

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

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

**IT(SS)A Nos: 345, 397, 489 & ITA 1557/Ahd/2019
Assessment Years: 2011-12 to 2014-15**

Shreem Soil Development Pvt. Ltd. 3 rd Floor, Solitaire Building, Opp. Bombay Garage, Sahibaug, Ahmedabad-380004 PAN: AAOCS2566A (Appellant)	Vs	The Dy. CIT, Central Circle-1(4), Ahmedabad (Respondent)
---	----	---

**IT(SS)A No: 512/Ahd/2019
Assessment Year: 2013-14**

The Dy. CIT, Central Circle-1(4), Ahmedabad (Appellant)	Vs	Shreem Soil Development Pvt. Ltd. 3 rd Floor, Solitaire Building, Opp. Bombay Garage, Sahibaug, Ahmedabad-380004 PAN: AAOCS2566A (Respondent)
--	----	--

**Assessee Represented: Shri Vijay H. Patel, A.R.
Revenue Represented: Shri Sudhendu Das, CIT-DR**

Date of hearing : 21-12-2023
Date of pronouncement : 09-02-2024

आदेश/ORDER

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

These appeals are filed by the Assessee and the Revenue as against the different appellate orders dated 22-04-2019, 03-06-2019 and 27-08-2019 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the respective assessment orders passed under section 143(3) r.w.s. 153A and r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years 2011-12 to 2014-15. Since common issues are involved in all the above appeals, the same are disposed of by this common order for the sake of convenience.

2. **IT(SS)A No. 489/Ahd/2019** for the Assessment Year 2013-14 is taken as the lead case. The brief facts of the case is that the assessee company was incorporated on 01-04-2010 and engaged in the business of developing of residential plots. The assessee has floated a scheme "Anand Dreams" at Pethapur-Mehudi Highway, Gandhinagar, Gujarat consisting of total 358 plots in phase I ranging from 500 to 1398 sq.yards and in Phase-II consisting of 397 plots ranging from 150 to 300 sq.yards. There was a search action u/s. 132 of the Act on 13-06-2013 in the business premises of the group concerns at Sahibaug, Ahmedabad wherein various computers and pen-drive were seized. The printout of the data found in computer and pen-drive were inventorised as File Nos. 1, 2 & 3 and statement of the Director Shri Vijaynarayan R. Jaju was recorded and he was specifically asked to explain Page No. 44 & 45 of File No. 1 of Hard Disk Annexure-A dated 13-06-2013.

2.1. In reply Question No. 54, the Director replied the pages on 44 & 45 are percentage of commission on the amount mentioned on these pages, he admitted that this is simply working of commission and he had worked the interest on the said amount. On being asked about the parties name mentioned in these pages, the assessee submitted that these are dummy names and no search party exists. On being asked about the interest of two parties name, the assessee submitted that these contains the details of interest at 1% to 2.5%. On being asked the total of Rs.16,42,51,000/- written on these pages, the Director submitted that this is the working income of the entire Shreem Group till dated and the working has been done by his ex-employee and this also contains the working of interest and commission receivable. Thereafter Question No. 60, he was asked as to whether the amount of Rs. 16.42 crores was recorded in the books or not. In reply, the Director submitted that this is unaccounted income on sale of plots in cash till date of entire Shreem Group and the assessee had not entered the same in any books of accounts or their respective company or firms of the group and thereby he declared this as the unaccounted income of the entire Shreem Group.

2.2. Thereafter another statement was recorded on 12-08-2013 vide answer to question no. 19, the Director submitted that the cash receipts admitted by him of Rs. 16.42 crores as follows:

- (a) Cash receipts from Anand Dreams Project Rs.1.42 crores
- (b) Sale of Plot No. 76 & 77 at Anand Dreams Rs. 20.40 lakhs
- (c) Cash received from booking of Plot No. 6 of Anand Aksha Schemes.

There were no retraction statement by the Director to the above statements recorded by the department.

2.3. During the assessment proceedings, the assessee failed to appear in spite of notices and failed to substantiate the correct details before the Assessing Officer. Therefore the claim of the assessee that the disclosure of Rs.16.42 crores which includes the total income of the group was not accepted by the Ld. A.O. Since each individual and group concern had made disclosure on the basis of evidences found in their respective cases. Secondly, the evidence found shows the details of income and the evidences found in respect of group concerns also shows details of receipt of income. Hence, there is no question of set of as in all the cases evidences of income has been found. In the light of the above and considering the assessee's own admission by recording statements u/s. 132(4) and no retraction made by the assessee. Therefore the Assessing Officer made an addition of Rs. 16.42 corres as the total income of the assessee and also initiated penalty proceedings.

3. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals) and no one represented before First Appellate Authority, therefore the same was dismissed by Ld. CIT(A).

4. Aggrieved against the same, the assessee filed an appeal before this Tribunal in IT(SS)A Nos. 403 to 405/Ahd/2017 and ITA No. 2226/Ahd/2017 for the Assessment Years 2011-12 to 2013-14 and 2014-15. The Co-ordinate Bench of this Tribunal vide order dated 20-12-2017 set aside the assessment with a direction to the

assessee to furnish necessary details and substantiate its claim before the Assessing Officer by observing as follows:

“...8. We have carefully perused the assessment orders in the case of Shreem Developers which are exhibited at pages 2 to 35 of the paper book. The assessment order of Shreem Construction is exhibited at pages 36 to 38. Shreem Builders at pages 39 to 43, Shri Vijaynarayan R. Jaju at pages 44 to 47 and Shri Anand Patel from pages 48 to 50 of the paper book.

9. We find that nobody attended during the assessment proceedings of the assessee nor anybody attended proceedings before the First Appellate Authority. Therefore, it appears that the assessments made in the cases of other assessees of the group were not verified and the entire disclosure amount has been added in the hands of the appellant assessee.

10. In our considered opinion, a grave prejudiced has been caused to the assessee by such non verification. Therefore, in the interest of justice, we restore these appeals to the files of the A.O. The A.O. is directed to verify from the assessment records of Shreem Developers and Others, The amount of undisclosed income offered during the course of the search proceedings as per the statement mentioned hereinabove. If the A.O. is satisfied that the undisclosed income has been taxed in the hands of other members of the group then there is no reason why the same income should be taxed in the hands of the assessee. The assessee is directed to furnish necessary details and substantiate its claim before the Assessing Officer.”

5. During the set aside proceedings, the assessee was given opportunity to explain the case by the A.O. After perusing the assessee's reply, the Ld. A.O. held as follows:

“...5.1 I have perused and verified the assessment orders of the group concerns and the members of the Shreem Group given in the disclosure chart offered by the assessee subsequent to the search. The associate concerns of Shreem Group have shown the income as admitted however those income offered by them are based on independent evidences like cash and jewellery seized and seized documents showing various unaccounted transactions. Further, the assessee has not correlated the source of income generated in its case to the application of income in the other group concerns and individuals of this group. From the group disclosure chart it is seen that there has been a disclosure in the hands of Shreem Developers for F.Y. 10-11 and 11-12 but as per the disclosure the generation of income in the hands of Shreem Soil & Development P. Ltd. starts from F.Y. 12-13 onwards. So if assessee's claim of generation of Rs. 16.42 crores in the hands of assessee concern and application in the hands of assessee's group is to be accepted then it would be illogical for application to precede generation as brought out above.

5.2 It is pertinent to mention here that the assessee has not submitted any evidence whatsoever during search or original assessment proceedings or during set aside proceedings the application of income as per disclosure in the hands of other group concerns and members of the Shreem Group. Hence for want of supporting evidences assessee's claim of telescoping benefits cannot be allowed besides there has been irrefutable and additional incriminating evidence found and seized in the case of the assessee which has also been accepted by the key person Sh. Vijay Jaju of Shreem Group vide statement recorded u/s 132(4) of the I.T. Act.

5.3 It may further be noted that the assessee had given a disclosure of Rs. 16.42 crores based on page No. 44 & 45 of file No. 1 (Scanned copy of page No. 44 & 45 from print out of Hard Disk Annexure A dated 13/06/2013 in its project Anand Dreamz, which Shri Vijay Jaju (partner) vide his reply to Question No. 54 of statement recorded u/s.132(4) on 13.06.2013 had stated that it contains the working of commission and interest receivable. Thereafter vide Question No. 60 he was asked as to whether the amount of Rs.16,42,51,000/- was recorded in the books or not, he submitted that this is unaccounted income on sale of plot in cash till date, of Shreem Group and the assessee has not entered or shown this amount in any books of account of the company or firms of the group and he declared this as unaccounted income of Shreem Group. During the set aside proceedings, the assessee has filed submissions claiming that the working represents Installment plan and interest payable in respect of sale of plots. It has further been claimed by the assessee that most of these plots have not been sold and as assessee follows revenue recognition method of accounting, the same should not be treated as his income. The submission of the assessee are taken on record however, no findings on it can be given, in view of the Hon'ble ITAT's specific directions which is for the limited purpose of verification of claim of assessee that disclosure be compared with group concerns respective disclosures and application of income thereof. Hence I am not a position to comment upon assessee's fresh stand taken vide its submission dated 26.12.2018 as discussed above.

5.4 The addition of Rs. 16.42 crores for A.Y. 13-14 vide order dated. 29.03.2016 u/s 143(3) R.W.S. 153A is based on the incriminating evidence discussed in the said assessment order. As this addition is distinct from the disclosure amount offered for the year, no interference in respect of the earlier addition requires to be made.

5.5 Furthermore it is seen that the assessee has neither filed the return of income for AY. 13-14 and A.Y. 14-15 nor paid the taxes in respect of the disclosure of Rs. 1.4 crores and 2.4 crores offered for both the assessment years. Even otherwise, as the assessee has failed to pay even the taxes in respect of the disclosure amount, there is no question of application thereof Subject to the discussion above and the specific directions of the Tribunal vide order dated. 20.12.2017 the total assessed income remains the same

as assessed vide order u/s 143(3) r.w.s. 153A dated 29.03.2016 at Rs. 16,42,51,000/-.

6. Total assessed income as per above discussion is Rs.16,42,51,000/- .Penalty Proceedings u/s.271AAB has been initiated separately.”

5.1. Similarly additions were made for the other Assessment Years as follows:

Asst. Years	Amount (Rs)
2011-12	40,40,000/-
2012-13	81,91,050/-
2014-15	2,71,51,510/-

6. Aggrieved against the same, the assessee filed appeals before Commissioner of Income Tax (Appeals). The Ld. CIT(A) after detailed discussions dismissed the assessee appeal observing as follows:

“...5.3 I have gone through the facts of the case, as mentioned in the assessment order, the documents found during the search & statement recorded u/s. 132(4) of the Act. It is clear from the above discussion that 2 pages (No.44 & 45) were found at common office of all group concerns. It has never been stated by Shri Vijaynarayan Jaju that this page contain details of transactions only pertaining to the appellant. Even Shri Jaju made it clear again & again that the total amount of Rs. 16,42,51,000/- written on this page is undisclosed income of all group persons. He submitted bifurcation of undisclosed income showing person wise/year wise before the ITO(Inv) vide letter dated 22.11.2013 and the same was neither been doubted nor any question was raised to the appellant about the said bifurcation. In reply to Q No. 75, while giving statement on oath u/s. 132(4), Shri Jaju made it clear that this amount of Rs. 16,42,51,000/- includes several other unaccounted transactions/receipts/ payments of group persons. Thus, the AO is not justified in accepting the statement of the appellant partially which suits to the department. It is a fact that Shn Jaju made disclosure of Rs. 16.42 crores as undisclosed income but it is also a fact that this disclosure was for whole Shreem group persons and not only to the appellant. The statement of Shri Jaju must be read in totality to reach to the correct conclusion. It is legally settled principle that the seized documents should be read in totality & objectively. On going through the chart submitted by the appellant before the AO & during the appellate proceedings, the appellant made disclosure in the hands of various group concerns totaling to Rs. 16,42,51,000/- In the case of Shreem Developers, the appellant made disclosure as mentioned below and the same has been returned in the returns of income filed for these years:-

Sr. No.	A.Y.	Amount disclosed (Rs.)	Amount returned in the return filed
i)	2010-11	72,00,000	1,19,88,517 (including disclosure of Rs.72 lakhs)
ii)	2011-12	1,62,00,000	1,87,81,881)including disclosure of Rs.1.62 crore)
iii)	2012-13	18,00,000	33,73,600 (including disclosure of Rs.18 lakh)
iv)	2013-14	2,58,00,000	2,68,97,300 (including disclosure of Rs.2.58 crore)
V)	2014-15	4,02,07,400	3,77,47,600 {AO made additions of Rs.29,55,600/- to determine Income of Rs.4,02,07,400
	Total	9,12,07,400	9,87,88,898

The above chart shows that the appellant has returned income of Rs.9,87,88,898/- against the disclosure of Rs.9,12,07,400/- in all these years in the name of Shreem Developers and the same is part of the disclosure made by Shri jaju for all group persons.

5.4 In respect of other group persons like Shreem Construction, Shreem Builders, Marwari Store Extension, Vijay Jaju & Shri Anand Patel, they have either returned the income disclosed in their return of income or additions have been made by the AO on the basis of disclosure made, as stated in the chart submitted by the appellant. Thus, it is clear from the above discussion that apart from the disclosure made in the hands of the appellant i.e. Rs.1.40 crore for A.Y. 2013-14 & Rs 2.40 crore for A.Y. 2014-15 (total Rs 3.80 cr.), balance full disclosure has been taxed in the hands of other group persons and making additions of the same amount in the hands of the appellant is nothing but double additions, which is not permissible. The appellant did not file return in response to notice u/s 153A of the Act, hence, additions of Rs.1.40 crore as disclosure made by Shri Vijaynarayan Jaju in the hands of the appellant for the year under consideration is confirmed. Remaining Rs 2.40 crore as disclosed for A Y. 2014-15 are being confirmed in that year. This ground of appeal is partly allowed.

5.5 The appellant's contention that the disclosure made was for gross receipts and the same was not net profit, hence, only profit portion may be added, is not found acceptable for the simple reason that the appellant itself has returned total receipt as income for A.Y 2012-13. The other group person i.e. Shreem Developer has also returned total gross receipts as income & paid taxes. Hence, this contention is contradictory of the method adopted by the appellant itself as well as other group persons. Thus, this

contention is dismissed. The case laws relied upon by the appellant in this regard are not applicable to this case, as facts are totally different.

7. Aggrieved against the same, the Assessee is in appeal before us in IT(SS)A No. 489/Ahd/2019 for A.Y. 2013-14 raising the following Grounds of Appeal:

1. In law, on facts and in the circumstances of the case, the appellate order passed by the ld. CIT(A)-11, Ahmedabad partly confirming the impugned block assessment order is against natural justice, bad in law and deserves to be cancelled.

2. On the facts, in law and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming the disclosure of on-money of Rs.1,40,00,000/- in place of profit @ 8% embedded therein. The Assessing Officer may please be directed to adopt 8% profit of the on-money in place of full amount of On-Money received.

3. The appellant Company craves leave to add, alter, amend any ground/s of an appeal on or before hearing of the appeal.

8. Ld. Counsel Shri Vijay H. Patel appearing for the assessee in support of its grounds submitted that the entire on-money is taxed by the Ld. Assessing Officer whereas the profit element at 8% embedded therein is only taxable in the hands of the assessee and relied upon following case laws:

(i) CIT vs. Balchand Ajit Kumar reported in 263 ITR 610 (MP)

(ii) CIT vs. Samir Synthetics Mill (Guj.) reported in LAWS(GJH)-2008-1-225

(iii) DCIT vs. Panna Corporation in Tax Appeal No. 323 of 2000 vide judgment dated 16.06.2012 (Guj.)

(iv) CIT vs. Abhishek Corporation LAWS(GJH)-2014-11-28 (Guj.)

(v) Sampada Homes Vs. ACIT in ITA No. 95 to 97/Hyd/2018 dated 07.09.2018 (ITAT Hyderabad)

(vi) Sri Sri Estates vs. ACIT in ITA No. 2242/Hyd/2017 and Ors. dated 25.07.2018

10. Per contra Ld. CIT-DR Shri Sudhendu Das appearing for the Revenue appearing for the Revenue supported the order passed by the Lower Authorities. Ld. CIT-DR further submitted that though this Hon'ble Tribunal set aside the matter back to the file of the Assessing Officer with a direction to the assessee to produce the records, the assessee failed to furnish the same in the remand proceedings. Therefore the order passed by the Lower Authorities does not require any interference, more so, when the assessee failed to file the Return of income for the Assessment Years 2013-14 & 2014-15 and not paid the taxes in respect of the disclosure made by the assessee for the above assessment years. Therefore the appeals filed by the assessee are liable to be dismissed.

11. We have given our thoughtful consideration and perused the materials available on record. The case laws cited by the assessee are all relating to the developers who are engaged in the construction of flats/building, wherein net profit rate is adopted. Further the landmark judgment of the Jurisdictional High Court in the case of CIT vs. President Industries reported in 258 ITR 654, is a case about discrepancies noted in the production of the assessee by the Central Excise Authority on production of man-made fabrics, wherein the Hon'ble High Court held that the entire addition is to be made not in respect of the sale consideration, but only in respect of the profit element embedded therein. But the facts in the present case is that the assessee company was incorporated on 01.04.2010 and developed residential 358 plots in Phase-I ranging from 500 to 1398 sq. yds. and 397 plots in Phase-II ranging from 150 to 300 sq.yds. Price of the plots are determined

based on the improvements/growth of particular area are based on its infrastructure, development, public utilities, etc. Market value of the land and Jantry value differs from place to place. More unaccounted moneys are utilized on sale and development of lands/plots which are converted from Agricultural to Non-Agricultural purpose. In such cases it is impossible to estimate the net profit unless the method adopted in manufacturing activities. Therefore the claim of the assessee that net profit is to be adopted in the land development transactions, wherein on-money was received by the assessee is legally not tenable. Further the assessee failed to disclose the proper details of expenses, development charges, etc. before the lower authorities even in the second round also. Therefore the claim made by the assessee to adopt net profit method on the on-money received by it, in real estate transaction is hereby rejected and the case laws relied before us are clearly distinguishable, which are not relating to development of plots.

12. In the result, the appeal filed by the Assessee is hereby dismissed.

IT(SS)A Nos. 345, 397 & ITA No. 1557/Ahd/2019 (Assessee's Appeals for A.Y. 2011-12, 2012-13 & 2014-15)

13. The only effective ground is to adopt net profit of 8% on the on-money received by the assessee for the above Assessment Years 2011-12, 2012-13 and 2014-15. For the detailed reasons adduced in Paragraph No. 11 of this order in IT(SS)A No. 489/Ahd/2019 relating to the Assessment Year 2013-14 is squarely applicable to the facts of the above three appeals. Respectfully following the

same, the appeals filed by the assessee are devoid of merits. Therefore the same are hereby dismissed.

IT(SS)A No. 512/Ahd/2019 (Revenue Appeal for A.Y. 2013-14)

14. The Grounds of Appeal raised by the Revenue reads as under:

Grounds of appeal:

- 1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in limiting the disclosure of the assessee to Rs.1.40 Cr. for A.Y.2013- 14 as per the party wise disclosure chart of the assessee and its related concerns totaling to Rs.16.40 Cr. as submitted by the assessee during the course of post-search proceedings.*
- 2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not taking into account the fact that Shri Vijay Narayan Jaju gave a disclosure of Rs.16.42 Cr. on the day of search u/s 132(4) of the IT Act in respect of pg No.44 & 45 of file No.1 being print out of Hard Disk Annexure "A" mentioned in Assessment Order and, as this disclosure of Rs.16.42 Cr. was in respect of entries dated FY 12-13, there can be no application of this disclosure amount of Shreem Soil Developers Pvt Ltd. (ie. assessee) with other assesseees of the group namely Shreem Developers whose disclosure is for AY 10-11 to AY 14-15 while the disclosure in the group concerns and individuals is for AY 13-14 & 14-15, so the unaccounted income of Rs.16.42 Cr disclosed for transactions in AY 13-14 & AY 14-15 in the case of assessee could not be considered for earlier years of Shreem Developers as the application of disclosure income cannot precede the year of generation of income.*
- 3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee has neither filed ROI nor paid full taxes as per the disclosure.*
- 4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee has not furnished any evidence to substantiate the basis of income generation in respect of the disclosure to other concerns of the Shreem Group and the income disclosed as per the chart is in respect of sale of plots in cash whereas for eg: Marwadi Stores is not in the business of real estate, and it can be said that the disclosure in Shreem Soil given by Shri Vijay Jaju, Director of the assessee company is exclusively in respect of the contents of (pg No 44 & 45 pages found in the hard disk and hence this disclosure is over and above the disclosure in other assesseees like Marwadi Stores, in Marwadi Store, Prop Shobhadevi Jaju, the disclosure is in respect of*

unaccounted stock of Rs.1,96,00,000/- and unaccounted Jewellery of Rs.51,59,667/- seized during the course of search.

5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessee suo-moto offered a disclosure chart apportioning this disclosure amount against its various concerns wherein there were separate cash and Jewellery seizures and accounted income and the same have been considered in their respective assessments.

6. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O.

7. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O. be restored to the above extent.

15. From the reading of above Grounds of Appeal, we do not find any infirmity in the order passed by the Ld. CIT(A) which is already extracted in Paragraph No. 6 of this order. Further the Ld. CIT-DR could not place on record to make the entire addition of Rs.16.42 crores as the income of the assessee and also could not sight any error in the findings of the Ld. CIT(A). Therefore the Grounds of Appeal raised by the Revenue are devoid of merits and the same are liable to be dismissed.

16. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 09 -02-2024

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 09/02/2024

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,
अहमदाबाद