

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

I.T.A. No. 4727/Mum/2011
(Assessment Year: 2007-08)

I.T.A. No. 8070/Mum/2011
(Assessment Year: 2008-09)

M/s Dev Sharda Developers P. Ltd. Office No.2, Laxmi Nivas No.5, Chandavarkar Lane, Borivali (W), Mumbai-400092. PAN : AABCD4640B	Vs.	ITO, Ward-9(1)(3), Room No. 223, 2 nd Floor, Aayakar Bhavan, M.K. Rod, Mumbai-400020.
Appellant)	:	Respondent)

I.T.A. No. 256/Mum/2020
(Assessment Year: 2007-08)

I.T.A. No. 257/Mum/2020
(Assessment Year: 2007-08)

Devshardha Developers P. Ltd. Shop No.2, Laxmi Nivas No.5, Dattani Trade Centre, Chandavarkar Road, Borivali (W), Mumbai-400092. PAN : AABCD4640B	Vs.	ITO, Ward-9(1)(3), Aayakar Bhavan, M.K. Rod, Mumbai-400020.
Appellant)	:	Respondent)

Appellant /Assessee by : Shri Kiran Mehta, AR

Revenue / Respondent by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 25.11.2024

Date of Pronouncement : 05.12.2024

ORDER**Per Padmavathy S, AM:**

These appeals in ITA No.4727 & 8070/Mum./2011 by the assessee are arising out of separate orders of the Commissioner of Income Tax (Appeals) – 19, Mumbai ("the CIT(A)" in short) dated 30.03.2011 for Assessment Year (AY) 2007-08, dated 19.10.2011 for AY 2008-09 which orders are against the order under section 143(3) of the Income Tax Act, 1961 (the Act). The appeals in ITA No.256 & 257/Mum./2011 are arising out of the separate orders of CIT(A) both dated 24.09.2019 for AY 2007-08 and AY 2008-09.

ITA No.4727/Mum./2011

2. The assessee is a company engaged in the business of Land Development, construction works as developers, contractors, builders, agents, estate agents etc. The assessee filed the return of income for AY 2007-08 on 15.05.2008 declaring a total income of Rs.49,730. The case was selected for scrutiny and the statutory notices were duly served on the assessee. There was a survey action conducted in assessee's case by the office of the DGIT(Inv) on 30.06.2008 and the assessee during course of survey has offered Rs.75,00,000 lakhs as income for AY 2009-10. Based on the information received from DGIT(Inv) on the basis of materials impounded during survey, the Assessing Officer (AO) raised queries for the year under consideration. After perusing the details submitted by the assessee, the AO made the following additions which are confirmed by the CIT(A).

Ground No.	Issue Involved	Addition made (Rs.)
2(1)	Payments aggregating Rs. 75,00,000 paid to Mr. Kishore Gulati for Silver Project held to be unexplained in terms	75,00,000

	of section 69C	
2(ii)	Payments aggregating Rs. 60,00,000 paid to Mr. Kishore Gulati for Shanti Doot Project held to be unexplained in terms of section 69C	60,00,000
3	Addition in respect of entries of transactions with Shri Ramjibhai added u/s 69A	450,000
4	Addition in relation to transactions with Devji Dholu made u/s 69C	21,00,000
5	Addition of interest paid to Nanjibhai u/s 69C/40(a)(ia)	20,300
6	Addition made u/s 69A in respect of noting of transactions with Nanjibhai	600,000
7	Addition made u/s 69A/69C in respect of noting for payments made/loans given received	2,22,700
8	Addition u/s 69C in respect of brokerage and labour charges paid for Kent Garden Flats	221,000
9	Loan given to Devram Mama and interest thereon	50,000 26,580
10	Addition made u/s 69A	51,000

Addition of Rs. 1,35,00,000, under section 69C of the Act

3. From the impounded book/documents during the course of Survey, the AO observed that the assessee has made cash payments totaling to Rs.75,00,000 on various dates from 01/11/2006 to 04/12/2006 to Mr.Kishore Gulati for the project Silver Co- operative Housing Society. It was also observed from the impounded documents that the assessee has made cash payments totaling to Rs.75,00,000 to Mr. Kishore Gulati on various dates from 24/06/2006 to 09/04/2007 for the project Shantidoot Co-operative Housing Society. During the assessment proceedings, the assessee was asked to explain the aforesaid notings found in the impounded documents from its premises. In response thereto, the assessee submitted that the payments made to Mr. Kishore Gulati for the aforesaid 2 projects are the same for the reason that the Silver Co-operative Housing Society project did not materialize

and the said money was transferred to the Shantidoot Co-operative Housing Society project. The AO did not accept the submissions of the assessee and held that the reply of the assessee is not substantiated by any form of evidence or entry in the books/diary. The AO further held that from the perusal of the dates on which payments have been made to Mr. Kishore Gulati, it is evident that the proposal for the Shantidoot Co-operative Housing Society project was floated before the proposal for the Silver Co-operative Housing Society project. The AO further held that from the date of payment made to Mr. Kishore Gulati it is very clear that payment for both projects have been made simultaneously. The AO also held that the claim that the payment towards project Shantidoot Co-operative Housing Society is out of the funds diverted from project Silver Co-operative Housing Society is not evidenced by the assessee. Since the assessee could not explain the source of payment, the AO made the addition of Rs.1,35,00,000 i.e.75,00,000 + Rs.60,00,000 under section 69C of the Act. As regards the amount of Rs.15 lakh falling in the financial year 2007-08, the same was considered for disallowance and addition to the income of the assessee in the assessment year 2008-09.

4. Aggrieved, the assessee filed further appeal before the CIT(A). Before the CIT(A), the assessee submitted that addition made by the AO is part of the amount of Rs.75,00,000 admitted by the assessee during the course of survey, and the addition made now in the year under consideration amounts to double addition. The CIT(A) in this regard called for a remand report from the AO. In its remand report dated 15/02/2011, the AO considered the impounded documents and objected to the cash book prepared and submitted by the assessee. As per the AO, the Cash book now prepared and submitted is only an afterthought as the transaction in question was never recorded in any statement of accounts and therefore of doubtful veracity. The AO disagreed with the submission of the

assessee that the cash of Rs.75 lakh was received from various flat owners from Charkop Shantidoot Building No.1 on the basis that the sale of Charkop Shantidoot Building has been made over a period of time. The CIT(A) accordingly dismissed the grounds raised by the assessee on the impugned issue by holding that –

“6.I have considered the facts of the case the findings of the A.O., the Remand Report, and also the contentions, as raised by the appellant company. I have also perused the impounded material/documents. As stated by the A.O., there are notings by hand, of cash payments having been made in the impounded material on different pages of the notebooks. The appellant has sought to explain stating that the entire on money routed is only Rs. 75,00,000/- which was derived from the sale of flats of the Charkop Project. It is further stated that initially the on money was paid for the Silver Co-operative Hsg. Soc. Project but since the project did not materialize it was diverted for the Shantidoot Project. In this regard I have to state that I am in agreement with the findings of the A.O. that as per the impounded material it cannot be stated with any amount of certainty that sum of Rs. 75,00,000/- was derived from Charkop Hsg. Project and it is this sum alone which was routed between the two projects. Even from the dates as mentioned on which the on money payments were made it can be seen that no conclusions can be drawn with any amount of certainty. It is also reckoned that the appellant had been in land development and construction business in earlier years and the claim made that Rs. 75,00,000/- was generated from sale of Charkop Project Flats and it was this sum that was in rotation is simply not acceptable not being verifiable, for the simple reason that the sum denotes cash generated outside the books of accounts. Therefore, the explanation as regarding the source is bereft of any acceptable evidence. In the said circumstance the addition of Rs. 1,35,00,000/- stands confirmed.”

5. The Id AR made detailed argument and also made written submissions which have been taken on record. The submissions of the Id AR are summarized as under –

(i) That the AO has not considered the fact that the addition made for the year under consideration is part of Rs.75,00,000 already offered to tax for AY 2009-10 as declared during the course of survey

(ii) That the coordinate bench of the Tribunal in assessee's own case for AY 2004-05 & Ay 2005-06, has held that the amount declared during the course of survey i.e.Rs.75,00,000 is offered towards the "on money" payments received for various AYs and this substantiates that the addition made for the year under consideration is also part of the amount declared during survey.

(iii) That the AO failed to consider the submission that the amount of Rs.75,00,000 given to Mr.Kishore Gulati towards project Silver Co- operative Housing Society is diverted to Shantidoot Co-operative Housing Society project and therefore making a separate addition for the two payments is incorrect.

(v) That the income declared during survey is the source for payments to Mr.Kishore Gulati and therefore no addition is warranted.

6. The ld DR on the other hand vehemently argued that the various claims made by the assessee with regard to the payments made to Mr.Kishore Gulati is unsubstantiated and are without any documentary evidence. The ld DR further submitted that the assessee has prepared a cash as an afterthought during remand proceedings and the AO has rightly rejected the same since the entries in the cash book are also not supported by any documents. The ld DR further submitted that the income declared during the course of survey which is offered to tax in AY 200-10 cannot be the source for payments made in earlier AYs. Accordingly the AO supported the orders of the lower authorities.

7. We heard the parties and perused the material on record. From the materials impounded during the course of survey, the AO noticed 2 sets of payments of Rs.75,00,000 each i.e. from 01/11/2006 to 04/12/2006 and from 24/06/2006 to 09/04/2007. These payments as per the materials impounded are stated to be made

towards two different projects, project Silver Co- operative Housing Society and project Shantidoot Co-operative Housing Society. Both these payments are made to one Mr.Kishore Gulati. The contention of assessee is that there only one Rs.75,00,000 which is diverted from project Silver Co- operative Housing Society to project Shantidoot Co-operative Housing Society and therefore there cannot be two additions. Further the assessee claims that the amount is already declared and offered to tax for AY 2009-10 as part of survey proceedings. During the course of hearing the ld AR also submitted that impounded materials are in Gujarati and that the AO has made addition without considering the translated version of the notings. We notice from the perusal of records that the assessee has not brought any new material on record to substantiate the claim that the same amount of Rs.75,00,000 has been diverted from one project to another. Further the cash book submitted before the AO during remand proceedings cannot be considered as evidence without any underlying documents in support of the entries made in the cash book. Therefore these contentions of the assessee in our view do not have any merits and cannot be accepted without any evidences to substantiate. The AO in the order under section has recorded the claim of the assessee that the income offered during the survey proceedings are part of the addition now made by the AO for the year under consideration. However it is noticed that the lower authorities have not recorded any specific adverse findings in this regard. Further, it is also not coming out clearly from the orders of the lower authorities, whether the translated versions of notings in Gujarati was perused while making the additions. In view of these facts we are of the considered view that the issue should be remitted back to the AO for the limited purpose of examining whether the entries basis which the additions are made are part of the income offered to tax in AY 2009-10. The AO in this regard is directed to consider the translated version of the entries and call for any other details as may be required. The assessee is directed to submit the relevant

documents and cooperate with the assessment proceedings. It is ordered accordingly.

Addition of Rs.4,50,000 as unexplained money under section 69A of the Act

8. The AO noticed from the impounded documents, that the assessee has given loan of Rs.4,50,000 on 07/11/2006 and 28/11/2006 in cash and received the same in cash on 12/01/2007. In absence of an explanation regarding the source of money and since the amount was not recorded in the books of accounts, the AO treated the sum of Rs.4,50,000 as "unexplained money" under section 69A of the Act. In the absence of any supporting evidences the CIT(A) dismissed the appeal filed by the assessee on this issue by observing as under:-

“7.1 In this regard it is the explanation of the appellant that the said sums represents money received from Ramajibhai to whom money used to be kept for safe keeping purposes. It is further stated that this is the same money that was given to Kishorbhai Gulati for the Silver Project. I am unable to accept the said explanation of the appellant. As stated by the A.O. in the Remand Report these are transactions which were never recorded in any statement of accounts, and the explanation that the amounts represents money kept for safe keeping with a trusted person, which was made use of for the payments of Rs. 75,00,000/- for the Silver Project and hence is not a loan advanced and taken back is absolutely unverifiable and to be rejected. The addition of Rs. 4,50,000/- stands confirmed.”

9. We heard the parties and perused the material on record. The argument of the ld AR with regard to this addition is that the impugned loan is first given by the assessee on 07.11.2006 Rs.2,50,000 and Rs.2,00,000 on 20.11.2006 which was subsequently returned. Therefore the ld AR argued that the addition cannot be made under section 69A of the Act. However the ld AR did not bring any material such as confirmation from the party, ledger copies etc., in support of the claim that the source for the loan given by the assessee is explained. Further we notice that in the CIT(A) after considering

the submissions of the assessee, and the remand report filed by the AO has dismissed the appeal filed by the assessee on this issue. In the absence of any contradictory material being brought on record, we are of the considered view that the order passed by the CIT(A) requires no interference and, therefore, is upheld.

