

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.3081/Mum/2023
(A.Y. 2017-18)**

ACIT, Thane West Room No. 9, A Wing, 6 th Floor, Ashar IT Park, Road No. 16Z, Wagle Industrial Estate, Thane (West) 400604	Vs.	Udhavdas Mohandas Rupchandani, Barrack No.758, Room No. 16, Eagle Nest Building, Behind Chopra Court, Ulhasnagar- 421003
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAQPR8856F		
Appellant	..	Respondent

Appellant by :	Ankush Kapoor
Respondent by :	M. Subramaniam

Date of Hearing	19.03.2024
Date of Pronouncement	08.04.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the revenue in electronic mode is directed against the order passed by the ld. CIT(A) for A.Y. 2017-18. The revenue has raised the following grounds before us:

- “1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the substantive addition of Rs.5 crore made on account of unexplained cash investment by giving telescoping benefit of additional income declared before the Hon’ble Income Tax Settlement Commission (ITSC) and additional income declared in the returns filed u/s 153C of the Act by M/s Konark Infrastructure (Water Supply UMC) (J/V) earlier years.
2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not appreciating the fact that M/s Konark Infrastructure (Water Supply UMC) (J/V) had declared additional income before the Hon’ble ITSC in F.Y. 2014-15 whereas the assessee made cash investment in F.Y. 2016-17 relevant to A.Y. 2017-18.

3. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in not appreciating the fact that the addition on account of unexplained cash investment was made on the basis of seized documents since the assessee failed to submit corroborative cogent and reliable evidences to establish that the said investment was made from additional income declared before the Hon'ble ITSC and additional income declared in the returns filed u/s 153C of the Act by M/s Konark Infrastructure (Water Supply UMC) (J/V) in earlier years.*
4. *The appellant craves leave to add, amend, modify or alter any of the grounds.*

2. Fact in brief is that search and seizure operation u/s 132 of the Act was carried out on 23.01.2018 on Konark Group and its associate concern including the assessee. Subsequently, notice u/s 153A of the Act was issued to the assessee on 27.06.2018. During the course of assessment the assessing officer noticed that loose paper bundle no.3 containing 22 pages was found and seized from the office premises of M/s Konark Infrastructure Ltd. The assessing officer observed from the contents of these paper that the same belonged to M/s Konark Infrastructure (Water Supply- UMC) (J/V) wherein M/s Konark Infrastructure Ltd. was one of the co-venturer. The paper shows cash investment of Rs. 5 crores made by the assessee. On query, the assessee claimed that no such investment of Rs.5 crores has been made by him. The assessing officer had not accepted submission of the assessee on the ground that the paper were seized from the office of M/s Konark Infrastructure Ltd. from whose office the business activities of M/s Konark Infrastructure Ltd. (Water Supply- UMC) (J/V) had been carried out and M/s Konark Infrastructure Ltd. and the assessee were joint venture in the M/s Konark Infrastructure Ltd (Water Supply- UMC) (J/V). The joint venture was having the co-venturers vig. M/s Konark Infrastructure Ltd. (50% shares) and Udhavdas M. Rupchandani (50% share) therefore the AO observed that assessee was having direct connection with M/s Konark Infrastructure Ltd. After observing the contents of the seized paper the assessing officer stated that the seized

paper was pertained to investment of the assessee of Rs.5 crores made in cash in M/s Konark Infrastructure Ltd. (Water Supply- UMC) (J/V) during the year under consideration, therefore, the same was treated as unexplained investment u/s 69 of the Act and added to the total income of the assessee.

3. The assessee filed the appeal before the ld. CIT(A). It was also submitted before the CIT(A) that the joint venture had offered additional income of Rs.950,56,072/- before the Income Tax Settlement Commission and the substantial part of this income (Rs.905,56,072/-) was on account of additional profit on estimation of net profit @ 8% in assessment year 2013-14 and this offer was accepted by the Income Tax Settlement Commission and the case was settled u/s 245D(4) on 03.12.2014. The assessee also submitted that even in the Income Tax Return filed u/s 153C for assessment year 2014-15 to assessment year 2016-17 the said joint venture has offered income of Rs.336,55,357/- on account of additional profit from business. The assessee has also provided the year wise detail of income offered by the Joint venture in 153C income tax return for A.Y. 2014-15 to A.Y. 2016-17. The joint venture has offered total additional income of Rs.12,87,11,429/- (Rs.950,56,072/- + Rs.336,55,357/-) for assessment year 2011-12 to A.Y. 2016-17 and paid due taxes thereon. The assessee has claimed the set-off of such income which was duly taxed. The ld. CIT(A) stated that additional income of Rs.950,56,072/- declared before the income Tax Settlement Commission for A.Y. 2011-12 to A.Y. 2013-14 has been accepted by the settlement commission and the AO has given effect to the order of the Income Tax Settlement Commission. The ld. CIT(A) further on analysis of the seized paper observed that the transactions were undertaken up to 25.08.2016 which cannot be considered to have been made for only F.Y. 2016-17. The total amount available for telescoping was Rs.12,87,11,429/-. The ld. CIT(A) held that cash investment

mentioned on the seized paper no. 20 & 21 was fully covered by the additional income offered by the joint venture before the settlement commission, therefore, no separate addition was required to be made in the hands of the assessee for such cash investment.

4. During the course of appellate proceeding before us the ld. D.R contended that assessing officer has rightly made the addition on account of unexplained cash investment and it was not established that said investment was declared before the Income Tax Settlement Commission and he relied on the order of assessing officer.

5. On the other hand, the ld. Counsel submitted that on similar issue and identical fact the ITAT, Mumbai in the case of Konark Infrastructure (Water Supply- UMC) (J/V) vide 3021, 3022, 3023, 3024/Mum/2023 has decided this issue in favour of the assessee after confirming the findings of ld. CIT(A) that the impugned Rs.5 crores had already been declared as additional income in assessment year 2011-12 to 2013-14 as per the order of Income Tax Settlement Commission. The ld. Counsel has also referred the decision of ITAT vide ITA No. 3025/Mum/2023 in the case of M/s Konark Infrastructure Ld. dated 27.02.2024.

6. Heard both the sides and perused the material on record. With the assistance of ld. representative we have perused the decision of ITAT in the case of M/s Konark Infrastructure (Water Supply- UMC) (J/V) as referred at para 5 of this order. The relevant part of the decision is reproduced as under:

“52. We now take up the appeals of the assessee and the Revenue in ITA Nos. 3024/Mum/2023 & 3059/Mum/2023 for AY 2017-18. The common issue involved in both these appeals relate to the protective addition of Rs.8,00,00,000/- made by the AO on account of unexplained cash credit in the hands of the assessee JV. The facts relating to this protective addition are that, the AO had found that there were two noting’s on Page Nos. 20 & 21 under the nomenclature ‘INVT in Cash’ in the names of the JV partners, KIL and Shri U.M. Rupchandani of Rs.3,00,00,000/- and Rs.5,00,00,000/- each. According to the AO, these pages contained the noting’s regarding the actual state of affairs relating to the assessee JV. The AO inferred that these cash investments

denoted the cash infused by the JV partners into the assessee JV to undertake the water pipeline project. Since the date on these pages was 25.08.2016, the AO presumed that the cash investments were made on this date and accordingly added these sums in the hands of the JV partners in AY 2017-18 by way of unexplained investment and correspondingly made protective addition in the hands of the assessee JV also by way of unexplained cash credit in AY 2017-18.

53. Aggrieved by this action of the AO, the assessee preferred an appeal before the Ld. CIT(A). Having regard to the cumulative facts of the case, the Ld. CIT(A) noted that, the assessee JV had already declared additional income of Rs.9.50 crores viz., Rs. 5 crores in relation to ECC and Rs.4.50 crores in relation to KIL in AYs 2011- 12 to 2013-14. The Ld. CIT(A) further noted that additional sum of Rs.3,36,55,357/- had also been offered by way of additional income across AYs 2014-15 to 2016-17. Applying the principle of telescoping, the Ld. CIT(A) held that such additional income assessed in earlier years could be telescoped against the cash investment of Rs.8 crores unearthed in Page Nos. 20 & 21 relating to AY 2017-18. The Ld. CIT(A) accordingly held that, no separate addition on account of cash investment was warranted since it was fully covered by additional income offered in earlier years. Being aggrieved by the above appellate order of the Ld. CIT(A), both the parties are in appeal before us.

54. Heard both the parties. Before adverting to the facts of the case, we first take note of the principle of telescoping which has since been judicially approved by the Hon'ble Supreme Court in the case of Anantharam Veerasinghaiah & Co. Vs CIT (123 ITR 457). In the decided case, it was held that where the assessee offers any income on ad hoc basis, then such income is commonly described as intangible addition; but it is very much a part of assessee's real income as disclosed in his account books and has the same concrete existence. The Hon'ble Court held that the secret profits or undisclosed income of an assessee earned in the same or an earlier assessment year may constitute a secret fund, even though concealed, from which the assessee may draw subsequently for meeting expenditure or introducing amounts in his account books. The intangible additions were held to be available to the assessee as the regular book profits could be. The Apex Court thus held when the unexplained cash deficits and the cash credits can be reasonably attributed to a pre-existing fund of concealed profits or by reference to concealed income earned in that very year then no addition is warranted on account of such cash deficits or cash credits

55. Similar view was expressed by Hon'ble Madras High Court in the case of CIT v. K. S. M Guruswamy Nadar and Sons, [1984] 149 ITR 127. In the decided case, it was held that when there are two separate additions viz., one on account of suppression of profit and another on account of cash credit, then it is open to the assessee to explain that, the suppressed profits had been brought in as cash credits and has to be telescoped into the other.

56. Gainful reference may also be made to the decision of the Hon'ble jurisdictional Bombay High Court in the case of CIT vs J.J. Gandhi (39 CTR 127). In this judgment also, the Hon'ble High Court had approved the theory of telescoping and held that it could be applied in cases where additions in relation of unexplained money/investment are sought to be made in the hands of the assessee. The Hon'ble Court explained that if an addition towards undisclosed income was made and the AO also seeks to make certain addition in relation to unexplained investment then, it can be treated by the assessee that the unexplained investment is sourced out of the undisclosed income already taxed.

57. The principle which emerges from the above is that, the same income should not be taxed twice i.e. once at the time of generation and thereafter at the time of application for routing back into the business. The said principle would equally apply where the cash generated by business concerns are routed through partners/directors. Having regard to this settled legal position, we now come back to the facts of the case. It is not in dispute that the assessee had declared additional income of Rs.9,50,56,072/- before the ITSC, Mumbai in AY 2013-14. It is noted that the assessee had also filed a letter dated 28.10.2014 before the ITSC wherein it was specifically clarified that this income was utilized by way of investment in the on-going work of water pipeline project at Ulhasnagar. The details of utilization inter alia comprised of sum of Rs.4,50,56,072/- and Rs.5,00,00,000/- by KIL and Eagle Infra Limited, represented by Shri U.M. Rupchandani, respectively. It is therefore evident that the JV partners had disclosed income in the hands of the assessee JV before the ITSC, Mumbai and such additional income of Rs.9,50,56,072/- represented the intangible addition / secret profit, which applying the judicially approved principle of telescoping, could be set off against any unexplained money/investment found by the Revenue.

58. The Ld. CIT(A) is noted to have rightly observed that the AO had erred in considering the cash investment aggregating to Rs.8,00,00,000/- to have been made in AY 2017-18 only because these pages were dated 25.08.2016. The Ld. CIT(A) had rightly analyzed the contents of the seized pages and inferred that the entries therein do not suggest that these transactions were undertaken only in FY 2016-17. Instead, the noting's as well as the surrounding circumstances relating to the water pipeline project suggests that the said investment would have been made by the JV partners earlier viz., when the project was ongoing and most likely in 2015 when the major work was completed.

59. However, irrespective whether the investment was made in 2015 or in FY 2016-17, the admitted facts show that the assessee JV had disclosed income of Rs.9,50,56,072/- in AY 2013-14 and had specifically declared the same to be the sum available for investment by the JV partners towards the water pipeline project. Further, the assessee JV had also declared additional income aggregating to Rs. 3,36,55,357/- in AYs 2014-15 to 2016-17, which was also available to be set off against any unexplained money/ investment of Rs.8,00,00,000/- added by the AO in AY 2017-18. On these facts, we thus uphold the Ld. CIT(A)'s action of allowing the telescoping benefit and set-off of the amount of undisclosed income aggregating to Rs.12,87,11,429/- (Rs.9,50,56,072 + Rs.3,36,55,357), towards the cash investment of Rs.8,00,00,000/- found mentioned on seized pages 20 & 21. Hence, having regard to the judicially approved principle of telescoping, according to us, since the additional income offered to tax in earlier years was sufficient to cover such cash investment alleged to have been made by JV partners, no separate protective addition was required to be made in the hands of assessee JV. Accordingly, the appeal of the Revenue is dismissed.”

7. The ITAT vide decision dated 27.02.2024 in the case of the Joint Venture Konark Infrastructure (Water Supply-UMC)(J/V) as discussed above on similar issue and identical facts held that the impugned investment of Rs.5 crores has already been offered as additional income

before the Income Tax Settlement Commission in earlier years and no separate addition was warranted as the same was fully covered by additional income offered in earlier years. Therefore, after considering the decision of ITAT there is nothing before us on hand to differ from the finding of the ITAT on the similar issue and fact to take a different view on this issue. Since issue on hand being squarely covered by the decision of ITAT and the revenue has not brought any material on record so that a different view can be taken on this issue, therefore, we don't find any reason to interfere in the decision of Id. CIT(A) accordingly, both the ground of appeal of the revenue are dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 08.04.2024

Sd/-

(Vikas Awasthy)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 08.04.2024

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.