

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

BEFORE SHRI PRASHANT MAHARISHI, AM  
AND  
SHRI NARENDER KUMER CHOUDHRY, JM

**ITA No. 1560/Mum/2023**

(Assessment Year: 2017-18)

**ITA No. 1561/Mum/2023**

(Assessment Year: 2019-20)

**ITA No. 1562/Mum/2023**

(Assessment Year: 2020-21)

The Deputy Commissioner of  
Income Tax  
Central Circle-2(2),  
Old CGO Building,  
806, 8<sup>th</sup> Floor, M.K. Road,  
Mumbai-400 020

**(Appellant)**

Shri Sachin Jagdish Prasad  
Joshi  
JMJ House, Orchard Avenue,  
Hiranandani, Powai,  
Mumbai-400 706

Vs.

**(Respondent)**

**PAN No. ADZPJ8537D**

**Assessee by** : Shri Neelkanth Khandelwal,  
AR  
**Revenue by** : Shri Dr. Kishor Dhule, CIT DR

**Date of hearing:** 22.08.2023

**Date of pronouncement** 17.11.2023

:

**ORDER**

**PER BENCH:**

01. These three appeals are filed by the Dy. Commissioner of Income Tax, Central Circle-2(2), Mumbai (The learned

Assessing Officer) for A.Y. 2017-18, 2019-20 and 2020-21, against appellate order passed by The Commissioner Of Income-Tax (Appeals)-48 [the learned CIT (A)], Mumbai dated 9<sup>th</sup> February, 2023 and dated 10<sup>th</sup> February, 2023, respectively. By these appellate orders, the LD CIT [A] has granted relief to Mr. Sachin J Joshi [Assessee] by allowing appeal of assessee.

02. The learned Assessing Officer raised following grounds for A.Y. 2017-18 as under:-

"1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the income Tax Act, 1961 amounting to Rs. 13,95,00,000/- made by the assessing officer, without considering facts that there was a seizure of incriminating material and failure of the assessee to prove the genuineness of the transaction.*

2. *Whether, the Ld. CIT(A) has erred both in law and or facts in failing to appreciate the findings of the assessing officer and overlooking the finding made during the assessment proceedings.*

3. *Whether the Ld. CIT(A) has failed to appreciate the details/justification given by the AO and therefore addition made and that the AO had established that transactions were not genuine and thus the addition made was correct by giving detailed clarification after through verification of the submission made by the assessee."*

03. The learned Assessing Officer raised following grounds for A.Y. 2019-20 as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the income Tax Act, 1961 amounting to Rs. 13,55,00,000/- made by the assessing officer, without considering facts that there was a seizure of incriminating material and failure of the assessee to prove the genuineness of the transaction."

2. Whether, the Ld. CIT(A) has erred both in law and on facts in failing to appreciate the findings of the assessing officer and overlooking the finding made during the assessment proceedings.

3. Whether the Ld. CIT(A) has failed to appreciate the details/justification given by the AO and therefore addition made and that the AO had established that transactions were not genuine and thus the addition made was correct by giving detailed clarification after through verification of the submission made by the assessee."

04. The learned Assessing Officer raised following grounds for A.Y. 2020-21 as under:-

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 68 of the income Tax Act, 1961 amounting to Rs. 1,45,00,000/- made by the assessing officer, without considering facts that there was a seizure of incriminating material and failure of

*the assessee to prove the genuineness of the transaction.*

*2. Whether, the Ld. CIT(A) has erred both in law and on facts in failing to appreciate the findings of the assessing officer and overlooking the finding made during the assessment proceedings.*

*3. Whether the Ld. CIT(A) has failed to appreciate the details/justification given by the AO and therefore addition made and that the AO had established that transactions were not genuine and thus the addition made was correct by giving detailed clarification after through verification of the submission made by the assessee."*

05. The fact as culled out from the orders of the lower authorities shows that

- i. Assessee is an individual engaged in the business of export and trading of Pan Masala, Supari, etc. and consultancy through his proprietary concerns (1), M/s SJJ exports company and (2) SJJ Consultancy. He is also partner in various firms.
- ii. For A.Y. 2017-18, assessee filed its return of income under Section 139(1) of the Income-tax Act, 1961 (the Act) on 31 October 2017, declaring total income of ₹10,18,24,860/-.
- iii. Search and seizure operation under Section 132(1) of the Act was conducted on 8 February 2021, in the case of JMJ Group. Consequent to that search, the case of the assessee was centralized with the

office of Dy. Commissioner of Income Tax, Central Circle-2(2), Mumbai, as per order dated 24 May 2021. Subsequently, the order under Section 127 of the Act was passed, where the case was transferred to the Dy. Commissioner of Income Tax, Central Circle-2(2), Mumbai.

- iv. A notice under Section 153 of the Act was issued on 17 December 2021. Assessee reiterated his return of income on 28 January 2022, at a total income of ₹10,18,24,860/-. The notice under Section 143(2) of the Act was issued on 31 January 2022.
- v. During the course of assessment proceedings, the learned Assessing Officer noted that, assessee has provided services to Omkar Group of companies for settlement of non-eligible tenants and possession of constructed rehabilitation units and has received ₹34,81,14,629/- as fees towards income.
- vi. The learned Assessing Officer noted that for A.Y. 2017-18 ₹13.95 crores, for A.Y. 2019-20 ₹13.50 crores and for A.Y. 2020-21 ₹1.45 crores, is received. The above sum was stated to have been received for facilitation fee for evacuation of tenants, settlement of non eligible tenants, resettlement in permanent accommodation, brokerage etc. against facilitation agreement dated 1<sup>st</sup> April, 2016.
- vii. During the course of assessment proceedings, the assessee was asked to prove the genuineness of the above income.

- viii. The assessee explained his activities and stated that the payer of the above sum has sought assessee help in facilitation of settlement.
- ix. An agreement was entered on 1 April 2016, against which the assessee has earned the above sum for four different assessment years. It was the claim of the assessee that he has declared this receipt as his income and offered the same for taxation.
- x. The learned Assessing Officer after considering the explanation of the assessee rejected the same holding that {1} assessee has not given as to what are the services provided by him to the other party, [2] assessee did not produce any advertisement pamphlets paper or media coverage in support of his claim where the assessee has stated that he being an actor, celebrity, used his brand name for facilitating the services in agreement dated 1<sup>st</sup> April, 2016., [3] merely showing the receipt in the income tax return as his income does not absolve assessee from showing the genuineness of the receipt.
06. Accordingly, the assessment order under Section 143(3) read with section 153A of the Act was passed on 31<sup>st</sup> March, 2022, determining the total income of the assessee at a loss of ₹3,76,75,140/- against the return income of ₹10,18,24,680/- and removing the income of ₹13,95,00,000/- from the business income, taxing it under Section 68 of the Act.

07. Assessee aggrieved with the same preferred the appeal before the learned Commissioner of Income tax (Appeals). Before the learned CIT (A) assessee submitted that
- i. Search took place on 8 February 2021, and therefore, A.Y. 2017-18 is a concluded assessment, which could not have been disturbed by the learned Assessing Officer without any incriminating material found during the course of search.
  - ii. Against this argument, the learned CIT (A) called for remand report vide his letter dated 30 January 2023.
  - iii. The remand report was submitted on 6<sup>th</sup> February, 2023, wherein with respect to the incriminating material, the learned Assessing Officer stated that the facilitator agreement between Shri sachin Joshi and M/s Omkar Realtors Private Limited was found as 'annexure OF' and as per annexure 'OF-1', a reconciliation statement showing receipt of income from Omkar Realtors and Developers Pvt. Ltd, relevant to various years was found. This was stated to be incriminating material in remand report.
  - iv. The learned CIT (A) referred to the Panchnama dated 8 February 2021 that no valuable goods or accounts were seized during the course of search. This Panchanama was available with him as submitted in a remand report by the learned Assessing Officer.

- v. He further noted that assessee's statement was recorded on 8<sup>th</sup> to 11<sup>th</sup> February 2021, wherein question no.37, assessee was asked about the transactions with Omkar Group. In response to that question assessee himself gave the facilitation agreement and the reconciliation of receipt to the income tax stating that he has received the sum as per agreement from the above company for respective assessment years.
- vi. Therefore, the learned CIT (A) noted that the above facilitation agreement was for work undertaken of slum rehabilitation projects of the above party for which assessee has been paid the above remuneration.
- vii. The learned CIT (A) further examined the facilitator agreement and the reconciliation statement. He accordingly, held that agreement, the reconciliation statement is part of the regular records of the assessee for which return of income is filed, and income is shown in the return of income.
- viii. The facilitator agreement and the receipt statement are supporting the regular books of account of the assessee.
- ix. He further noted that A.Y. 2017-18 had not abated and therefore, if and only if any incriminating material is found during the course of search, addition can be made only to the total income.

