

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

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

ITA No.3803/Mum/2023 (A.Y 2010-11)

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| Girish Narayan Bherwani 11, 2 nd Floor, Sudhama Sadan 3 rd Road, Khar West 400052 | Vs. | Income Tax Officer (IT)-1(1)(1) Rom No. 114, 1 st Floor Scindia House, Ballard Estate Pier, Mumbai 400038 |
| PAN/GIR No. : ANWPB5554B | | |
| Appellant | .. | Respondent |

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| Appellant by : | Shri Nishant Ruparel |
| Respondent by : | Shri Krishna Kumar, JCIT |

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| Date of Hearing | 06.05.2024 |
| Date of Pronouncement | 06.05.2024 |

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A)-55, Mumbai, which in turn arises from the assessment order passed by the A.O u/s 143(3) r.w.s. 147 of the Income Tax Act, 1961 (the Act), dated 29.12.2017 for A.Y. 2010-11. The assessee has assailed the impugned order on the following grounds before us:

1. Ground No. 1: Addition u/s 69B as deemed income of an amount of Rs 23,59,599/- on the basis of loose papers found during search on the premises of builder

The learned CIT Appeals has erred in law and in facts in confirming the addition u/s 69B of the Income Tax Act, 1961 made

by the assessing officer of Rs 23,59,000/-by treating the same as deemed income of the assessee.

The learned AO had passed the order without appreciating the fact that assessee had proved the genuineness of the transaction of investment in flat which had been routed through banking channels.

Assessee has not paid any cash for the purchase of the property and hence no addition is warranted.

The assessee therefore preferred an appeal before the Hon'ble Income Tax Appellate Tribunal,

Ground No.2

General

- (a). *The CIT Appeals order being contrary to evidence and facts of the case should be amended/ modified or deleted in the light of the ground deduced above.*
- (b). *The Appellants crave leave to reserve to themselves the right to add, delete, alter, amend, and substitute any or all the grounds at or before the time of hearing.”*

2. The facts in brief is that in this case the original return of income for Assessment Year (AY) 2010-11 was not filed by the assessee and the case of the assessee was reopened by issuing notice u/s. 148 of the Act by the Assessing Officer (AO) as per the information received from DGIT (Inv.) Unit-IX(2), Mumbai. The information received mentioned about the payment of Rs.23,59,500/- in cash as on-money for purchase of flat No. 2904 in La Citadel project in Mumbai. A search action was taken place on 4th October, 2012 in the case of M/s. Sheth Developers P. Ltd. During the course of search proceedings statement of Shri Ashwin Natwarlal Sheth, Director of the said company was recorded u/s. 132(4) of the Act. In his statement on 1st December, 2012 Shri Ashwin Natwarlal Sheth has admitted that the company had taken on-money totaling to Rs.49,63,70,870/- on account of sale of flats of its 4 projects over and above the agreement value. During the course of search action in the case

of Sheth Developers P. Ltd., loose paper folder was also found which contained project-wise on-money received by the company over and above the agreement value of flats. The Assessing Officer (AO) further stated that the assessee had booked a flat in the project of Sheth Developers P. Ltd., namely, La Citadel project and had paid an advance sum of Rs.45,37,500/- during the Financial Year under consideration. On the basis of statement of Shri Aswhin Natwarlal Sheth for offering 8% on-money on various projects, the AO has determined an amount of Rs.23,59,500/- as on-money received from the assessee. Accordingly, an amount of Rs.23,59,500/- was treated as deemed to be the income of the assessee u/s. 69B of the Act.

3. The assessee filed 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 ld. Counsel for the assessee vehemently contended that the entire transactions for purchasing of the flat has been routed through normal banking channels and no consideration has been paid in cash. He further submitted that there was no supportive and corroborative material found during the search action which discloses the name of the assessee for providing on-money in purchasing the flat. He also submitted that the AO, on the general statement of the Director of Sheth Developers P. Ltd. has estimated the on-money paid by the assessee, which is not correct and the addition is made merely on assumption basis.

5. On the other hand, the ld. D.R. for the Revenue supported the orders of the lower authorities.

6. Heard both parties and perused the material of record. A search action was carried out in the case of M/s Sheth Developers Pvt. Ltd. During the search proceedings, in the statement recorded u/s. 132(4) of the Act Shri Ashwin Natwarlal Sheth, Director of the said builder company had admitted that the company had taken on-money amounting to Rs.49,63,70,870/- on sale of flats of 4 projects over and above the agreement value. On the basis of information received the case of the assessee was reopened by issue of notice u/s. 148 of the Act. Since the assessee had also booked a flat in one of the projects of Sheth Developers P. Ltd., therefore, the AO has determined an amount of Rs.23,59,500/- as on-money paid by the assessee on the basis of the statement of the Director of the builder company as referred above. It is undisputed fact that even in the statement the Director of the Sheth Developers P. Ltd. had not mentioned the name of the assessee and there was no any incriminating material to demonstrate that the assessee was connected with the transactions reflected in loose paper. During the course of assessment the assessee had also brought these facts before the notice of the AO that there was no evidence that the assessee had paid any on-money. It was also explained that being a non-resident Indian the question of making any cash payment does not find any support in the case of the assessee. Further, the AO has also not conducted any enquiry or brought any evidence on record to corroborate the seized evidence with the assessee. Neither in the statement of the Director nor in the loose paper it was mentioned that the assessee had paid any on-money of Rs.23,59,500/- for purchasing the flat from the said builder.

7. During the course of appellate proceedings before us, the ld. Counsel has also referred to judicial pronouncements, i.e., ACIT v. Sharad Chaudhary, [2015] 55 taxmann.com 324 (Delhi – Trib.), Pradeep Kumar

Sharma v. DCIT [2021] 132 taxmann.com 41 (Delhi-Trib.) and DCIT v. Gordhanbhai L. Talavia, [2023] 146 taxmann.com 528 (Surat-Trib.) on the proposition that there is no basis for making addition in the absence of any supportive or corroborative material and evidence to connect seized material with the assessee. Looking to the above facts and findings we consider that the AO has not demonstrated from any relevant material that the assessee has paid any on-money on purchasing flat from Sheth Developers P. Ltd. Therefore, we consider that making the impugned addition in the case of the assessee is not justified.

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

Order pronounced in the open court on 06.05.2024.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 06.05.2024
n.p

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

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

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