

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No.707, 709 to 713/Mum/2023

(Assessment Years: 2008-09, 2010-11 to 2014-15)

Sachin Vilas Chaugule,
B 1503, Gundecha Heights,
LBS Marg,
Mumbai-400 078

Vs.

CIT (A)
Mumbai

(Appellant)

(Respondent)

PAN No. AILPC1561H

Assessee by : Mr. Vimal Punamiya, Adv
Revenue by : Dr. Kishor Dhule, CIT DR

Date of hearing: 02.08.2023
Date of pronouncement : 31.08.2023

ORDER

PER BENCH:

01. This is the bunch of 6 appeals filed by assessee against the Consolidated appellate order passed by the Commissioner Of Income Tax (Appeals) 47, Mumbai (the learned CIT – A) dated 17/1/2013 wherein the appeal filed by the assessee against the assessment order passed under section 153A read with section 143 (3) and under section 143 (3) of The Income Tax Act, 1961 (the Act) by The Assistant Commissioner Of Income Tax, Central Circle – 1 (2), Mumbai (the learned AO) for Assessment Year 2008 – 09 to assessment year 2013 – 14 and 2014 – 15 respectively are dismissed. The assessee aggrieved with the same has preferred appeal before us for assessment year 2008 – 09, 2010 – 11 to 2014 – 15.

02. In ITA number 707/M/2023 assessee has raised following grounds of appeal for A.Y. 2008-09:-

"1. On the facts and in the circumstances of the case and in law the learned assessing officer erred in relying on statement furnished before the Settlement Commission by ignoring the fact that the said statement has been declared to be untrue and unreliable by the Settlement Commission and resorting to additions in returned income solely on the strength of such a statement that has been declared to be unreliable and untrue without adducing any other any other evidence in support of such an addition.

2. On the facts and in the circumstances of the case and in law the learned assessing officer erred in making addition of Rs.24,00,000 as per column 1 of tabular chart being opening cash balance, ignoring the fact that it is not an income of the appellant for the assessment year 2008-09 and the learned Commissioner Appeal has erred confirming the said addition by conveniently for this aspect not rejecting the statement filed before the Settlement Commission.

3. On the facts and in the circumstances of the case and in law the learned assessing officer erred in making addition of Rs.6,00,000 to the total income of the appellant ignoring the fact that the amount of Rs.6,00,000 is taxed twice once by making addition in this assessment year and again in the assessment year 2014-15 and the learned Commissioner Appeal has erred confirming the said addition.

4. On the facts and in the circumstances of the case and in law the learned assessing officer erred in making further addition of Rs.1,53,750 as per column 2 of tabular chart, and Rs. 1,192 Rs.5,437, as per columns 6,7, of

tabular chart ignoring the fact that the sums are part of income declared and assessed in the assessment year 2014-15 and the learned Commissioner Appeal has erred confirming the said addition.

5. *On the facts and in the circumstance of the case and in law the learned assessing officer erred in making addition of Rs.6,785 ignoring the fact that the appellant has never earned this income and in any case it forms part of income declared and assessed in the assessment year 2014-15 and the learned Commissioner Appeal has erred confirming the said addition.*

6. *The learned Commissioner Appeal has erred further adding cash of Rs. 2 Crores owned up by Hiranandani to be their cash in writing to the income of appellant spread over in relevant 7 years on the basis of ratio of returned income; the portion of the said sum added during the assessment year in consideration being Rs.11,44,200, purely on the grounds that Hiranadani group has allegedly not shown the said cash in their income and by resorting to incorrect statement that appellant had not responded to the notice in the said matter.*

7. *Ld CIT-Appeals has erred in invoking power under Section 251-1 of Income Tax Act 1961 and resorting to further additions to assessed Income amounting to Rs. 11,44,200.*

8. *The appellant craves for leave to add, alter, amend or delete any ground-s of appeal either before or during the course of hearing of the appeal."*

03. Brief facts of the case shows that assessee is one of the employee, general manager Liaison with Hiranandanai group. He is an engineering graduate and law graduate. He has been



working with the group after joining it in 2004. His job profile is to lie on and coordinate to professionals, other persons with various state government departments like urban development, town planning, revenue Department, pollution control and to facilitate the approval of various projects required of Hiranandani group of companies at different levels of development and constructions of Township. His main source of income is stated to be salary.

04. A search and seizure action under section 132 and a survey under section 133A of the income tax act, 1961 were initiated in the case of Hiranandani group of cases on 11/3/2014 by the deputy director of income tax (investigation) unit – IV (3), Mumbai. On the same day, the assessee's residential premises at 1503B Gundecha Heights, LBS, Kanjurmarg, Mumbai was also covered. During the course of search, jewellery worth ₹ 2,574,800 and cash of ₹ 75,250,500/- was found. Cash of ₹ 7.5 crores was seized. During the course of search, various diaries and pen drive were also seized. The diaries were in the handwriting of the assessee detailing the work done during the day and pending work. These diaries indicated the various government offices assessee has visited on various dates, which clearly showed that he is taking direct instructions from Mr. Niranjani Hiranandani for the work. His statement was recorded under section 132 (4) on 11 and 12/3/2014. In response to question number 21 of the above statement assessee admitted that out of ₹ 75,250,000, a sum of ₹ 55,250,000 is his unaccounted cash receipt. For the balance, Rs 2 crores he submitted that it is given to him by one Mr. Dilip Kapadia for work which was to be delivered to him but he could not deliver as that person is out of town. In statement, he also admitted that there are various cash deposits in the bank accounts of the assessee on different dates amounting to ₹ 6,847,928. Subsequently assessee filed an application before the settlement commission on 8/1/2016 offering the total



income of ₹ 96,134,411 as additional income. Thus, the total income offered before the settlement commission was Rs. 12,01,47,538. Assessee offered the income as gratuitous payment received. Settlement commission rejected the application of the assessee as (i) assessee could not disclose the manner of earning such income (ii) Rs.2 crores found from the assessee's premises and owned by Hiranandani group but not offered by them for taxation. Therefore, assessment proceedings commenced. For the impugned assessment year the assessee did not file any original return of income under section 139 (1) of the act and therefore notice under section 153A was issued on 2/12/2014 which was complied with furnishing the return of income declaring a total income of ₹ 386,120. The learned assessing officer took note of the fact that assessee has disclosed ₹ 96,134,411 before the settlement commission and therefore the income of the assessee should be assessed at the same amount. The AO took note of the statement of facts submitted before the settlement commission and held that that the income comprises of the cash found during the course of search and cash deposited in the bank account of the assessee and his family members over and above the salary income and income from other sources earned by the assessee. The Id AO held that (i) assessee could not show by any contrary evidence to prove that he has not earned above income disclosed before the settlement commission, (ii) in statement under section 132 (4) there was no whisper that assessee was receiving any gracious payments from brokers, (iii) during search not a single scrap of paper or other evidence was found to show that assessee has received gracious payment,(iv) further there are cash deposits in the bank account of his proprietary concerns. The AO also viewed the changing stand of the assessee regarding the source of acquisition of the unaccounted cash of ₹ 5.52 crores found during the course of search and seizure

action at is residential premises. Assessee further failed to give evidence with respect to the cash deposit in his bank account and the bank account of his relatives. Accordingly, the learned assessing officer assessed the income of the assessee of the same sum, which was disclosed, by the assessee for respective assessment years with before the settlement commission. In the admission before the settlement commission assessee offered for assessment year 2008 – 09 is as under:-

- (i) ₹ 24 lakhs as profits and gains of business
- (ii) ₹ 153,750 is salary income
- (iii) ₹ 6 Lacs is further profits and gains from a proprietary concern
- (iv) ₹ 1192 is income from other sources being savings bank interest
- (v) ₹ 5437 is fixed deposit receipt interest
- (vi) ₹ 6785 is the bank credit in the name of wife of assessee

05. Thus, assessee offered ₹ 3,167,164 for assessment year 2008 – 09 before the settlement commission. As per the return filed by the assessee under section, 153A of the act salary income was shown at ₹ 513,616 and income from other sources was shown at ₹ 2500 along with the loss from income from house property of ₹ 30,000. The learned assessing officer computed the income of the assessee by including the income declared before the settlement commission as well as the income shown by the assessee as per return of income filed under section 153A of the act at the gross total income of ₹ 3,653,280/-, granted deduction under chapter VIA of ₹ 1 lakh and determined the total income of the assessee at ₹ 3,583,280/-

by passing an assessment order under section 153A read with section 143 (3) of the act on 30/3/2016.

06. For assessment year 2010 – 11, assessee filed or in the return of income under section 139 (1) of the act of ₹ 4,33,372/- the same income was repeated in response to notice under section 153A and further before the settlement commission assessee disclosed 2,69,84,316/-. Assessment under section 153A read with section 143 (3) of the income tax act was passed on 30/3/2016 determining the total income of the assessee at ₹ 27,417,688. In the assessment, the learned assessing officer made the addition of ₹ 26,984, 316 that was disclosed by the assessee before settlement commission.
07. For assessment year 2011 – 12 assessee filed return under section 139 (1) of the act amounting to ₹ 956,485. Assessee disclosed before the settlement commission for the same year amount of additional income of ₹ 33,678,398. The learned assessing officer assessed the total income as per order under section 153A read with section 143 (3) on 30/3/2016 at ₹ 34,634,883/-.
08. For assessment year 2012 – 13 assessee did not file any return of income under section 139 (1) however in response to notice under section 150 3A of the act the assessee disclosed the income of ₹ 1,500,198/- before settlement commission the assessee further disclosed additional income of ₹ 10,528,970. Assessment order under section 153A read with section 143 (3) of the act was passed on 30/3/2016 determining total income of the assessee at ₹ 1,20,29,115/-.
09. For assessment year 2013 – 14 assessee filed his return of income at ₹ 7,254,635/-. The same income was returned in section 153A of the act. Before settlement commission, assessee disclosed additional income of ₹ 1,52,93,654. The learned assessing officer passed an order under section 153A

read with section 143 (3) of the act on 30/3/2016 determining total income of the assessee at ₹ 22,550,789/-.

010. For assessment year 2014 – 15, assessee filed original return of income under section 139 (1) of the act on 30/11/2014 declaring total income of ₹ 28,549, 340/-. The assessee revised its return of income on 6/1/2016 declaring total income of ₹ 12,997,280/-. Subsequently the assessee against revised its return of income and 3/3/2016 declaring total income at ₹ 84,719,040/-. Assessment was framed under section 143 (3) of the act on 30/3/2016 by determining total income of the assessee at ₹ 85,447,038.
011. All these assessment order was challenged before the learned CIT – A – 47, Mumbai who passed a consolidated order for assessment year 2008 – 09 to assessment year 2014 – 15 for all seven years. However, before us the appeal is filed only for six years wherein as appeal for assessment year 2009 – 10 is not before us at present.
012. The learned CIT – A by passing the consolidated order dealt with issue of addition for each of the assessment year. Assessee contested that all the addition in the assessment years starting from assessment year 2008 – 9 to assessment year 2013 – 14 are based on the table mentioned in the assessment order. Assessee submitted that there is a double taxation of the cash amounting to ₹ 5.52 crores. While furnishing disclosure before the settlement commission assessee has spread cash of the above sum in three years included in additional income. For assessment year 2010 – 11 sum of ₹ 2 crores, for assessment year 2011 – 12 ₹ 275 Lacs and for assessment year 2012 – 13 Rs. 77 lakhs were offered. For the generation of cash, assessee disclosed repairing and gratuitous payment in his return of income before settlement commission of RS. 2.60 crores for assessment year 2010 – 11,

for assessment year 2011 - 12 ₹ 325 lakhs and for assessment year 2012 - 13 Rs. 99 lakhs. Assessee submitted that while filing the return of income for assessment year 2014 - 15 though before the settlement commission the income was spread over number of the years but before the assessing officer assessee filed revised return offering the income for assessment year 2014 - 15. The learned assessing officer made the addition for the income once as offered before settlement commission spread over several years and second time in assessment year 2014 - 15. Therefore, the same income is taxed twice. Assessee also contested that sole reason, the evidence for such addition in the various years is declaration of the assessee before the settlement commission, and there are no other evidences available. It was further stated that the settlement commission has rejected disclosure of the assessee as untrue; the learned AO has wrongly relied upon them. Therefore, the claim of the assessee was that for the purpose of disclosure of income before settlement commission, assessee has spread the same income in respective years commencing from assessment year 2008 - 09 till 2014 - 15. The learned assessing officer has made the addition year wise as per the disclosure of the assessee before the settlement commission and same income is also added in the hence of the assessee for assessment year 2014 - 15.

