

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 201/Rjt/2022
Assessment Year 2012-13**

Hemal Manharbhai Vaishnav 1/6, Rayon Housing Society No. 5, Rudraksh, Post Office Road, Veraval-362266 PAN: ABCPV0659D (Appellant)	Vs	The ITO, Ward-4, Veraval, Veraval (Respondent)
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**Assessee Represented: Shri Mehul Ranpura, A.R.
Revenue Represented: Shri Abhimanyu Singh, Sr.D.R.**

Date of hearing : 07-11-2023
Date of pronouncement : 13-12-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 24.05.2022 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2012-13.

2. The brief facts of the case is that the assessee is an individual and receiving salary income and interest income. For the Assessment Year 2012-13, the assessee filed its original Return of Income declaring total income of Rs. 1,78,308/-. As per information available with the Assessing Officer that certain documents related to the assessee were found and seized in the search action conducted on 30.05.2012 on Jasubhai A. Vaghasia Group and others of Junagadh and Rajkot. In the premises of Shri Mehul Rajpara, Advocate a Satakhat in respect of Flat No. 102, White House, Nava Nagarwada, Junagadh was found and seized. As per the satakhat, the total sale consideration is Rs. 17,85,000/- which was signed by the purchaser Shri Arvindrai P. Mankad and the developer by Shri Arvindbhai Balubhai partner of Smit Construction. However as per the registered sale deed, the developer received Rs. 7.5 lacs only and balance Rs. 10.35 lacs was considered as on-money for the sale of above flat no. 102. Since the assessee herein is also one of the purchaser of flat in White House namely Flat No. 203, wherein sale deed was registered on 31.05.2011 only for a consideration of Rs. 7.5 lacs and the A.O. held that the assessee ought to have paid on-money of Rs. 10.35 lacs to the developer. Thus assessment was reopened by issuing a notice u/s. 148 of the Act on 25.03.2018 for escapement of income.

3. After repeated notices, the assessee filed his Return of Income on 01.11.2018 declaring total income of Rs. 1,78,308/- as declared in the original Return. During the course of assessment proceedings, the assessee pleaded that the reopening of assessment itself is bad in law, since the reasons recorded has no any evidence against the

assessee and the assessee purchased the flats only for Rs. 7.5 lacs which is the Jantry value as per the Stamp Duty Authorities. Further the assessee has not entered any Satakhat with the Developer other than the sale deed for Rs. 7.5 lacs, so there is no question of any addition on account of on-money paid by the assessee. Therefore requested to drop the reassessment proceedings. The above explanation was not accepted by the A.O. and made an addition of Rs. 10.35 lacs as on-money paid by the assessee for purchase of Flat No. 203 at White House, Junagadh and demanded tax thereon.

4. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals), NFAC. The assessee also brought to the notice that in the case of the developer namely M/s. Smit Construction, the Ld. CIT(A)-II, Ahmedabad deleted the addition of on-money pertaining to 15 flats sold by Smit Construction and in the case of Flat No. 102 restricted the addition to 20% being the profit ratio on the sale of so called on-money received by the developer. However the Ld. CIT(A), NFAC dismissed the assessee appeal without taking into account various submissions made by the assessee.

5. Aggrieved against the same, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as the "CIT(A)") in rejecting the ground of appeal related to validity of notice issued u/s 148 of the Income tax Act, 1961. That on facts as also in law, proceedings- initiated u/s. 147 of the

Act is invalid and assessment finalized on such invalid initiation deserves to be quashed and may kindly be quashed.

3. The ld. CIT(A) erred on facts as also in law in confirming addition made on account of alleged on-money payment Rs.10,35,000/- on purchase of flat no.203, White House, Nava Nagarwada, Junagadh. The addition confirmed is unjustified and uncalled for in view of the fact that contrary addition of alleged on money receipt in case of a builders was delete by the ld. CIT(A) and department has accepted the said order of ld. CIT(A).

6. Ld. Counsel Shri Mehul Ranpura appearing for the assessee submitted before us a Paper Book containing the written submissions filed before Ld. CIT(A) and copy of the decision in the case of the Developer M/s. Smit Construction passed by CIT(A)-11, Ahmedabad. Ld. Counsel drawn our attention to the findings of Ld. CIT(A) in the case of Smit Construction as follows:

".....6.2 I have considered the assessment order and submission of the appellant. The important question is to consider whether a piece of document (Satakhat for sale of a Flat) alone found during the search operation from third party can be made a basis of presumption of acceptance of 'On Money' and on the basis of such document, can the component of 'On Money' be extrapolated on other sale transactions in particular project. And whether on money on sale of flat is to be taxed or profit element embedded in that on money is to be taxed. On perusal of assessment order, it is seen that the AO ventured upon to multiply the 'On Money receipt in 16 Flats sold during the period relevant to A Y. 2011-12 and 2012-13 based on a Satakhat (Agreement to sale) of a single Flat, found during course of search operation in the case of third party. The AO has justified his action comparing the details of the impugned Satakhat with the details of the relevant final sale deed of the same Flat (Flat No. 102 executed in FY 2011-12 relevant to AY 2012-13) observing that the name of the purchaser is same, initial payment details of Rs. 5 lakh also same and the signature of purchaser also found to be same. However, the AO has not brought on record any such other details which could have corroborated the Inference that the appellant has received 'on money' on sale of all the Flats in "White House" project, so as to justify his action on perusal of the Assessment Order, appears that the AO has solely relied on the amount of proposed sale consideration mentioned in the Satakhat for sale of Flat No. 102 to extrapolate the same sale value in remaining Flats of the project and has worked out the total On Money received by the appellant in the said Project. The appellant has contended that the AO has neither provided copies of the statements recorded of the persons from whose possession the impugned Satakhat was found, nor allowed examination of the seized material. It is not justified that access to the material on which the entire addition is made has not been allowed to the appellant during the assessment proceedings. It is clear that the appellant was not provided any opportunity to rebut the so called evidences. Similarly rejection of request of the appellant to allow cross examination of the relevant person and other concerned parties is violation of principle of natural Justice. From the above facts, it is apparent that the AO has made addition based

on presumption that each of the purchasers would have paid Rs 17,85,000/- in the project "White House. The onus to prove the on-money actually received by the appellant is thrust upon the AO, which has clearly not been met in all the cases. The AO has neither confronted any of the purchasers of Flat so as to confirm the actual sale price of Flat nor has he examined the persons who purchased the flat. The AD has not brought any other independent evidence on record to support the conclusion arrived at, most importantly, there is no any evidence of substantial cash changing hands while executing the sale transactions as there is no trace of cash payment in excess of the amount shown in the registered documents in all the cases. On examining the entire facts of the case, it is quite apparent that the AO had made the additions only on the strength of the Satakhat, which has stated to have been seized during the search conducted at the premises of one Mehul Rajpara in following judicial pronouncement addition made merely by extrapolation is held to be against the law and consequently additions made have been deleted.

(i) High Court of Gujarat in case of Jayaben Ratilal Sorathia [2013] 40 taxmann.com 436 (Gujarat)

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Therefore, considering the above binding decisions of jurisdictional ITAT and High Court, it is held that AO was not justified in extrapolating the income of appellant based upon on-money reflected in one satakhat. Thus, in present case addition of on-money made except for flat No. 102 is directed to be deleted as there is no materials on record to prove that in fact appellant received any on money on all the flats.

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The plea of the appellant is considered, it is seen that the appellant has been showing net profit which is below 10% in A.Y 2011-12 and 2012-13 on turnover shown in books of account and ratio of net profit on on-money receipt would be higher than net profit shown in regular books of account. Hon'ble Gujarat High Court in case of Jay Builder Vs. ACIT [2013] 33 taxmann.com 62 has upheld decision of Hon'ble Ahmedabad ITAT for taxing 15% net profit on on-money receipts. Considering the facts of Appellant's case and referring to decisions referred to supra. It is reasonable to estimate net profit @ 20% on on-money receipts. There is nothing on record which prove receipt of on money in AY 2011-12 neither any incriminating materials was found unlike AY 2012-13. Under the circumstances, the addition of Rs. 31,92,000/- made for the AY 2011-12 is directed to be deleted. However, as one Satakhat was found for AY 2012-13 as per which the assessee has received on money of Rs. 10,35,000/-, addition of undisclosed income in case of appellant is restricted to Rs.2,07,000/- being 20% of on Money and therefore balance addition of Rs. 1,27,84,000/- is directed to be deleted. Thus, this ground of appeal is allowed in A.Y. 2011-12 and partly allowed in A.Y. 2012-13.

7. Thus the Ld. Counsel pleaded that the so called on-money receipts in the hands of the developer is itself is deleted by the Ld. CIT(A). Therefore the addition made on account of on-money

deemed to be paid by the assessee is liable to be deleted. The Id. Counsel also relied upon various case laws in support of his claim.

8. Per contra Ld. Sr. D.R. Shri Abhimanyu Singh appearing for the Revenue supported the orders passed by the Lower Authorities and requested to uphold the same.

9. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. It is clearly seen from the reasons recorded by the Assessing Officer on-money of Rs. 10.35 lacs would have been paid by the assessee for purchase of Flat No. 203 in the residential project namely White House. There is no dispute about the Jantry value of the above property is Rs. 7.5 lacs only. The Assessing Officer held that the assessee failed to furnish source of on-money given of Rs. 10.35 lacs for purchase of the above flat. Thus the Ld. A.O. without any material on record insisting the assessee to prove a negative. In fact, the A.O. failed to prove with any tangible material on record that the assessee has paid on-money to the developer. Further the Ld. CIT(A) in the case of developer namely Smit Construction deleted the additions made on account of on-money receipt on sale of remaining 15 flats by the developer. Even in the case of Flat No. 102, the Ld. CIT(A) restricted the profit element being 20% on the on-money to Rs. 2,07,000/- only. Therefore in our considered view, the above addition made by the Assessing Officer has no basis and liable to be deleted and we direct the Ld. A.O. to delete the same.

10. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 13-12-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 13/12/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
राजकोट