

IN THE INCOME-TAX APPELLATE TRIBUNAL “J” BENCH,  
MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER  
&  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 5516/MUM/2024  
(A.Y. 2020-21)

<b>Beachwood Properties Private Limited,</b> Commerz, 3 <sup>rd</sup> Floor, International Business Park, Oberio Garden City Off Western Express Highway, Goregaon, Mumbai 400 067, Maharashtra	v/s. बनाम	Deputy Commissioner of Income Tax Central Circle- 4(1), Room No. 419, Kautilya Bhavan, Bandra Kurla Complex, Bandra, Mumbai 400051, Maharashtra
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABCB1399P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Tarang Mehta
Respondent by :	Shri Asif Karmali (Sr. DR)

Date of Hearing	23.12.2024
Date of Pronouncement	26.12.2024

**आदेश / ORDER**

**PER PRABHASH SHANKAR [A.M.] :-**

The present appeal arising from the appellate order dated 23.08.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals) [hereinafter referred to as “CIT(A)”] pertaining to assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 26.03.2022 for the Assessment Year [A.Y.] 2020-21.

2. The grounds of appeal are as under:-

1. The learned A.O. had erred in law and facts by making an addition of Rs. 11,20,000/- u/s 69C of the Income-tax Act, 1961 (the Act) and the Hon'ble Commissioner of Income-tax (Appeals) has erred in law and facts in confirming the aforesaid addition for expenditure incurred in cash based on the certain entries appearing in loose papers, rough diaries, sheets etc. herein referred to as seized material, found during the course of search at the premises of group Company of the Appellant by ignoring the fact that -

(A) The addition has been made on the basis of notings appearing in the material seized from the premises of a person other than the Appellant which does not belong to the Appellant.

(B) Oberoi Realty Group and Mr. Vikas Oberoi had filed their Settlement Applications u/s. 245C of the Act before the Hon'ble Income Tax Settlement Commission (ITSC) on 22 January 2021 to buy peace and avoid litigation. The notings appearing in the seized material containing name of the Appellant amounting to Rs. 11,20,000/- for the year under consideration have been fully considered while declaring the additional income in the Settlement Application filed by Mr. Vikas Oberoi and others.

(C) Subsequent to the Assessment Order, the Hon'ble Interim Board for Settlement (IBS- 1), New Delhi has passed the Settlement Order wherein the notings made against the Appellant were considered. The issue regarding unexplained expenditure in the case of the Appellant has been squarely covered/considered by the Hon'ble IBS-1 in its Order dated 28 April 2023 vide para No. 5.2.3.2 and 5.2.3.3 while disposing the settlement application of Mr. Vikas Oberoi, wherein the Hon'ble IBS has accepted the explanation on the source of unexplained expenditure.

(D) The cash income was offered for tax and out of that cash income, cash expenditure was noted. Addition of such cash expenditure in the hands of the Appellant 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 Appellant as cash expenditure. Once the source of the cash is taxed, it cannot be further taxed as unexplained cash expenditure.



3. Facts of the case are that addition was made u/s 69C in the hands of the assessee for expenditure incurred in cash based on certain entries appearing in loose papers, rough diaries etc. referred to as seized materials during the course of search at the premises of one of the group companies of the assessee i.e **Oberoï Realty group**. On the basis of seized materials, action u/s 153C was taken against the assessee. Cash expenditure was added u/s 69C for AYs 2014-15 to 2020-21. However, the searched person i.e Oberoi Realty Ltd and group entities alongwith Director Sri Vikas Oberoi filed application before hon'ble Settlement Commission wherein cash receipts and expenditure reflected in seized papers were considered for calculating additional tax in the hands of Sri Vikas Oberoi. The assessee took the stand that cash expenditure was already offered for taxation. Since at the time of assessment, settlement application was still pending, the AO added such expenditure in the hands of the assessee with a noting that impugned assessment order would be amenable to rectification as deemed fit based on ruling of Settlement Commission as and when it becomes available. The Id.CIT(A) also upheld the addition made.

4. Before us, the Id.Counsel pleaded that the impugned cash expenditure was already considered by the **Hon'ble Interim Board for Settlement (IBS- 1), New Delhi**(henceforth 'IBS') while



accepting the application made by Sri Oberoi who is director of assessee company which treated it as personal expenses of the said person. The nature and source of such unexplained expenditure were explained through cash flow statement which was furnished and formed part of the application before IBS. Moreover, the assessee was not a 'searched person' but Sri Oberoi who accepted the impugned transaction as his personal expenditure and the explanation was accepted by ld.IBS u/s 245D(4) of the Act.

4.1 The ld. Counsel also placed on record a consolidated order passed in its own case in **ITA No. 5510 to 5515/Mum/2024 for AYS 2014-15 to 2019-20 dated 11.12.2024** wherein similar addition made u/s 69C in earlier years were subject matter of appeal and the co-ordinate 'B' Bench, ITAT,Mumbai after due consideration of all the relevant facts of the case in para 8/page-12 of the order deleted the additions on the ground that once the source of cash was taxed, it cannot be considered as unexplained expenditure again in the hands of the assessee. It was held that the issue regarding unexplained expenditure in the hands of the assessee was squarely covered and considered by the order of ld.IBS while disposing the application of Sri Vikas Oberoi wherein it had accepted the explanation on the source of unexplained expenditure. In para 8.1/page-13,the additions made were deleted



allowing the appeal of the assessee for all the six assessment years under consideration.

4.2 Since the issue involved has already been decided in favour of the assessee on exactly same facts and circumstances for earlier years, respectfully following the above order of the Co-ordinate bench, we delete the addition made and thus allowing the grounds in this regard.

**5. In the result, the appeal is allowed.**

Order pronounced in the open court on 26/12/2024.

Sd/-

**ANIKESH BANERJEE**

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

**PRABHASH SHANKAR**

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 31.12.2024

Lubhna Shaikh / Steno

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai



5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

