

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

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 708/MUM/2023 (A.Y: 2009-10)

Sachin Vilas Chaugule B-1503, Gundecha Heights LBS Marg, Kanjurmarg Mumbai - 400078 PAN: AILPC1561H	v.	CIT (Appeals) – 48 Mumbai - 400020
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Vimal Punmiya
Department Represented by	:	Shri Suhas Dabade
Date of Conclusion of Hearing	:	21.09.2023
Date of Pronouncement	:	27.09.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 47, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 17.01.2023 for the A.Y. 2009-10.

2. Assessee has raised following grounds in its appeal: -

"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.31,77,500/- to the total income solely on the ground that bank deposits are more without ascertaining character of the bank deposits of the appellant and also ignoring the fact that the amount of Rs.31,77,500/- is taxed twice, once by making addition in this assessment year and again in the assessment year 2014-15 the learned Commissioner Appeal has erred confirming the said addition

3. On the facts and in the circumstances of the case and in law the learned assessing officer erred in making further addition of Rs.6,00,000/- as per column 2 of tabular chart, and Rs.6,934/-, Rs.78,884/- as per columns 6,7, of tabular chart ignoring the fact that the amounts are taxed again in the A.Y. 2014-2015 the learned Commissioner Appeal has erred confirming the said addition

4. On the facts and in the circumstance of the case and in law the learned assessing officer erred in making addition of Rs.33,033/-, as per column 8 of tabular chart ignoring the fact that the appellant has never earned this income the learned Commissioner Appeal has erred confirming the said addition

5. 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.7,55,400; 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

6. *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 ₹.7,55,400/-."*

3. At the outset, Ld. AR of the assessee brought to our notice that the identical issues in appeal has been considered by the Co-ordinate Bench of this Tribunal in assessee's own case in ITA No. 707, 709 to 713/Mum/2023 dated 31.08.2023 for the A.Y. 2008-09, 2010-11 to 2014-15 and Coordinate Bench has adjudicated the issues and remitted the issues back to the file of the Assessing Officer for denovo adjudication (Copy of the order is placed on record). Ld. AR of the assessee requested the similar direction may be issued for the Assessment Year under consideration.

4. On the other hand, Ld. DR has fairly accepted the submissions of the Ld.AR.

5. Considered the rival submissions and material placed on record, we observe from the record that identical issues were decided by the Coordinate Bench and remitted the issues back to the file of the Assessing Officer in the A.Y.2008-09 and A.Y. 2010-11 to 2014-15. While deciding the issue, the Coordinate Bench of the Tribunal in ITA No. 707, 709 to 713/Mum/2023 dated 31.08.2023, held as under: - -

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

22. 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. Niranjana 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.”

6. Since the issues are exactly similar and grounds as well as the facts are also identical, respectfully following the above decision in assessee's own case for the A.Y. 2008-09, 2010-11 to 2014-15, we remit the issues raised by the assessee to the file of the Assessing Officer for denovo adjudication. Needless to say that the assessee shall cooperate with the assessment proceedings before the Assessing Officer and the Assessing Officer shall provide adequate opportunity of being heard to the assessee. Accordingly, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on the 27th September, 2023.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 27/09/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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
(Asstt. Registrar)
ITAT, Mum