Addition of Rs.21,00,000 as unexplained expenditure under section 69C

10. During the assessment proceedings, from the impounded documents the AO noticed two entries one on 07.11.2006 for Rs.15,00,000 as given to Mr.Devram Doulhe and Rs. 6 lakh on 14/11/2006, to an unnamed person. The AO also noted that the said transaction was executed in cash. In absence of any explanation by the assessee regarding the source, nature of the expense, and the identity of the person to whom the said money is given, the AO made the addition of Rs.21 lakh by considering the same as "unexplained expenditure" under section 69C of the Act. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue, by observing as under:-

“8.21 am in agreement with the finding of the A.O. As per the notings in page 103 of Annexure A1 which has been examined by me it has been noticed that the sum of Rs. 21,00,000/- is written as representing "on payments". In the said circumstances the explanation now put forth by the appellant the said sums represent amounts received back from Devram Dholu, which were kept with him for safe keeping is not acceptable, being totally unsupported by any tangible evidence. The addition as made under s. 69C stands sustained.”

11. We heard the parties and perused the material on record. The contention of the ld AR before us is that the impugned amount was not claimed as an expenditure by the assessee and that therefore no addition can be made under section 69C of the Act. Further the ld AR contended that the impugned amount is

received from Mr.Devram Doulhe and not given by the assessee as held by the AO and that this fact is evidenced from the statement recorded from the son of Mr.Devram Doulhe. Before us, the ld AR did not bring any material on record to explain the source or the nature of entries, confirmation from parties etc. The contention that the addition could not have been made under section 69C on the basis that the assessee has not claimed any deduction remains unsubstantiated. In view of these facts in our considered view, we see no infirmity in the order of the CIT(A) in confirming the addition made by the AO.

Addition of Rs.6,00,000 under section 69A and Rs.20,300 under section 40(a)(ia) of the Act

12. During the course of assessment proceedings, the AO noticed the following entries from the impounded materials

03	24.11.2006	2,00,000	Taken on interest @ 1.5%
		1,00,000	Paid to Mr,Dharamsi out of the above
		20,300	Interest paid
04	17.07.2007	2,00,000	Amount taken from Nanjibhai
05	17.07.2007	4,00,000	Amount taken from Nanjibhai

13. Since the assessee did not provide any satisfactory explanation for above transactions made in cash, the AO treated the sum of Rs.6,00,000 as addition under section 69A of the Act. The amount of Rs.2,00,000 being cash loan was added under section 269SS and Rs.20,300 was added under section 40(a)(ia) for non-deduction of TDS by the AO. On further appeal CIT(A) confirmed the additions made by the AO. The relevant observations of the CIT(A) with regard to the addition of Rs.6,00,000 and Rs.20,300 are extracted below –

“9.1The A.O. has made the addition of Rs. 20,300 stating that Rs. 2,00,000/- represents amount of loan taken in cash on interest at 1.5% out of which 1,00,000/- has been paid to Shri Dharamshi and Rs. 20,300/- represents interest paid on the loan obtained. Even during the course of hearing of the appeal no proper explanation was given to explain the transaction and the

payment of Rs. 20,300/- Thus, it represents unexplained expenditure and it is also undisputed that no TDS has been made on the payment. The addition as made stands sustained.”

“10.1 During the course of hearing of the appeal the appellant filed additional evidence vide Annexure 6 (Paper Book-Page No. 69) to support its contention that Shri Nanjibhai from whom the loan was taken is an agriculturist. The A.O. considered the additional evidence and submitted as per the Remand Report that the additional evidence as furnished is 7/12 extract in respect of land held by Shri Nanjibhai and that there are no other details such as copy of return of income, capital a/c and statement of income of Shri Nanjibhai. Therefore the A.O. held that it is not proved that he is an agriculturist that his only source of income is from Agriculture.

10.2 I have considered the fact and am of the view that mere filing of a 7/12 extracts does not in any way prove the source of the money lent nor does it any way prove the genuineness of the transaction. The findings of the A.O. with regard to the sum of Rs. 6,00,000/- and the addition as made under s. 69A stands confirmed.”

14. The Id AR submitted that the entries which were in Gujarati have not been correctly interpreted by the AO while making the addition. The Id AR submitted that the loan from Mr.Nanjibhai is only Rs.4,00,000 and not Rs.6,00,000 as held by the AO. The Id AR further submitted that the entry for Rs.4,00,000 is total of two loans taken for Rs.2,00,000 each and that this fact is supported by the amount of interest paid. The Id AR argued that when the AO has not question the amount of interest, doubting the genuineness of the loan is not tenable.

15. The Id DR on the other hand submitted that the addition is made by the AO mainly for the reason that the assessee has not discharged the onus of identity, creditworthiness and genuineness of the loan creditor. The Id DR further submitted that the assessee failed to deduct TDS on the interest paid and therefore the AO has correctly made the disallowance.

