

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SHRI GAGAN GOYAL, AM**

ITA No. 549/Mum/2022
(Assessment Year: 2008-09)

Ajiv Yashwant Patil 103, Parijat Apartments, Gaothan, Virar (W), Thane-401 303	Vs.	ACIT, Central Circle-3 Thane
PAN/GIR No. ABQPP 8269 F		
(Assessee)	:	(Revenue)

&

ITA No. 610/Mum/2022
(Assessment Year: 2008-09)

DCIT, Central Circle-3 Thane	Vs.	Ajiv Yashwant Patil 103, Parijat Apartments, Gaothan, Virar (W), Thane-401 303
PAN/GIR No. ABQPP 8269 F		
(Revenue)	:	(Assessee)

Assessee by	:	Shri Subodh Ratnaparkhi
Revenue by	:	Shri Manoj Kumar Sinha

Date of Hearing	:	22.11.2023
Date of Pronouncement	:	15.02.2024

ORDER

Per Kavitha Rajagopal, J M:

These are cross appeals filed by the assessee and the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), Pune-11 passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2008-09.

2. The assessee has challenged this appeal on the grounds of reopening and the addition of Rs.2,73,50,000/- being the unexplained investment and disallowance of Rs.37,62,530/- towards cost of improvement.

3. The Revenue, on the other hand, has challenged the deletion of addition of Rs.30,70,00,000/- and restricting the disallowance on cost of development to 50% out of Rs.75,25,060/-.

4. The brief facts of the case are that the assessee is an individual and had filed his return of income dated 24.12.2018, declaring total income at Rs.37,31,830/-. Pursuant to a search and seizure action carried out in the group cases of Ameya dated 31.07.2014, certain incriminating documents were found and seized which disclosed cash receipts, pertaining to the assessee with regard to Alkapuri land. The assessee's case was reopened vide notice dated 10.02.2015 u/s. 148 of the Act and the assessee vide his reply stated that his original return of income may be treated as 'return of income' filed in response to notice u/s. 148 of the Act. The assessee was served notices u/s. 143(2) and 142(1) of the Act dated 17.08.2015. The assessee then filed his objection for reopening vide his letter dated 14.12.2015 and sought for a copy of the reasons recorded along with the relevant documents relied upon by the Assessing Officer ('A.O.' for short). The Id. A.O. then furnished the copies of the reasons for reopening vide letter dated 04.11.2015 and disposed of the objections raised by the assessee. The Id. A.O. then passed the assessment order dated 21.03.2016 u/s. 143(3) r.w.s. 147 of the Act where the Id. A.O. determined the total income at Rs.37,67,07,665/- by making various additions/disallowances.

5. Aggrieved by the said order, the assessee was in appeal before the Id. CIT(A), challenging the reopening and the impugned additions/disallowances.
6. The Id. CIT(A) vide order dated 27.01.2022 had partly allowed the appeal filed by the assessee.
7. Both the assessee as well as the Revenue are in appeal before us, challenging the impugned order of the Id. CIT(A).
8. Ground nos. 1 & 2 of the assessee's appeal is on challenging the reopening of assessment u/s. 147 of the Act.
9. The facts of these grounds are that during the search and seizure u/s. 132 of the Act carried out in the Ameya group of cases dated 31.07.2014, the assessee's residents was also covered under the said search. It is observed that certain incriminating documents were found and seized. The Id. A.O. proceeded to reopen the cases of the assessee u/s. 147 of the Act and had duly recorded the reasons for reopening this assessment year which falls under unabated assessment. The reasons for reopening are cited hereunder for ease of reference:

Reasons for belief that the income has escaped assesmentn in the case of Shri Ajiv Yashwant Patil for A.Y. 2008-09

The information regarding receipt of Rs.3583.50 lacs by Shri Ajiv Y. Patil during A.Y. 2007-08 is received from DDIT (Inv) – 1, Thane vide his letter No. THN/DDIT(Inv)-1/Ameya/14-15/222 dated 22.01.2015. Wherein it is stated that a search u/s. 132 was carried out in the case of Ameya Group of Virar on 31.07.2015. Wherein it stated that a search u/s. 132 was carried out in the case of Ameya Group of Virar on 31.07.2014. Page No. 1 & 2 of annexure A-2 of bundle No. 1 seized from the residence of Shri Rajeev Patil (Party No. A-14) shows that cash was received by the assessee Shri Ajiv Yashwant Patil in respect of Alkapuri land. Copy of the loose papers is enclosed.

The page no. 1 shows the date and amount in abbreviated form. The figures are to be read in lacs, for example against 09.08.2007 amount written is 77.00. this should be read as 77 lacs. The total cash receipt is shown as Rs.273.50 and cheque receipt is shown at 140.00. On

lower portion cheque received from Sanjiv Patil A/c No. 17859 is shown at 100.00. These figures should be read as under:

*Cash: 273.50 should be read as Rs.273.50 lacs
: 140.00 should be read as Rs.140.00 lacs
: 100.00 should be read as Rs.100.00 lacs*

Thus the total payment received for Alkapuri land is Rs.513.50 lacs.

The page No. 2 shows the Alkapuri land statement. Upper portion of this page shows receipt of Rs.1670.00 lacs and payment of Rs.1670.00 lacs. On lower portion of this page receipt of Rs.1400.00 lacs and payment of Rs.1400.00 lacs is written.

During the post search proceedings, the assessee has stated that these are old transactions for A.Y. 2007-089 which is beyond the period covered by search.

As per AST module of the ITD system, assessee has not filed return of income for the A.Y. 2008-09. Therefore, I have reason to believe that the income of the assessee amounting to Rs.3583.50 lacs has escaped assessment for the reason of failure on the part of the assessee, to disclose fully and truly all the material facts for the assessment of income for A.Y. 2008-09.”

*Sd/-
(Alok Malviya)
DCIT, Central Circle-3, Thane*

10. From the above mentioned reasons, it is observed that cash receipt of Rs.3583.50 lacs pertaining to the assessee for the relevant assessment year was found during the search which had mentioned that the same pertain to Alkapuri Land along with the date and amount in abbreviated form on various occasions. The A.O. made an addition of Rs.5,13,50,000/- as ‘unexplained investment’ and Rs.30,70,00,000/- as ‘unexplained cash receipts’ and Rs.1,60,00,000/- as ‘unexplained income’ and made addition aggregating to Rs.37,67,07,665/-. The assessee has contended that the A.O. had mentioned that no income tax return was filed by the assessee for the impugned year which was factually incorrect for the reason that the assessee has filed his original return of income dated 24.12.2008. The assessee contended that the notice u/s. 148 of the Act was bad on the ground that the A.O. had failed to consider the original return of income filed by the assessee. The assessee relied on the decision of the Hon’ble Gujarat High Court in the case of *Mumtaz Haji Mohd. Memon vs. ITO* (in Sp. Civil Appl. No. 21030 of 2017 dated 21.03.2018 (Guj)) which held on identical facts that the reopening was bad in law. The

assessee further to this contended that the ld. A.O. in the reasons recorded had stated that the assessee has received a sum of Rs.35.83 crores for Alkapuri land which the assessee contends that belongs to M/s. Sharp Realtors in which the assessee is not a partner and, hence, the assessee was not entitled to receive the said amount for the purpose of Alkapuri Land. The assessee further to this contended that the ld. A.O. had stated in the assessment order that Rs.5.13 crores was 'unexplained investment' out of Rs.35.83 crores and that the balance Rs.30.70 crores was held by the assessee and paid to Shri Deepak Shah who was one of the partner of M/s. Shark Realtor. The assessee contended that the reopening was on the basis of one ground and addition was made by the A.O. on a different issue. The assessee in addition to this stated that the A.O. did not have any incriminating material to reopen the assessment year which falls under the unabated assessment year. It was also contended that except payment of Rs.1 crores by the assessee towards proposed acquisition of development right from M/s. Sharp Realtors for a minor portion of Alkapuri land, there was no other material on record to justify the action of the ld.A.O. The assessee relied on the decision of the Hon'ble Apex Court in the case of *ITO vs. Lakmani Mewal Das* [1976] 103 ITR 437 (SC). The ld. A.O. after considering the assessee's submission made the impugned addition/disallowance.

11. The ld. CIT(A) in an appeal preferred by the assessee held that the assessee out of the seized paper has accepted the transaction of Rs.1 crore dated 24.09.2007 which was related to payment made to M/s. Sharp Realtors pertaining to Alkapuri land. The ld. CIT(A) further held that the seized paper discloses the name of the assessee and his brother along with the amounts and dates specified on various occasions. The ld. CIT(A)

further held that the assessee's contention was that the ld. A.O. has wrongly specified that the assessee has not filed his return of income during the impugned year which could be because the assessee must have filed his return of income mainly with the ld. A.O. who did not have the jurisdiction and, hence, the same could not be located on the AST module of ITD system. The ld. CIT(A) further stated that the assessee has not contended that the cash transaction found in the seized papers are already declared in the original ITR filed by the assessee. There was no scrutiny assessment done in the assessee's case for A.Y. 2008-09 for which the only requirement to initiate the proceeding u/s. 148 of the Act was reason to believe that the income has escaped assessment based on the prima facie material. The ld. CIT(A) relied on the decision of the Hon'ble Apex Court in the case of *Asst. CIT vs. Rajesh Zhaveri Stock Brokers* [2007] 291 ITR 500 (SC), *Central Provinces Manganese Ore Co. Ltd. vs. ITO* [1991] 191 ITR 662, *Raymond Woollen Mills Ltd. vs. ITO* [1999] 236 ITR 34 (SC) along with various other decisions which has held that for the purpose of reopening the assessment, the A.O. merely has to have prima facie material for reason to believe that income has escaped assessment nor to confer jurisdiction for reopening. It was further held that sufficiency or correctness of the material is irrelevant at the stage of reopening. The ld. CIT(A) distinguished the decisions relied upon by the assessee in the case of Hon'ble Gujarat High Court in the case of *Mumtaz Haji Mohd. Memon* (supra) and *Lakmani Mewal Das* (supra). The ld. CIT(A) upheld the order of the ld. A.O. in reopening the assessment. The assessee has challenged the grounds of reopening before us.

12. The Id. AR for the assessee contended that the Id. A.O. had reopened the assessment on the wrong reasons that the assessee has not filed his return of income for A.Y. 2008-09 which was factually incorrect. The Id. AR further stated that the Id. A.O. has recorded the reasons that the assessee has received a sum of Rs.35.83 crores towards acquiring Alkapuri land which was also factually incorrect as the said land was acquired by M/s. Sharp Realtors and not by the assessee. The Id. AR also stated that the reasons recorded states that the assessee has received amount in cash towards the said amount whereas the addition of Rs.5.13 crores was made by the Id. A.O. as unexplained investment and that the balance Rs.30.70 crores was said to have been collected by the assessee from various parties and paid to M/s. Deepak Shah who was the partner of the M/s. Shark Realtors. The Id. AR stated that the addition of reopening was done for one reason and addition was made on a different ground. The Id. AR relied on the decision of the Hon'ble Supreme Court in the case of *Mumtaz Haji Mohd. Memon* (supra) and *Lakmani Mewal Das* (supra).

13. The learned Departmental Representative ('Id.DR' for short), on the other hand, contended that the reopening in the case of the assessee was rightly made by the Id. A.O. for the reason that the seized material during the search proceeding contained the details of payments pertaining to Alkapuri and along with the name of the assessee and his brother Shri Rajiv Y Patel. The Id. DR further stated that the assessee has also admitted part of the transaction mentioned in the seized material pertaining to Rs.1 crore which was the transaction with regard to Alkapuri land. The Id. DR thus stated that the Id. A.O. has reopened based on the tangible material related to the transaction made by the

assessee related to Alkapuri land. The ld. DR relied on the order of the ld. CIT(A) which has extensively dealt with the contention of the assessee.

14. We have heard the rival submissions and perused the materials available on record. It is evident that there was no scrutiny assessment made u/s. 143(3) of the Act in the assessee's case during the impugned year and based on the information received from Investigation Wing that the assessee has received cash in respect of Alkapuri land based on page nos. 1 & 2 of Annexure A-2 of bundle no. 1 seized from the residents of Shri Rajiv Patel during the search proceedings carried out in the case of Ameya Group of Virar dated 31.07.2014. It is observed that page no. 1 of the seized material contained date and amount in abbreviated form on various occasions reflecting a cash receipt aggregating to Rs.273.50 lacs and cheque receipt of Rs.140.00 lacs. It also reflects the cheque received from Shri Sanjiv Patel amounting to Rs.100.00 lacs where the total payment received was Rs.513.50 lacs. Page no. 2 of the seized material shows receipt of Rs.1670.00 lacs and payments of Rs.1670.00 lacs and receipt of Rs.1400.00 lacs and payment of Rs.1400.00 lacs. The reason specified by the ld. A.O. is that the assessee has not filed his return of income as per ASD module of ITD system and that there was failure on the part of the assessee to disclose fully and truly all material facts pertaining to Rs.3583.50 lacs which has escaped assessment.

15. From the above observation, it is evident that there has been certain transactions carried out by the assessee relating to the Alkapuri Land which the assessee has admitted to the extent of Rs.100 lacs by way of cheque payment dated 24.09.2007. The assessee has further contended that only a small portion of development rights in Alkapuri land

was to be acquired by the assessee from M/s. Sharp Realtors was not supported by any documentary evidences. Presumably it is seen that the assessee has dealt with Alkapuri land for which payments were received and made both in cash as well as in cheque. The provision of section 147 of the Act for reassessment stipulates a condition that the Id. A.O. should have reason to believe that income has escaped assessment and the above mentioned facts are suffice for the purpose of invoking the provision of section 147 of the Act in the said case. The assessee's contention that the addition was made on one ground whereas the reason for reopening was on another ground does not hold good in the present case where the A.O. is not bound to conclusively determine as to why the reopening was to be made. Mere 'reason to believe' that income has escaped assessment based on some tangible material is suffice to reopen the assessment which in this case was the seized material which showed cash and cheque payment along with the name of the assessee and the dates on various occasions where payment was made. The assessee has also not completely denied the transaction that M/s. Sharp Realtors pertaining to Alkapuri land. Though in the remand proceeding, M/s. Sharp Realtors have admitted to the said transaction but has stated that due to various reasons the sale of development rights to the assessee did not materialize and that the amount received as advances were substantially refunded by account payee cheques. These facts go about to state that the assessee had transacted for sale of development rights with M/s. Sharp Realtors thereby corroborating the seized material found during the search proceeding.

16. The assessee's contention that the A.O. has wrongly stated in his reasons for reopening that the assessee has not filed his return of income ipsofacto cannot be a reason

to hold the reassessment proceeding as invalid unless the assessee proves that he had declared the payments found in the seized material in his original ITR. Neither before the lower authorities nor before us, the assessee has failed to establish the said fact.

17. From the above observation, we are of the considered opinion that the A.O. has rightly invoked the provision of section 147 of the Act and there is no merits in the submission of the assessee. We, therefore, dismiss ground nos. 1 & 2 raised by the assessee.

18. Ground no. 3 of the assessee's appeal and ground nos. (i) & (ii) of Revenue's appeal pertains to the addition of Rs.2,73,50,000/- being the unexplained investment made by the assessee for acquiring development rights for Alkapuri Land. It is observed that the assessee has admitted that Rs.100 lacs reflecting in the seized paper pertain to the transaction made by the assessee with regard to Alkapuri Land and paid to Shri Deepak Shah partner of Shark Realtors. The assessee further contended that Rs.40 lacs reflected in the seized paper pertains to the amount paid to Raj Enterprises on 18.08.2007 appeared as loan by journal entry in the books of the assessee. The assessee has admitted these two amounts which were for acquiring development rights in Alkapuri land. The ld. A.O. held that since the assessee has accepted the above mentioned transaction as per the seized paper then the other entries amounting to Rs.273.50 lacs and Rs.100 lacs which was a cheque received from Shri Sanjiv Patel also pertains to acquiring development rights in Alkapuri land thereby making an addition of Rs.5,13,50,000/- as unexplained investment. The ld. CIT(A), on the other hand, had partly allowed this ground of appeal raised by the assessee and restricted the addition to the extent of Rs.2,73,50,000/- on the ground that

the assessee has failed to explain the source of the cash payment which constitute the unexplained investment made by the assessee for acquiring development rights of Alkapuri land.

19. The assessee is in appeal before us, challenging the order of the Id. CIT(A) in upholding the addition made by the A.O. to the extent of Rs.2,73,50,000/-.

20. The Id. AR contended that the assessee has admitted to the transaction of Rs.100 lacs and Rs.40 lacs and has denied the other transactions in the seized paper nos. 1 & 2 of bundle no. 1 to be that of the assessee. The Id. AR stated that the Alkapuri land was acquired by M/s. Sharp Realtors not by the assessee and the assessee has merely agreed to acquire development rights from M/s. Sharp Realtors only to a small portion of the Alkapuri land. The Id. AR further stated that the seized paper not only contain the assessee's name but also various other persons names were also mentioned which establishes that the entire amount does not belong to the assessee. The Id. AR contended that the assessee's name does not find place in the list of on-money receipts received by M/s. Sharp Realtors and stated that the assessee has not made any payment in cash to M/s. Sharp Realtors.

21. The Id. DR, on the other hand, controverted the said fact and stated that as the assessee himself has admitted part of the transaction reflected in the seized paper, it is evident that there have been transactions made by the assessee by cash and cheque for the purpose of acquiring the development right of Alkapuri land. The Id. DR further stated that the assessee has not discharged his onus to prove that the remaining amount does not

pertain to the assessee but to third parties. The Id. DR also stated that the assessee has not given any documentary evidence to show that the other transaction does not relate to the assessee. The Id. DR relied on the order of the Id. A.O.

22. We have heard the rival submissions and perused the materials available on record. It is observed that the seized documents from the residents of the assessee evidences transaction made by the assessee with regard to the Alkapuri land. Though the assessee has admitted part of the seized document to be genuine remaining part stands denied by the assessee. The Id. A.O. interpreted 273.50 being the net amount on the right hand portion of the seized paper to be Rs.273.50 lacs and Rs.140/- and Rs.100/- was interpreted as Rs.140 lacs and Rs.100 lacs being the cheque transactions pertaining to Alkapuri land. This fact has been corroborated by the confirmation given by M/s. Sharp Realtors to the extent of Rs.2,40,00,000/- out of Rs.513.50 lacs. The Id. A.O. proceeded to make an addition on the entire amount of Rs.513.50 lacs reflected in the seized paper. The Id. CIT(A) restricted the same to Rs.273,50,000/- for the reason that the assessee has explained the source to the extent of Rs.2,40,00,000/- which was made through banking channel. Both the lower authorities have failed to accept the assessee's contention that various other names were mentioned in the upper half of the seized paper was not related to the assessee for the reason that the onus is on the assessee to prove the contents of the seized paper where he has partly accepted the figures mentioned as cheque transaction. The Id. CIT(A) held that the assessee cannot pick and choose the entries in the seized paper by accepting the cheque payments and denied the cash payments.

23. From the above observation, it is evident that the addition of Rs.2,73,50,000/- alleged to be the cash paid to M/s. Sharp Realtors by the assessee as per the seized paper records pertains to the development rights of Alkapuri land which was to be acquired by the assessee from M/s. Sharp Realtors. The lower authorities have not brought anything on record to show that the said project was materialized. On the contrary, the assessee had contended that neither the assessee nor his brother has acquired the development rights of Alkapuri land from M/s. Sharp Realtors, for which no on-money payments were made to M/s. Sharp Realtors. It is also observed that the remand report submitted by the Id. A.O. has furnished the details of on-money receipts received by M/s. Sharp Realtors which has been confirmed by the Id. CIT(A)-11, Pune vide order dated 31.03.2017 in the case of M/s. Sharp Realtors for the A.Y. 2008-09 where the assessee's name is not in the list of alleged on-money depositors. It is also to be noticed that the seized paper contains names of various third parties whose involvement in the said transaction has not been established by the Id. A.O.

24. For the above mentioned reasons, we deem it fit to hold that the lower authorities have failed to establish that the assessee has made the impugned on-money payment to M/s. Sharp Realtors. In the absence of any corroborating evidence, we deem it fit to direct the Id. A.O. to delete the impugned addition towards the unexplained investment made by the assessee. Ground no. 3 raised by the assessee is allowed and ground nos. (i) & (ii) raised by the Revenue are hereby dismissed.

25. Ground no. 4 pertains to the addition of Rs.37,62,530/- towards cost of improvement being expenditure claimed by the assessee in working of LTCG arising on

sale of the land at Virar. It is observed that the assessee has claimed the development expenses towards land filling, labeling, compound wall and other related expenditure for which the assessee had claimed total expenditure of Rs.75,25,060/-. The assessee had contended that the said payments were made through banking channels and copies of ledger extracts have been furnished by the assessee. The Id. A.O. had denied the said claim on the ground that the assessee had failed to furnish the copies of invoice or confirmation from the concerned persons to substantiate that the said amount was expended for development of land paid to three persons namely M/s. Padmavati Realtors, M/s. Y K Real Estate and Shri Manish Patil.

26. The Id. CIT(A), on the other hand, made an adhoc disallowance of 50% of the said expenditure and confirmed Rs.37,62,530/- on the ground that the conveyance deed dated 14.08.2007 for land admeasuring 2993.934 sq. mtrs. which was sold to the Immaculata Society for a consideration of Rs.1,60,00,000/- which was reserved for a school. As per the said conveyance deed, the assessee was bound to undertake and completed the infrastructure work.

27. Aggrieved by the adhoc disallowance, the assessee is in appeal before us, challenging the order of the Id. CIT(A).

28. It is observed that the assessee has furnished the registered deed of conveyance dated 14.08.2007 for the sale of land to Immaculata Society which was not before the Id. A.O. but furnished before the Id.CIT(A). This was considered by the first appellate authority where the recitals of the said conveyance deed has specified in clause (4) that

the assessee had to carry out the infrastructure work such as land filling, compound wall and other allied work to be completed by the assessee. The said expenses incurred by the assessee were made through banking channels which details were before the lower authorities. The Id. A.O. has failed to make any further enquiry from the parties who have received the payment for carrying out the said work. The Id. CIT(A) has also not justified in making an adhoc disallowance of 50% towards the expenditure claimed by the assessee.

29. In the above factual matrix, we are of the considered opinion that the assessee has discharged the primary onus by giving the details of the payments made by the assessee to the concerned parties which nevertheless was through banking channel. In the absence of any justification in upholding the impugned addition/disallowance, we hereby allow ground no. 4 raised by the assessee is allowed and ground no. (iii) raised by the Revenue is hereby dismissed.

30. Ground no. 5 of the assessee's appeal and ground no. (iv) of the Revenue's appeal are general in nature and requires no further adjudication.

31. In the result, the appeal filed by the assessee is partly allowed and the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 15.02.2024.

Sd/-

Sd/-

(Gagan Goyal)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 15.02.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai