

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH MUMBAI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 5510 to 5515/MUM/2024
Assessment Year: 2014-15 to 2019-20

Beachwood Properties Pvt. Ltd., Commerz, 3 rd Floor, International Business Park, Oberoi Garden City, Off. Western Express Highway, Goregaon (East), Mumbai – 400 063 (PAN : AABCB1399P)	Vs.	Deputy Commissioner of Income Tax, Central Circle 4(1) Mumbai
(Assessee)		(Respondent)

Present for:

Assessee : Shri Vijay Mehta, CA and
Shri K.S. Karthikeyan
Revenue : Shri Kailash C. Kanojiya, CIT DR

Date of Hearing : 09.12.2024
Date of Pronouncement : 11.12.2024

ORDER

PER BENCH:

These six appeals filed by assessee are against the orders of Ld.
CIT(A)-52, Mumbai vide order nos.

- i) ITBA/APL/S/250/2024-25/1067940238(1)
- ii) ITBA/APL/S/250/2024-25/1067940320(1)
- iii) ITBA/APL/S/250/2024-25/1067940364(1)
- iv) ITBA/APL/S/250/2024-25/1067940436(1)
- v) ITBA/APL/S/250/2024-25/1067940485(1)

vi) ITBA/APL/S/250/2024-25/1067940541(1)

all dated 23.08.2024, passed against the assessment orders by the Assistant Commissioner of Income Tax, Central Circle-4(1), Mumbai, u/s. 153C r.w.s.143(3) of the Income-tax Act (hereinafter referred to as the "Act"), dated 28.03.2022 for Assessment Years 2014-15 to 2019-20.

2. This is a bunch of six appeals, wherein common issue is involved except for variation in the amount of addition made in each of the years. Since common issue is involved, we take up all these appeals together for adjudication by passing this consolidated order. The lead case for appreciating facts is taken as ITA No.5510/Mum/2024 for AY 2014-15. The common issue involved is in respect of addition made u/s.69C for expenditure incurred in cash based on certain entries appearing in loose paper, rough diaries, sheets, etc., referred to as seized material found during the course of search at the premises of one of the group company of the assessee. Assessee in the present case is "*other person*" as referred to in section 153C and the impugned assessments have been completed by passing orders u/s.153C r.w.s. 143(3) of the Act.

3. Brief facts of the case are that, assessee filed its original return of income on 24.09.2014 reporting total income at Rs.30,08,290/-. Subsequently, a search and seizure action was undertaken on 20.08.2019 u/s. 132 of the Act in the case of Oberoi Realty Ltd. and its related/associated entities commonly referred to as Oberoi Realty Group. Owing to this search, certain incriminating material was found and seized, which according to the ld. Assessing Officer was pertaining to the assessee. Accordingly, notice u/s. 153C was issued on the assessee in response to which return of income was filed on 11.03.2021 reporting total income at Rs.30,08,290/-. A show-cause notice was issued on 08.03.2022 to explain the documents seized from the group.

Assessee made its submissions. After the analysis of data on record and based on statements recorded during the course of search, Department itself classified the nature of transaction and did its quantification which is extracted from the impugned assessment order for ease of reference.

“10.5 Representative data and its analysis

It must be borne in mind that the process to arrive at the final dataset (CTE-database) for analysis was extremely time consuming, tedious and difficult since it involved many steps and processes, as narrated above, as well as weeding out duplicate/multiply entries and dumb documents/entries and/or other entries which could not be understood/interpreted.

Once the representative data D. 27 identified CTE-bases /processed data) from 01.04.2009 onwards was available after removing all duplicates etc. to the extent possible. was analyzed by adopting a differential approach for cash payments and cash receipts. with the objective of arriving at the quantum of total cash transaction on the basis of nature/ head of such cash receipt and/or payment as well as its financial-year, for a clearer picture. Analysis of data was done by adopting a differential approach for cash receipts and cash payments with the help of MS Excel Pivot-tables which helped in 'summarizing and classifying the data

10.6 Cash Receipts

For cash receipts, all entries were sorted date-wise and duplicates were identified as 'duplicates' while other entries were considered as original Only the entries which were treated as 'original were considered in data summation, while the entries treated as "duplicates were 'net considered ile ignored. Further analysis of cash receipts also revealed that data entries could be broadly classified into the following "nature or head for each financial year-

- a Concession/Discount*
- b. Car parking*
- c. Sale of scrap*
- d. Miscellaneous/ Other receipts*

10.7 Cash Payments

Similar to the approach adopted for cash receipts, only data entries of cash transactions which were treated as 'originals were considered while those treated as 'duplicates were 'not-considered in final summation process. Also, these data entries could also be classified into the following 'heads' for each financial year -

- a. Project Expenses/Payments*
- b. Personal Expenses*

- c. Vikas Oberoi Expenses
- d. Gayatri Oberoi Expenses
- e. Bindu Oberoi Expenses
- f. Santosh Oberoi Expenses

10.8 Quantification of Cash Transaction Entries

The quantification of cash transactions has been done, on the basis of cash transaction entries which were found recorded on the identified 27 CTEBs as well as statements of various persons recorded during search/survey proceedings, broadly under the head - cash receipts and cash payments.

10.9 Cash Payments

The cash payments have been bifurcated into two heads-one those relating to business entities of Oberoi Realty Group and the other relating to the personal expenses of the members of Shri Vikas Oberoi, promoter-director of ORL

10.9.1 Cash Payments of Business-entities of Oberoi Realty Group

Such cash payments have been tabulated as under -

Table 10—10: Entity-wise cash payments for Oberoi Realty Group entities

2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	Entity-wise Total	ORL	ORL	ORL	Grand Total
		2,000										2,000	47,909	7,050	9,76,068	10,33,027
2010-11													3,34,212	8,850	5,66,123	9,11,185
2011-12			3,250										1,42,424	3,800	20,07,852	21,59,076
2012-13	2013-14	45,988	6,040	704									80,666	13,853	19,47,240	20,74,491
2013-14	2014-15	44,268	42,268	2,727	8,865								3,67,947	13,751	20,85,438	25,65,764
2014-15	2015-16	44,925	5,33,472	58,555	24,425								4,62,250	13,250	50,05,976	61,52,853
2015-16	2016-17	15,702	3,50,615	3,72,570	760								7,52,306	13,700	16,68,465	31,24,118
2016-17	2017-18	3,635	1,77,446	11,130	11,495								2,34,506	22,660	27,11,606	31,23,428
2017-18	2018-19	8,000	2,66,750	2,940	5,000								1,34,666	11,846	9,71,846	14,01,048
2018-19	2019-20	67,000	1,23,396	2,800	19,400								2,39,857	59,000	16,79,624	21,91,077
2019-20	2020-21	11,200	1,45,650										1,08,315	5,400	16,84,429	18,54,994
		2,46,468	16,45,637	6,64,926	70,195								18,85,058	1,73,160	2,13,02,667	2,67,90,111
		2,46,46,800	16,45,63,700	6,64,92,600	70,19,500								18,85,90,800	1,73,16,000	2,13,02,66,700	2,67,90,11,100

NB: * two 'zeros' added to the 'Entity-wise Total' figure on right-side to arrive at Grand Total

3.1. From the above extraction, it is noted that Department had adopted a differential approach for cash payments and cash receipts after removing the duplicates to the extent possible with the objective of arriving at quantum of total cash transaction. In respect of cash receipts, the nature of the same was broadly classified into concession/discount, car parking, sale of scrap and miscellaneous other receipts. Similarly, nature of cash payments was also classified

into six different nature of expenses as project expenses, personal expenses, Vivek Oberoi expenses, Gayatri Oberoi expenses, Bindu Oberoi expenses and Santosh Oberoi expenses. Finally, a summary of entity wise cash payments of the group was tabulated and the 3rd column in the above table so extracted represents cash payments relating to the assessee for the years under consideration before the Tribunal.

3.2. In response to the above analysis of data and seized material done by the Department, assessee submitted before the ld. Assessing Officer that the notings in the seized material were recorded by the junior staff of the searched person in various loose papers or diaries. The searched person, i.e., Oberoi Realty Ltd. and its group entities along with Mr. Vikas Oberoi had filed application before the, the then Settlement Commission, wherein receipt and payment entries reflected in the seized material had been considered for calculating the additional tax in the hands of Mr. Vikas Oberoi. Accordingly, it was submitted that the source of cash expenditure of Rs. 44,76,800/- for AY 2014-15 has already been offered for taxation.

3.3. Ld. Assessing Officer, upon considering this submission by the assessee noted that matter was pending before the Settlement Commission and therefore waiver, as claimed by the assessee cannot be granted until its final disposal. He noted that the impugned assessment order will be amenable to rectification as deemed fit based on ruling of Settlement Commission as and when it becomes available. Ld. Assessing Officer thus, proceeded to complete the assessment by not accepting the contentions raised by the assessee. He further observed that, assessee had not furnished details on nature and purpose behind the expenditure incurred. Thus, according to him since

assessee had failed to explain the nature and character of the said payments, the said sum of Rs.44,76,800/- was treated as unexplained expenditure u/s.69C and was added to the total income of the assessee. Aggrieved, assessee went in appeal before the Id. CIT(A).

4. Before CIT(A), it was submitted that, subsequent to the impugned assessment order, Interim Board for Settlement (IBS, erstwhile Settlement Commission) had passed a settlement order, dated 28.04.2023, wherein notings made against the assessee were considered. To demonstrate its case, references were made to the application along with annexures thereto, made before the Settlement Commission by Mr. Vikas Oberoi, details of which are elaborated below:

- i) Mr. Vikas Oberoi is the Managing Director/Director in the following Oberoi Realty Group of companies which also includes the assessee company wherein he is a Director and holds 99.01% shares.

<i>Sr, No.</i>	<i>Name of Entity</i>	<i>Designation</i>	<i>% of shareholding</i>
1	<i>Oberoi Realty Limited</i>	<i>Managing Director</i>	58.54
2	<i>Expressions Realty Private Limited</i>	<i>Director</i>	-
	<i>Kingston Property Services Limited</i>	<i>Director</i>	-
4	<i>Oberoi Constructions Limited</i>	<i>Managing Director</i>	.
5	<i>Integrus Realty Private Limited</i>	<i>Director</i>	-
6	<i>Incline Realty Private Limited</i>	<i>Director</i>	-
7	<i>l-Ven Realty Limited</i>	<i>Director</i>	50.00
8	<i>Shrivatsa Realty Private Limited</i>	<i>Director</i>	-

9	<i>Siddhivinayak Realties Private Limited</i>	<i>Director</i>	-
10	<i>Arrow Flight Services Private Limited</i>	<i>Director</i>	-
11	<i>Beachwood Properties Private Limited</i>	<i>Director</i>	99.01
12	<i>Oberoi Estates Private Limited</i>	<i>Director</i>	40.00
13	<i>R. S. Estate Developers Private Limited</i>	<i>Director</i>	99.99
14	<i>Evenstar Realty Private Limited</i>	<i>Director</i>	99.90

- ii) In respect of expenditure incurred by Mr. Vikas Oberoi including personal expenditure of his family members, year wise details of such expenditure were furnished. In this respect, it was submitted amongst other things that entries which contain name “*Beach Wood Properties Pvt. Ltd.*” have also been considered as expenditure of Mr. Vikas Oberoi. The details are tabulated as under:

<i>Sr. No.</i>	<i>A. Y.</i>	<i>Amounts (in Rs.)</i>
1	2010-11	57,86,700
2	2011-12	2,40,54,900
3	2012-13	1,03,28,600
4	2013-14	1,77,01,800
5	2014-15	1,72,56,300
6	2015-16	1,83,89,100
7	2016-17	1,56,15,400
8	2017-18	1,08,72,400
9	2018-19	53,97,500
10	2019-20	1,35,22,200

11	2020-21	29,87,200
	Total	14,19,12,100

iii) Details of personal expenditure were furnished by him including that of the assessee company which is tabulated below:

Sr. No.	A.V.	Bindu Oberoi	Gayatri Oberoi	Santosrt Oberoi	Vikas Oberoi	BPPL	Total
1	2010-11	-	28,85,000	5,00,000	24,01,700	-	57,86,700
2	2011-12		65,65,800	56,09,500	1,16,79,600	2,00,000	2,40,54,900
3	2012-13		50,13,200	15,00,000	34,90,400	3,25,000	1,03,28,600
4	2013-14	17,300	24,76,600	23,84,600	82,24,500	45,98,800	1,77,01,800
5	2014-15	6,68,700	32,68,400	23,17,000	65,25,400	44,76,800	1,72,56,300
6	2015-16	2,79,000	24,98,000	28,34,800	82,84,800	44,92,500	1,83,89,100
7	2016-17	10,500	4,00,100	46,31,400	90,03,200	15,70,200	1,56,15,400
8	2017-18	40,000	8,17,200	30,38,900	66,12,800	3,63,500	1,08,72,400
9	2018-19	-	1,35,800	17,15,400	27,46,300	8,00,000	53,97,500
10	2019-20	-	12,28,500	19,51,000	36,42,700	67,00,000	1,35,22,200
11	2020-21	-	1,01,900	9,03,000	8,62,300	11,20,000	29,87,200
	Total	10,15,500	2,53,90,500	2,73,85,600	6,34,73,700	2,46,46,800	14,19,12,100

iv) In the above table, column “BPPL” represents the cash payments in respect of the assessee and for items at Sr. No.5 to 10 for AY 2014-15 to 2019-20 represents that of the assessee in appeal before the Tribunal. In this respect, summary of cash flow for each of the Assessment was also furnished, one for AY 2014-15 is reproduced as under:

A.Y. 2014-2015 (From 01-04-2013 To 31-03-2014)	
Receipts	Payments

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
<i>Opening Balance</i>		<i>2,60,20,500</i>			
<i>On Money</i>			<i>Expenditure</i>		<i>-</i>
<i>Oberoi Realty Limited</i>		<i>30,00,000</i>	<i>Project Expenditure</i>	<i>13,15,94,000</i>	
			<i>Vikas Oberoi</i>	<i>1,72,56,300</i>	<i>14,88,50,300</i>
<i>Scrap</i>					
<i>Oberoi Realty Limited</i>		<i>2,50,000</i>			
<i>Loan Receipts</i>		<i>26,71,50,000</i>	<i>Loan Repayment</i>		<i>11,80,05,600</i>
			<i>Closing Balance</i>		<i>2,95,64,600</i>
<i>Total</i>		<i>29,64,20,500</i>	<i>Total</i>		<i>29,64,20,500</i>

4.1. In the report, under Rule 9 of the Income Tax Settlement Commission (Procedure) Rules of Mr. Vikas Oberoi, the stand of the Department was that the source of these cash payments remained unexplained and also the nature of payments could not be explained. Therefore, the entire cash payments had to be taken as the income of the applicant, i.e. Mr. Vikas Oberoi. Relevant portion from the order of Interim Board of Settlement, passed u/s. 245D(4) in the case of Oberoi Group of cases, dated 28.04.2023 are placed in the paper book before us, where from it was pointed out as to how the impugned additions made in respect of unexplained cash expenditure have been duly considered in the said order. In para 5.2.3.2, relating to response of the

applicant in Rule 9A report, specific mention of assessee company is made by stating that *“this also shows that the source of cash expenditure incurred by the applicant including personal expenditure of his family members and of Beachwood Properties Pvt. Ltd. (BPPL) is explained out of additional income offered by the applicant”*. The ld. IBS, thus concluded in para 5.2.3.3. that the applicant had explained the source of personal expenses, cash found during the course of search to be out of additional income disclosed by the applicant in his cash flow statement. Therefore, no further addition is called for. Thus, no adverse inference was drawn and accordingly, no addition was called for in this account. Assessee had furnished this order of IBS before the ld. CIT(A), who after considering the same, observed that conclusion of IBS is applicable only for the parties who had filed petition before it. According to him, since assessee company is not one of them and therefore explanation for the cash expenditure does not apply on it to delete the addition made by the ld. Assessing Officer. He thus, sustained the addition so made. Aggrieved, assessee is in appeal before the Tribunal.

5. Before us, ld. Counsel for the assessee reiterated the facts discussed in detail as stated above and therefore not repeated for the sake of brevity. Admittedly, it is a fact on record that the alleged cash expenditure added in the hands of the assessee have been considered by ld. IBS while accepting the application made by Mr. Vikas Oberoi, who is a Director of assessee company, holding 99.01% shares. In the order so passed by the ld. IBS, specific mention of the assessee company is stated in respect of alleged cash expenditure transactions taken from the notings of loose papers, diaries, etc., found and seized in the course of search of Oberoi Realty Group. Also, it is a fact on record that the classification of notings from the seized material to arrive at the alleged cash payments and receipts for making the addition was done by the

Department on its own analysis, which was put up before the assessee for explanation as to its nature and source. Commonality of the source was explained by the assessee through the submissions made before the Settlement Commission (IBS) by accepting the same as his own personal expenses by Mr. Vikas Oberoi, which was eventually accepted by ld. IBS in its order. The nature and source of these un-explained cash expenditure were explained through cash flow statement which was furnished and formed part of the application made before IBS.

5.1.. Ld. Counsel placed reliance on the order of Coordinate Bench in the case of Wadhwa Construction and Infrastructure Ltd. in ITA No. 584 & 585/Mum/2022, dated 21.09.2022, wherein on a similar set of facts and circumstances, Revenue's appeal for addition made u/s.69C was dismissed.

6. Per contra, ld. CIT DR submitted that assessee has not explained the nature and source of the unexplained cash expenditure for which addition have been made, as assessee is not a party in the application made before the Settlement Commission and subsequently order passed by ld. IBS and therefore placed reliance on the order of the ld. CIT(A) to sustain the addition so made.

7. It is worth noting a fact that the impugned assessment has been completed u/s. 153C r.w.s. 143(3) as assessee is not a searched person but "other person" as contained in section 153C of the Act. Mr. Vikas Oberoi is a searched person who has accepted the impugned transaction as his personal expenses and went into settlement before the ld. Settlement Commission, explaining the nature and source thereof, which has been accepted in the order passed by IBS u/s. 245D(4). It is also important to note that ld. AO himself in the impugned

order has taken note of the application made before the Settlement Commission by Mr. Vikas Oberoi in respect of the impugned additions and noted that the said order shall be amenable to rectification as deemed fit, once the final order is passed against the application made before the Settlement Commission. These facts in itself substantiate the submissions made by the ld. Counsel for the assessee to delete the additions so made.

8. We have carefully perused the relevant extracts from the order of the ld. IBS placed in the paper book along with the contents of application made by Mr. Vikas Oberoi before the Settlement Commission. We find that the source from which the unaccounted expenditure was incurred has already been considered and taxed in the hands of Mr. Vikas Oberoi, the Director and substantial share holder of the assessee company as held in the settlement order. The notings of undisclosed expenditure had been fully explained by furnishing the cash flow statement which has been accepted by the ld. IBS. Thus, we note that cash receipt was offered to tax and out of that cash receipt, cash expenditure was noted. Addition of such cash expenditure in the hands of the assessee would tantamount to double taxation, firstly as cash income in the hands of Mr. Vikas Oberoi in the settlement proceedings and again in the hands of the assessee as cash expenditure. We are of considered view that, once the source of cash is taxed, it cannot be further taxed as unexplained cash expenditure. The issue regarding addition of unexplained expenditure in the hands of assessee is squarely covered and considered by the order of ld. IBS while disposing the settlement application of Mr. Vikas Oberoil wherein ld. IBS has accepted the explanation on the source of unexplained expenditure.

8.1. Considering the facts and circumstance of the case and the discussion made above, we delete the addition made in the hands of the assessee u/s. 69C for cash payments, treated by the ld. Assessing officer as unexplained expenditure. Accordingly, grounds taken by the assessee in this respect are allowed.

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

10. Since, identical issue is involved in all other remaining five appeals, except for variation of quantum of addition, our observations and findings in ITA No.5510/Mum/2024 applies mutatis mutandis to the remaining five appeals. Thus, these five appeals are also allowed.

11. In the result, all the six appeals of the assessee are allowed.

Order is pronounced in the open court on 11 December, 2024

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 11 December, 2024

MP, Sr.P.S.

Copy to :

- 1 The Assessee
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai