

IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER**

ITA No. 125/Nag./2023
(Assessment Year : 2019-20)

Deputy Commissioner of Income Tax,
Central Circle-2(1), Nagpur

..... Appellant

v/s

M/s. Neel Infratech,
Flat No. 201-202, 2nd Floor, 16, Ujjwal
Co-Op.Housing Society, Narendra Nagar
Square, Ring Road, Nagpur.
PAN : AAHFN9427H

..... Respondent

Assessee by : Shri Suren Duragkar, CA
Revenue by : Shri Abhay Y. Marathe, Sr. DR

Date of Hearing – 29/07/2024

Date of Order – 31/07/2024

ORDER

PER K.M.ROY, A.M.

The present appeal has been preferred by the department challenging the impugned order dated 29/03/2023, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-3, Nagpur [*learned CIT(A)*], for the assessment year 2019-20.

2. The grounds of appeal raised by the department are as follows:

- [1] On the facts and in the circumstances of the case, Ld.CIT(A) has erred in deleting the addition of Rs.3,48,000/- on account of cash receipts which

was correctly added in the income of the assessee by the Assessing Officer on the basis of incriminating documents found and impounded during the course of survey proceedings and considering the facts and circumstance of the case.

- [2] On the facts and in the circumstances of the case, Ld. CIT(A) has erred allowing the assessee's appeal without considering the facts that the documents No. A-2/12 (pages 1 to 84) and A-2/64 (page 1 to 185) based on which the addition of Rs.2,86,14,610/- was made has evidentiary value and assessee failed to explain with any documentary evidences during the course of assessment proceedings and kept silence on this issue
- [3] On the facts and in the circumstances of the case, Ld. CIT(A) has erred in deleting the addition of Rs. 2,86,14,610/- on account of unexplained expenditure u/s 69C of the IT Act, which was correctly added by the Assessing Officer in the income of the assessee on the basis of incriminating documents found and impounded during the course of survey proceedings.
- [4] Any other grounds and fact to be raised at the time of appeal.”

3. The facts of the case as culled out from the CIT(A)'s order are as follows:-

“A survey action u/s 133A of the I.T. Act was conducted at the business premises of M/s. Tirupati Developers. During the survey proceedings many incriminating documents related to the appellant were found and impounded. Accordingly, the case of the appellant was reopened u/s 147 of the Act after recording the reasons as required by section 148(2) of the Act and obtaining necessary section u/s 151.

The appellant is partnership firm engaged in marketing associate in the field of Real Estate Business. The appellant filed his original return of income u/s 139(1) for A.Y. 2019-20 on 23/07/2019 declaring total income of Rs. 14,47,930/-. In response to notice u/s 148 of the Act which was issued on 17/02/2021, the appellant filed the return of income on 15/03/2022 declaring total income of Rs. 14,47,930/-.

Subsequently, notices u/s 143(2) of the Act was issued and served to the appellant on 15/03/2022 and notices u/s 142(1) of the Act was also issued and served to the appellant.

The AO has made assessment u/s 147 of the Act on 31/03/2022 determining total assessed income at Rs. 3,04,10,540/- after making addition of Rs. 3,48,000/- on account of Marketing income and Rs. 2,86,14,610/- on account of Unexplained income u/s 69C of the Act.

4. Being aggrieved, the assessee carried the matter before the CIT(A). The assessee challenged the addition of Rs.3,48,000/- made by the Assessing Officer. The learned CIT(A) granted relief by holding as follows;

“The addition of total income was made on account of adhoc 40% of the cash received from the customers by M/s Tirupati Developers to the income of the appellant as per para 2 of the assessment order. In the written submission, it has been stated that the appellant acts as broker/marketing associate and fined customers for projects of M/s Tirupati Developers and in return receives commission. M/s Trupati Develepees has practice of bookings plots in the name of Broker/Marketing Associates instead of actual customers of plots. The appellant has a practice of booking revenue share in books of accounts after execution of sale deed. The appellant has shown the entire commission received s)-3 as income in the books of account of the appellant in respective assessment years. The appellant has shown its share of income much more than whatever mentioned in the impounded documents. Further the appellant has submitted the supporting documents to the AO relating to the all impounded documents but the same had not been considered by the AO while passing the assessment order. The AO has considered the cash receipt in framing the assessment of the appellant, which is not correct.

It is very much clear that the impounded documents & registers having entries related do not match. Therefore, the impounded documents cannot be relied upon is not conclusive evidence. In view of the above facts and circumstances, I direct to the AO to delete the addition of Rs. 3,48,000/-. Hence ground no. 2 is allowed.

5. The assess further challenged the addition of Rs.2,86,14,610/- made on account of unexplained expenditure in respect of booking of plots and brought to tax u/s 69C of the I.T. Act, 1961. The learned CIT(A) granted relief by holding as follows:

“The addition of total income was made on account of unexplained expenditure in respect of booking of plots and same is brought to tax u/s 69C of the Act, as per para 3 of the assessment order. As per the impounded documents, cash is paid by the customers who have booked plots of M/s Tirupati Developers through the appellant and the same was entered in the name of appellant in the cash book by M/s Tirupati Developers. Further impounded documents which were seized from the premises of M/s Tirupati Developers had name mentioned of the appellant instead of actual plot owner's name. The AO relied only on these documents which were found from the premises of third party. Also, the

AO has considered the entire amount as unexplained expenditure and added back to income of the appellant without bringing any corroborative or additional evidence. During the assessment proceedings the appellant has explained with documentary evidence that the said cash payments along with payments through banking channel, were paid by the customers to M/s Tirupati Developers, against which M/s Tirupati Developers has executed sale deed of plots in the name of customers. Further, the appellant has made various judicial references in the submission regarding addition made u/s 69C which is reproduced below.

i. In Prarthana Construction (P) Ltd. Vs. Deputy Commissioner of Income Tax on 20 December, 1999 (ITAT- Ahmedabad) -

"It has been held that loose papers and documents seized from premises of third parties and statement recorded at back of assessee without it being afforded opportunity to interrogate said documents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee".

ii. In J.R.C. Bhandari and S.C. Sethi V. ACIT, ITAT Jodhpur Bench -

In our above decision, we have found the addition made on the basis of loose sheets found from the possession of third party and not corroborated by any other supportive evidence to be uncalled for and not sustainable in law. We follow our aforesaid decision and hold accordingly, and in turn, we uphold the impugned order of learned CIT(A) deleting the addition made by the AO on the basis of entries in the loose sheets being page Nos. 67 and 71 of Annexure A-1, found from the possession of Shri A.K. Chajjer. We order accordingly.

It is very much clear that the impounded documents & registers having entries related do not match. Therefore, the impounded documents cannot be relied upon is not conclusive evidence. In view of the above facts and circumstances I direct to the AO to delete the addition of Rs. 2,86,14,610/-. Hence ground no. 3 is allowed.

6. The revenue being aggrieved is in appeal before us. The learned Sr. DR. opened his argument by canvassing that the appellant failed to produce any document before the Assessing Officer and as such the CIT(A) has gone amiss in entertaining the addition evidence filed before it. He, therefore, requested that the matter may be set aside for fresh adjudication before the AO.

7. On the other hand, the learned AR submitted that all the evidences are before the Assessing Officer, but he passed a very cryptic order

ignoring all the evidences on record. No additional evidences were relied before CIT(A).

8. We have carefully gone through the evidences on record and perused the submission. We find that the department has not pressed the ground of non-adherence to Rule 46A of Income Tax Rules regarding production of additional evidence before the CIT(A). In fact, in the paper book the assessee has submitted vide page Nos. 100 to 130 all the details submitted before the Assessing Officer in reply to notice u/s 142(1) of the I.T. Act, 1961. We find that the same has also been uploaded on a portal on 21st January, 2022, vide acknowledgment No. 959209811210122 which was before the due date of submission of 31st March, 2022. However, the order passed under 31st March, 2022, does not make any reference to the detailed submission so made. The learned AR has correctly drawn our attention to the meticulous submission before the Assessing Officer, wherein minutest explanation of each and every page of important document has been furnished. He has clearly pointed out as to the nature and source of such cash receipts. He also made a detailed written submission before us, which is reproduced below for the sake of easy reference.