013. The learned CIT - A considered the explanation of the assessee. However he found that during the course of search cash amounting to ₹ 7.52 crore was found and seized, assessee has accepted and owned cash of only ₹ 5.52 crores and stated that balance cash of ₹ 2 crores belong to Hiranandani group where he worked as a general manager. Therefore, he considered the whether the balance case of ₹ 2 crores is taxable in the hands of the assessee or not. He referred to the order of the settlement commission in case of Hiranandani group where though Hiranandani group had

accepted the cash found at the residence of the assessee in assessment year 2014 – 15 however it offered income of only ₹ 1.40 crores and not of ₹ 2 crores which was found and seized from the premises of the assessee. He further noted that in statement recorded under section 132 (4) of the assessee, there was no mention of cash belonging to Hiranandani group. On perusal of the order of the settlement commission under section 245D (1) on 4 March 2014 there was an entry of ₹ 2 crores in the cash statement, however settlement commission did not accept that the same amount was lying with the assessee for seven days without being delivered or handed back. The claim of the assessee was that the person to move it was to be given namely Shri Dilip kapadia was not in town. The CIT also rejected the same because assessee did not name the party and not the identity of that person was established. Therefore, a show cause notice dated 11/11/2022 was issued to the assessee as to why the cash found at the residence amounting to Rs 2 Crores should not be added to the total income of the assessee in the same proportion as assessee offered additional income before the settlement commission. No explanation was furnished by the assessee. As the assessee failed to furnish the details called for, the learned CIT – A noted that assessee has failed to show that whether the cash found at his residence of ₹ 200 lakhs pertain to him or pertain to him or to Hiranandani group, therefore he made an addition of the above sum by spreading it over from assessment year 2008 – 09 to 2014 – 15.

014. The learned CIT – A disbelieved the statement that assessee had an opening cash balance of ₹ 24 lakhs which was disclosed before the settlement commission as opening cash on hand. The learned CIT – A also noted that assessee was a non-filer of return of income for the relevant assessment year. He noted that assessee has made a bald statement that cash of ₹ 24 lakhs was an opening cash balance without bringing on record

copies of the return of income of the earlier years or furnishing copies of the bank statement from where cash was withdrawn or details of drawing of family with supporting documents. Thus, the addition of ₹ 24 lakhs was confirmed for assessment year 2008 – 09. Further, he also rejected the contention of the assessee that the identical amount has also been offered by assessee in his return of income for assessment year 2014 – 15 and therefore it amounts to double addition.

015. Similarly for all other additions, he rejected the contentions of the assessee that assessee has offered the same income in assessment year 2014 – 15, however before the settlement commission the same income was spread over number of assessment years, therefore, the addition is to be made according to the income tax act only for assessment year 2014 – 15 as income belonged to that year. The main reason for rejection is that in the statement of facts filed before the settlement commission assessee has offered this income for respective years and therefore it is the duty of the assessee, onus is on the assessee to show that it is the same income which is also offered for taxation in the return of income for assessment year 2014 – 15. According to him, assessee has failed to show the same and therefore there is no infirmity in the addition made by the AO in respective years and also tax the same income in assessment year 2014 – 15 as it is offered by the assessee in the return of income. He further held that merely because the settlement commission has rejected the application of the assessee, it does not wipe out the spirit of the search, findings of the search and the meticulous and exhaustive manner with proper justification pertaining to the income, which was offered year wise as additional income in the statement of fact, furnished before settlement commission. He further noted that the learned AO for assessment year 2014 – 15 has made addition only on protective basis with the intention of safeguarding the interest of the revenue. Further,



the AO was bound by the CBDT circular not to assess the income of the assessee below the returned income filed by the assessee for the respective year. Accordingly, with this reasons he dismissed the appeal of the assessee for assessment year 2008 – 09.

