

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SMT RENU JAUHRI ACCOUNTANT MEMBER**

**ITA No.3677/Mum/2024  
(Assessment Year :2009-10)**

M/s. Leo Realtors 801, 8 <sup>th</sup> Floor HDIL, Kaledonia Sahar Road Andheri East Mumbai – 400 069	Vs.	DCIT, Central Circle- 6(2) R.No.1903, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021
<b>PAN/GIR No.AABFL4770B</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Akshay Jain
Revenue by	Shri Manoj Kumar Sinha
<b>Date of Hearing</b>	<b>27/08/2024</b>
<b>Date of Pronouncement</b>	<b>29/08/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 24/05/2024 passed by CIT(A)-54, Mumbai for the quantum of assessment passed u/s.143(3) r.w.s. 147 for the A.Y.2009-10.

2. Before us the assessee has raised following grounds:-

“1) That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the order passed by the Ld. AO

*without appreciating the fact that re-opening is bad-in-law since the same was done without any application of mind and solely on the basis of information received from DGIT (Inv) Wing. As such, the reopening is bad in law and liable to be quashed.*

*2) That on the facts and circumstances of the case and in law, the Ld. CIT (A) erred in confirming the order passed by the Ld. AO without appreciating the fact that re-opening is done based on based on suspicion and surmises. As such, the reopening is bad in law and liable to be quashed*

*3) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the additions made by the Assessing Officer of Rs. 55,00,000/- disregarding the fact that the appellant had never entered into any transactions relating to sale/purchase/trading of shares.*

*4) On the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming the additions made by the Assessing Officer without appreciating the fact that the Appellant has not claimed any loss on sale of shares, therefore, the allegation of the Ld. AO is vague and arbitrary. As such, the addition made by the Ld. AO is bad in law and liable to be quashed.”*

3. The brief facts are that the assessee had filed its return on 28/09/2009 declaring 'Nil' income. The said return was duly accepted and processed u/s. 143(1). Thereafter, assessee's case was reopened u/s.147 by issuance of notice dated 30/03/2016 u/s.148 on the following reasons:-

*“A search/survey action was conducted by Unit-3, Investigation Wing, Mumbai on M/s Ekta & Bhoomi Group on 05th Oct 2015. During the course of search and survey action, incriminating data of M/s Bhoomi Group has been found which is related to cash transactions executed by the Bhoomi Group. The data in respect of cash transactions pertaining to Bhoomi Group was found in digital form. This data related to cash transaction is maintained first in*

*journal and thereafter posted in ledger. For each project and group concern entity, separate ledger has been maintained. In that ledger account, all transaction executed in cash by a particular entity of Bhoomi Group in relation to the project and its business activity have been recorded. These transactions have not formed part of regular books of accounts. The director of M/s Bhoomi Group, Sh. Akshay Doshi in his post search statement recorded u/s 131 dated 28.12.2015 has accepted that this digital data found during the course of search represents the cash transactions executed by Bhoomi Group and have not been recorded in regular books of accounts. Relevant portion of Statements of Mr. Akshay Doshi recorded in this regard is enclosed herewith as Annexure-1 Following are the cash amounts which have been received by M/s. Leo Realtor in financial year 2008-09 as per the data contained in the ledger and these are not recorded in regular books of accounts*

<i>Sl. No.</i>	<i>Head under which cash has been received</i>	<i>Amount (Rs.)</i>
<i>1</i>	<i>Bogus loss on sale of shares</i>	<i>55,00,000/-</i>
	<i>Total</i>	<i>55,00,000/-</i>

*The above mentioned amount represents undisclosed income of the assessee for the relevant year"*

4. Thus, the entire premise for reopening is that assessee has entered into transaction for bogus loss on sale of shares of Rs.55,00,000/-. Before the ld. AO assessee had submitted that he had not entered into any such sale / purchase / trading of shares and no such claim has been made in return of income. The relevant reply of the assessee is incorporated by the ld. AO reads as under:-

