

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3664/Mum/2023  
(A.Y. 2015-16)**

Mr. Vicky Murli Advani T3-3202, Runval Greens, Rosewood, Near Fortis Hospital, Mulund Goregaon Link Road, Mulund West- 400 078	Vs.	Income Tax Officer, International Tax, Ward1(1)(1), Room No. 1817A, 18 <sup>th</sup> Floor, Air India Bldg. Nariman Point, Mumbai – 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AGYPA7741A		
Appellant	..	Respondent

Appellant by :	Rajesh Sanghvi
Respondent by :	S. Arunkumar

Date of Hearing	27.02.2024
Date of Pronouncement	04.03.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the ld. CIT(A)-55, Mumbai, dated 30.08.2023 for A.Y. 2015-16. The assessee has raised the following grounds before us:

- “1. In the facts and circumstances of the case and in law, the Ld. CIT (Appeals) erred in upholding the action of the AO for treating the amount of Rs. 33,56,250/- as unexplained investment u/s 69 on account of "On Money" paid to developer M/s Runwal Homes Pvt Ltd for purchase of Flat, ignoring the submission made by the appellant and confirm the addition which is based on assumption and presumption.*
- 2. In the facts and circumstances of the case and in law and without prejudice, the Ld. CIT (Appeals) has misinterpreted the answer given by Mr Subodh Runwal on 21-11-14 to question no. 17 and 18, and further*

*no opportunity of cross examination of Mr Subodh Runwal was given in spite of asking for the same and hence rules of Natural Justice were violated.”*

2. Fact in brief is that return of income declaring total income of Rs.4,04,040/- was filed on 27.08.2015. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was completed on 29.09.2017 assessing total income at Rs.4,04,040/-. Subsequently, information was received from the DGIT(Inv.), Mumbai that the assessee had purchased a flat no. 3202, Unit No. T3-3202 in project 'Runwal Greens' of M/s Runwal Homes Pvt. Ltd. and paid Rs.33,56,250/- as on money during the financial year 2014-15 relevant to assessment year 2015-16. The assessing officer stated that assessee has actually paid Rs.2,32,31,250/- against the agreement value of Rs.198,75,000/-. Therefore, the case was reopened u/s 147 of the Act and notice u/s 148 was issued on 02.05.2019. The assessee filed return of income in response to notice u/s 148 of the Act on 02.05.2019 declaring total income of Rs.4,04,040/-. Subsequently, the notice u/s 143(2) and 142(1) of the Act were issued on 04.09.2021. The assessing officer further stated that during the course of search action in the case of Runwal Group statement u/s 132(1) of the Act of Shri Subodh Runwal director of Runwal Group and companies was recorded on 21.11.2014 and he has confirmed that they have taken on money from the various purchases in their project Runwal Greens and have also given a list of those purchasers. The assessee was one of the purchaser of flat mentioned in the list. Thereafter, the assessing officer vide letter dated 20.04.2021 show case the assessee to explain by the on money amount of Rs.33,56,250/- should not be added to the total income. The assessee explained that he was a non-resident during the assessment year 2015-16 and working for S.S. & C Globe OP in London and there was no question of any cash generation in India. It was also explained

that his income tax return was duly scrutinised u/s 143(3) of the Act and there was no trace of any cash transaction from his account. The assessee also asked the assessing officer to show him any documentary evidences showing that assessee has paid any cash for purchasing the impugned flat from Runwal Group. The assessee has furnished the relevant supporting details like copy of bank statement, copy of return of income, etc. however, the AO has not agreed with the submission of the assessee and he referred the statement of director of Runwal Group Shri Subodh Runwal recorded u/s 132(4) of the Act on 21.11.2014 where he admitted that on money was received form various persons on account of sale of flats, shops to them which includes the assessee's transactions with the group concern of Runwal Group. The assessing officer come to the conclusion on the basis of following reasons that assessee has paid on money for purchase of the said flat:

- “1. It is established fact that the assessee has entered into transactions with the group concern of Runwal Group by way of purchase of a flat. This information brought out by the investigation wing during the course of search proceedings and has relevance to the assessee for the purchase of the said flat.*
  
- 1. The said information obtained during search proceedings pertain to such transactions which are not accounted for in the regular books of accounts of assessee and the entities of Runwal Group of Companies*
  
- 1. One of the parties of the said transaction, being Runwal Group of Companies has accepted the unaccounted part of the transaction entered with the assessee and admitted to have received the money from the assessee. Hence, the statement of Shri Subodh Runwal, the Director of Runwal Group of Companies recorded u/s. 132(4) of the I.T. Act, 1961 on 21.11.2014 has absolute validity as the same is backed by the evidences obtained during the course of search proceedings.”*

Therefore, an amount of Rs.33,56,250/- was added to the total income of the assessee company unexplained investment u/s 69 of the Act.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the Id. Counsel submitted that the AO has made the addition on the ground of on money payment purely on the basis of statement given by the director of Runwal Group without bringing on record any incriminating material showing that assessee has actually paid the said on money on the purchase of the flat. The Id. Counsel also referred copy of assessment order u/s 143(3) of the Act made in the case of the assessee on 29.09.2017 wherein assessment was made after verification of all the relevant details. The Id. Counsel also referred page no. 25 to 30 of the paper book containing copies of statement of Shri Subodh Runwal Director of M/s Runwal Group and submitted that name of the flat of the assessee was not listed in the list of the cases wherein taking of on money was reported. The Id. counsel submitted that in the case of the assessee the detail of transaction of on money payment was got prepared from the director of the company on the date of search showing that assessee has taken on money on the purchase of the flat. He also referred various pages of the paper book and submitted that there was no incriminating material found against assessee of giving on money to the builder. The Id. Counsel has also placed reliance on the various decision of ITAT as follows:

- i. *Rupinder Tandon Vs. ACIT Circle 24(3) vide ITA No.7874/Mum/2019 (AY: 2015-16)*
- ii. *Priya Happy Kumar Surya Vs. ACIT Vs. ACIT 29(2) vide ITA No.5784/Mum/2019 (AY: 2015-16).*
- iii. *Hon'ble Supreme Court of India dated 02.09.2019 in the case of M/s Andaman Timber Industries Vs. Commissioner of Central Excise, Kolkata-II*
- iv. *Manoj Kumar Chandrama Prasad Vs. ITO Ward-3(3)(1) vide ITA No. 191/Mum/2023.*
- v. *Mr. Rajesh Prabhudas Parekh Vs. CIT(A), ITO NFAC, Delhi ITA No.25/Mum/2023 (AY: 2010-11)*

*vi. Shri Mahendra Lalka Vs. Dy. CIT, Lucknow ITA No. 172/LKW/2023  
(AY: 2013-14)*

On the other hand, the ld. D.R referred the assessment order and submitted that there was evidence against the assessee in the form of statement of Shri Subodh Runwal Director Runwal Group recorded u/s 132(4) of the Act stating that assessee has made payment of on money of Rs.33,56,250/- for purchase of flat.

5. Heard both the sides and perused the material on record. The assessee has purchased flat no. T3-3202 in Runwal Greens project developed by Runwal Home Pvt. Ltd. As per the agreement the value of the purchase flat was Rs.1,98,75,000/-. A search action was conducted in the case of Runwal Group on 21.11.2014. During the course of search particularly statement of Shri Subodh Runwal director of M/s Runwal Home Pvt. Ltd. was recorded u/s 132(4) of the Act where he has admitted that on money was taken from the purchase of the flat in Runwal Green project developed by M/s Runwal Home Pvt. Ltd. It was revealed that the assessee had paid Rs.232,31,250/- as against the agreement value of Rs.198,75,000/-. The assessee explained that being a non-resident he did not generate any cash for making any payment to the builder over and above the money given for purchasing the flat through banking channel. Even the assessee has asked the assessing officer to provide the copy of any incriminating material showing that assessee has paid on money for the purchase of impugned flat. However, neither any copy of incriminating material seized was provided to the assessee nor any opportunity to cross examine the director of the Runwal Group was provided to the assessee. Further it is noticed that the name and detail of flat no. of the assessee was not listed in the list of cases reported as per question no. 15 of the statement recorded u/s 132(4) of the Act of Shri Subodh Runwal director of the Runwal Group. Except the information that assessee has also provided on money to the

Runwal Group obtained on the date of search action there is no other incriminating material found which demonstrate that the assessee has paid any on money for purchasing the impugned flat. We have perused the judicial pronouncement referred by the Id. Counsel with the assistance of the Id. representatives. We have gone through the case of Rupinder Tandon vide ITA No. 7874/Mum/2019 dated 22.12.2023. The relevant extract of the decision is reproduced as under:

- “10. Considered the rival submissions and material placed on record, we observe that there was a search action in the case of “Runwal Projects Private Limited” and in that case the Director has accepted that they have received on-money from the various projects conducted by them and he has disclosed the name of all the flat owners. The Tax Authorities proceeded to make the addition based on the above declaration of receipt of on-money in the hands of the builders. However, no cross examination opportunity was given to the assessee. In this case even though the date of cross examination was fixed, however the builder has avoided and not present on the date of cross examination. It clearly shows that the builder is not in a position to face the assessee in front of the Tax Authorities, to the reasons best known to them. However, there is no evidences available in the hands of the Tax Authorities against the assessee except the statement of the builder. The additions proposed by the Assessing Officer merely relying on the statement of the builder was not willing to cross examination before the effected party. Therefore, in our considered view the addition cannot be made without bringing proper material on record or bringing on record the proper joint statement from the builder as well as the assessee wherein assessee should be one of the party should concede that they have made the on-money. In this case merely relying on the statement of the third party and without giving opportunity to the assessee to prove its point of view, which is against the natural justice. The addition cannot be made in the hands of the assessee. Therefore, we are inclined to treat the assessment order as bad in law which was made purely on the basis of assumption and unverified statement of the third party. It was submitted before us the case of the builder is decided in its favour by the ITAT has no relevance in this case. Accordingly, appeal filed by the assessee is allowed.”

In the case of the assessee also the assessing officer has made addition of on money merely on the basis of information disclosed by the director of the Runwal Group without bringing on record any other relevant incriminating material and no opportunity to cross examine was provided, therefore, following the decision of ITAT we consider that merely relying on the statement of the third party and without

corroborating the payment of on money with any other incriminating material the impugned addition of on money u/s 69 of the Act is not justified, therefore, we direct the AO to delete the impugned addition, therefore, this ground of appeal of the assessee is allowed.

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

Order pronounced in the open court on 04.03.2024

Sd/-

Sd/-

(Kuldip Singh)  
Judicial Member

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 04.03.2024

Rohit: PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**