

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

**BEFORE SHRI BR BASKARAN, AM AND SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.3435/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2021-22)

Esoof Shoeb Contractor Ground Floor, Rubberwala House, Dr. A Nair Road, Agripada, Mumbai-400011.	<b>बनाम/</b> Vs.	DCIT, Central Circle-4(2) 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACOPC8503G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Mani Jain, FCA	
Revenue by:	Smt Sanyogita Nagpal, CIT	

सुनवाई की तारीख / Date of Hearing: 08/04/2024

घोषणा की तारीख /Date of Pronouncement: 07/06/2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Learned Commissioner of Income Tax (Appeals) -52, Mumbai [ in short 'ld. CIT(A)'] dated 31.07.2023 for AY. 2021-22. The sole grievance of the assessee in this appeal is against the Ld. CIT(A)'s action of sustaining the addition of Rs.12,32,000/- made by the AO on account of unexplained money u/s 69A of the Income Tax Act, 1961 [ in short 'the Act']. Briefly stated the facts as noted are that, cash of Rs.12,32,000/- was found and seized from the premises of the assessee. In the course of assessment, the AO held the impugned sum to be unexplained and accordingly added it u/s 69A of the Act. Aggrieved by this action of the AO, the assessee preferred an appeal before the Ld. CIT(A) who confirmed the impugned addition. Now the assessee is in appeal before us.



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2. At the outset, the Ld. AR brought to our notice that the assessee, was a partner in M/s Rubberwala Realty, which had offered profits from on-monies aggregating to Rs.54,80,509/- to tax across AYs 2015-16 & AYs 2017-18 to 2020-21 and therefore the said intangible profits offered by the firm was available to be telescoped against the cash of Rs.12,32,000/- found from the partner in the course of search and therefore urged that the separate addition made in the hands of the assessee deserves to be deleted. Per contra, the Ld. DR supported the order of the lower authorities.

3. 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



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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.

4. Also, the Hon'ble Punjab & Haryana High Court in the case of **CIT Vs Prem Chand Jain (60 Taxman 37)** has held that the past intangible additions made in case of firm, of which assessee was a partner, could be taken into account for setting off the unexplained investments of assessee. The relevant findings of the Hon'ble High Court has taken note of by us are as follows :-

“5. The counsel for the department wanted to argue in the first instance that once the assessee had agreed to the addition on account of household expenses, the same could not be deleted. There is obvious fallacy in the argument because even now the assessee is not disputing the additions on account of household expenses but the argument on his behalf is whether the past intangible additions made in the case of the firm and allocated to the assessee's share could be taken into account in considering the unexplained income and thus, would be available to the assessee for set off in respect of the agreed additions in low household expenses in regard to the five assessment years under consideration. Accordingly, in view of the decision of this Court in Ram Sanehi Gian Chand's case (supra), and decision of the Supreme Court in Anantharam Veerasinghaiah & Co. v. CIT



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[1980] 123ITR457, the Tribunal was right in remitting the case to the AAC to redecide the appeal afresh keeping in view the dictum of law laid down in the said two decisions.

6. The question is thus, answered in favour of the assessee, that is in the affirmative, and against the department.”

5. In light of the ratio laid down in the above decisions (supra), we are in agreement with the Ld. AR that additional income of Rs.54,80,509/- offered to tax by the firm, M/s Rubberwala Realty represented intangible addition, which applying the judicially approved principle of telescoping, is available to be telescoped against the cash found on the firm's partner i.e. the assessee. In the given facts before us, we note that the intangible additions made in the hands of the firm is sufficient to set-off the cash found on the assessee and therefore the impugned addition of Rs.12,32,000/- made in the assessee's hands is held to be unsustainable. The AO is directed to delete the same.

6. Overall therefore, the appeal of the assessee stands allowed.

Order pronounced in the open court on this 07/06/2024.

Sd/-  
(B R BASKARAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 07/06/2024.  
Vijay Pal Singh, (Sr. PS)



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**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, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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