- x. He relied upon several judicial precedents of Hon'ble High Courts and of the Tribunals for the same.
- xi. Accordingly, he held that for the impugned A.Y. 2017-18, which is not an abated assessment year, the addition of ₹13.95 crores made under Section 68 of the Income-tax Act, 1961 (the Act), does not survive.
08. Accordingly, he passed a consolidating appellate order for A.Y. 2017-18 and 2018-19 on 9<sup>th</sup> February 2023, deleting the above addition. For the sake of completeness, the addition of ₹50 lacs was made for A.Y. 2018-19, which was also deleted giving the same reasons. However, there is no appeal of the learned Assessing Officer for A.Y. 2018-19, before us.
09. The learned Assessing Officer aggrieved with that has challenged the deletion of addition of ₹13.95 crores.
010. The learned CIT Departmental Representative submitted that the learned CIT (A) has clearly in error in holding that there is no incriminating material found during the course of search. He submitted that 'annexure OF' in the form of facilitating agreement and 'Annexure OF-1' in the form of reconciliation statement were in fact the incriminating material and therefore, the order of the learned CIT (A) is not sustainable in law.
011. The learned Authorized Representative vehemently supported the order of the learned CIT (A) in holding that the facilitating agreement as well as the receipt of

reconciliation is part of the regular records of the assessee which assessee himself produced in response to question no.37 of his statement under Section 132(4) of the Act. The receipt is recorded in the books of account of the assessee in accordance with that agreement and therefore, those are not incriminating material. He submits that regular books of accounts and material, which supports the regular books of accounts, cannot be said to be an incriminating material found during search. It was further stated that issue is squarely covered in favour of the assessee that in absence of any incriminating material found during the course of search, concluded assessment could not be disturbed. He relied up on decision of honourable supreme court in case of *Abhisar Buildwell Pvt Ltd.* [2023] 149 taxmann.com 399 (SC)/[2023] 293 Taxman 141 (SC).

012. We have carefully considered the rival contentions and perused the orders of the lower authorities. Search took place on 8<sup>th</sup> February 2021, and therefore, admittedly A.Y. 2017-18 was not an abated assessment year. The impugned assessment can only be disturbed when incriminating material is found during the course of search. It is the claim of the Revenue that facilitating agreement and receipt of reconciliation statement found during the course of search is itself an incriminating material. We find that the assessee has offered the income arising from the above agreement reconciled with the reconciliation statement for the respective years. The facilitator agreement is signed by the assessee, which Omkar Developers is part of the regular books of accounts and records of the assessee supporting his

original return filed. On looking at question no.37 of the statement of the assessee, which clearly shows that when the assessee was asked about his transactions with Omkar Realtors Pvt. Ltd, assessee explained the nature of transaction and himself, produced the above agreement along with the statement. Assessee categorically stated that he has already included the above sum in his total income. In the remand report submitted by the learned Assessing Officer, it is clear that in the Panchnama, it is stated that no document or accounts were found and seized. Further, the remand report also says that addition is made in the hands of the assessee only based on facilitator agreement and receipt reconciliation. No evidences were found as stated in the order of the learned Assessing Officer, which even remotely suggested that the income offered by the assessee is not correct. Even in the assessment proceedings, no material is brought on record by the learned Assessing Officer. In view of the appellate facts, we do not find any infirmity in the order of the learned CIT (A) in holding that in an unabated assessment order i.e. A.Y. 2017-18, in absence of any incriminating material found during the course of search, no addition could have been made. Therefore Respectfully following the decision of Honourable Supreme court in case of Abhisar Buildwell Pvt Ltd [Supra] , all the grounds of the appeal of the learned Assessing Officer are dismissed.

013. In the result, ITA No. 1560/Mum/2023 for A.Y. 2017-18 is dismissed.



014. For AY 2019-20, ITA No. 1561/Mum/2023 is filed by the learned Assessing Officer. The fact shows that
- i. Assessee filed his return of income under Section 139(1) of the Income-tax Act, 1961 (the Act) on 31 October 2019, at ₹8,69,60,740/-.
  - ii. Notice under Section 153A of the Act was issued on 17 December 2021, against which the assessee reiterated his return on 28 January 2022, at the same income.
  - iii. During the course of assessment proceedings, the learned Assessing Officer found that for this assessment year, assessee has received ₹13,55,00,000/- on account of income from facilitation fee. So assessee was asked to prove the genuineness of the above receipt offered by him as his income.
  - iv. Assessee also reiterated what was stated in A.Y. 2017-18.
015. The learned Assessing Officer for the similar reasons as given in A.Y. 2017-18, held that the above sum is required to be added under Section 68 of the Act at the applicable tax rate of 60%.
016. Accordingly, the assessment order under Section 143(3) read with section 153A of the Act was passed on 31<sup>st</sup> march, 2022, determining the total income of the assessee at ₹13,55,00,000/- under Section 68 of the Act computing the normal income at a loss of ₹4,85,39,260/- . The unexplained cash credit under Section 68 of the Act

of ₹13,55,00,000/- was charged to tax under Section 115 BBE of the Act.

017. For A.Y. 2020-21, the learned Assessing Officer has filed appeal in ITA No.1562/Mum/2023, against the order of learned CIT (A) dated 10<sup>th</sup> February, 2023, wherein the addition of ₹1,45,00,000/- was made by the learned Assessing Officer on fees received from Omkar Developers as per facilitation agreement. The fact shows that return of income was filed on 15<sup>th</sup> February, 2021, at the total income of ₹2,04,35,300/-. In response to notice under Section 153A of the Act, dated 17 December 2021, assessee reiterated his return on 28 January 2022, at the same income.
018. The learned Assessing Officer raised the similar query about ₹1,45,00,000/- received from Omkar Realtors Developers Private Limited. Assessee also explained the receipt of the above sum as in A.Y. 2017-18. The assessment order under Section 143(3) read with section 153A of the Act was passed on 31 March 2022, wherein ₹1,45,00,000/- was taxed under Section 68 of the Act at tax rate prescribed under Section 115BBE of the Act.
019. For A.Y. 2019-20 and 2020-21, the learned CIT (A), on appeal by the assessee passed consolidated order wherein the above addition was deleted. The learned CIT (A) categorically noted that
- i. Income received by the assessee is for rendering services terms of agreement with the Omkar Realtors and Developers Ltd.



- ii. Before him an adjudication order was produced dated 7<sup>th</sup> March, 2022, in the Special Court under the prevention of money laundering Act in special case no.377 of 2022, wherein the Special court examined the issue of rendering services to the Omkar Realtors Developers Pvt. Ltd. as per Para no.33.
- iii. He also examined the facilitator agreement, the receipt statement, the tax invoices is raised by the assessee coupled with 37 other documents produced by the assessee listed at page no.22 to 24 of his order in the form of minutes of the meeting, statement of the accounts, invoices, debit notes to show that the services rendered by the assessee is in accordance with the agreement. He also examined the facilitator tax invoices and held that utilization of the services of the assessee has been recorded by both the parties and considered by the Special Court.
- iv. Accordingly, he deleted the addition of ₹13,55,00,000/- for A.Y. 2019-20 and ₹1.45 crores for A.Y. 2020-21.
020. The learned Assessing Officer is aggrieved with the order of the learned CIT (A) and is in appeal before us for both the years.
021. The learned CIT Departmental Representative vehemently submitted that the assessee has failed to prove rendering of the services and therefore, the nature and sources of receipt though offered by the assessee, as



income is not to the satisfaction of the learned Assessing Officer. Therefore, the addition is made under Section 68 of the Act. He submitted that the agreement and invoices merely does not show that services have been rendered by the assessee. He also submitted that the order of the Special Court does not have any bearing on this appeal. He submitted the learned CIT (A) has placed reliance on irrelevant material and therefore, his order is not sustainable.

022. The learned Authorized Representative defending the order of the learned CIT (A) submitted that there is an agreement between the service provider and the service receiver. The assessee has rendered services in accordance with the agreement. Assessee has continuously explained the nature of services, the reason why the assessee was hired, it also gave names of various companies to whom services have been rendered. It was further stated that the services are also subject to the GST, which was collected by the assessee and paid to the GST department. The GST department has also not questioned the rendition of the services. He submits that assessee has not provided services to any one company but to number of different companies from which assessee has received the remuneration. He submits that the nature of remuneration and the services of remuneration both have been explained by the assessee to the learned Assessing Officer. The learned Assessing Officer has merely stated that assessee has not rendered those services. He referred to overwhelming evidences recorded by the LD CIT [A], which are not controverted by the LD AO. He also stated that the learned Assessing



Officer has not made any enquiry when the learned Assessing Officer produced the overwhelming evidences. There is no evidence available with the learned Assessing Officer that nature and sources of income stated by assessee is false and income is chargeable to tax at higher rate of taxation under Section 115BBE of the Act. He further stated that the learned CIT (A) was also submitted copy of the order of the Special Court, which in various paragraph have conclusively verified the evidence and held that the transaction is genuine. In view of this, he submitted that the order of the learned CIT (A) is correct in deleting the addition. He also referred to his paper book filed for both these years.

023. We have carefully considered the rival contentions and perused the orders of the lower authorities. The assessee has received certain sums as service fee/ consultancy fee in terms of agreement with Omkar Realtors Pvt. Ltd. and several of group of companies of Omkar Group. To support his income, the assessee has stated in answer to question no. 37 of his statement recorded under Section 132(4) of the Act that assessee has provided facilitation services to that group. The assessee also shown that the income has been offered by him in his return of income along with the tax deduction and source of certification of the various parties. During the course of appellate proceedings, before the learned CIT (A) assessee produce the copies of the minutes of various parties also supported with the tax invoices. The minutes of the meeting clearly shows that assessee has participated in those meetings and has provided services in accordance with the facilitator agreement entered into by him with



those parties. The tax invoices prepared by the assessee and raised on the parties shows the GST amount on the services. There is no dispute of GST payment on such transactions. However, this fact is not determinative of genuineness of the receipt but it is also one of the factors supporting the case of the assessee. The real issue that arises is that when the assessee has produced such an overwhelming evidences before the learned Assessing Officer, neither during the search proceedings or during the assessment proceedings, the learned Assessing Officer made any enquiry with any of the parties. If the learned Assessing Officer was of the view that no services have been rendered by the assessee to those parties, there should have been an enquiry either in the form of 133(6) of the Act or issue of summons under Section 131 of the Act to the parties that has paid these sums. The learned Assessing Officer has not carried out any such enquiry. He has also not examined the evidences produced by the assessee either during the course of assessment proceedings or during the remand proceedings. The paper books filed by the assessee clearly shows that the assessee has discharged his onus by producing confirmation from the parties, agreement of the services rendered, tax invoices, copies of board meetings minutes for the proof of services. Thus, according to him, the assessee has discharged his onus of showing the nature and source of the receipts, if the learned Assessing Officer is not satisfied with the same, he should have at least carried out minimum enquiries to throw onus back to the assessee. There is not a single enquiry carried on by the learned Assessing Officer to



disbelieving the nature and source of the credits shown by the assessee. The LD AO did not even care to examine the parties who have paid these sums to the assessee and whether the above sum is allowed as deduction in the hands of such parties / companies. Naturally, if the claim of revenue is that no services are rendered by assessee to those parties; naturally, such expenses incurred by those parties are also not incurred by them wholly and exclusively for the business purposes of those companies, and it is not allowable to them. In view of this, we find that assessee has discharged its initial onus cast upon him. Further, the order of the Special court, though not determinative of the issue but by Para no.29 and 33 of such order, which was relied heavily by the learned CIT (A) also, supports the case of the assessee. In view of the above, we do not find any merit in the appeal of the learned Assessing Officer. Accordingly, we confirm the order of the learned CIT (A) and dismiss the appeals filed by the learned Assessing Officer for both the years. Accordingly, the appeals of the learned Assessing Officer for A.Y. 2019-20 and 2020-21 are dismissed.

024. In the result, all the three appeals filed by the learned Assessing Officer are dismissed.

Order pronounced in the open court on 17.11.2023.

Sd/-  
(NARENDER KUMER CHOUDHRY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 17.11.2023

*Dragon*



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