

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“F” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 3112/Mum/2023  
(Assessment Year: 2012-13)**

<b>Jitesh Jitendra Sakhidas</b> 1006, 10 <sup>th</sup> Floor, Rashmi Heights CHS Ltd. Dayabhai Patel Road, Opp. M.W. Desai Hospital, Malad (East), Mumbai- 400097 <b>PAN : AWYPS6387C</b>	Vs.	<b>ITO, Ward-30(1)(5),</b> Room No. 607,C-13, 6 <sup>th</sup> Floor, Pratyaksha Kar Bhavan, BKC, Bandra (East), Mumbai-400051.
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri Nitesh Joshi, CA  
**Revenue/Respondent by** : Ms. Rajeshwari Menon, Sr. DR

**Date of Hearing** : 21.02.2024  
**Date of Pronouncement** : 27.02.2024

**ORDER**

**Per Padmavathy S, AM:**

This appeal is against the order of the Commissioner of Income Tax (Appeals)-51, Mumbai [for short 'the CIT(A)] dated 17.08.2023 for the AY 2012-13. The assessee raised the following grounds:

*1. The Addition of Rs.67,00,000/- toward unexplained Investment u/s.69B of the Act on a ground that inspite of numerous opportunities given, the appellant had neither complied to nor attended in response to any of these notices Per statement -I.*

*2. Whether the order passed by the CIT(A) confirming the addition of Rs.67,00,000/- made by the Assessing Officer was correct in law, as after introduction of 'Faceless Appeal Scheme, 2020', vide Gazetted Notification F.No. S.O. 3296 (E), dated 25-9-2020 all the pending and new appeals of the taxpayers before the CIT(Appeals) w.e.f. 25-9- 2020, shall be adjudicated and disposed of by the National Faceless Appeal Centre (NFAC), Delhi, and not by the jurisdictional CIT(Appeals) Annexure-1.*

2. The assessee is an individual and filed the return of income for AY 2012-13 on 03.09.2012 declaring a total income of Rs. 3,30,250/-. The return of income was processed under section 143(1) of the Income Tax Act, 1961 (the Act). During the year under consideration, the assessee purchased a residential flat no. 1006 from M/s. Rashmi Infrastructure Developers Ltd along with Shri.Sachin Jitendra Sakhidas for a consideration of Rs.65,00,000. A survey under section 133A was conducted in the premises of M/s. Rashmi Infrastructure Developers Ltd. on 18.10.2013 and during the course of survey proceedings evidence relating to payment of on money by various flat purchasers has been found and the statement of the Director of the said company was recorded. The AO re-opened the assessment stating that there is a reason to believe escapement of income since certain loose paper found during survey bears the Flat number of the assessee against which an amount of Rs.67,00,000 is mentioned and that as per the statement of the Directors the said loose paper contains on money payments received from some of purchasers of the Flats. The assessee submitted before the AO that he has paid only his share in the total consideration including the stamp duty charges and that no further payments were made by him to M/s Rashmi Infrastructure Developers Ltd. The assessee further submitted that the sales and purchases of his business does not support the findings of the AO and that there has not been any cash withdrawals to substantiate the huge cash payment. The assessee requested for the statement recorded from the director of of M/s. Rashmi

Infrastructure Developers Ltd and also requested for cross examination of the Director. The AO issued summons under section 131 to the Director of M/s. Rashmi Infrastructure Developers Ltd who did not appear and kept filing adjournment letters seeking more time. However the AO proceeded to complete the assessment based on the materials available on record and the statement of the Director whereby the AO made an addition of Rs. 67,00,000/- under section 69B of the Act as unexplained investments. The relevant findings of the AO in this regard are extracted below:

*“A. The information received from the ITO-3(3)(1) is not general or vague but specific information pertaining to the cash component paid by the assessee to M/s Rashmi Infrastructure Developers Limited in a transaction of sale of flat by the said concern to the assessee. In the information received, the name of the assessee is clearly mentioned and the flat number mentioned is purchased by the assessee. The said information clearly specifies the amount of cash component.*

*B. During the course of survey the information has been gathered, confronted to the director of the group, Shri Uma Shankar Saha and in his statement recorded u/s 131 of the Act. Shri Uma Shankar Saha has confirmed the receipt of cash as found recorded in the evidence.*

*C. The department has carried out survey, deeply investigated the relevant issues, examined the information and only after such deep analysis, has forwarded the same to this assessment section for necessary action as per the provisions of the Act. The said information is supported by the statement on oath of Shri Uma Shankar Saha. Hence, the information so received forms a strong base for reasons to believe that income has escaped assessment and to make additions of such escaped income in the hands of the assessee.*

*D. Mere filing or production of return of income and computation with profit and loss account and balance sheet for the year under consideration does not result into full and true disclosure of facts of the assessee, within the meaning of section 147. The reasons have been recorded based on the tangible material available on record and on specific information. Thus the reasons recorded for issue of notice are on reasonable foundation and constitute reasonable belief that Income had escaped assessment.*

*E. The assessee has purchased flat No 1006 from M/s Rashmi Infrastructure Developers Limited during the year under consideration and the cash component*

*has been paid during the year under consideration. This is not a coincidence but a deliberate happening of fact. It is a practice in the business of building construction of flats that wherever on-money is involved, it is taken before the signing of agreement. The amount mentioned in the reasons (aggregating to Rs.67,00,000/-) was paid by the assessee prior to the signing of agreement. Hence, the escapement is rightly being considered in the year under consideration*

*F. For the purpose of reopening of the assessment, what is material, is tangible information that income had escaped assessment. A reason to believe what is relevant not an established fact of the escapement of income. Attention may be drawn to the decision of the Hon, Bombay High Court on the issue of tangible material for reopening of assessment in the case of Export Credit Guarantee Corporation of India Ltd. (WP No. 502 of 2012 dated 10/11<sup>th</sup> January 2013) wherein it was held that where the assessing officer have tangible material to come to the conclusion that there is an escapement, the power to reopen can be exercised. At the stage when the assessment is reopened, it is not necessary that the material before the A.O. should conclusively prove to establish that the income has escaped assessment.*

*G. The documents, information gathered and statement of Shri Uma Shankar Saha director of M/s Rashmi Infrastructure Developers Limited recorded during the survey u/s 1334 prove the payment of cash component by the assessee and the source of such cash payment has not been disclosed and explained by the assessee during the entire assessment proceedings.*

*11. Considering the entirety of the facts discussed herein above the material information received from the ITO 3(3)(1) including the details of cash component and the statement of Shri Uma Shankar Saha director of M/s Rashmi Infrastructure Developers Limited it is established that the assessee has indeed paid cash of Rs 67,00,000/- to M/s Rashmi Infrastructure Developers Limited for the purchase of flat No. 1006 during the year under consideration.*

*Therefore the amount of Rs.67,00,000/- paid by the assessee to M/s Rashmi Infrastructure Developers Ltd. for the purchase of flat No. 1006 in their project constitutes unexplained investment not fully disclosed in his books of account. Accordingly, the said amount is taxed u/s 69B of the Act and added to the total income of the assessee. Penalty u/s 271(1)(c) is initiated for concealment of income.”*

3. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) issued various notices from June 2023 to August 2023. However, the assessee did not make any personal appearance nor filed any additional details before the

CIT(A). Accordingly, the CIT(A) dismissed the appeal ex-parte. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Id. AR submitted that the entire addition is made on the basis of a loose paper claimed to be found in the premises of M/s Rashmi Infrastructure Developers Ltd. during the course of survey and on the basis of statement of the Director. The Id. AR drew our attention to the statement recorded from the Director in this regard it is extracted below:

*“Q. 21 Please go through the pages No. 15, 60, 61, 82, 86, 87, 89, 91 and 103 of the loose paper folder (Annexure-A-1) containing pages 1- 201 found and impounded during the course of survey proceedings at your Regent Chambers Office on 18.10.2023 Please explain the contents of the same as the noting appearing on these loose papers depicts the receipt of certain amount of cash on sale of certain flats pertaining to ‘Rashmi Heights’. Please go through the said noting and explain the same.*

*Ans. Sir, I have gone through these pages. The summery of the said alleged receipts as appearing on the said loose papers is being tabulated hereunder.*

Page No.	Flat No.	Amt. (Rs.)
15	704 & 705	24,66,000/-
61	1006	67,00,000/-
61	105	47,50,000/-
61	104	37,64,000/-
61	1605	64,00,000/-
61	2201	43,00,000/-
61	102	50,00,000/-
61	2101	45,98,000/-
61	2106	1,11,22,000/-
61	1603	66,56,000/-
61	2204	44,00,000/-
61	102	24,00,000/-
82	1503	14,04,200/-
86	1202	5,00,000/-
87	1202	4,00,000/-
89	1602	9,80,000/-
89	802	17,03,500/-
89	1505	3,50,000/-
89	1602	15,00,000/-

89	1505	1,00,000/-
89	702	12,00,000/-
89	702	3,00,000/-
91	2102	17,50,000/-
86 & 89	801	9,00,000/-
87 & 89	802	2,25,000/-
103	905	11,01,000/-
		<b>7,49,69,7011</b>
<i>Page 136 of Annexure A-5 impounded from the Site Office</i>		

*I do admit that there are certain notings on the aforesaid loose papers denoting unaccounted cash receipts and there may have been certain cases where we may have taken part payment in cash to accommodate the buyer. However, I wish to state that all these noting do not depict merely cash receipts against sale of flats. A few of them could also be mere estimates. However, I am presently not in a position to justify the said cash notings. Hence, I hereby offer the above sum of Rs 749,69,700/-, being the sum of all these unaccounted cash notings, as tabulated above, as the additional income of M/s Rashmi Infrastructurs Developers Ltd, towards the Tower No 1 of Rashmi Heights for the AY 2013 2014 being the year of completion of the Project and the year in which the income has been offered to tax.*

5. The ld. AR argued that from the above extracted statement, nothing specifically is coming out to incriminating the assessee not there is any mention that the assessee has made cash payment to the builder. The ld. AR further argued even otherwise the said statement has been subsequently retracted by the Director. The purported loose sheet which the AO claims to contain the name of the assessee and the flat number purchased is not shared with the assessee for him to rebut the allegation. The ld. AR submitted that the assessee is in the business which does not generate the cash flow to make the alleged cash payments. The ld. AR further submitted that during the assessment proceedings the assessee has submitted copy of sale agreement along with the bank statement substantiating the amount paid towards purchase of flat. The ld. AR also submitted that the source of investment was clearly explained to the AO and without any incriminating material against the claim of the assessee the AO cannot make an addition under section 69B of the

Act. The ld. AR also drew our attention to the fact that the addition made by the AO is much higher than even the stamp duty value determined by the authority. The ld. AR in this regard relied on the decision of the SMC bench of the Mumbai Tribunal in the case of Rajesh Prabhudas Parekh Vs. CIT (ITA No. 25/Mum/2023 dated 31.03.2023).

6. The ld. DR on the other hand submitted that the loose sheet found during the course of survey contains the flat number of the assessee and in the statement recorded the Director has admitted when confronted with the loose sheet that the sheet contains payments received in cash to accommodate the buyers. The ld. DR argued that a combined reading of this would lead to the conclusion that the assessee has made the cash payments as mentioned in the loose sheet to M/s. Rashmi Infrastructure Developers Ltd. and accordingly the AO has made the addition. Accordingly, the ld. DR supported the order of the lower authorities. The ld. DR made the alternative submission that the assessee has not represented the case on merits before the CIT(A) and therefore, the case should be remitted back to the CIT(A).

7. The ld. AR in rebuttal submitted that the various notices of the CIT(A) have been sent to a different email Id. And therefore the assessee was not aware of the various notices issued by the CIT(A). The ld. AR further submitted that the assessee has furnished all the relevant details before the AO which is part of the PB submitted before the Tribunal and there is no new material that needs to be verified for adjudicating the appeal on merits. Therefore, the ld. AR prayed that the appeal be decided based on materials on record by the Tribunal.

8. We have heard the parties and perused the material on record. The assessee vide agreement dated 25.12.2011 (page no. 21 to 40 of PB) has purchased flat no. 1006 in Rashmi Heights along with the another co-owner Mr. Sachin Jitendra Sakhidas for a total consideration of Rs. 65,00,000/- and the assessee has made payment including stamp duty on various dates to the tune of Rs. 32,57,115/- during the AY under consideration (page 9 of PB). The bank statements evidencing the payments made by the assessee to the builder is also part of the records (page 9 to 13 of PB). The contention of the Revenue is that the Director of M/s. Rashmi Infrastructure Developers Ltd. while confronted with the loose sheet bearing the flat number purchased by the assessee has replied stating that the notings in the sheet may have been unaccounted cash receipts received from buyers. It is relevant note here that the Director in the statement which is extracted in the earlier part of this order had stated that all the notings do not depict the cash receipts against the sale of flats and few of them could be mere estimates. Therefore, there is merit in the submission that nothing concrete coming out of this statement incriminating that the assessee has made the alleged cash payment towards purchase of the flat. It is further noticed that the other than statement recorded from the Director there is no other material which has been relied by the AO for drawing adverse inference against the assessee that supports the allegation that the assessee has made cash payments towards purchase of flats. Though the AO has issued summons under section 131 of the Act, the Director did not appear before the AO and therefore the veracity of the statement could not be tested on the touch stone of cross-examination. Given this in our considered view In such a scenario, it would be unfair to rely only on the statement of the Director without any corroborative material showing that the assessee had paid cash of Rs.67,00,000/- over and above the sale consideration of Rs.65,00,000/-. In this regard reliance is placed on the

decision of the Hon'ble Supreme Court in the case of CIT vs S. Khader Khan Son ([2012] (352 ITR 480) (SC)). It is also noticed that the assessee has purchased the flat for a consideration which is more than the stamp duty value of Rs.64,09,575 (page 22 of paper book) and that the addition of Rs.67,00,000 over and above the stamp duty value without any material evidence does not bear any logic. In view of the above discussion and considering all the facts and after perusing the materials on record, we are of the view that the AO is not correct in making the addition of Rs.67,00,000 merely based on the statement recorded from the Director and without bringing any adverse material on record to substantiate the claim that the assessee has made a cash payment to the builder towards purchase of the flat. Accordingly, we hold that the addition of Rs.67,00,000 is not tenable and be deleted.

9. In the result, the appeal of the assessee is allowed.

*Order pronounced in the open court on 27-02-2024.*

*Sd/-*  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

*\*SK, Sr. PS*

*Sd/-*  
**(MS. PADMAVATHY S)**  
**Accountant Member**

**Copy of the Order forwarded to :**

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

BY ORDER,  
(Dy./Asstt. Registrar)  
**ITAT, Mumbai**