

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JABALPUR BENCH, JABALPUR**

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.12/Jab/2017  
(ASSESSMENT YEAR- 2008-09)**

Asst. Commissioner of Income Tax, Circle-2(1), Jabalpur.	vs	Shri Sarabjeet Singh Mokha, 1112, Pachpedi, South Civil Lines, Jabalpur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN No. AFXPM8245F</b>		

<b>Revenue By</b>	Shri Shravan Kumar Gotru, CIT DR
<b>Assessee By</b>	Shri Rahul Bardia, CA
<b>Date of hearing</b>	15/09/2023
<b>Date of Pronouncement</b>	22/09/2023

**ORDER**

**PER OM PRAKASH KANT, A.M.:**

This appeal by the Revenue is directed against the order dated 28.03.2017 passed by Ld. Commissioner of Income Tax (Appeals)-2, Jabalpur [in short "Ld.CIT(A)"] for the assessment year 2008-09, raising following grounds :

1. *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,34,00,000/- made by the AO on account of sale of Hotel Building.*

2. *Whether under the facts and circumstances of the case, the order of the Ld.CIT(A) can be said to be perverse.*

3. *That the appellant reserves the right to amend/alter any of the grounds of appeal/add other grounds of appeal at the time of hearing.”*

2. Briefly stated facts of the case are that in the case of the assessee, a search and seizure action u/s 132 of the Income Tax Act, 1961 (in short “the Act”) was carried out alongwith the premises of “Mokha” and “Jamdar” groups. Consequent to the search, notice u/s 153A of the Act was issued on 28.02.2013. In response, the assessee submitted to treat the original return of income filed as return of income in response to section 153A of the Act. The assessment proceedings u/s 153A of the Act was completed on 31.03.2014 after making certain additions/disallowances. On further appeal, Ld.CIT(A) allowed part relief to the assessee.

3. Aggrieved with the part relief allowed to the addition of Rs.2,34,00,000/- on account of sale of hotel building, the Revenue is in appeal before the Tribunal by way of raising sole grounds as reproduced herein above.

4. We have heard Ld. Authorized Representatives of the parties on issue in dispute and perused the relevant material available on record. The M/s M.S. Construction, a partnership firm having three partners namely, (1) Mata Tejkumari (25%), (2) Sarabjeet Singh Mokha (37.5%) and (3) Shri Ajay Sethi (37.5%), had constructed a hotel building which was sold to “Sethi” brothers. In the sale deed for stamp duty purpose, transaction value of the hotel building has been recorded at Rs.66 Lakhs whereas in the “agreement” to transfer found in the paper seized during the course of search, total valuation was noted as Rs.6.25 crores. The AO accordingly, made addition in the hands of the assessee in proportion to 37.5% of the shares out of Rs. 6.25 crores which was worked out to Rs.2.34 crores. Before Ld.CIT(A), the assessee contested that addition for the entire amount of difference in the valuation as per the seized paper and submitted the value recorded in Sale Deed had already been added in the hands of the M/s M.S. Construction and therefore, no separate addition should be made for the share of the addition in the hands of assessee. Ld.CIT(A) deleted the addition by observing as under:-

### **6.3.3 DECISION:**

*“I have considered the written submission put forth by the counsel, perused the facts of the case including the findings of the AO in the impugned assessment order, observation of the AO in the Remand Report & rejoinder thereon and other material brought on record and this ground of appeal relating to the addition of Rs.2,34,00,000/- made on account of sale of hotel building by MS Construction to Sethi Brothers is decided as under:-*

- (i) The appellant and Ajay Sethi are the partners M/s MS Construction. As per the sale deed of hotel building, the sale was made by firm M/s M.S. Construction to Sethi Brothers for Rs. 66 lacs. Whereas, as per the Ikrarnama, M/s M.S. Construction had agreed to sale to Sethi Brother the hotel building for Rs. 6.25 crore. For this reason, the AO added Rs. 2.34 crores to the income of the appellant being 37.5% of difference between ikrarnama price and registered sale deed price.*
- (ii) Before me the ld AR has given various reasons for the difference between sale price in registered sale deed and ikrarnama. However without going into the merit of these submission of the ld AR and reserving my right to decide this issue on merit in the case of M/s M.S. Construction, I am of the view that for the following reasons Rs. 2.34 crores cannot be added to the income of the appellant :-*

*(a) M/s MS Construction is partnership firm of which the appellant and Ajay Sethi are the partners.*

*(b) The profit earned by the firm is to be taxed in its hands and as per the provision of section 10(2A) of Income Tax Act, 1961 this profit cannot be again added to the income of the partner. In the assessment order of M/s M.S. Construction passed on 31.03.2014 the AO taxed 75% of difference between ikarnama price and sale deed price to the income of the firm.*

*(c) In the assessment order of Ajay Sethi who is other partner of the firm M/s M.S. Construction, no addition has been made on account of profit on sale of hotel building. In the case of RadhaSoami Sat Sangh vs. CIT [1992] 193 ITR 321 it has been held that if the department has taken one view in one case then in view of principle of consistency other view shall not be taken in the case of other assessee. Hence, I am of the view that the AO was not justified in adding Rs. 2,34,00,000/- to the income of the appellant.*

*(d) In result, this ground of appeal is allowed.”*

5. We are of the opinion that once the addition for a particular item has been made in the hands of the partnership firm then

share of the same addition in the profit ratio cannot be added in the hands of the partner. This being a settled principle, no addition could have been made in the hands of the assessee in respect of the property which was owned by the partnership firm. Before us, Ld. Counsel for the assessee has filed assessment and the appellate orders in respect of M/s M.S. Construction showing that the said addition was made in the hands of the said partnership firm. In view of the above facts and circumstances and the evidence on record, we don't find any infirmity in the order of Ld.CIT(A) on the issue in dispute and accordingly, we uphold the same. The sole grounds raised by the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 22/09/2023.

**Sd/-**  
**(PAVAN KUMAR GADALE)**  
**JUDICIAL MEMBER**

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

*\*Amit Kumar\**

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR

6. Guard File

Asstt. Registrar  
Jabalpur Bench