

IN THE INCOME TAX APPELLATE TRIBUNAL

"SMC" BENCH, MUMBAI

BEFORESHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

MS. RENU JAUHRI, ACCOUNTANT MEMBER

ITA no. 4818/Mum./2023

(Assessment Year :2010-2011)

M/s. Swastik Constructions

Shop No. 2, Yashwant Apartment,
Phoolpada Road, Virar East,
Thane-401013
PAN: ABBFS7088Q

..... Appellant

v/s

Income Tax Officer,

Ward-4(4), Thane
Room No. 4, 6th Floor,
A Wing, Ashar IT Park,
Road No. 16Z, Wagle Indl. Estate,
Thane-400604

..... Respondent

Assessee by : Shri Shreyash Shah a/w Shri Kunal Shah
Revenue by : Shri. R. R. MakwanaSr. DR

Date of Hearing – 01/08/2024

Date of Order 01/10/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 08/11/2023 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2010-11.

2. In this appeal, the assessee has raised the following grounds: –

"1. RE-OPENING - BAD IN LAW

On the facts and in the circumstances of the case and in law, the honourable Commissioner of Income-tax (Appeals)-3, Coimbatore erred in confirming the action of the learned Income-tax Officer, Ward 4(4), Thane of reopening of the assessment under section 147.

2. ADDITION ON ACCOUNT OF UNEXPLAINED MONEY U/S.69A

1. The learned Commissioner of Income-tax (Appeals) R erred in facts as well as in law in confirming the addition of Rs.21,65,000/- made by the assessing officer on account of alleged cash transaction on the basis of loose papers found during the course of search proceedings at Swastik Group.

2. In doing so, he did not accept the fact that the cash dealing manifest from the loose papers were not related to the assessee but dealing of Swastik Group with Viva College and adverse inference was influenced by the assessee's account coming right after the papers relating to Viva College in the loose papers set.

3. In doing so, he did not accept the fact that the cash transactions appearing in the impugned seized papers had already been considered by the Swastik Group while filing their petition before the Settlement Commission. The Settlement Commission has since passed order accepting the petition filed by the Swastik Group where these amounts reflected in the impugned Seized Papers were considered by them."

3. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a partnership firm deriving income from construction activities. For the year under consideration, the assessee filed its return of income on 22/03/2011 declaring a total income of ₹ 31,516. Subsequently, information was received from DIT (System), Thane regarding search action under section 132 of the Act carried out on M/s Swastik group of cases on 31/07/2014. As per the information, during the search action, incriminating material pertaining to the assessee was found and seized wherein it was mentioned that the assessee had paid a total amount of ₹ 21,65,000 to M/s Vrushi Enterprises in cash during the financial year 2009-10. It was further informed that during the post-search inquiries, the assessee submitted that

these transactions were related to a loan from M/s Vrushi Enterprises received by the assessee in the year under consideration in the mode of cash. Thus, it was informed that the assessee has received an amount of ₹ 21,65,000 in the mode of cash from M/s Vrushi Enterprises during the relevant financial year. Accordingly based on aforesaid information notice under section 148 was issued on 30/03/2017 and proceedings under section 147 of the Act were initiated. During the reassessment proceedings, the assessee was asked to explain the unaccounted cash payment of ₹ 21,65,000 to M/s Vrushi Enterprises during the year as per repayment of the loan taken in cash. The assessee was further asked to show cause as to why the aforesaid unaccounted cash should not be added to its income under section 69A of the Act. In the absence of any satisfactory response from the assessee that they have not entered into any such transaction, the Assessing Officer ("AO") vide order dated 20/12/2017 passed under section 143(3) read with section 147 of the Act treated the unaccounted cash of ₹ 21,65,000 as unexplained money not recorded in the books of the assessee as its income and added the same to the total income of the assessee.

4. During the appellate proceedings before the learned CIT(A), the assessee gave an explanation that the Swastik group went before the Hon'ble Income Tax Settlement Commission ("*Hon'ble ITSC*") and the application of the group has been accepted. The learned CIT(A), vide impugned order, held that the name of the assessee is not included in the name of the taxpayers who went before the Hon'ble ITSC. Therefore, the learned CIT(A) rejected the submission of the assessee that the impugned

addition was disclosed before the Hon'ble ITSC. The learned CIT(A) dismissing the appeal filed by the assessee held that since the assessee could not explain the nature and source of cash paid, the amount of ₹ 21,65,000 has rightly been added to its total income by the AO under section 69A of the Act. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

"6. The onus is on the assessed to prove that the Cash deposits made did not bear the character of income. The assessee has filed ITR, declaring a meagre income of Rs 31560. Taxpayer has not declared its true income and has not paid taxes due thereon. The assessee has not responded to notices u/s 142(1) and show cause notices issued during E-assessment proceedings. Since the assessee failed to give any explanation about the nature and source of cash credits which is nothing but unexplained money u/s 69A of the Income Tax Act, 1961 and added to the Total Income of the assessee. The Total Income assessed is taxed u/s 115BBE of the Act at the rate of 60%.

7. The assessee explained that there is a cash flow statement prepared for the group as a whole. There is sufficient cash available with the partners for making payment. The taxpayer in his written submissions has stated that before the CIT(Appeals) cash flow statement was submitted. It is informed that no such Cash Flow statement was submitted before this office. Considering the facts of the case the amount of Rs 2165000 added under section 69A was upheld. There is another appeal filed in the same Ay against a section 263 order dt 29/5/2021. The taxpayer had requested for clubbing the same. It is replied that it is a separate appeal and will be taken up without delay, if it is enhancement of the same amount."

Being aggrieved, the assessee is in appeal before us.

5. During the hearing, the learned Authorised Representative ("learned AR") submitted that the loose papers, found during the search proceedings at Swastik group do not contain the name of the assessee nor the assessee has been named therein in any way. It was further submitted that the amount disclosed in these loose papers has been offered to tax by the other entities of the Swastik group in their application filed before the Hon'ble

ITSC and the said application has also been accepted by the Hon'ble ITSC. In this regard, the learned AR referred to the orders passed by the Hon'ble ITSC and also the submissions made before the learned CIT(A) regarding the payment of tax on the impugned addition. The assessee also placed on record a copy of Form 26AS evidencing the payment of tax on the additional income offered before the Hon'ble ITSC.

6. By referring to page 57 of the paper book, the learned AR submitted that the entire addition of ₹ 21,65,000 is based on this loose sheet, which was found during the search proceedings on the Swastik group. By referring to the transactions mentioned to be in cash, from 05/04/2009 till 19/05/2009, the learned AR submitted that the same corresponds to ₹ 21,65,000. From the perusal of the document reproduced on page 57 of the paper book, we find that the said document does not contain the name of the assessee and only mentions "Viva College" and "Vrush Enterprises". From the perusal of other documents which were seized from the Swastik group during the search proceedings, forming part of the paper book from pages 59-61, we find that the loose documents on which the assessee's name is mentioned are in respect of the transactions which were through the banking channel. In the present case, it is undisputed that these loose documents were found during the search proceedings on the Swastik group. As per the assessee, various entities of the Swastik group, except the assessee, filed an application before the Hon'ble ITSC on 24/12/2019. In the proceedings before the Hon'ble ITSC, these group entities declared additional income and furnished a detailed explanation regarding the various

loose papers and documents including digital data found and seized during the search proceedings apart from the cash, jewellery and valuables belonging to various individuals. Further, from the Statement of Facts, forming part of the paper book from pages 124-168, we find that the lead Applicant of the Swastik group, i.e. Sharp Realtors, presented cash flow before the Hon'ble ITSC incorporating the unaccounted cash transactions for the period 01/04/2008 to 31/03/2015 on the basis of the noting found on various documents seized in the search/survey proceedings and offered additional income of ₹ 2,82,44,886. The said fact is further evident from the acknowledgement of Common Paper Book-III filed before the Hon'ble ITSC containing the aforementioned documents. From the aforesaid cash flow statement, forming part of the paper book from pages 181-182, we further find that the impugned addition of ₹ 21,65,000 is forming part of the same.

7. We find that the application filed before the Hon'ble ITSC was admitted vide order dated 26/12/2019 passed under section 245D(1) of the Act and subsequently, the order under section 245D(4) of the Act was passed by the Hon'ble ITSC on 25/09/2023. In order to substantiate the payment of tax by Sharp Realtors on the disclosure of additional income, the assessee has placed on record the details of the self-assessment tax paid and the copy of Form 26AS. We further find that all these details were also furnished before the learned CIT(A) and submission was made that the Swastik group has duly considered the amount of ₹ 21,65,000 for arriving at its taxable income while filing its application before the Hon'ble ITSC. However, we find that the learned CIT(A) merely proceeded on the basis

that the taxpayers before the Hon'ble ITSC do not include the name of the assessee. Having considered the various details as noted above regarding the amount appearing in the loose sheets found during the search proceedings, we are of the considered view that since the amount of ₹ 21,65,000 has already been considered in the application filed before the Hon'ble ITSC by the Swastik group and the disclosure of additional income and the application has been accepted by the Hon'ble ITSC, the addition of the said amount of ₹ 21,65,000 in the hands of the assessee on account of entries appearing in the loose sheets will amount to double taxation which is completely impermissible. Therefore, we direct the AO to delete the impugned addition of ₹ 21,65,000 in the hands of the assessee as the same has already been offered to tax by the Swastik group and the due tax thereon has been paid. Accordingly, ground no. 2 raised in assessee's appeal is allowed.

8. Considering the submission of the assessee, since the relief has been granted to the assessee on merits, the issue arising in ground no. 1 raised in assessee's appeal is left open.

9. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 01/10/2024

Sd/-
RENU JAUHRI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 01/10/2024

Aniket Singh Rajput, (Stenographer)