016. For the appeal of the assessee for other years, he held that except the issue of the enhancement of ₹ 2 crores, all other issue remains the same and therefore his decision applies in other appeals Mutatis mutandis. Accordingly, he dismissed all the appeals of the assessee.
017. Assessee is aggrieved and has preferred appeals before us.
018. In these appeals following issues emerges for our consideration
- i. whether the sum of ₹ 2 crores can be added in the hands of the assessee when that sum has been owned by one of the companies of Hiranandani Group
 - ii. whether the sum disclosed before the settlement commission as undisclosed income year wise by the assessee is correctly added and confirmed by the learned CIT – A when the same income is further offered by the assessee for assessment year 2014 – 15
 - iii. whether where there is a double taxation of the same income in which year the income should be taxed i.e. as per the amount disclosed before the settlement commission which is not been admitted or according to the principles of income tax act when it is found
 - iv. Whether there is any violation of the principles of natural justice in giving an opportunity of hearing to the assessee on various issues.

019. The learned authorized representative submitted year wise paper book wherein he has supported the return of income, computation of total income while filing the original return of income, and computation of total income in return of income filed under section 153A & documents for each of the year. For assessment year 2008 -2009 (in 2 volumes) the assessee has submitted the various details submitted before the learned assessing officer, statement of the assessee, copy of the reply submitted to the deputy director of income tax (investigation) and relevant extract of the settlement commission submission. He also referred to the order of commission dated 21/1/2016 and consequently written submissions placed before the learned CIT appeal on several occasions. Before us, he also referred to statement of income offered before the settlement commission as well as the income returned by the assessee in various return of income. He submitted that as per the original return of income filed for all these years the assessee has offered the income of ₹ 37,197,350/-, in response to return filed under section 153A of the act the total income was revised at Rs. 10,87,42,370/-. Against which the assessed income for all these years is ₹ 190,051,880 which is enhanced by the learned CIT - A to ₹ 210,051,880. He submitted that the only difference between the assessed income as per the assessment order is for all these years and the revised income as per the order of the learned CIT - A is an addition of ₹ 2 crores enhanced by the learned CIT - A. He submitted that the above sum of ₹ 2 crores was not belonging to the assessee but belonging to Hiranandani group for which Mr. Niranjani Hiranandani has given a confirmation that out of the total cash seized of ₹ 75,250,500 from the assessee only a sum of Rs. 2 crores belong to the head Hiranandani group and balance belongs to him. He further submitted that the above sum of ₹ 7.5 crores found from the assessee, assessee has accepted that only ₹ 5.50 crores should be treated as an advance tax in



the hence of the assessee for assessment year 2014 – 15 and balance sum of ₹ 2 crores shall be treated as an advance tax for assessment year 2014 – 15 in case of Roma builders private limited. He submitted that this company belongs to Hiranandani group. In view of this when the adjustment of the tax credit of ₹ 2 crores is already given to Roma builders private limited and when by a certificate that particular company has owned the sum, it cannot be added in the hands of the assessee. He further referred to the statement of the assessee placed at page number 86 to 95 of the paper book. He referred to question number 18 wherein reference of Mr. Dilip is given with his identification number, his role and responsibility and to whom he reports to. In question number 19, the modus operandi of assessee working with him is also explained. With respect to question number 20, the assessee said that the above sum of ₹ 75,250,000 is found from the assessee dense of the assessee. With respect to the source of the above sum in answer to question number 21 assessee has clearly said that this money belongs to Mr. Dilip Kapadia of Hiranandani group. In view of this his submission was that that the addition of ₹ 2 crores made by the learned CIT – A by way of an enhancement is not supported by any evidence but the addition has been made by the learned CIT – A in the hands of the assessee erroneously. With respect to the other additions, he referred to the disclosure made by the assessee before the settlement commission placed at page number 104 – 116 of the paper book. Accordingly, he submitted that orders of the Id AO and CIT (A) may be reversed.

020. Ld DR vehemently supported the orders of lower authorities. It was submitted that statement before Settlement commission in SOF is the evidence to tax the income declared by assessee in respective years. Assessee needs to prove that those income were not earned in earlier years but in AY 2014-15. With respect to Rs 2 Crores , it was submitted that it is not



clearly coming out of the settlement commission that whether Rs 2 Crores are owned by Roma Builders Private Limited. Issues of getting credit of advance tax of Rs 2 Crores, in case of Roma Builders Pvt Limited, it was submitted that it cannot be verified here, but fact remains that statement of assessee is changing and there is no concrete evidence that Hiranandani Group has owned it. On violation of principles natural justice, no arguments are advanced by assessee. Therefore, there is no infirmity in the orders of lower authorities.

021. We have carefully considered rival contention and perused the orders of lower authorities. We address the issues raised before us as under :-

022. We first come to the issue of cash found during the course of search and in whose hands it should be taxed. Admittedly, from the residence of the assessee sum of ₹ 75,250,500 was found as per inventory of cash dated 11/3/2014 placed at paper book page number 83. Therefore, naturally it is the duty of the assessee to explain source of the above cash found. The first instance was the statement recorded under section 132 (4) of the assessee on 11/3/2014. In response to question number 20 of the statement, assessee confirms that the cash of ₹ 75,250,500 has been found from his residence. In response to question number 21 he explains the source of cash. He says that out of ₹ 75,250,500, a sum of ₹ 55,250,000 is unaccounted cash receipt not recorded in any of the books of accounts of the assessee. He further says that there is unaccounted cash has been generated over the period through brokerage received from land sale purchase dealings and unaccounted cash receipt of repairing fabrication work etc. He offers that amount for taxation as his undisclosed income over and above his regular income. However, with respect to the sum of ₹ 2 crores, he explains that it has been given to him by one person who is working with Hiranandani group i.e.



Mr Dilip Kapadia. He explains who is that person in response to question number 18. He submits that this cash was to be given to him but as on the date he was not in the town and therefore it could not be delivered and therefore it was lying at his residence. No further questions were asked. The assessee was also not directed to produce the above person. During the course of assessment proceedings and before the learned deputy director of income tax (investigation) assessee confirms that a sum of ₹ 55,250,000 is his income. Regarding the balance sum of ₹ 2 crores, he furnishes a certificate signed by Mr. Niranjan Hiranandani stating that the sum belongs to Hiranandani group and not to the assessee. This fact is further substantiated by letter dated 25 July 2014 wherein The Additional Director Of Income Tax (investigation), Mumbai by Mr. SH Patrawala & co with the request that out of the cash seized of ₹ 75,000,000 sum of ₹ 55,000,000 may be treated as advance tax of the assessee for assessment year 2014 – 15 and further ₹ 2 crores may be treated as advance tax for assessment year 2014 – 15 in case of Roma builders private limited. In case of settlement petition of Hiranandani group, the above sum was taken as source of income and offered for taxation. This fact has not been controverted by learned assessing officer as well as by the learned CIT – A. During the course of assessment proceedings, the learned assessing officer did not make any addition in the hands of the assessee. However, the learned CIT – A looking at the total cash found and amount added in the hands of the assessee noting that the addition of ₹ 2 crores have not been made, he enhanced the assessment and made the addition of ₹ 2 crores. The learned CIT – A did not look at the correspondence placed by the assessee before him, certificate of Hiranandani group, details of settlement wherein the above sum was included, details of advance tax adjustment of about ₹ 2 crores in case of Roma builders private limited etc. on examination of the



facts we find that, the dispute is only with respect to the sum of ₹ 2 crores found during the course of search in case of the assessee from the residence of the assessee. This sum has been owned by Hiranandani group belonging to them, the respective submission was made before the investigating authorities as well as request was also made for granting credit of the above sum as advance tax in case of Roma builders private limited. Therefore, it is apparent that on the sum of ₹ 2 crores a claim has been made by somebody else other than the assessee that it is owned by it and it belongs to that company. It is also the claim of the assessee that above group has owned the above sum in the settlement petition filed before the settlement commission. Therefore if the sum is taxed once in the hands of Hiranandani group, there is no question that the same amount can be added in the hands of the assessee once again. Further, if the advance tax credit has been given to the assessee M/s Roma builders private limited as advance tax for assessment year 2014 – 15 and not to the assessee, then it can be inferred that the sum belongs to Hiranandani group. There is no dispute that the total sum of ₹ 75,250,000 is required to be taxed. Out of that ₹ 55,250,000 has already been owned by the assessee and taxed in his hands. Therefore, the addition made by the learned CIT – A on enhancement requires inquiry by the assessing officer whether the assessee owns the above sum of ₹ 2 crores or by the Roma builders private limiting. If Roma builders private limited owns it, no addition can be made in the hands of the assessee. Therefore we set-aside this issue to the file of the learned assessing officer to verify whether the amount of ₹ 2 crores has been granted as advance tax credit to Roma builders private limited or not, whether the above sum of ₹ 2 crores have been offered by the Hiranandani group in Settlement petition or not and if the learned assessing officer reaches at the conclusion that the sum belongs to Hiranandani



group, no addition should be made in the hence of the assessee. However, it is all the matter of examination of the evidence and investigation by Id AO. The learned assessing officer is directed to examine the evidence placed before him, enquiry and then decide the issue in accordance with the law.

023. Now we come to the (ii) and (iii) issue the year in which the income is required to be taxed. Undisputedly assessee filed a settlement petition before the settlement commission. Assessee offered an additional income of ₹ 96,134,411/- spread over 7 years. The assessee has disclosed ₹ 83,400,000 as profits and gains of business in his proprietary concern as well as Gratuitous payments received. It is further disclosed a sum of ₹ 4,329,750 as salary income and further offered opening cash balance of ₹ 24 lakhs. The settlement petition was not admitted as assessee failed to disclose the manner in which the income was earned. On rejection of the settlement petition, the claim of the assessee is that though before the settlement commission assessee has spread the undisclosed income over number of years but now the income of the assessee is required to be assessed based on the principles laid down under the income tax act. Therefore, most of the income was required to be offered in assessment year 14 – 15. As per the revised return filed by the assessee on 3/3/2016, he declared total income of ₹ 84,719,040. Total cash found during the search was offered as income for assessment year 2014 – 15. The other income, which was also disclosed during the course of search, was also offered for taxation in this assessment year. The learned assessing officer while making the assessment for respective years taxed the income disclosed by the assessee based on year wise disclosure as per statement of facts before settlement commission. It is also an admitted fact that except the statement of facts before the settlement commission, there is no evidence that the income of the assessee is earned in respective years as offered before



settlement commission. Before the settlement commission assessee could not prove that the income belongs to those years for which it was disclosed. There were no evidences found during the course of search also that the income of the assessee is chargeable to tax in the year in which assessee has offered before the settlement commission. It is also not in dispute that the assessee once again offers the total income disclosed by the assessee and assessed by the assessing officer for assessment year 2014 – 15. Therefore, according to us it has led to double taxation of the same income i.e. once the income is taxed spread over number of years as offered by the assessee before settlement commission, second time, when settlement petition of assessee failed, assessee offered the same income for assessment year 2014 – 15. Further sum of the application of the income was also taxed. Therefore, it is a clear case of double taxation. In view of this we set-aside all these appeals back to the file of the learned assessing officer with a direction to the learned assessing officer to tax the income of the assessee in accordance with the provisions of the income tax act. For undisclosed income learned assessing officer should tax the income in the year in which it is found. The learned AO is also directed to examine the claim of the assessee of not to tax the application of the income as well as the source of income. In the result we set-aside all these 6 appeals back to the file of the learned assessing officer with a direction to frame the assessment de novo after affording opportunity of hearing to the assessee.

024. Coming to the last issue of the violation of the principles of natural justice, we find that the assessee has not made any submission, and as we have set-aside the whole assessment framed for all these 6 assessment years back to the file of the learned assessing officer, the above grievance, has become infructuous.



025. In the result all the six appeals filed by the assessee are allowed for statistical purposes with above direction.

Order pronounced in the open court on 31.08. 2023.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.08. 2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai