

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI**

**BEFORE SHRI BR BASKARAN, AM  
&  
SHRI N. K. CHOUDHRY, JM**

आयकरअपीलसं./ I.T.A. No. 1053/Mum/2023  
(निर्धारणवर्ष / Assessment Year: 2010-11)

And

आयकरअपीलसं./I.T.A. No. 1054/Mum/2023  
(निर्धारणवर्ष / Assessment Year: 2011-12)

**Ankush Ramrao Shinde**  
19A, Cosmos Horizon Skyline  
CHS, Pokharan Road 2,  
Thane- 400601

**Versus**

**Income Tax Officer  
- 20(1)(1), Mumbai**  
Room no. 124, 1st floor,  
Chambers, Lalbaug, Parel  
Mumbai-400020

PAN No. AETPS2857J  
(Appellant)

: (Respondent)

**Appellant by** : None  
**Respondent by** : Shri. Naganath B. Pasale, Ld. DR

**Date of Hearing** : 18.07.2023  
**Date of Pronouncement** : 19.07.2023

आदेश / **ORDER**

**Per N K Choudhry, Judicial Member:**

These appeals have been preferred by the Assessee against the orders even dated 31<sup>st</sup> March, 2023 impugned herein passed by the Ld. Commissioner of Income Tax(Appeals)/National Faceless Appeal Centre(NFAC) Delhi, {in short 'Ld. Commissioner' u/s.250 of the Income Tax Act 1961 (in short 'the Act') for AYs 2010-11 & 2011-12.

**2.** None appeared on behalf of the Assessee in spite of sending notice for the date of hearing, therefore, considering the peculiar facts and circumstances, we have heard these appeal as ex-parte.

**3.** In these appeals, the facts and issues and involved, appears to be common in nature, hence for the sake of brevity, we have heard these appeals simultaneously and are disposing of the same by this composite order. For brevity, we will quote the facts and issues involved in ITA NO. 1053/Mum/2023, for determination and the result of the same shall apply mutatis mutandis to both the appeals.

**4. ITA NO. 1053/Mum/2023**

In this case , the Assessee before the revenue authorities claimed to be a farmer and working as a Govt. Officer and had shown it's total income of Rs. 3,71,747/- on account of agriculture income beside salary and interest income, by filing it's return of income on dated 31<sup>st</sup> July, 2010.

**4.1** Subsequently, on the basis of the information received from the DGIT (Inv) Mumbai, to the effects that the Assessee has made cash payment of Rs. 5,00,000/- to Cosmos Group against booking of flat no. 19A, during the year under consideration. This Fact has been confirmed

during the course of search and seizure action in the case of Cosmos Group. The statement recorded on oath of Shri. Manish Mehta, Director of said concern, wherein he has admitted his undisclosed income relating to the 'on money' paid by the Assessee, which was unearthed during the search action. Accordingly, after recording the reasons and issuing the statutory notice dated 30<sup>th</sup> March 2016 u/s. 148 of the Act, the case of the Assessee was re-opened.

**4.2** In response said notice, the Assessee claimed that the return of income already filed by the Assessee, be considered as the return filed in response to the notice u/s.148 of the Act.

**4.3** Subsequently, by issuing the statutory notices, the Assessee was show caused as to why the 'on money' paid to Cosmos Group for booking of flat should not be added to the total income of the Assessee as undisclosed income.

**4.4** In response to show cause the Assessee by filing letters dated 23<sup>rd</sup> & 26 Dec, 2016 claimed that the Assessee had not paid any cash to the Cosmos Group or the builder Concorde Developer as alleged. The payments have been made through banking channels. The Assessee further requested to provide the copy of the incriminating documents against the Assessee as allegedly recovered in search of Cosmos Group or Concorde Developers and stated

the no enquiries were made with the Assessee or any such information was gathered by the AO, during such proceedings of Cosmos Group.

**4.5** The Assessing Officer though treated the cash payments of the Rs. 5,00,000/- allegedly made by the Assessee to M/s. Cosmos Group as income u/s.69 of the Act being investment made in property for the amount, not recorded in books of account maintained, by holding as under:

*5. The submission of the Assessee has been considered but the same is not acceptable. The DDIT (Inv.). Unit 1(4), Mumbai vide letter dated 07.03.2016 informed that a search and seizure action was conducted on Cosmos Gorup on 24.09.2014 It was informed that the details of on-money provided by various flat buyers was maintained in gmail and yahoo mail account of Cosmos group. During the course of search & seizure action statement of Ms. Karuna Suresh Khambayat, Sales Head of Cosmos Group and incharge of the entire process after the flats are booked by the customer was recorded in which she stated that there was often a cash element involved in the sale of the flats.*

*In the statement of Smt. Meenal Mahesh Patil, head of accounts of Cosmos Group accepted that on-money is being taken and cash transaction are being done during the sale of flats by cosmos group. She accepted that she used to fill the amount of cash*

*received in excel sheet and tally and then she used to maile the same to the Director email id.*

*In the statement of Shri Suraj Parmar, one of the three chief promoters of the Cosmos Group also accepted cash transactions are being made in sale of flats/shops/offices. The cash transactions are entered into tally system and also in MS- Excel sheets created on a pen drive. From the pen-drive, the entire data including tally backup and MS-excel sheets were uploaded to the e-mail address of the Director.*

*Further, in the statement of Shri Manish Mehta, Director of Cosmos group was recorded in which he was accepted that the email data contained the amount of unaccounted income received from purchase of flats/shops/offices.*

**4.6** However, with regard to the providing statements and incriminating documents to the Assessee, the Assessing Officer held as under:

*6. As regard the providing statements and incriminating documents to assessee is concerned it is submitted that the case of the assessee is re-opened on 30.03.2016 and various notices dated 22.07.2016, 22.11.2016 & 30.11.2016 was issued and assessee never made such request. At the fag end of the assessment proceedings, assessee requested for incriminating documents and hence the representative of the assessee vide order sheet noting dated 27 12 2016 was*

*informed that his request would not be considered due to time barring issue which is barred by limitation on 31.12.2016.*

**5.** On appeal the Ld. Commissioner affirmed the said addition made by the AO. The Assessee being aggrieved preferred these appeals. The Ld. DR supported the orders passed by the authorities below.

**6.** We have given thoughtful given consideration to the peculiar facts and circumstances of the case, specifically the orders passed by the authorities below from where it clearly appears that the Assessee had specifically requested for the details or copy of any incriminating documents found against the Assessee as alleged during the search of Cosmos Group or Concorde Developers qua booking of flat. The Assessee had also claimed that no enquiries were made with the Assessee or no such information was gathered by the AO during the search proceedings of Cosmos Group, however both the authorities below failed to provide the requisite documents to the Assessee, which amounts to denial of justice. Hence, for the just decision of the case and for the ends of justice, we deem it appropriate to remand the instant case to the file of the Assessing Officer with the direction to provide the requisite documents as asked for the Assessee and a reasonable opportunity to the Assessee to substantiate its case. Hence ordered accordingly. Resultantly

the orders passed by the authorities below are set aside and the appeal of the Assessee is allowed for statistical purposes.

**7.** In the result, both the Appeals filed by the Assessee stands allowed for statistical purposes in the same terms.

Orders pronounced in the open court on 19-07-2023.

Sd/-  
(B R Baskaran)  
Accountant Member

Sd/-  
(N. K.Choudhry)  
Judicial Member

Ms.Urmila

आदेशकीप्रतिलिपिअग्रेषित/**Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT- concerned
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
5. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**