents advances from the continued projects of the assessee company from earlier years. Therefore, total receipts of the assessee company, from the continued projects from earlier years works out to Rs 18,43,04,32/- (Sales Rs 15,17,65,273/+ Advances during the year Rs 3,25,39,054/-). The suppressed receipts for the year under consideration @ 10.35% on Rs 18,43,04,32/- works out to Rs 1,90,75,498/-. Since, the assessee has already claimed expenses against the disclosed receipts, no expenses shall be allowable against these undisclosed / suppressed receipts. Therefore, an addition of Rs 1,90,75,498/- is made to the total income of the assessee on account of suppressed receipts. Penalty proceedings u/s 271(1)(c) are initiated separately.”*

6. Thus, it is clear that the AO has assumed the suppression of the receipts for year under consideration based on the assessment order passed u/s 153A for A.Y.2007-08 to 2013-14. On appeal the Ld. CIT(A) has considered and decided this issue in para 4.2 as under:

*“4.2. Ground Nos 3 & 4:- Through these grounds of appeal the appellant has challenged the addition made by the AO amounting to Rs. 1,90,75,498/- on account of suppression of receipt. It has been found that, search and seizure proceedings u/s 132 of the Act were conducted on the various business premises of the appellant on 31.11.2012. During the search proceedings various incriminating documents reflecting receipt of 'on money'/suppression of receipt were seized. Considering such documents, the assessment for the AY 2007-08 to AY 2013-14 was completed u/s 153A r.w.s 143(3) on 25.03.2015. On the basis of such incriminating material, the Ld AO estimated ratio of suppression of receipt at 49% of the total sales as shown by the appellant in the return of income for the above mentioned years. Accordingly, necessary additions were made in the AY 2007-08 to 2013-14. The appellant further filed appeal before the CIT (A) who reduced ratio of suppression of receipt to 34.2% from 49%. Against this order the appellant went before ITAT. Hon'ble ITAT Indore decided the above appeal on 24.01.2019 in ITA (SS) No.124 to 129/Ind/2017 and 317/Ind/2017 for the AY 2007-08 to 2013-14. Entire additions has been deleted by Hon'ble ITAT stating that the figures mentioned in the seized documents were almost tallying to the figures mentioned in the regular books of account with minor difference of gross receipt which cannot lead to be a basis for addition on account of suppression of receipt @49%. The appellant has also furnished the copy of the above decision and cited relevant paras of judgement in its written submission which has been reproduced in this order in earlier paras. On going through the assessment order for the year under consideration, it has been found that the Ld AO has made addition on the basis of facts and findings given in the assessment order for the AYS 2007-08 to 2013- 14. But the Ld AO has arrived at ratio of suppression of receipt at 10.35% on the basis of figures of AY 2011-12. Accordingly, Ld AO has made addition of Rs. 1,90,75,498/- in the year under consideration. I have found the order of the Ld AO is not justifiable as the addition has been made on the basis of past history and incriminating document relating to earlier years, not the present year. The Ld AO has also not given any basis for incorrectness of books of account of the appellant. Thus, the books of account rejected u/s 145(3) of the Act cannot be upheld. No estimation of income and rejection of books of account can be done on the basis of facts and findings of the past years. In the year under consideration, the Ld AO has not pointed out any evidence of suppression of receipt. Accordingly, the addition made by the Ld AO cannot be sustained. More importantly Hon'ble ITAT Indore*

*has set aside the findings of Ld AO and deleted the additions made in AY 2007-08 to 2013-14 which had been made basis for the addition in the year under consideration. Now the basis of addition adopted by the Ld AO is no longer in existence. Therefore, such addition made in the year under consideration has to be struck down. Hence, addition of Rs. 1,90,75,498/- is hereby deleted. The above grounds of appeal are allowed”*

7. As it is clear from the impugned order of the Ld. CIT(A) that this tribunal for A.Ys.2007-08 to 2013-14 has decided this issue in favour of the assessee and deleted the addition made by the AO. The Ld. CIT(A) has followed the decision of this Tribunal in assessee's own case for A.Ys.2007-08 to 2013-14 which is sole basis of addition made by the AO for the year under consideration. Accordingly in the facts and circumstances of the case and in view of the order of this tribunal in assessee's own case for A.Ys.2007-08 to 2013-14 we do not find any error or illegality in the impugned order of the Ld. CIT(A) same is upheld.

8. In the result, appeal of the revenue is dismissed.

The Order is pronounced in the open court on 04 .07.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Indore, 04.07.2023**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore