

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.3885/M/2024  
Assessment Year: 2013-14**

<b>Mr. Mahendra Tulsidas Thakker</b> 401, Divyelok, Ld Ruparel Marg, Malabar Hills, Mumbai - 400006 <b>PAN: AFAPT1192H</b>	Vs.	<b>Income Tax Officer, Int Tax Ward-4(1)(1)</b> Room No. 1729, 17 <sup>th</sup> Floor, Air India Building, Nariman Point Mumbai - 400021
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Prakash Jhunjunwala, A.R.  
Revenue by : Shri R.R. Makwana, Sr. D.R

Date of Hearing : 24.09.2024  
Date of Pronouncement : 29.11.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 25.06.2024, impugned herein, passed by the National Faceless Appeal Centre/Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

**2.** In this case, during the assessment year under consideration the Assessee has booked a property i.e. flat No.1501, 15<sup>th</sup> floor, Indiabulls BLU, Ganpatrao Kadam Marg, Bharat Mills, Mumbai-400013 for a total consideration of Rs.3,97,54,516/-, however, as alleged as per records available with the Revenue Department, it was seen by the Assessing Officer (AO) that apart from sale consideration, the Assessee has paid Rs.51,00,000/- in cash over and above the sale consideration and has not declared the same in the sale deed and therefore in order to verify vide notice dated 01.03.2022, the Assessee was show caused to explain as to why on money paid to M/s. Indiabulls Infra Society Pvt. Ltd. for purchase of the aforesaid property, should not be added back to the total income of the Assessee.

**3.** The Assessee objected to the allegations by contending that no such payments have been made by the Assessee in cash to the builder.

**4.** The AO though considered the claim of the Assessee, however, not found the same as acceptable and on considering the peculiar facts and circumstances of the case ultimately added the amount of Rs.51,00,000/- in the income of the Assessee by treating it as unexplained money under the provisions of section 69A of the Act by observing and holding as under:

*“A search and seizure operation was conducted on M/s. Indiabulls group of entities u/s 132 of the Act on 13.07.2016. In pursuance to which the M/s. Indiabulls Infra Society Ltd. filed a settlement application u/s 254(1) of the Act on 03.10.2017 disclosing certain additional income for A.Y. 2010-11 to A.Y. 2017-18 and (India bulls) admitted having received on money on sale of certain units from different customers including Mr. Mahendra Tulsidas Thakker and has not recorded in the books of account. Considering the letter dated 20.03.2020 submitted before the DCIT, Central Circle 6(4), Mumbai, it is observed that the Assessee has paid on money in cash to M/s. Indiabulls Infra Society Ltd. over and above agreement value towards purchase of*

*property under consideration, which is unexplained money and accordingly the amount of Rs.51,00,000/- is added in the income of the Assessee by treating it as unexplained money under the provisions of section 69A of the Act."*

**5.** The Assessee, being aggrieved, challenged the said addition before the Ld. Commissioner, who more or less on the same reasoning as given by the AO, ultimately affirmed the addition.

**6.** The Assessee, being aggrieved, is in appeal before us and has raised various issues including reopening of the case by issuing notice u/s 148 of the Act, however, at the time of argument of this case has not emphasized on the same and on merits the Assessee has claimed as under:

*"That during the assessment the Assessee had categorically denied of having made any onmoney to the builder. Further, the Assessee had purchased the flat on executing the registration agreement at Rs.3,97,54,516/- which is much in excess of the value adopted by the stamp value authority to the tune of Rs.2,79,42,000/-. Further, the materials found at the premise of third party and the statement of third party recorded at the back of the Assessee is not binding on the Assessee. Further, even in spite of written request, the copies of contrary material and statement of third party had not been provided to the Assessee for confrontation and opportunity of cross examination has also not been provided to the Assessee. Therefore, the addition in hand is unsustainable. Without prejudice to its right, the addition of onmoney made during the impugned year is erroneous, since the Assessee had executed the registration purchase agreement on 10.02.2016, whereas the addition has been made in the case pertaining to A.Y. 2013-14. Further, the property is co-owned by the Assessee's wife and therefore even otherwise the entire addition (100%) cannot be made in the hands of the Assessee. The Assessee in support of his claim also relied on various judgments passed by the various Hon'ble Courts".*

**7.** On the contrary, the Ld. D.R. vehemently relied on the orders passed by the authorities below. Further, the Ld. D.R. submitted that admittedly in the instant case M/s. Indiabulls Infra Society Ltd. has filed one letter as reproduced by the AO, wherein the amount of Rs.51,00,000/- has been shown as receipt of onmoney. Therefore, the addition made by the AO as affirmed by the Ld. Commissioner is

labile to affirmed by dismissing the appeal of the Assessee, as the impugned order does not require any interference.

**8.** Having heard the parties and perusing the material available on record and giving thoughtful consideration to the rival claims of of the parties following questions emerge:

- (i) *“Whether the statement/document made by/received from third party can be relied on making the addition, without giving an opportunity to contradict the same and/or the opportunity to cross examine the person who gave the statement/document”.*
- (ii) *“Whether the suo-moto disclosure made before the Settlement Commission without corroborative material /evidence can be made base for making the addition”.*

**8.1** The Hon’ble High Court of Rajasthan in the case of Commissioner of Income Tax, Central, Jaipur vs. Smt. Sunita Dhadda (2018) 100 taxmann.com 525 (Rajasthan) (31<sup>st</sup> July 2017) also dealt with the identical issue wherein the addition on account of onmoney allegedly received as appears from the document seized during the search u/s 132 of the Act from the third party’s premises has been taken a base, however, the Ld. CIT(A) and Tribunal deleted the addition after considering the peculiar facts and circumstances of the case, wherein no other corroborative evidence/material was available and the opportunity of cross examination was also not afforded to the Assessee and therefore the Hon’ble High Court affirmed the deletion of the addition made by the Tribunal by dismissing the appeal of the Revenue Department.

**8.2** It is also a fact that the aforesaid judgment in the case of Smt. Sunit Dhadda (supra) stands affirmed by the Hon’ble Apex Court in the case of Commissioner of Income Tax, Central vs.

Sunita Dhadha (2018) 100 taxman 526 (SC). Hence, on this aspect itself, the addition is unsustainable.

**8.3** We further observe that Hon'ble High court of Delhi in the case of Commissioner of Income Tax-II vs. Anil Khandelwal ITA No.247 of 2015 & ITA No.248/2015 decided on 21.04.2015 has also dealt with the identical issue wherein certain documents were seized from third party. The Assessee denied the contents of the impugned seized documents and the person from whom the impugned documents were seized as also stated during the cross examination that there has been no cash transaction between him and the Assessee or his family members or entity in which they are interested.

The Hon'ble High Court considered the aforesaid aspects and held that it is well settled law that the loose papers, diaries and documents cannot possibly be construed as books of account regularly kept in the course of business, such evidence would therefore be outside the purview of section 34 of the Evidence Act, 1972. Therefore, the Revenue would not be justified in raising its case just on the loose papers and documents found from third party if such documents contained narrations of transactions with the Assessee, as decided by the Hon'ble Supreme Court in the case of Central Bureau of Investigation vs. VC Shukla (1988) 8 SCC 410.

**8.4** On the aforesaid analyzations we are of the considered view that the statement/document made by/received from third party cannot be relied on making the addition, without giving an opportunity to contradict the same and/or the opportunity to cross examine the person who gave the statement/document. Thus, the question no. 1 is answered accordingly.

**8.5** Coming to the second question "Whether the suo-moto disclosure made before the Settlement Commission can be made base for making the addition", we observe that Hon'ble Co-ordinate Bench of the Tribunal in the case of Late Shri Sawarmal Hisaria vs. Dy. Commissioner of Income Tax, Circle-2(4) ITA No.274/M/2021 decided on 05.04.2022 has dealt with the identical issue, wherein the disclosure made by the Assessee before Income Tax Settlement Commission (in short "the ITSC") was taken into consideration for making the addition. However, the tribunal did not approve such addition.

**8.6** The Co-ordinate Bench of the Tribunal in the case ACIT vs. Smt. Renu Sehgal in ITA No.837/JP/2018 decided on 19.08.2019 has also dealt with the identical issue wherein the income was offered by making disclosure statement before the ITSC. The Tribunal by considering and following various judgments including in the case of Anantnadh Constructions & Farms (P) Ltd. vs DCIT, 166 ITD 83 by the Tribunal and in the case of Maruti Fabrics (2014) 47 taxmann.com 298 by the Hon'ble Gujarat High Court, ultimately deleted the identical addition by observing and holding as under:

*"The ITAT Mumbai Bench in the case of Anantnadh Constructions & Farms (P) Ltd. vs DCIT, 166 ITD 83 while considering the identical issue held in para 13 to 19 as under: -*

*13. We find that assessee has made declaration and filed some information before Settlement Commission admitted under section 245D of the Act and it can be used only for limited purpose for settlement of tax dispute and passing an order under section 245D(4) of the Income Tax Act and not for other purpose. The assessee has made a disclosure and such disclosure ultimately ended in settlement order under section 245D(4) of the Act. The disclosure came to the possession of AO. The fact that the disclosure made under section 245D(1) of the Act even if constructed as if no order under section 245D(4) has been*

*passed it will not give a license to the AO to use the confidential information disclosed in an annexure to the application of the Settlement Commission. If the application is treated as not admitted under 245D(1) of the Act, then the provisions are clear that confidential information can never be passed on to the AO nor can it be used in evidence against the assessee. Section 245D(4) has clearly held that admission of assessee's application under section 245(1) was incorrect. We find that any confidential information disclosed in annexure to the settlement application before Income Tax Settlement Commission can never be the basis to make the addition. We find that in the instant case, the AO has reopened the assessment under section 147. Thereafter, AO has not brought any evidence or made any inquiry that assessee has earned additional income of Rs.5 lakhs as brokerage income. In the instant case, after reopening the assessment order, the AO had not made any inquiry and not examined the material which was before him that how this income was declared by the assessee and addition has been made simply relying upon the declaration made in the application before the Settlement Commission under section 245D. The AO was in possession of the paper relating to the income but in absence of any material no addition can be made. The Hon'ble Gujarat High Court in the case of Commissioner vs. Maruti Fabrics 47 Taxmann.com 297 has held that whatever material is produced along with application by the assessee before Settlement Commission or result of inquiry held or evidence recorded by the Settlement Commission in course of proceedings before it can be used by the adjudicating authority as if same had been produced before such Central Excise Officer. Once application or proceedings before Settlement Commission fails, Central Excise Officer is required to adjudicate entire proceedings and show cause notice and Hon'ble Gujarat High Court has held as under:*

*"Considering sub-section (2) of section 32L of the Act, in a case where an order is passed by the Settlement Commission under sub-section (1) of section 32L and thereafter adjudicating authority is required to adjudicate the case, the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission or the result of inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence have been produced before such Central Excise Officer or*

*held or recorded by him in the course of the proceedings before him on fair reading of sub-section (2) of Section 32L of the Act whatever is admitted by the assessee while submitting the application before the Settlement Commission submitted under Section 32E(1) of the Act straightway cannot be said to be admission on behalf of the assessing accepting the liability. Whatever the material is produced alongwith the application and/or any material and/or other information produced by the assessee before the Settlement Commission or the result of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it can be used by the adjudicating authority as if such materials, information, inquiry and evidence has been produced before such Central Excise Officer, while adjudicating the show cause notice and the proceedings. If the contention on behalf of the appellant is accepted, in that case, there is no question of further adjudication by the Central Excise Officer with respect to the amount admitted by the assessee while submitting the application before the Settlement Commission submitted under Section 32E(1) of the Act. Once the application or proceedings before the Settlement Commission fails, the Central Excise Officer is required to adjudicate the entire proceedings and show cause notice. Under the circumstances, so far as proposed question of law No.1 is concerned, the present Tax Appeals deserve to be dismissed and are, accordingly, dismissed by answering the proposed question of law No.1 against the Revenue."*

14. *Respectfully following the same, we hold that Hon'ble Gujarat High Court's judgment in the case of Maruti Fabrics pertains to Central Excise but if we compare central excise under section 32E of the Central Excise Act this section is parallel to section 245C of the Income Tax Act. One primary condition mentioned in section 32E for filing central excise settlement petition is "a show cause notice for recovery of duty issued by Central Excise Officer has been received". In Income Tax Act section 245C requires some pendency of proceedings. The Central Excise application is allowed or rejected vide order under section 32F(1). This section is parallel to section 245D(1). Section 32L gives the powers and procedure of Central Excise Settlement Commission. This section is similar to section 245F of the Income Tax Act. Section 32L gives the powers*

*of the Settlement Commission to send the case back to the Central Excise Officer. Section 32L reads as under:*

*"32L(1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under section 32E has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the Central Excise Officer having jurisdiction who shall thereupon dispose of the case in accordance with provisions of the Act as if no application under section 32E had been made.*

*32L(2) For the purpose of sub-section (1), the Central Excise Officer shall be entitled to use all the materials and other information produced by the assessee before the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such Central Excise Officer or held or recorded by him in the course of the proceedings before him."*

*15. We find that section 245HA(1) of the income Tax Act lists several circumstances in which the case before the Settlement Commission would abate; whereas in section 32L(1) non - cooperation of the petitioner is the only ground. The Central Excise Officer derives its power its power to assess such abated proceeding vide section 32L(2) of the Central Excise Act. This is identical to powers vested with an AO under section 245HA(2) and 245HA(3) under the Income Tax Act. It is therefore very clear that the provisions of Central Excise Settlement Commission and that for Income Tax settlement Commission are identical. Therefore, the judgment of Hon'ble Gujarat High Court in the case of Maruti Fabrics although pertaining to Central Excise should be applied to cases abated under section 245HA of the Income Tax Act also.*

*16. Therefore, we are of the view that the judgment of Hon'ble Gujarat High Court is applicable to the facts of the assessee's case. We find that Hon'ble Gujarat High Court has held that if the petition filed before the Settlement Commission wherein assessee has made declaration but proves that assessee has neither earned such income nor any incriminating material was found during the search relating to undisclosed income then no addition can be made.*

17. We have also gone through the judgment of ITAT, Mumbai in the case of *Dolat Investment vs. Dy. Commissioner of Income Tax* wherein the ITAT has specifically held in para 22 which reads as under:

"22. The first issue is whether the case of the assessee for assessment year 2005-06 was admitted by the Settlement Commission under section 245D(1) of the Act?

On this issue, we have already seen that in the order dated 30-11-2007 under section 245D(4) of the Act, the Settlement Commission has clearly held that the assessee for assessment year 2005-06 does not satisfy the criteria of offering income on which at least an incometax payable should exceed Rs. 1 lakh. The Settlement Commission has further held that when admitting the petition of the assessee for assessment year 2005-06, this aspect was overlooked and that they are rectifying the apparent error by excluding assessment year 2005-06 of the assessee from the process of settlement. Thus, the case of the assessee for assessment year 2005-06 cannot be considered to have been admitted for the process of settlement under section 245D(1) of the Act. Consequently, the confidential information disclosed in the Annexure to the Settlement application could not have been used by the Assessing Officer against the assessee to make the impugned addition. Therefore, the addition to the income made by the Assessing Officer in assessment year 2005-06 which is based only on the disclosure made in the Annexure to the Settlement Commission is not valid in law. Consequently, the imposition of penalty on the basis of such invalid addition cannot be sustained. In view of the above conclusion, we do not wish to go into the other alternate argument of the learned counsel for the assessee regarding abatement of proceedings before Settlement Commission and use of confidential information disclosed by the assessee in such proceedings by the Assessing Officer in making assessment."

18. From the above decision of the Tribunal where they have discussed the section 245C(1) and section 245D(i) and 245HA by following observation:

"20. The Finance Act, 2007 made changes to the provisions for settlement of cases contained in

*Chapter XIX-A of the Income-tax Act 1961. One change involves introduction of a new concept of abatement of proceedings before the Settlement Commission for which provisions has been made in the newly inserted section 245HA relevant portion whereof reads thus : —*

*"245HA. Abatement of proceeding before Settlement Commission.— (1) where....*

*(i)an application made under section 245C on or after the 1st day of June, 2007 has been rejected under sub-section (1) of section 245D;*

*(ii )an application made under section 245C has not been allowed to be proceeded with under sub-section (2A) or further proceeded with under sub-section (2D) of section 245D;*

*(iii) an application made under section 245C has been declared as invalid under sub-section (2C) of section 245D;*

*(iv) in respect of any other application made under section 245C, an order under sub-section (4) of section 245D has not been passed within the time or period specified under sub-section (4A) of section 245D, the proceedings before the Settlement Commission shall abate on the specified date.*

*Specified date would be (i) in respect of an application referred to in sub-section (2A) or sub-section (2D), on or before the 31st day of March, 2008; (ii) in respect of an application made on or after 1st day of June, 2007 within nine months from the end of the month in which the application was made.*

*(2) Where a proceeding before the Settlement Commission abates, the Assessing Officer or as the case may be any other income-tax authority before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under section 245C had been made.*

*(3) For the purposes of sub-section (2), the Assessing Officer or as the case may be, other income-tax authority, shall be entitled to use all the material and*

*other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it, as if such material, information inquiry and evidence had been produced before the Assessing Officer or other income-tax authority or held or recorded by him in the course of the proceedings before him."*

*21. Thus, when a proceedings before the Settlement Commission abates, it reverts to the income-tax authority before whom it was pending at the time of making the application for settlement and the income-tax authority has to dispose of the case in accordance with the provisions of the Act as if no application for settlement had been made and for that purpose, it is entitled to use all the material and other information produced by the assessee before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it."*

*19. We find from the above proposition of law by Hon'ble Gujarat High Court and Tribunal that simply relying upon the declaration made before the Settlement Commission no addition can be made. In this group case, the search was conducted in the business premises of Lodha Group and subsequent to search action assessee company along with other companies of Lodha Group filed a petition under section 245C(1) of the Act before Settlement Commission. The assessee has offered additional income of Rs.5 lakhs towards the land brokerage income. This offer was made for maintainability of petition before Settlement Commission as stated in clause (i) and clause (ia) of section 245C(1) of the Act. We are of the view that after reopening of the assessment order no addition can be made on the basis of income offered by the assessee before Settlement Commission. We find that no incriminating material was found during the course of search action substantiating that assessee has actually earned undisclosed income. Therefore, just because assessee has offered additional income before Settlement Commission, no addition can be made without basis. Hence, the addition made by the AO and Ld. CIT(A) is deleted."*

*Thus the Tribunal in the said case followed the decision of Hon'ble Gujarat High Court in the case of Maruti Fabrics (2014) 47 Taxmann.com 298 wherein Hon'ble High Court held that once the application or proceedings before the Settlement Commission fails, the AO is required to adjudicate upon the entire proceedings and show cause notice. In the case in hand, in the absence of any material much less the incriminating material, no addition can be made on the basis of income offered in the application u/s 245C(1) which was rejected by the Settlement Commission. Accordingly, the enhancement made by the ld. CIT(A) is deleted.”*

**8.7** We further observe that Co-ordinate Bench of the Tribunal at Jaipur in the aforesaid case i.e. ACIT vs. Smt. Renu Sehgal in ITA No.837/JP/2018 decided on 19.08.2019 by considering the identical issue has ultimately held that addition made merely on the basis of suo-moto disclosure made by the Assessee before the ITSC, is not sustainable in the eyes of law.

**8.8** Therefore on the aforesaid analyzations and discussions, we are of the considered view that the suo-moto disclosure made before the Settlement Commission without corroborative material/evidence cannot be made base for making the addition. Hence the question no.2 is answered accordingly.

**8.9** Coming to the instant case, we observe that admittedly except a letter dated 20.03.2020 filed before the DCIT, Central Circle-6(4)/Settlement Commission; there is no other corroborative material/documents for making and sustaining the addition in hand. Even otherwise, no opportunity was given by the AO or the Ld. Commissioner to the Assessee to cross examine the person who gave the statement/made disclosure/issued the letter as relied on for making the addition. Hence, respectfully following the judgments referred to above and the peculiar facts and circumstances of the case in our considered view the addition in hand is unsustainable, hence the same is deleted.

9. In the result, the appeal filed by the Assessee is allowed.

**Order pronounced in the open court on 29.11.2024.**

**Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.