*"Our client has never entered into any sale/purchase/trading of shares. To support our above contentions we are enclosing herewith the copy of return of income filed, alongwith balance sheet, profit and loss accounts and computation of income showing a NIL income for assessment year 2008-09 and 2009-10. After going through the above it can be very easily seen that our client has neither claim any losses nor the same has been ever come into the books of accounts of our clients and hence allegation made by the department for claim of loss is without any basis and hence no additions can be made in the hands of our client."*

5. However, the Id. AO simply based on search in the case of Bhoomi Group and one statement of Mr. Akshay Doshi in whose possession some digital data was found representing the cash transaction, he made addition u/s.68 after making the following observations:-

*"5. The submission of the assessee has been carefully perused but the same is not acceptable for the reason as described below:-*

*5.1 During the course of search on the Bhoomi group dated 05.10.2015 incriminating data of Sony Vio Laptop was found & seized from the premises of Smt. Vasumati V. Modi wherein ledger A/c titled BHOOMI CONSTRUCTION (BRIZE A/C) was found. This particular ledger A/c reflects all the transactions executed in cash by Bhoomi Construction and associated concerns of the Bhoomi group with relation to its project BRIZE and its related business activities. This fact was also admitted by Sh Akshay Doshi director of the Bhoomi group in his post search statement recorded u/s 131 dated 28.12.2015 wherein he had stated "that the digital data found during the course of search represents the cash transaction executed by Bhoomi group and have not been recorded in the regular book of account"*

*5.2 In light of the search proceedings and admittance by Sh. Akshay Doshi it is very clear that the receipt of money by M/s Leo Realtors as evident from the ledger A/c of M/s. BHOOMI CONSTRUCTION (BRIZE A/C) pertaining to A.Y. 2009-10 is the*

*undisclosed income of the assessee received in cash for that year which is not recorded in the regular books of account.*

*5.3 The ledger account is very specific on the dates in which the said cash payment was received by M/s Leo Realtors,*

*5.4 Therefore in view of the same the amount of Rs. 55,00,000/- represents the undisclosed income of the assessee for A. Y. 2009-10 and thus is added back to the returned income of the assessee under the provision of section 68 of the I. T. Act, 1961. Penalty proceedings u/s. 271(1)(c) of the Act are initiated separately for furnishing inaccurate particulars of income.*

6. Before the ld. CIT (A) assessee apart from challenging the validity of reopening submitted that there is no such material available with the ld. AO to reopen the assessment and assessee has not entered into any such transaction. The ld. CIT (A) has confirmed the said addition holding that assessee has not furnished any evidence in support of the claim.

7. We have heard both the parties and also perused the relevant material placed on record. The entire premise and the reasons recorded by the ld. AO for reopening the case is that assessee had entered into some transaction of cash amount which assessee has received from Bhoomi group in the form of bogus loss on sale of shares. Ld. AO has made the addition of Rs.55,00,000/- u/s.68. First of all, once assessee had denied having entered into any such transaction for booking loss on sale of shares nor it is emanating from the return of income or computation of income, then how can AO could have reason to believe that assessee has made such bogus claim of loss. There is no material on record that assessee has claimed any such loss

nor there is any evidence that any such amount has been credited in the books of accounts of the assessee or in the bank account. Simply based on some data found from the possession of the third party in the search, without corroborating whether assessee had actually into such transaction or received any such cash or has made any claim for long term capital loss in the books or in the return of income, then neither the reopening is valid nor addition can be made. Once the ld. AO received the information at least he has to corroborate whether assessee has made any such claim of bogus loss on sale of shares. The assessee has filed 'Nil' return of income and no such claim has been made on account of short term and long term capital loss. Neither any such amount has been received by the assessee in the books or bank account. Accordingly, the reopening on the reasons recorded by the ld. AO itself is invalid and also on merits also no such addition can be made. Thus, the impugned assessment order is hereby quashed and also on merits, the addition stands deleted.

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

Order pronounced on 29<sup>th</sup> August, 2024.

**Sd/-**  
**(RENU JAUHRI)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 29/08/2024  
KARUNA, sr.ps

**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, Mumbai**