

**IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, VP AND SHRI AMARJIT SINGH, AM**

ITA No. 2372/Mum/2023  
(Assessment Year: 2018-19)

Dy. CIT, Central Circle-2(2) Room No. 806, 8 <sup>th</sup> Floor, Old CGO Annex Building, M. K. Road, Mumbai-400 020	Vs.	M/s. Madhu Developers 10, Planet Industrial Premises Off. Subhash Road, Vile Parle East, Mumbai-400 057
PAN/GIR No. AAQFM 9577 Q		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Appellant by</b>	:	Shri J. P. Bairagra
<b>Respondent by</b>	:	Shri R. R. Makwana
<b>Date of Hearing</b>	:	21.11.2024
<b>Date of Pronouncement</b>	:	27.11.2024

**ORDER**

Per Saktijit Dey, VP:

This is an appeal by the Revenue, against order dated 05.04.2023 of learned Commissioner of Income Tax (Appeals)-48, Mumbai ('Id.CIT(A) for short), pertaining to assessment year (A.Y.) 2008-09.

2. Before we proceed to deal with the issue arising in the appeal, it is necessary to put on record that the appeal was earlier disposed of by order dated 28.11.2023 *ex parte*, qua the respondent assessee. However, while considering the application filed by the assessee under Rule 24 of Income Tax (Appellate Tribunal) Rules, 1964, the appellate order was recalled, and the appeal was restored to its original position. This is how, the appeal came up for hearing again before this bench.

3. Be that as it may, the sole issue arising for consideration is deletion of addition of Rs.2,26,00,000/-, made by the Assessing Officer (AO) u/s.69A of the Income Tax Act, 1961 ('the Act' for short).

4. The relevant facts for deciding this issue are, the assessee is a resident partnership firm and stated to be engaged in real estate business. For the assessment year under dispute, the assessee filed its return of income on 31.10.2018, declaring income of Rs.6,04,57,826/-. Pursuant to a survey conducted u/s. 133A of the Act, in the business premises of the assessee on 29.11.2017, assessee's case was selected for scrutiny. In course of the assessment proceeding, the A.O. observed that during the survey action, certain loose papers were found and impounded, wherein income by way of cash amounting to Rs.2,26,00,000/- was found to have been received by the assessee over and above the income recorded in the books of accounts. He further noticed that in the statement recorded in course of survey action, the assessee owned up the cash receipts as its income and also accepted the fact that such income has not been recorded in the books of account. Hence, the assessee came forward not only to record such receipts in its books of accounts, but also to offer them as 'additional income' under the head 'business and profession', in the return of income to be filed for A.Y. 2018-19. Following up with the declaration at the time of survey, the assessee offered an amount of Rs.2,50,00,000/- in the return of income furnished for the A.Y. 2018-19 under the head 'business income'. However, while completing the assessment, A.O. did not accept assessee's claim of business income and treated it as 'unexplained money' u/s. 69A of the Act and brought it to tax, at the special rate provided u/s. 115BE of the Act.

5. The assessee contested the aforesaid action of the A.O. before first appellate authority. Being convinced with the submissions of the assessee, learned first appellate authority reversed the action of the A.O. in treating the income of Rs.2,26,00,000/- as 'unexplained money' u/s. 69A of the Act.

6. Before us, learned Departmental Representative ('ld. DR' for short) strongly relied upon the observations of the A.O. Whereas, ld. Counsel appearing for the assessee relied upon the observations of learned first appellate authority. In fact, ld. Counsel for the assessee furnished a written synopsis supported by number of judicial precedents.

7. We have considered rival submissions and perused the materials available on record. We have also applied our mind to the decisions relied upon. Undoubtedly, in course of survey operation, certain loose papers were impounded revealing unaccounted income of the assessee. When the assessee was confronted with such loose papers in course of survey action, in the statement recorded, the assessee admitted the fact that the cash receipts amounting to Rs.2,26,00,000/- noted in the loose sheets are its income from business and have not been recorded in the books of accounts. The assessee further made a declaration that unrecorded receipts would be offered as 'additional income' under the head 'business' in the return of income filed for A.Y. 2018-19. This fact clearly comes out of the following question and answer in the statement recorded in course of survey action:

*Q.17 These notepads also contains details regarding cash receipts on back side of following pages:*

<i>Notepad no.</i>	<i>Back side of Page no.</i>	<i>Date</i>	<i>Amount of cash received (Rs.)</i>
5	1	29.04.2017	16,00,000
5	17	20.05.2017	5,00,000
		21.05.2017	5,00,000
5	18	22.05.2017	10,00,000
5	28	02.06.2017	11,00,000
5	37	13.06.2017	15,50,000
6	7	27.06.2017	28,50,000
6	8	28.06.2017	17,50,000
6	15	05.07.2017	17,50,000
6	17	07.07.2017	5,00,000
6	18	10.07.2017	10,00,000

6	55	04.09.2017	5,00,000
6	64	15.09.2017	5,00,000
6	72	26.09.2017	10,00,000
6	73	27.09.2017	5,00,000
6	78	04.10.2017	5,00,000
6	81	09.10.2017	15,00,000
7	31	18.10.2017	15,00,000
7	33	30.10.2017	15,00,000
7	37	15.11.2017	10,00,000
		<i>Total</i>	<i>2,26,00,000</i>

*Kindly explain the nature of these cash receipts and explain as to how these receipts are recorded in your books of accounts.*

*Ans. I have checked my books of accounts as of date and I have noticed that these receipts are not recorded in the books of accounts. It appears to be an omission on the part of the accountant. These are recordings in my hand writing intended to be recorded in the books of account, as could be seen that these are recorded in a notepad where other petty cash transaction are also noted and recorded in a notepad where other petty cash transaction are also noted and recorded in the books of accounts. Under the circumstances that these transactions have not been recorded and also to cover any other such accounting discrepancies and/or errors of omission and commission. I undertake to record these transactions and offer the additional income of Rs.2,50,00,000/- under the head of Business income of M/s. Madhu Developers, for AY 2018-19. I also undertake to pay advance tax including the advance tax as per Projected P & L and Balance sheet on 15<sup>th</sup> December, 2017 and 15<sup>th</sup> March, 2018.*

8. Thus, from the statement recorded, it is very much clear that the source of additional income offered by the assessee is from business. In fact, the A.O. has not disputed the aforesaid factual position. Keeping in perspective, the aforesaid factual position, if we examine the provision of section 69A of the Act, it can be seen that the provision has two limbs. Firstly, the assessee must be found to be the owner of any money, bullion, jewellery or other valuable article not recorded in the books of account, maintained by him for any source of income. Secondly, the assessee does not offer any explanation about the nature and source of acquisition of the said money, bullion, jewellery or other valuable article, or the explanation offered by him is not satisfactory, in the opinion of the A.O.

9. In the facts of the present appeal, even assuming that the first limb of section 69A of the Act is attracted, however, it cannot be said that the assessee has not offered any explanation regarding the nature and source of the money. Not only in course of the survey action, but subsequently the assessee has clearly stated that the unaccounted money found

at the time of survey was out of his business. Not only the A.O. has not contradicted the aforesaid claim of the assessee, but he has failed to identify any other source of income of the assessee, except business. Thus, when there is no contrary material brought on record to dispel assessee's claim that the unaccounted money is out of business, the provisions of section 69A of the Act would certainly not get attracted.

10. In view of the aforesaid, we do not find any infirmity in the decision-making process of learned first appellate authority. Consequently, we uphold the decision of learned first appellate authority by dismissing the ground.

11. In the result, the appeal is dismissed.

*Order pronounced in the open court on 27.11.2024*

Sd/-

(Amarjit Singh)  
Accountant Member

Mumbai; Dated : 27.11.2024

Sd/-

(Saktijit Dey)  
Vice President

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai