

**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. 455/MUM/2024 (A.Y: 2015-16)

Ali Akbar Sami Choudhari TPS-3, 1 st Floor, Basuri Apartments Pali Naka, Bandra (W) Mumbai – 400050 PAN: ABVPC9898A	v.	DCIT – 23(1) Dr. SS Rao Marg, Parel Mumbai - 400012
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Sumit Mantri
Department Represented by	:	Shri Manoj Kumar Sinha
Date of conclusion of Hearing	:	15.05.2024
Date of Pronouncement	:	17.05.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. This appeal by the assessee is preferred against the order dated 21.12.2023 by National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] pertaining to A.Y.2015-16.

2. The grievance of the assessee read as under: -

"1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (appeal) erred in confirming the addition of Rs.82,13,261/- u/s. 69 of the income Tax Act, 1961 as unexplained investments without appreciating the facts and circumstances of the case and position of law.

2. On the facts and circumstances of the case, the learned Commissioner of Income Tax (appeal) failed to appreciate that the Learned Assessing Officer has not allowed the opportunity of cross examination to the Appellant before framing the said addition."

3. Briefly stated the facts of the case are that the, assessee filed his return of income on 01.10.2015 declaring a total income of ₹.29,29,980/-. The return was processed under section 143(1) of Income-tax Act, 1961 (in short "Act") and subsequently selected for scrutiny under CASS and accordingly, statutory notices were issued and served upon the assessee.

4. During the course of the scrutiny assessment proceedings the Assessing Officer was seized with the information received from the Investigation Wing, Mumbai that during the search and seizure action under section 132 of the Act in the case of Runwal Group, statement of Shri Sandeep Runwal, Director was recorded in which he admitted that his group has been receiving on-money on the properties sold by it. Taking a leaf out of the statement of Shri Sandeep Runwal, the assessee

was asked to show cause why the same on-money paid over and above the transactions valued amounting to ₹.82,13,261/- for purchasing of flat at Runwal Elegante be not treated as unexplained investment under section 69 of the Act.

5. In his reply the assessee denied of having made such on-money payments. This contention of the assessee was dismissed by the Assessing Officer who was of the firm belief that since Shri Sandeep Runwal has accepted of having received the on-money the assessee has invested and went on to make the addition of ₹.82,13,261/-.

6. The assessee agitated the matter before Ld. CIT(A) but without any success.

7. Before us, the counsel for the assessee vehemently stated that the assessee has purchased the property being Flat No. 501 at Runwal Elegante but has not paid any on-money in cash for the purchase of said flat. It is the say of the counsel that the builder M/s. Runwal Projects Pvt Ltd., has confirmed the transaction. In support the counsel relied upon various judicial decisions of the Coordinate Benches wherein transactions with Runwal Group has been considered by this Tribunal.

8. Per contra, Ld. DR strongly supported the findings of the Assessing Officer and the Ld. CIT(A) and read the operative part.

9. We have given a thoughtful consideration to the orders of the authorities below and have also considered the statement of Shri Sandeep Runwal. At the very outset, we have to state that the allegation that cross-examination of Shri Sandeep Runwal was never allowed to the assessee is baseless in as much as when the Assessing Officer confronted the statement of Shri Sandeep Runwal to the assessee during the course of the assessment proceedings the assessee never asked for any cross-examination.

10. In the statement of Shri Sandeep Runwal the list is attached wherein Shri Sandeep Runwal has given the details of cash received on sale of flats at various projects of the Runwal Group with names of the customers and the exact amount. The name of the assessee is at Sl.No.21 for the Flat No. 501 at Runwal Elegante which shows the cash receipt by Runwal Group of ₹.82,13,261/-. The contention of the counsel that it is merely an estimation defies all commercial logic because an estimated figure is always a complete figure. But the figure mentioned hereinabove is so accurate that it cannot be considered as an

estimated figure. Most important fact is that the recipient i.e., seller has admitted of having received a cash component of the transaction. Therefore, it is reasonable to conclude that the payee must have made the said payment. The undisputed fact is that the assessee has in fact purchased the flat from Runwal Group. When the purchase is not in dispute, the payment is not dispute then in all probability the cash component is also correct. The seller has admitted of having received on-money which is the income of the seller and no prudent business man would offer income which it has never earned / received. The decision of the Coordinate Benches are misplaced in as much as each case has to be decided on the facts of its own and since in the case in hand the income has been assessed in the hands of the seller applying the principles of preponderance of probability on the facts of the case in hand, we do not find any reason to interfere with the findings of the Ld.CIT(A).

11. In the result, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 17th May, 2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai / Dated 17.05.2024
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