

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

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

ITA NO. 3479/MUM/2023 (A.Y: 2011-12)

| | | |
|--|----|---|
| Assistant Commissioner of Income Tax -Circle 6(1)(2) Room No. 506, 5 th Floor Aayakar Bhavan Mumbai, Maharashtra , 400020 | v. | Arvind Poddar Balkrishna Industries Limited C-15, Trade world, Kamala Mills Compound Senapati Bapat Marg, Lower Parel Mumbai, Maharashtra - 400013 PAN: AACPP2352E |
| (Appellant) | | (Respondent) |

| | | |
|--------------------------------------|----------|-------------------------------|
| Assessee Represented by | : | Shri Haridas Bhat |
| Department Represented by | : | Shri Manoj Kumar Sinha |
| | | |
| Date of conclusion of Hearing | : | 13.05.2024 |
| Date of Pronouncement | : | 15.05.2024 |

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the revenue is preferred against the order dated 03.08.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2011-12.

2. The solitary grievance of the revenue is that the Ld. CIT(A) erred in directing the Assessing Officer to delete the addition of ₹.7 crores made under section 69A of Income-tax Act, 1961 (in short "Act").

3. Briefly stated the facts of the case are that, on the basis of the information received from the office of DGIT (Investigation), Mumbai that from a search and seizure action in the case of M/s Nish Developers & Group of Cases a pen drive and loose papers were seized. In the seized documents found from the residence of Shri Pravin Mishra, one of the trusted employees of Shri Kailash Agarwal, the name of the assessee appearing in the pen drive and it came to notice that the assessee has made the cash payment of ₹.7.00 Crore towards purchase of flat. Accordingly, Assessing Officer issued notice under section 148 of the Act.

4. Assessee objected to the reopening of the assessment stating that he does not have any flat in his own name in the project "One Avighna Park" of Nish Developers Pvt. Ltd., and has not entered into any transaction of whatsoever in nature with Nish Developers Pvt. Ltd. The Assessing Officer completed the assessment proceedings by making the addition of ₹.7 crores under section 69A of the Act.

5. Before Ld. CIT(A) the assessee challenged the validity of the notice under section 148 of the Act claiming that the same was issued on borrowed satisfaction and there was no independent application of mind before initiating the re-assessment proceedings. The Ld. CIT(A)

was convinced that the Assessing Officer was in possession of a tangible information and was of the opinion that when issuing notice for reopening of assessment the Assessing Officer is only require to show reasonable belief that income escaped assessment and upheld the reopening.

6. On merits of the case, the Ld. CIT(A) found that the Assessing Officer has simply relied upon the statement of Shri Pravin Mishra who is the employee of Shri Kailash Agarwal and has later on retracted from his statement. It was also strongly contended that the very basis of the addition is the details found in the pen-drive and the said pen-drive is not been accepted as a valid piece of evidences by the Tribunal in the case of Nish Developers Pvt. Ltd., the Ld. CIT(A) was convinced and directed the Assessing Officer to delete the addition.

7. We find that this Tribunal in a batch of appeal in the case of M/s.Nish Developers Pvt. Ltd. in ITA No. 3490/MUM/2016 and others, for the A.Ys. 2011-12 to 2015-16, had the occasion to consider the said pen-drive. The relevant findings read as under: -

"28. In the present case also during cross examination before AO during assessment proceeding, Mr Pravin Mishra admitted that he has prepared all this data on his own imagination which is not related to the assessee. The cross examination being conducted in the presence of the AO, the AO has also not

reexamined Mr Pravin Mishra, thus acceding to the same. In case the AO was not convinced of the said statement, he ought to have re-examined or carried out further investigation to gather further evidences for substantiating his stand. Therefore, considering the facts of the case and judicial pronouncements in this regard, the order of CIT(A) on the issue of pen drive cannot be accepted. Considering all these facts of the assessee, we are of the view that the order of Ld. CIT(A) applying a blanket rate of 20% on the on-money calculated on the basis of data in the pen drive wherein the name of the customers were not even matching with the data in the pen drive and also the fact the amounts mentioned against the various flats purchasers having glaring and huge variations and that the pen drive was recovered from the premises of the employee of the assessee, the onus is on the Revenue to prove that data in pen drive are related to affairs of the assessee. Though the AO has not done his duty to determine correct income of the assessee by carrying out proper investigation of the case, yet the Tribunal being highest fact finding body is equally duty bound to determine correct income of the assessee based on the facts available on record....”

8. The above observations of the Coordinate Bench show that the very basis of the assessment has been removed. Therefore, the impugned additions do not have any legs to stand. Therefore, we are declined to interfere with the findings of the Ld. CIT(A).

9. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 15th May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 15.05.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT 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, Mum