

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.5388/M/2019
Assessment Year: 2011-12**

M/s. Sabari Developers LLP, 101, Sabari Prasad, 11 th Road, Chembur, Mumbai – 400 071 PAN: AAYFS9056N	Vs.	Dy. Commissioner of Income, Central Circle-4(1), Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Satish Kumar, A.R. &
Ms. Shivani Bajpai, A.R.

Revenue by : Shri Ajay Singh, D.R.

Date of Hearing : 10 . 10 . 2023

Date of Pronouncement : 31 . 10 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant M/s. Sabari Developers LLP (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 13.06.2019 passed by the Commissioner of Income Tax (Appeals), (hereinafter referred to as CIT(A)] qua the assessment year 2011-12 on the grounds inter-alia that :-

“1. On the facts and circumstances of the case as well as in law the CIT(A) has erred in rejecting the Appellants submissions objecting

initiation of the proceedings u/s 148 of the Act on the following specific grounds taken before him:-

(i) on the basis of an invalid notice issued by ACIT, Circle 27(3) who recorded the reasons, obtained approval from the Pr. CIT 27, Mumbai and issued the impugned notice u/s 148 of the Act on 29.03.2018 though he was not having the jurisdiction on the assessee firm as the same had already been transferred to the DCIT Central Circle 4(1) Mumbai vide order dated ___/___/2018.

ii) on the basis of an invalid and void ab initio notice issued u/s 148 of the Act after taking an approval from the Pr. CIT 27, Mumbai who was not having jurisdiction on the assessee and simultaneously the approval was only a technical approval without recording of any satisfaction for reopening of the assessment against the provisions of section 151 of the Act.

iii) on the basis of an invalid and void ab initio notice issued u/s 148 of the Act on 29.03.2018 as the notice issued u/s 148 of the Act is without application of mind by the assessing authority and merely on the basis of information received from the investigation wing, thus a borrowed satisfaction.

(iv) on the basis of the reasons recorded which are vague, incorrect and are based on suspicion, surmises, presumptions and conjectures only.

(v) on the basis of a borrowed satisfaction from the investigation wing, personal statements on oath and merely repeating the facts recorded by the investigation wing without establishing any direct link between the tangible material and the formation of the reason to believe that the income of the assessee had escaped assessment.

(vi) Without disposing off the objections raised by the assessee by a speaking order before completing the assessment and without giving the assessee an opportunity of being heard.

Thus, the impugned notice issued u/s 148 of the Act should be declared as illegal and the consequent assessment order u/s 147 of the Act should be quashed.

2. On the facts and circumstances of the case as Rs. well as in law the CIT (A) has erred in confirming the action of the AO in making an addition of Rs. 5,50,000/- as alleged On money received on sale of a flat without appreciating that the said amount was received in the regular books of account from the flat buyer for which the bank statement was submitted, evidencing receipt of Rs 5,50,000/- by cheque

in the succeeding financial year and also without appreciating and providing:

(i) Copies of the evidences / material Bharani whose statement has been statement recorded of Mr. Hiren relied on besides refusing his cross examination and examination of the buyer of the flat though it was specifically requested in the assessment proceedings.

(ii) That the statement of Mr.HirenBharani cannot be relied on as he had already retracted from the statement given u/s 132(4) of the Act at the time of search as it was given in the pressurised mental state of mind.

(iii) That no incriminating material of receipt of such cash was found during the search proceedings. The noting were simply tentative estimates for furnishing the flat with interior work/ major alterations in the form of an offer made to the prospective buyer.

(v) Without appreciating the submissions and the documents furnished by the assessee during the assessment proceedings.

(v) Without making any enquiry to confirm from the buyer about payment of any additional consideration over and above the declared consideration as on money.

Thus the addition made on conjecture and surmises, without bringing any evidence on record and without proper enquiry, should be deleted.

3. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee is into the business of building construction. Original assessment in this case was completed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’). Subsequently on the basis of search and seizure operation conducted on the Sunshine Group it was noticed that the assessee had received on money in cash for sale of various properties and as such the assessee has failed to disclose all material facts necessary for assessment, notice under section 148 of

the Act was issued and served upon the assessee. Necessary notices under section 143(2) and 142(1) were issued and served upon the assessee. Declining the contentions raised by the assessee the Assessing Officer (AO) proceeded to hold that the assessee has suppressed its business receipts in the shape of on money to the tune of Rs.5,50,000/- which shall be taxed on receipt basis irrespective of the method of accounting followed by the assessee as the assessee has not intended to offer the same for taxation and thereby made the addition to the tune of Rs.5,50,000/- by framing assessment under section 143(3) read with section 147 of the Act.

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

Ground No.1

5. Ground No.1 raised by the assessee has not been pressed during the course of argument, hence the same is hereby dismissed.

Ground No.2

6. The AO has made the addition on the premise that the assessee being a developer has received on money to the tune of

Rs.5,50,000/- from one Mr. V.V. Varghese during the year under consideration which the assessee has not disclosed and thereby suppressed the business receipt on account of on money receipt in cash for sale of flat.

7. The Ld. A.R. for the assessee challenging the impugned addition contended that the AO as well as the Ld. CIT(A) have erred in appreciating the fact that the amount in question i.e. Rs.5,50,000/- was paid by one Mr. V.V. Varghese through banking channel and also produced the books of account of the assessee available at page 120 to 121 and bank record available at page 143 to 144 of the paper book.

7. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A) and prayed for the dismissal of the appeal of the assessee.

8. We have perused the bank statement of the assessee maintained with Punjab National Bank available at page 143 & 144 of the paper book which shows that amount of Rs.5,50,000/- was credited in the account of assessee on 07.04.2010 by instrument No.911399; MICR-1 day-LET. It is not the case of the Revenue that some other amount of Rs.5,50,000/- than the one paid through banking channel was paid by Mr. V.V. Varghese in cash to the assessee. The AO in order to cover up the mischief committed in reopening has nowhere mentioned the date of payment of amount in question of Rs.5,50,000/- in cash to the assessee. Furthermore, when we examine the ledger account of Mr. V.V. Varghese maintained by the assessee available at page 120 & 121 of the

paper book it shows the only receipt of Rs.5,50,000/- through banking channel during the year under consideration.

9. In view of what has been discussed above, we are of the considered view that the AO as well as the Ld. CIT(A) have proceeded on the basis of wrong facts without verification that the amount of Rs.5,50,000/- was received by the assessee from Mr. V.V. Varghese in cash whereas the said amount was credited in the account of assessee through banking channel i.e. Punjab National Bank.

10. So in view of the matter the addition made by the AO and confirmed by the Ld. CIT(A) is not sustainable in the eyes of law, hence ordered to be deleted.

11. Resultantly, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 31.10.2023.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.10.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.