

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 1437/MUM/2022
Assessment Year: 2008-09

The Dy. CIT, CC-6(4),
Room No. 1925, 19th floor, Air
India Building, Nariman Point,
Mumbai-400021.

Appellant

Vs. Iconic Realtors Ltd.,
11, B Wing, Mittal Tower, Free
Press Journal Marg, Nariman
Point, Mumbai-400021.

PAN NO. AABCI 7348 M
Respondent

Assessee by : Mr. Madhur Agarwal
Revenue by : Mr. R.A. Dhyani, CIT-DR

Date of Hearing : 06/12/2023
Date of pronouncement : 31/01/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 30.12.2021 passed by the Ld. Commissioner of Income-tax(Appeals)-54, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2008-09, raising following grounds:

"(1) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C of Rs. 27.04.00.000/- even though Shri Madan Kolambekar, in his statement recorded on oath w/s. 132(4) of the Act, during the search action had admitted to have received unaccounted receipts from and made unaccounted cash expenditure on behalf of the Jai Corp Group, for purchase of 12.5% CIDCO plots. in lieu of commission/brokerage."



(2) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made s.69C aggregating to Rs.27,04,00,000/- even though the 12.5% CIDCO plots transaction actually took place in the hands of the assessee company, after making the said unaccounted/unexplained payment."

(3) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made w/s.69C aggregating to Rs. 27,04,00,000/- even though it has been held in the impugned order that the transactions of the assessee company with Shri Madan Kolambekar were not on 'principal to principal' basis."

(4) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made us.69C aggregating to Rs. 27,04,00,000/- even though vide the impugned order, the action of the AO to reject the retraction affidavit filed by Shri Madan Kolambekar and Shri HirenOza has been upheld."

(5) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made us.69C aggregating to Rs. 27,04,00,000/- even though it has been held in the impugned order that the transactions that documents seized from the premises of Shri Madan Kolambekar and impounded from the premises of M/s. Weldone Real Estate Limited can be used as evidence against the assessee."

(6) "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made w/s.69C aggregating to Rs.27,04,00,000/- even though plethora of evidences were found during the course of search, which corroborate the statements recorded on oath of various persons and substantiate the fact that the assessee company had made unaccounted/unexplained payments."

(7) "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting addition of Rs. 12,23,72,393/- u/s 69 of the Act considering it to be a double addition"

2. Briefly stated, facts of the case are that during the year under consideration, the assessee company was engaged in the procuring/purchasing plots of land in vicinity of Special Economic Zone, Mumbai by way of employing land aggregators. The assessee filed original return of income on 17.09.2008 claiming net loss of Rs.30,808/-. Subsequently, a search and seizure action u/s 132 of the Income-tax Act, 1961 (in short 'the Act') was carried in the case



of 'Jai Corporation Ltd'. group on 05.03.2009. The assessee being one of the entities of 'Jai Corporation group' was also subjected to the search action. Accordingly, a notice u/s 153A of the Act was issued and assessment in terms of section 153A r.w.s. 143(3) of the Act was completed on 29.12.010 ,wherein the total income was assessed at Rs.39,27,41,685/- making additions, *firstly*, addition of Rs.27,04,00,000/- on account of unexplained expenditure u/s 69C of the Act relating to 12.5% CIDCO land at 'Dronagiri' area and *secondly*, addition for unexplained investment u/s 69C of the Act of Rs.12,23,72,393/-. On further appeal, the Ld. CIT(A) deleted both the additions. Aggrieved, the Revenue is in appeal before the Income-tax Appellate Tribunal (in short 'the Tribunal') raising the grounds as reproduced above.

3. The ground Nos. 1 to 6 of the appeal relate to issue of addition amounting to Rs.27,04,00,000/-, whereas ground No. 7 relates to addition of Rs.12,23,72,393/-.

4.1 At the outset, the ld DR referred to the delay of 75 days in filing the appeal as pointed out by the Registry and submitted that the period of delay in filing the appeal being during the Covid Pandemic period, the delay is covered by the decision of the Hon'ble Supreme Court in Civil appeal no. 21 of 2022 in Miscellaneous Application No. 655 of 2021 in *suo-motu* writ petition (C) No. 3 of 2020.



4.2 We have heard rival submission of the parties on the issue of condoning the delay in filing the appeal. Before us, the Ld. DR brought on record that order of the Ld. CIT(A) was received in the office of the Principal Commissioner of Income-tax (PCIT) on 31.01.2022 , therefore, filing of appeal before the Tribunal was due on 30.03.2022, whereas the appeal has been filed on 27.05.2022. The Hon'ble Supreme Court in the writ petition (supra) has held that in cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from the 01.03.2022 and in the event the actual balance period of limitation remaining w.e.f. 01.03.2022 is greater than 90 days that longer period shall apply. Since, the period of limitation in the instant case is falling into the period covered by the Hon'ble Supreme Court (supra), therefore the appeal filed by the Revenue is held to be within the limitation period and accordingly admitted for adjudication.

5. We have heard rival submission of the parties on the ground Nos. 1 to 6 of the appeal. Briefly stated facts qua the issue in dispute are that the 'Jai Corporation Group' was engaged in real estate sector operation and was a partner into Special Economic Zones (SEZs) in vicinity of the Mumbai, namely 'Navi Mumbai SEZ and Mumbai SEZ. The group purchased a large parcel of agriculture/non-agriculture lands in vicinity of those SEZs through



various companies of the group as well as individual employees of the group with an objective of developing a township in those areas. The entities of the group employed 'land aggregators' for procuring land. The various 'land aggregators' /'brokers' like Shri 'Madan Kolambekar', Shri 'Mahendra Banthia', Shri 'Ganesh Atmaram Mokshe' etc. used to facilitate and purchase lands through tri-party agreements. The land aggregators/brokers used funds provided by the 'Jai Croperation Group' entities for purchase of the land in their name for further transfer to the entities of the Jai Corporation including the assessee company. During the course of search action at the premises of Shri Madan Kolabekar incriminating material in the form of files of purchase of land/management information system (MIS) reports etc. were found and seized in physical form as well as soft copy form. Statement of Shri Madan Kolabekar was recorded on various occasions in search and post search proceedings, wherein he admitted of incurring cash expenditure on behalf of Jai Corporation entities including the assessee company for purchase of land. He admitted that he used to receive commissions/brokerage for such land deal at specified rates. He also revised his return of income for corresponding period declaring commission/brokerage income from land deals. During the course of search at the premises of sh Madan Kolabekar, Shri Hiren Oza i.e. an employee of Jai Corporation Group arrived at the search site and from whom certain documents in the form of details of purchase of properties etc. were found. In his statement recorded,



he also admitted the fact of cash expenditure for purchase of plot of lands. Though, before the Assessing Officer both these persons have retracted their statement but the Assessing Officer has rejected their retraction in absence of any evidence of threat or coercion during the statement recorded u/s 132(4) of the Act. In the case of the assessee 12.5% CIDCO plots of land have been purchased at 'Dronagiri' area. These plots have been commonly called as '12.5% CIDCO plots' for the reason that against the acquisition of the land from the farmers by the CIDCO for amenities like roads, schools etc., developed plot of land measuring 12.5% of the land acquired, was given to the farmers. Such displaced farmers were called as project affected persons (PAP) and in order to rehabilitate them Government formulated scheme which called 12.5 % scheme of CIDCO. The assessee had purchased several such '12.5% CIDCO plots' directly from PAPs/farmers for which the initial payment was made by the land aggregator and remaining payments were made by the group entities including the assessee. However, in many other cases such 12.5% CIDCO plots have been routed through land aggregator like Shri Madan Kolabmekar. Firstly, a tripartite agreement used to be made among him, PAPS/farmers/sellers and CIDCO and then said plots were used to be registered in the name of land aggregators or their proprietary concerns .Subsequently such plots would be transferred by them or their proprietary concerns to several entities of Jai Corporation Group including the assessee.



6.1 The assessee during the assessment proceedings claimed that its transaction with Shri Madan Kolambekar were on 'principle to principle' basis and he was an independent land aggregator but the Assessing Officer rejected the said contention in view of the observations, *firstly*, several incriminating documents found during the course of search proved that the Jai Corporation Group through several of its employees exercised control over Shri Madan Kobambekar and his proprietary concern, *secondly*, Shri Madan Kolambekar in his statement on oath u/s 132(4) of the Act admitted that he used to receive only commission/brokerage on such land deals. The Assessing Officer has noted that incriminating evidence of unaccounted cash payment to the tune of Rs.40 crores was found during the course of search action from the office premises of Shri Madan Kolambekar at Vashi, Navi Mumbai, being status report/MIS report consisting of 'Madan Kolambekar purchase of 12.5% CIDCO plots'. The Assessing Officer further observed that out of total payments made of Rs.16974.62 lakhs, a sum amounting to Rs.12,974.62/- lakhs were appearing in the books of accounts of the various entities of the Jai Corporation Group including the assessee company. Thus a sum of Rs.4,000/- lakhs (Rs. 40.00 crores) shown as payment to others was not recorded in the books of account of those entities of the Jai Corporation Group including assessee company and proprietary concern of Shri Madan Kolambekar. The Assessing Officer further perused the third annexure to MIS reports containing details of payments made to



various parties under the head 'development charges of Rs.55,34,08,000/-. Out of such development charges, a noting was found recorded as "as per bank statement" for a sum of Rs. 15,34,08,000/- and another noting being " difference" for the balance of sum Rs.40,00,00,000/-. Therefore, the Assessing Officer held this balance sum of Rs.40 crores as nothing but unexplained cash expenditure.

6.2 The Assessing Officer during the assessment proceedings asked the assessee and Shri Madan Kolambekar to furnish year wise, entity wise breakup of unexplained cash expenditure but in view of no compliance on the part of the assessee, he allocated such cash expenditure of Rs.40 crores among 4 entities of Jai Corporation Group on the basis of details filed by sh Madan Kolabkar. In the case of the assessee, in the year under consideration on the basis of the details submitted by Shri Madan Kolambekar, unexplained cash expenditure was found to be Rs.27,04,00,000/-. Accordingly, the Assessing Officer computed the addition in hands of the assessee. The ground Nos. 1 to 6 of the present appeal are in respect of the addition of Rs.27,04,00,000/-.

6.3 Further, as per the seized document found from the office of 'M/s Weldone Real Estate Ltd. Pvt. Ltd'. i.e. another entity of Jai Corporation Group, it was found that a sum of Rs.12,23,72,393/- was transferred from Ionic Realtors Ltd. i.e. the assessee company to M/s Deva Realtors for purchase of agricultural land. It was found



that said amount of Rs.12,23,72,393/- did not appear in the books of account of the assessee company. Thus, on the basis of the documents seized from the office of sh Madan Kolambekar and M/s Weldone Real Estate Pvt. Ltd. and found from possession of Shri Hiren Oza i.e. employee of the Jai Corp. Group who used to supervise land transactions with Shri Madan Kolambekar, the Assessing Officer concluded that the sum aggregating to Rs.30,67,72,393/- was transferred from several Jai Group companies including to assessee company to Shri Madan Kolambekar for purchase of agriculture land, out of which a sum of Rs.12,23,722,393/- was not appearing in the books of the account assessee company. Therefore, the Assessing Officer held that said expenditure of Rs.12,23,72,393/- was in the nature of the unexplained expenditure/investment of assessee company and accordingly, he made addition. The ground No. 7 of the present appeal is in relation to this addition of Rs.12,23,72,393/-.

7. On further appeal, the Ld. CIT(A) after considering the documentary evidence found during the course of the search, statement recorded on oath of Shri Madan Kolambekar and other persons and noting on the seized material held that Shri Madan Kolambekar was only an agent of Jai Corporation group in respect of purchase of the land. Further, the Ld. CIT(A) upheld rejection of the retraction affidavit of Shri Madan Kolambekar and Shri Hiren Oza. The Ld. CIT(A) also held that documents seized from the



premises of Shri Madan Kolambekar and impounded from M/s Weldone Real Estate Ltd. could be used as an evidence for making addition in the case of the assessee. However, the Ld. CIT(A) further observed that another land aggregator, 'Shri Dilip Dherai' was also searched during search on Jai Corporation group and the Assessing Officer on the basis of the documents seized from the premises of the Shri Dilip Dherai made addition in the case of 52 entities/individual of the Jai Corporation group. 'Shri Dilip Dherai' in his statement recorded u/s 132(4) of the Act admitted that cash payment was made by Jai Corporation group in respect of purchase of land and accordingly, the Assessing Officer made addition u/s 69C of the Act in such 52 group cases and the ld CIT(A) confirmed said addition in those 52 entities. However, the Income-tax Appellate Tribunal (in short the 'Tribunal') vide its order dated 22.03.2013 deleted the addition u/s 69C of the Act in those cases. The Department preferred appeal before the Hon'ble High Court in 6 cases out of those 52 cases. The Hon'ble Bombay High Court in the case of CIT Central v. M/s Lavanya Pvt. Ltd. in ITA No. 72 of 2004 vide order dated 23.06.2017 upheld the decision of the Tribunal. Further in the case of Krupa Land Ltd. (another entity of Jai Corporation), similar addition u/s 69C of the Act was made which was deleted by the Ld. CIT(A) and said deletion has been upheld by the Tribunal in ITA No. 604/Mum/2012 . Therefore, the Ld. CIT(A) relying on the decision of the Co-ordinate Bench of the Tribunal in the case of Krupa Land Ltd.(supra) and decision of the Hon'ble



Jurisdictional High Court in the case of M/s Lavanya Pvt. Ltd. (supra), deleted the addition of Rs.27,04,00,000/- made u/s 69C of the Act on account of unexplained expenditure relating to purchase of 12.5% CIDCO plots at 'Dronagiri' area.

7.1. On the issue of addition of Rs.12,23,72,293/- in respect of unexplained cash payment made to Shri Madan Kolambekar for purchase of agriculture land, the Ld. CIT(A) observed that Assessing Officer at para 13.21 of the assessment order had concluded that all the agriculture land transaction were actually made by M/s Jai Laxmi Realties Pvt. Ltd. Therefore, the Ld. CIT(A) was of the view that once the Assessing Officer has added the same amount in the hand of M/s Jailaxmi Realty Pvt. Ltd. for assessment year 2008-09, the addition in the hands of the assessee would be double addition and therefore, the Ld. CIT(A) deleted said addition of Rs.12,23,72,393/- in the hands of the assessee.

7.2 Before us, the Ld. DR submitted that the Ld. CIT(A) failed to appreciate following facts:

- *Shri Madan Kolambekar, in his statement recorded on oath u/s. 132(4) of the Act had admitted to have received unaccounted receipts from and made unaccounted cash expenditure on behalf of the Jai Corp Group;*
- *Shri Madan Kolambekar, received commission/brokerage for agricultural land deals with the assessee company and the same was disclosed during the assessment proceedings, by filing a revised ITR;*
- *The Ld. CIT(A) in the impugned order has held that the transactions of the assessee company with Shri Madan Kolambekar were not on 'principal to principal' basis;*
- *The agricultural land transactions actually took place in the hands of the assessee company (through its nominated*



farmers), after making the said unaccounted/unexplained payment;

- The Ld.CIT(A) in the impugned order has held that the documents seized from the premises of Shri Madan Kolambekar and impounded from the premises of M/s. Weldone Real Estate Limited can be used as evidence against the assessee;
- The Ld.CIT(A) in the impugned order has upheld the action of the AO to reject the retraction affidavit of Shri Madan Kolambekar and Shri Hiren Oza;
- The plethora of evidences found during the course of search, including those found from the premises of the Jai Corp group entities and the assessee Company, corroborate the statements recorded on oath of various persons, substantiate the fact that the assessee company had made unaccounted/unexplained payments.

7.3 Further, the DR submitted that against the decision of the Tribunal in the case of Krupa Land Ltd. (supra), the Department has preferred further appeal before the Hon'ble Bombay High Court and which is pending and therefore the decision of the Ld. CIT(A) might not be relied upon. On the issue of addition of Rs.12,23,72,393/- the Ld. DR relied on the order of the lower authorities.

7.4 On the other hand, the Ld. counsel for the assessee relied on the order of the Ld. CIT(A) and submitted that in view of binding precedent of the Co-ordinate Bench as well as Hon'ble Jurisdictional High Court followed, the order of the Ld. CIT(A) is justified. On the issue of addition of Rs.12,23,72,393/- the Ld. counsel referred to the decision of the Tribunal in ITA No. 1425/Mum/2022 along with CO No. 103/Mum/2022 for assessment year 2008-09 in the case of Jailaxmi Realty and Developers Ltd. and submitted that the Tribunal has deleted the



said addition following finding of the Tribunal in the case of Krupa Land (supra) and decision of the Hon'ble Jurisdictional High Court in the group cases of the assessee.

7.5 We have heard rival submission of the parties and perused the relevant material on record. As far as ground Nos. 1 to 6 of the appeal of the Revenue are concerned, the facts pointed out by us in brief above have not been disputed by either of the parties. The only objection of the Departmental Representative is that Revenue has not accepted the decision of the Hon'ble Bombay High Court in the case of Lavanya Pvt. Ltd. (supra) and decision of the Co-ordinate Bench of the Tribunal in the case of Krupa Land Ltd.(supra) ,therefore, appeal has been preferred before the Tribunal. In our opinion though the Revenue might not have finally accepted the decision of the Co-ordinate Bench of the Tribunal or Hon'ble Jurisdictional High Court, but we are bound by the said decision of the Co-ordinate Bench of the Tribunal as well as decision of the Hon'ble Jurisdictional High Court being a binding precedent in identical set of facts and circumstances. Therefore, respectfully following the finding of the Co-ordinate Bench of the Tribunal in the case of Krupa Land Ltd. (supra) and decision of the Hon'ble Jurisdictional High Court in the case of Lavanya Pvt. Ltd. (supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground Nos. 1 to 6 of the appeal of the Revenue are accordingly dismissed.



8. As far as ground No. 7 of the appeal of the Revenue is concerned, we find that identical addition in the case of Jailaxmi Realty and Developers Ltd. (supra) has been deleted by the Tribunal observing as under:

“31. We observe from the above decision that the fact in the present case is similar to the case of Krupa Land Ltd. (supra) as the present proceedings also arise from the same search. Instead of the statement of Mr. Dilip Dheria, the Revenue is relying on the statement of Mr. Madan Kolambekar in the present proceedings. However, in the present case also, Mr. Madan Kolambekar has withdrawn his statement and other than loose papers, no further material has been brought on record by the Revenue to justify the addition in the hands of the assessee. The Revenue has not supported the allegation by any material showing cash passing hands. Further, the Revenue authorities have not enquired with the vendors or brought any statement on record of the vendors to substantiate the claim of the Revenue that extra cash has actually change hands. In view of the above facts, we are inclined to accept the findings of the Ld.CIT(A), who was justified in relying on the decision of the coordinate bench of the Tribunal in the case of Krupa Land Ltd. (supra).

32. Respectfully following the above said decision of the Hon'ble High Court and Coordinate Bench, since these decisions are binding decisions for all the group concerns of Jai Corp Group, as the facts in all these group concerns are similar. Accordingly, we do not find any reason to interfere with the findings of the Ld.CIT(A) by deleting the additions proposed by the Assessing Officer u/s. 69C of the Act. Accordingly, various grounds raised by the revenue are dismissed. Since we have decided the main appeal against the revenue the relevant cross objection filed by the assessee is also dismissed.”

8.1 Since the addition has been made in the case of the assessee on the basis of the very same documents, which was the basis for the addition in the case of M/s Jailaxmai Realty and Developers Ltd. (supra), therefore, following the finding of the Co-ordinate Bench of the Tribunal in the case of Jailaxmi Realty and Developers Ltd. (supra), we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground No. 7 of the appeal of the Revenue



is accordingly dismissed. The Ground No. 8 being general in nature, same is dismissed as infructuous.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 31/01/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 31/01/2024

Rahul Sharma, Sr. P.S.

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,

(Assistant Registrar)
ITAT, Mumbai