“Ground No. 1: Addition made of Rs. 3,48,000/- being Estimated Marketing Income

A.O. - Para 2 - Page No. 94 to 97

CIT (A) Page No. 4 to 23

1. Document No A-2/9: The assessee has booked Plot No. 1 of Suwarnabhoomi Layout of M/s. Tirupati Developers for one of its customers. The details are as follows

<i>Plot No.</i>	<i>Name of Customer</i>	<i>Receipts</i>	<i>Date</i>
<i>7</i>	<i>Sharddha Mitesh Shukla</i>	<i>30,000</i>	<i>22.07.2018</i>

As per impounded document

Plot No.	Area of Plot Sq.ft	Rate	Consideration Amount	Amount Received	Page No.
1	6663.35	300	19,99,005	10,31,000	51

Actual

Plot No.	Sale Deed Amount	Sale Deed Date	Survey Date	Page No.
1	28,01,000	26-03-2019	25-06-2019	50 to 53

From the above it is clear that the consideration amount and the received amount is much less than the Sale Deed amount and the A.O. has made addition on the basis of impounded document irrespective of the fact the Sale Deed of the said plot was executed before the survey date. The assessee has shown its income much more as per actual transaction than the addition made by A.O. on the basis of impounded document.

2. Document No A-2/16: The assessee has booked Plot No. 43 of Rajatbhoomi-3 Layout of M/s. Tirupati Developers for one of its customers. The details are as follows

Plot No.	Name of Customer	Receipts	Date
43	Radhey Shyam Maurya	50,000	11.12.2015

As per impounded document

Plot No.	Area of Plot Sq.ft	Rate	Consideration Amount	Amount Received	Page No.
43	1291.48	710	9,16,951	6,60,000	56

Actual

Plot No.	Sale Deed Amount	Sale Deed Date	Survey Date	Page No.
43	9,20,000	29-12-2018	25-06-2019	53 to 59

From the above it is clear that the consideration amount and the received amount is much less than the Sale Deed amount and the A.O. has made addition on the basis of impounded document irrespective of the fact the Sale Deed of the said plot was executed before the survey date. The assessee has shown its income much more as per actual transaction than the addition made by A.O. on the basis of impounded document.

3. Document No A-2/17 : The assessee has booked Plot No. 14 of Rajatbhoomi-4 Layout of M/s. Tirupati Developers for one of its customers. The details are as follows

Plot No.	Name of Customer	Receipts	Date
14	Suryakant Sudhirrao Bharne	70,000	22.07.2018

As per impounded document

Plot	Area of Plot	Rate	Consideration	Amount	Page No.
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No.	Sq.ft		Amount	Received	
14	1614.60	670	10,81,782	6,01,000	61

Actual

Plot No.	Sale Deed Amount	Sale Deed Date	Survey Date	Page No.
14	20,17,000	21-12-2020	25-06-2019	59 to 63

From the above it is clear that the consideration amount and the received amount is much less than the Sale Deed amount and the A.O. has made addition on the basis of impounded document. The assessee has shown its income much more as per actual transaction than the addition made by A.O. on the basis of impounded document.

4. Document No A-2/23: The assessee has booked Plot No. 70 of Silver City Layout of M/s. Tirupati Developers for one of its customers. The details are as follows

Plot No.	Name of Customer	Receipts	Date
70	Madhuri Kishore Barai	3,00,000	15.09.2018

As per impounded document

Plot No.	Area of Plot Sq.ft	Rate	Consideration Amount	Amount Received	Page No.
70	1588.01	-	-	4,00,000	68

Actual

Plot No.	Sale Deed Amount	Sale Deed Date	Survey Date	Page No.
70	6,22,000	28-03-2019	25-06-2019	66 to 70

From the above it is clear that the consideration amount and the received amount is much less than the Sale Deed amount and the A.O. has made addition on the basis of impounded document irrespective of the fact the Sale Deed of the said plot was executed before the survey date. The assessee has shown its income much more as per actual transaction than the addition made by A.O. on the basis of impounded document.

From the impounded documents and documents of actual transactions, it is very much clear that the impounded documents & registers having entries relating to the assessee are not matching with the actual transactions. Therefore, the impounded documents cannot be relied upon & is not conclusive evidence

Ground No. 2 & 3 : Addition made of Rs. 2,86,14,610/- being Unexplained Cash Expenditure u/s. 69C of the Act.

A.O. - Para 3 - Page No. 97 to 98

CIT (A) Page No. 23 to 36

The A.O. has made addition of Rs. 2,86,14,610/- to the income of the assessee as Unexplained Cash Expenditure u/s. 69C of the Act, without considering the submissions of the assessee during the assessment proceedings. The said amount was paid by customers against plot bookings, which were booked through the assessee. The assessee submitted explanation about each transaction in the impounded document by submitting charts containing the Plot No, name of customers, amount paid to Tirupati Developers, date of payment, Sale Deed date, Sale Consideration & share of Tirupati Developers & share of assessee in the Sale Consideration. The A.O. not gave any cognizance to the submission and added the entire amount to the income of the assessee, as if the said amount was paid by the assessee itself.

Document No. A-2/12 & Document No. A-2/64: The assessee has booked Plots in various Layouts of M/s. Tirupati Developers for its customers. It is the practice of the developer to show such bookings in the name of Assessee Firm. As the payments are against bookings of plot from customers to M/s. Tirupati Developers the same should not have been treated as unexplained cash expenditure u/s. 69C of the Income Tax Act, 1961, in the hands of assessee. The assessee has given detailed explanation regarding the entries in the impounded documents during the assessment proceedings & appellate proceedings, the submissions during the assessment proceedings are at Page No. 103 to 112, 116, & 121 to 128 of the Paper Book & submissions during the appellate assessment proceedings are at Page No. 72 to 85 of the Paper Book.

The submissions already made are as follows:

- 1. The assessee has booked Plots in various Layouts of M/s. Tirupati Developers for its customers. It is the practice of the developer to show such bookings in the name of Assessee Firm, though the payments were against bookings of plot from customers to M/s. Tirupati Developers.*
- 2. The assessee is acting as the Broker/marketing associate of M/s Tirupati Developer and the primary source of income for the assessee is revenue share received from M/s Tirupati Developers which is duly offered for tax in respective A.Y.*
- 3. The relationship between M/s Tirupati Developers and assessee is similar to that of Principal and Agent, with M/s Tirupati Developers being the principal and assessee being agent. Thus, in normal course of business the payment would be made by the principal, i.e., M/s. Tirupati Developers to the agent, i.e., the assessee. However, the Assessing Officer failed to comprehend the primary submission made by the assessee and has made addition on the grounds that payment has been made by agent to principal i.e. by assessee to M/s Tirupati Developers.*
- 4. During the relevant Assessment Year, the assessee acted as Broker/marketing associate between the customers and M/s Tirupati Developers. The payments were made by the customer to M/s Tirupati Developers because the plots had been purchased by customers who are the actual beneficiary of the plots and*

not the assessee. It is the normal practice of M/s. Tirupati Developers to mention the name of the broker through whom the plot has been booked instead of the name of individual customer for the sake of convenience.

5. Therefore, addition u/s 69C as unexplained expenditure in hands of assessee is not tenable as no payments are made by the assessee to M/s. Tirupati Developers nor any expenditure has been claimed by the assessee regarding any payment made by the assessee.

6. The detailed chart of the plots Nos., amount received by M/s. Tirupati Developers, date of receipt, date of sale deed, amount of sale deed, the assessee's share and the share of Tirupati Developers in the sale consideration is enclosed herewith as Annexure V & Annexure VI. (Page No. 121 to 128 of paper book)

7. The assessee has shown its share of income as per actual transactions after execution of sale deeds in the respective years, which is much more than noted in the impounded documents.

8. The online reply was submitted by the assessee during assessment proceeding vide acknowledgement no. 959209811210122 dated 21/01/2022 and thereafter manually with proper explanation and reasoning. The Order has been passed on 31/03/2022 by the A.O whereas the reply was filed more than 2 months before the Order. The assessing officer while passing order stated that "However the assessee has not offered any explanation and kept silence on cash expenditure amounting to Rs. 2,86,14,610/-" is wrong. The assessing officer passed order without properly appreciating the facts and submissions of the assessee and neither providing reasons in support of his order. Thus, the assessing officer erred in passing the order by considering partial submission of the assessee.

9. Some observations from the detailed charts Annexure V & Annexure VI (Page No. 121 to 128 of paper book) submitted at the time of assessment & appellate proceedings are as follows:

- i. The details mentioned at para 1 above is that, there is difference in amount mentioned in impounded document & actual Sale Deed Amount of Plot No. 1 of Suvarnabhoomi Layout. The same can be cross verified from entry No. 2 of the chart placed at 122 of the paper book.*
- ii. The details mentioned in the chart of Plot No. 122, Suvarnabhoomi Layout placed at page No 121 of paper book shows that the amounts are received from customers of Plot the sale deed of the same is executed on 03/01/2019, before 25/06/2019 i.e., the date of survey.*
- iii. Also there are various sale deeds which are executed before 25/06/2019 i.e., the date of survey which are mentioned in the chart placed at Page No. 121*

to 124, confirms that the payments are made by customers of the plots, who are actual beneficiaries.

- iv. *The A.O. has not taken efforts to verify the details of the actual transactions of Sale Deeds which were executed before the date of Survey.*

From the above it can be very well concluded that the payments referred in impounded documents are from the customers of plots and not by the assessee, which confirms that the addition made by the A.O. is bad in law.

Considering the said facts the CIT(A) gave relief to the assessee by deleting the addition made by the A.O.”

9. As regards the addition of Rs.3,48,000/- towards estimated marketing income, he has amply demonstrated that the consideration amount and the received amount is less than the amount as per the sale deed and the Assessing Officer has made the addition irrespective of the fact that the sale deeds were executed before the date of survey. The assessee has already declared the income in his profit & loss account which is more than the addition made by the Assessing Officer on the basis of impounded document. Thus, it is a case of double addition of the same income on a selective basis. Once the book results are accepted, it is clear that the income already disclosed takes into account the estimated income on the basis of impounded documents. Hence, we are of the opinion that the CIT(A) has correctly dealt with the addition of estimated marketing income in view of the fact that the assessee has already declared the same in his regular books of account.

10. As regards the addition u/s 69C of the Act for Rs.2,86,14,610/-, it may be worthwhile to refer to Section 69C of the Income Tax Act on the very onset.

“69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the

[Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:

Provided that, notwithstanding any contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

11. It is crystal clear that the assessee has explained about the source of such payment. The assessee has acted only as a conduit between the purchaser and the developer. So, naturally it was not incumbent upon the assessee to make any payment to M/s. Tirupati Developers, because he is not the ultimate purchaser of the plot. The assessee only acts as a marketing agent and only 40% of his share as marketing income in respect of payment received from the customer is booked as income. Even if for argument sake we assume that there is an unaccounted cash receipt in the hands of M/s. Tirupati Developers, it is apparent that the appellant has got no role in such payment because his duty is only to find out the potential customers and to take them to the developer for ultimate registration of plots. He is only a meeting point and there is no question of him making the investment. The very business model of the appellant is never in doubt. It is axiomatic that the so called cash payment as per the impounded document must have generated from the purchasers of the plots. The assessee from the very beginning of the proceeding has been clear in his approach and has denied that he has made the investment. An entry in the documents from the custody of third parties must be corroborated substantially to establish the very factum of transaction. In fact, assessee has been frank enough to disclose the name of the customer who has made the cash payment to him for handing over to M/s. Tirupati Developers. The Assessing Officer had all the information with him to make further inquiry and investigation to test the veracity of the submission. But he maintained

as stark silence. He neither verified the fact from M/s. Tirupati Developers nor from the customer whose name was before him. Even learned Sr.DR failed to throw any light about the stand of the revenue in case of M/s. Tirupati Developers who has received the money. It is apparent that there are very loose ends to this entire investigation process and the AO has failed to apply his mind. The impounded documents recovered from a third party has been accepted to be sacrosanct and the same is tested against the assessee. In spite of assessee's denial, no inquiry was made at all. It is not the case of the revenue that the land was actually purchased by the assessee. There is no logic as to why a person should make such a huge payment and still not purchased the land in his own name. It is also not the case of the revenue that the assessee has understated his income in any manner whatsoever as recorded in the regular books of account. The very invocation of Section 69C is fragile and is misconceived because the assessee has never incurred any expenditure from his own resources. He is only acting as an agent and has dutifully handed over the money to his principal. It is the plot holders who has invested the money, but for reasons unknown no action was taken by the department against them and only the addition has been sustained by the Assessing Officer because in the impounded document the name of the assessee had appeared. The assessee has given very cogent and plausible explanation that his name was appearing because all the customers were introduced by him and to keep a close control over the amount of commission that has to be paid to him, all the payments were booked under his name. This is a very common accounting treatment for this type of business, because the principal must be informed about the quantum of business generated by the agent so that he can be correctly remunerated. The agent also on the other

hand has his own information system to keep a tab on the volume of business generated by him so that it can be matched with the principal and there is no dispute about the generation of the commission. When these glaring facts were before the Assessing Officer and he did not apply his mind, there is no question of giving him a second innings to verify the information once again after the limitation period of assessment was expired long back as per the suggestion of Sr.DR. The learned Sr.DR pointed out that in real estate industry, there is an ample generation of cash transaction and hence the impounded documents have an evidentiary value. But he has failed to draw our attention to any corroborative evidences to justify the entries in the impounded documents.

12. Be it as may, under the Income Tax Act, it is the prime responsibility to tax the correct person. The generation of cash was from the investors of the plot and the assessee has no role for the same. The understatement of sale consideration, if any, can lead to an income in the hands of the developer, and not on the assessee. The learned AR has also placed the series of judgments, as follows.

- I] Hon'ble Delhi High Court Order in the case of CIT vs. D.K.Gupta
- II] Hon'ble ITAT, Ahmedabad Order in the case of Prarthana Construction (P) Ltd vs. DCIT
- III] Hon'ble ITAT, Jodhpur Order in the case of J.R.C.Bhandari and S.C. Sethi vs. ACIT
- IV] Hon'ble ITAT, Mumbai Order in the case of Spartex (India)(P) Ltd vs. DCIT
- V] Hon'ble ITAT, Hyderabad Order in the case of Nagarjuna Construction Co. Ltd vs. DCIT

X] Hon'ble Bombay High Court order in case of PCIT
Vs. Hasan Ali Khan 426 ITR 556 (2020)

We find that the CIT(A) has already taken into consideration some of the judgments while passing its order i.e. Hon'ble ITAT, Ahmedabad Order in the case of Prarthana Construction (P) Ltd vs. DCIT and Hon'ble ITAT, Jodhpur Order in the case of J.R.C.Bhandari and S.C. Sethi vs. ACIT.

13. In the light of above discussion, we feel that no interference at this stage is called for in the cogent and watertight order of the CIT(A). All the grounds of the revenue are dismissed. The CIT(A) enjoys a coterminous power with that of AO. He has applied his mind and with diligence arrived at an incisive conclusion which cannot be tinkered upon without any justifiable reasons. Accordingly, the appeal of the revenue is dismissed.

14. In the result, the appeal filed by the department is dismissed.

Order pronounced on 31/07/2024.

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

NAGPUR, DATED: 31/07/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

True Copy

By Order

Rajesh V. Jalit
Private Secretary (On contract)

Sr. Private Secretary
ITAT, Nagpur