16. We heard the parties and perused the material on record. The AO noted the entries as tabulated above and called on the assessee to furnish details pertaining to

the loan borrowed. However it is noticed that the assessee did not furnish any details before the AO and CIT(A) except the claim that Mr.Nanjibhai is an agriculturist. The onus of the assessee to prove the identity, creditworthiness and the genuineness of the loans borrowed has not been discharged and accordingly we see merit in the ld DR that the AO has correctly made the addition. We further notice that the AO did not furnish any details even before the CIT(A) or before the AO during remand proceedings. During the course of hearing before us, the ld AR made submissions on the amount of loan, but did not bring any contrary material to prove the identity or the source for the loan. Considering these facts, we are of the view that the CIT(A) has correctly sustained the addition made by the AO and accordingly the decision of the CIT(A) does not warrant any interference.

Addition of Rs.2,22,700 as unexplained expenditure under section 69C of the Act

17. It is noticed by the AO from the impounded documents that there were certain expenses and loans recorded by the Directors of the assessee in their diaries but which are not recorded in their books of accounts. In absence of explanation furnished by the assessee, the amount of Rs.2,22,700 was considered as "unexplained expenditure" as per section 69C of the Act. The CIT(A) vide impugned order granted partial relief to the assessee on this issue, by observing as under:-

"11.3After considering the submissions and the Remand Report it is held that an amount of Rs. 5,000/- is treated as having been explained and hence is deleted. As regards the rest of the entries, it is seen that the appellant has sought to explain the said sums as having been received from Nanjibhai, not for the purpose of the appellant's business but for the benefit of Dharmashibhai. If that be so, it has not been explained as to why the said sums were not directly given to a third party if it indeed was for the benefit of the third party. The submission that appellant was acting only a conduit appears to be only a make believe especially in the absence of any other relevant corroborative material. Therefore, I am inclined to sustain the

findings of the A.O. as per the Remand Report. Barring the sum of Rs. 5000/- treated as explained, the balance sum of Rs. (2,27,770-5000) 2,22,770/- is brought to tax.”

18. We heard the rival submissions and perused the materials on record. The reason for the AO to make the addition towards the entries in the diary of the directors is that the assessee has not been able to provide any explanation with regard to those entries. The claim of the assessee before the CIT(A) that these transactions do not belong to the assessee and that the assessee is only a conduit also remains unsubstantiated. The ld AR during the course of hearing did not submit any new materials except to argue that the entries of Rs.1,00,000 appearing twice are to be squared off with each other since it is a loan taken and given. These submissions of the ld AR are not supported by any documentary evidences. Hence we are of the considered view that there is no infirmity in the decision of CIT(A) in upholding the addition of Rs.2,22,770 towards unexplained expenditure / unexplained loan.

Addition of Rs.2,21,000 as unexplained expenditure under section 69C of the Act

19. During the assessment proceedings, from the impounded documents it was observed that the payments/expenses were incurred by the assessee in case for the purpose of payment made to Mr. Dinesh Kimavat and brokerage paid to Mr. Dilip Zaveri. The AO observed that the said payments/expenses were not explained by the assessee in spite of sufficient and numerous opportunities being given to it. Therefore, the said expenses amounting to Rs.2,21,000, was considered as unexplained payment under section 69C of the Act. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee on this issue, by observing as under:-

“Addition of Rs.2,21,000/- under s.69C:

12. It is stated by the A.O. in Para 6.6 of the assessment order that Page 105 of Annexure A2 showed notings with regard to cash payments made to Dinesh Khimavat and Dilip Zaveri. During the course of the hearing of the appeal it was stated by the appellant that the said payments represent brokerage and labour charges towards sale of Flat No. 2001 and Flat No. 2002, Kent Garden, TPS 3, Borivali (W), Mumbai. It was further stated that the said expenses which were not accounted, may be allowed and treated as disclosed, when the disclosure of Rs. 75,00,000/- was made during the survey. After examining the said explanation the A.O. has stated as follows in the Remand Report.

The A.O. on the basis of page 105 of Annexure A-2 added the amount of Rs. 2,21,000/- in absence of any submission during the assessment proceedings. Now, at the time of remand proceedings, the assessee has submitted the bills of Rs. 50,000/- paid to Mr. Kimavat as labour charges. It is observed that the assessee has not deducted any TDS of the same and hence is to be disallowed u/s 40(a) (ia) of the Act. Further, the assessee has made cash payment hence also contravened the section 40A(3) of the Act.

As can be seen the entire sum of Rs. 2,21,000/- represents unaccounted payments. Plea of the assessee that the same may be considered as part of the disclosure made during the time of survey is unacceptable. In the absence of any tangible material. The addition of Rs. 2,21,000/- stands confirmed.”

20. We heard the parties and perused the material on record. The ld AR primarily contended that the impugned addition pertains to expenses incurred towards brokerage on Flat 2001 & 2002 and that these flats belong to the Directors of the assessee company. In this regard we notice that the CIT(A) while considering the addition of Rs.1,68,40,000/- made towards sale of flats not offered to tax has given relief to the assessee on the ground that the flat no.2001 & 2002 belong to the directors of the assessee. The relevant observations of CIT(A) in this regard are extracted below –

“14. It was explanation of the appellant during time of hearing of the appeal the said addition is not in order since the flats were not owned by the appellant company and that the capital gains on sale of flats no. 2001 and 2002 is already shown by Shri Devram C. Bhavani and Mrs. Shardaben D. Bhavani for A.Y. 2007-08. The said submission of the appellant had been examined by the A.O. during the Remand Proceedings and have been found

to be in order. It is stated by the A.O. that the property was sold and the concerned individuals have offered capital gain. In view of the said report of the A.O. as per Para 5.9 of the Report the said addition stands deleted.”

21. From the perusal of notings of the impugned transactions we notice that the payments are mentioned as "Flat 2001 & 2002 - On money" and "Flat 2001 & 2002 Regular a/c books". Therefore in our considered view, the impugned addition needs factual verification in the light of the relief given by the CIT(A) towards sale of Flat No.2001 & 2002. Accordingly we remit the issue back to the AO to call for necessary details pertaining to the notings and decide in accordance with law. Needless to say that the assessee be given a reasonable opportunity of being heard. It is ordered accordingly.

Addition of Rs.50,000, relating to the cash loan given to Shri Devram Mama and interest thereon amounting to Rs.26,580

22. From the perusal of the materials on records and the submissions of parties, we notice that the assessee contended the addition on the ground that these entries do not pertain to the assessee but to one KD Enterprises. However nothing is brought on record neither before the lower authorities, nor before us during the course of the hearing in support of the said claim. Considering these facts we hold that there is no infirmity in the findings of the CIT(A) upholding the addition made by the AO on the ground that the claim of the assessee cannot be accepted without any concrete evidence.

Addition of Rs.51,000 under section 69A

23. We heard the parties and perused the materials on record. The AO made the addition for the reason that the assessee could not substantiate the receipt of the amount of Rs.51,000 and the CIT(A) upheld the same on the

ground that the assessee did not furnish any new evidence. Before us the limited prayer of the Id AR was that in the same page where the receipt of Rs.51,000 is recorded, there is also an entry for Rs.17,320 towards expenditure incurred to earn the impugned income and that the same may be allowed as a deduction. Accordingly we remit the issue back to the AO for examination of the claim of the assessee and allow the deduction in accordance with law after giving a reasonable opportunity of being heard to the assessee. It is ordered accordingly.

24. Ground No.11 is with regard to the levy of interest under section 234A of the Act. In this regard, we deem it appropriate to remand this issue to the file of the AO for de novo adjudication after the necessary examination of the fact whether the return of income was filed by the assessee within the prescribed time under the Act. The issue of charging of interest under section 234B of the Act is consequential in nature not warranting any adjudication separately. Therefore, this ground is allowed for statistical purposes.

25. In the result, the appeal by the assessee for AY 2007-08 is partly allowed for statistical purposes.

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26. For the year under consideration, the assessee filed its return of income on 30/09/2008 declaring a total income of Rs.45,260. The AO while completing the assessment under section 143(3) made various additions to assess the income at Rs.2,13,04,260/. On further appeal the CIT(A) confirmed the additions and the assessee is in appeal against the order of the CIT(A). The issues contended in the appeal for AY 2008-09 are as tabulated below –

Ground	Issue	Amount of addition (Rs.)
1-2	Addition made u/s 69C in respect of amounts paid to Mr. Kishore Gulati	15,00,000
3	Interest paid to Devram mama qand Interest receivable from Dharamshi	36,000 69,000
4 to 6	Addition made u/s 69A in respect of additional amounts allegedly paid to Mr. Kishore Gulati	1,97,00,000

Addition of Rs.15,00,000 made under section 69C

27. The AO made an addition of Rs.1,35,00,000 towards the payments made to Mr. Kishore Gulati in respect of Shantidoot Co-operative Housing Society project based on the notings in the documents impounded during survey in AY 2007-08. Since some of the entries in the document pertain to AY 2008-09, the AO made an addition of Rs.15,00,000 falling in this year was added under section 69C of the Act. The CIT(A) confirmed the addition by holding that –

“5.3 I have carefully considered the facts of the case, the submissions of the appellant & assessment order. The main plea of the appellant is that amount of Rs.15,00,000/- was rotated between the two projects and thus the addition cannot be made twice. It is noted that an amount of Rs.25,00,000/- was paid in cash to Kishorbhai between June, 06 Oct.,06 apparently for Shantidoot project as indicated in Annexure A-1, A-2, A-5 of the impounded documents. There is no evidence that the said cash was returned back to the Director of the appellant company nor it is proved by any evidence that the approval for Shantidoot project did not materialize. Subsequently during November & December, 06 Rs.75,00,000/- was paid in cash for Silver project and thereafter Rs.50,00,000/- was paid during March-April, 07 for Shantidoot project. Though there is no overlap in dates, it cannot be established by any evidence that Shantidoot project was planned first and then it got delayed and thereafter Silver project was initiated and thereafter the same also did not fructify and thereafter Shantidoot project was revived. There is no evidence in the form of correspondence or any details to show that the approvals were delayed from MHADA. Though the assessee's version that the money was

returned and again given back do fit in with the dates of cash payment to Kishorbhai but the said assertions and transactions are not proved by any third party evidence. The addition of Rs.15,00,000/- is thus confirmed.”

28. We heard the parties and perused the materials on record. The Id AR reiterated the submissions made for AY 2008-09 contending that the amount is part of the amount declared during the survey proceedings which is offered to tax in AY 2009-10. We have while considering the issue of addition of Rs.1,35,00,000 have remitted the issue back to the AO for the limited purpose of examining whether the entries basis which the additions are made are part of the income offered to tax in AY 2009-10. Since the addition made in the year under consideration is made on same set of notings in the documents impounded, we are remitting the issue of addition of RS,15,00,000 back to the AO with similar direction.

Addition of Rs.36,000 being interest paid to Mr. Nanji Devashi and amount of Rs. 9000 being interest receivable from Dharamshi

29. During the assessment proceedings, from the impounded documents it was observed that interest of Rs.36,000 was paid to Mr. Nanji Devashi and amount of Rs. 9000 being interest receivable from Dharamshi. Since the loan obtained from Mr.Nanji Devashi was added under section 69A of the Act in the assessment year 2007-08, payment of interest of Rs.36,000 in cash and accrual of interest of Rs.9,000 was added under section 69C and section 40A(3)(a) of the Act. The CIT(A) confirmed the additions for the reason that the AO in AY 2007-08 has added the loan obtained from Mr. Nanji Devshi under section 69A of the Act since the same are not recorded in the books of accounts and that the above interest being paid on the said loan is also liable to disallowed.

30. We heard the parties and perused the material on record. We have while considering the issue of loan obtained from Mr.Nanji Devshi has upheld the addition made by the AO under section 69A of the Act. During the course of hearing for the year under consideration, the Id AR did not bring any new material on record to substantiate the loan and therefore we see no reason to interfere with the decision of the CIT(A) in confirming the addition made towards the interest payments on the said loans.

Addition of Rs.1,97,00,000 under section 69A of the Act

31. In the course of assessment proceedings from the impounded documents, the AO observed that the assessee has given an amount of Rs.1,97,00,000 to Mr. Kishore Gulati on 15/08/2007 and the said amount is not recorded in its books of account. It was further observed that the amount involved and advanced in connection with the so-called alleged project of Evergreen Restaurant & Bar is Rs.1,97,00,000. Accordingly, the said amount was added under section 69A of the Act. The assessee submitted that the notings do not represent actual payment and is only the way in which the funds would be made available for the proposed project of Evergreen Restaurant & Bar. The assessee further submitted that the entry of Rs.74,50,000 is funds to be diverted to the proposed project and Rs.22,50,000 is from Mr.Raju Dhulani with whom money was given for safe custody. The AO rejected the submissions of the assessee since the same are not supported by any documentary evidences and made an addition of Rs.1,97,00,000. The assessee contended before the CIT(A) that the payment made to Mr.Kishore Gulati is not a fresh payment and is part of Rs.1,35,00,000 added in AY 2007-08 and Rs.15,00,000 added in AY 2008-09. The assessee further submitted that Rs.47,00,000 is paid by cheque and the English translation of the notings would

substantiate the same. The assessee further submitted that as per the translated version of the notings Rs.1.97 crore is mentioned as paid prior to 15.08.2007 out of which Rs.97,00,000 is to be adjusted for the Evergreen project and the balance Rs.1 crore is to be returned to Mr.Kishore Gulati. The CIT(A) after considering the submissions of the assessee confirmed the addition by holding that –

“8.3I have carefully considered the facts of the case, the submissions of the appellant, assessment order. Page 9 of Annexure A-7 and page 15 of Annexure A-8 which is part of the impounded documents and is also attached to the assessment order, reveal that Mr. Devram Bhavani, Director of the company had given as on 15.8.07, Rs.1,97,00,000/- to Kishorbhai out of which Rs.97,00,000/- has been adjusted in Evergreen Restaurant project and balance Rs.1,00,00,000/- is lying with Kishorbhai. Further from Rs.97,00,000/-, Rs.22.5 lac was given to Rajubhai who has deposited the amount in his account so the investment in Evergreen project is Rs.74,50,000/-. It is also indicated in the paper that Rs.5 lac was given to MHADA by Kishorbhai and that Rs.10 lac was also given by Rajubhai to MHADA. From above narrations, it appears that upto 15.8.07, Rs.1.97 cr. was given to Kishorbhai and the source of the said amount has not been explained vis-à-vis books of account. The plea of the appellant that the said figures are mere projections is not correct as these referred to amounts given to Rajubhai and Kishorbhai. Undisputably the amount of Rs.1.97 cr. is not recorded in the books. It has also not been shown how Rs.47 lac. of deposits recorded in books against Kishorbhai form part of transaction relating to Evergreen project. Although, the alternate plea of the appellant that the addition of Rs.1.35 cr. in A.Y.2007-08 by A.O. is covered by the notings in instant document looks probable but the appellant could not substantiate this aspect vis-à-vis entries in impounded documents pertaining to A.Y.2007-08 and in the current year. The appellant ought to have shown the cash flow in different years against various projects to suggest that same amount was rotated in different projects. The appellant has not come out clean with all the details explaining the cash transactions in different years and under these circumstances, the addition of Rs.1.97 cr. is confirmed. Ground No.6 is dismissed.”

32. We heard the parties and perused the material on record. The primary reason for the AO to make the addition and the CIT(A) to confirm the addition is that the claim of the assessee with regard to the notings are not supported by the any evidences. Even before us no fresh evidences are submitted to substantiate the

claims with regard to the payments made to Mr.Kishore Gulati. Considering the facts and circumstances, we are inclined to agree with the decision of CIT(A) in confirming the addition for the reason that claims made by the assessee are not supported by any documentary evidences. Accordingly we do not see any infirmity in the decision of CIT(A) on the impugned issue.

33. The issue arising in ground no.6 does not arise from the facts and circumstances of the present case and therefore, the same is dismissed.

34. In the result, the appeal by the assessee is partly allowed for statistical purposes.

ITANo.256 & 257/Mum./2020 - Assessee's Penalty appeal-A.Y.2007-08

35. The only grievance of the assessee in these appeals is against the levy of penalty of Rs. 58,03,540 under section 271(1)(c) of the Act for AY 2007-08 and Rs. 72,21,175 for AY 2008-09. For AY 2007-08 since the CIT(A), in the quantum proceedings, had confirmed the addition of Rs. 1,60,64,070 under section 69C, Rs. 11,51,000 under section 69A of the Act and interest of Rs. 26,580, the AO vide order dated 01.03.2013 passed under section 271(1)(c) of the Act levied a penalty of Rs. 58,03,540. On further appeal the CIT(A) confirmed the penalty. For AY 2008-09 the AO levied a penalty of Rs. 72,21,175 based on the additions confirmed by the CIT(A) in the quantum appeal.

36. We heard the parties and perused the material on record. In view of our decision with regard to the impugned additions for AY 2007-08 & 2008-09, the penalty under section 271(1)(c) which is consequential in nature has to be examined afresh. Therefore we remit the appeals for AY 2007-08 & 2008-09 back

to AO to consider the impugned additions in the light of our decision in the quantum appeal and decide the levy of penalty accordingly as per law. Needless to say that the assessee be given reasonable opportunity of being heard.

37. In result the appeal for AY 2007-08 and 2008-09 against the penalty orders are allowed for statistical purposes.

38. In result, the appeals in ITA No.4727 & 8070 /Mum/2011 for AY 2007-08 & AY 2008-09 are partly allowed for statistical purposes. The appeals in ITA No. 256 & 257/Mum/2011 are allowed for statistical purposes.

Order pronounced in the open court on 05-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai