

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2611/Mum/2023
(Assessment Year :2010-11)**

Purshottam Leelaram Ubhrani, Nashik Flat No.301, Mangalmurti Apartment New Pandit Colony Near Sindhi School Maharashtra- 422002	Vs.	Income Tax Officer Thane, Mumbai
PAN/GIR No.ABBPU2691K		
(Appellant)	..	(Respondent)

Assessee by	Shri Ajay Singh & Shri Akshay Pawar
Revenue by	Shri R.R. Makwana
Date of Hearing	28/03/2024
Date of Pronouncement	28/03/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 29/05/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for A.Y. 2010-11.

2. In the grounds of appeal assessee has challenged the addition of Rs.7,50,000/- on account of alleged on-money paid

for purchase of flat and challenged the jurisdiction of AO (ITO-Ward-3(2)- Thane), as he had no jurisdiction over assessee as he was assessed the tax at Nashik. At the time of hearing, the Id. Counsel for assessee did not press this ground on the ground that since assessee had not challenged the jurisdiction of the Id. AO within the time limit prescribed u/s.124(3)(a). Since this ground is not pressed, therefore, this ground raised by the assessee is treated as dismissed.

3. On merits, he submitted that nowhere either in the assessment order or in appellate order has been stated that, whether the Id. AO was having any material or information which was under his possession that assessee has paid cash of Rs.7,50,000/- to the builder; nor there is any whisper about any specific information. Accordingly, he requested that matter should be restored back to the file of the Id. AO to provide the exact details and information because assessee's contention is that he has not paid any on-money to the builder and he has purchased flat from M/s. Cosmos group at an agreement value of Rs.30,91,000/-.

4. The brief facts are that assessee has filed his return of income for A.Y.2010-11 declaring total income of Rs.1,53,540/- on account of long term capital gains. A search action was conducted by DDIT (Investigation) Unit-4, Mumbai on the Cosmos group on 24/09/2014 which was engaged in the business of building and construction. During the search proceeding, a statement was recorded u/s.132(4) of one of the

chief promoter of M/s. Cosmos group wherein he has accepted certain cash transactions were made in sale of flats / shops / offices. As per the information, assessee has purchased flat from the said builder at an agreement value of Rs.30,91,000/- and has paid on-money in cash of Rs.7,50,000/- over and above the agreement value. Based on this information, notice u/s.148 was issued on 31/03/2017. In response to show-cause notice, assessee submitted that he has booked flat from M/s. Cosmos group for a maximum value of Rs.30,91,000/- in F.Y.2009-10, out of which assessee has paid Rs.15,77,770/- only and balance amount of Rs.15,13,230/- remained unpaid. The assessee had surrendered the flat back to M/s. Cosmos Construction in A.Y.2013-14 for consideration of Rs.55,00,000/-. The assessee had declared long term capital gain of Rs. 24,09,000 in the return of income for A.Y. 2013-14. The ld. AO has made addition of Rs.7,50,000/- u/s.69 of the Act, holding that, Assessee had not given any explanation on on-money paid to M/s. Cosmos Builder and this office had specific information regarding on-money paid by the assessee by the promoter of Cosmos group and there is no reason as to why the builder will give a false or incorrect statement.

5. The ld. CIT (A) too has confirmed the addition made by the ld. AO on the ground that there is specific information gathered during the search and seizure operation in the case of M/s. Cosmos group. But what was the specific information has not been discussed anywhere in the order.

6. The d. DR strongly relied upon the order of the order of the ld. AO and ld. CIT (A) and alternatively agreed that matter can be restored to the AO to provide the information o the assessee.

7. After considering the relevant finding given in the impugned order as well as material placed on record, it is seen that, in so far as reopening is concerned, the information received from the Investigation Wing gathered during the course of search and seizure operations in the case of M/s. Cosmos group that they had received cash as on-money, probably can be a ground for reopening the case u/s.147. However, for making an addition it is incumbent upon the ld. AO to specify what was the information or material in his possession. If there was any specific entry found in any document mentioning the name of the assessee with the amount or any material that assessee has actually paid on-money in cash of Rs.7,50,000/-, then same should have been confronted to the assessee and also mentioned in the assessment order. Here in this case assessee had duly explained that he had only paid Rs.15,77,770/- out of purchase agreement of Rs.30,91,000/- and balance amount of Rs.15,13,230/- remained unpaid. In the subsequent years assessee had surrendered the flat back to the Builder in A.Y. 2013-14 for value of Rs.55,00,000/- and has gained long term gain of Rs.24,09,000/- and also paid the taxes on such gain.

8. Once assessee had denied any on-money, then it was incumbent upon the AO to specifically bring on record any material or any statement where name of the assessee has been

specifically mentioned or is there any diary or material found from the builder wherein name of the assessee alongwith amount of Rs.7,50,000/- has been specifically mentioned. The ld. AO may have in his possession some letter from Investigation Wing, but that material should not be in his own knowledge or possession, albeit he should have confronted to the assessee and brought on record in the assessment order itself that there this is specific information where assessee's name is appearing in the seized documents or Computer hard disc and there is specific mention about the assessee paying on-money to the builder. If the assessee has not even paid the entire agreed value and has also surrendered back the property to the builder for a much higher amount, then where is the question of assessee paying extra money when there is no specific detail mentioned in the assessment order or CIT (A) order. Such kind of addition without mentioning any material cannot be sustained. However, as requested by both the parties, matter is restored back to the file of the ld. AO, only for a very limited purpose, to confront the specific information and material to the assessee which contains the name of the assessee and that assessee has paid on-money in cash of Rs.7,50,000/- to the builder and seek explanation from the assessee and make inquiry. Simply based on letter from Investigation Wing cannot justify the addition. Accordingly, appeal of the assessee is allowed for statistical purposes.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced on 28th March, 2024.

Sd/-
(S RIFAUZ RAHMAN)
ACCOUNTANT MEMBER

Mumbai; Dated 28/03/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai