

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

**BEFORE JUSTICE (RETD.) C.V. BHADANG, PRESIDENT AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA NO. 343/MUM/2024 : **A.Y : 2015-16**

Income Tax Officer,
Mumbai. (Appellant)

Vs. Dwarkadas Parsram Mulchandani
B/604, Residency Apartments,
Lokhandwala, Back Road, Andheri
(W), Mumbai 400 053.
PAN : AAEPM3382R (Respondent)

Appellant by : **Shri R.R. Makwana, Sr. DR**
Respondent by : **None**

Date of Hearing : **09/12/2024**
Date of Pronouncement : **09/12/2024**

ORDER

PER JUSTICE (RETD.) C.V. BHADANG, PRESIDENT :

This is an appeal by the Revenue challenging the order dated 30.11.2023 passed by the Commissioner of Income Tax (Appeals), NFAC, Delhi. The appeal relates to assessment year 2015-16. By the impugned order, the learned CIT(A) has allowed the appeal filed by the respondent-assessee thereby deleting the addition of Rs.1,99,35,491/- made by the Assessing Officer vide order dated 29.10.2017 under Section 69 of the Income Tax Act, 1961 ('Act' for short).

2. The Revenue in this appeal has raised the following grounds :

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the Assessing Officer has made additions u/s 69 of the Act, of Rs.1,99,35,491/-, as on-money given against the booking of flat No. TA-1703, in the project Runwal Elegant, developed by Runwal Group and this

creditable information was received from the DDIT-Unit-4(1), Mumbai during the search operation conducted by the DGIT(Inv.), Mumbai.

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the “on-money” of Rs.1,99,35,491/- paid against booking the flat no. TA-1703 in the project Runwal Elegant developed by Runwal Group, ignoring the fact during the search action conducted u/s 132 of the Act, Shri Sandeep Runwal Director of Runwal Group in his statement on oath u/s 132(4) of the Act, has admitted that assessee has paid on-money for purchase of flat.*

3. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the Assessing Officer has made additions of Rs.1,99,35,491/-, as on-money given for the purchase of unit no. TA-1703 in the project Runwal Elegant, developed by Runwal Group, as assessee during the assessment proceedings has not produced any explanation/evidences about the source of money?*

4. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the “on-money” of Rs.1,99,35,491/- paid against booking the flat no. TA-1703 in the project Runwal Elegant of Runwal Group by ignoring the fact during the search action conducted u/s 132 of the Act, Shri Sandeep Runwal, Director of Runwal Group in the statement on oath u/s 132(4) of the Act, has provided the list of only 21 buyers, who has actually paid “on-money” out of numerous buyers, and the assessee was one of them in such a towering project.*

5. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the “on-money” of Rs.1,99,35,491/- paid against booking the flat no. TA-1703 in the project Runwal Elegant of Runwal Group by ignoring the fact during the search action conducted u/s 132 of the Act, Shri Sandeep Runwal, Director of Runwal Group, has offered to tax the entire “on-money” received from the buyers.*

6. *The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary.”*

3. The brief facts are that the Assessing Officer claims to have received information from the DDIT (Inv.) which revealed that assessee had purchased flat No. TA-1703 in Runwal Elegant from M/s. Runwal Group for a consideration of Rs.5,94,92,000/- in which the assessee had allegedly paid “on-money” of

Rs.1,99,35,491/-. It appears that in the search proceedings conducted on the Runwal Group, statement of Shri Sandeep Runwal was recorded under Section 132(4) of the Act. Shri Sandeep Runwal had admitted about having received on-money of Rs.1,99,35,491/- over and above the amount of Rs.3,95,56,509/- as per agreement to sale. In such circumstances, the Assessing Officer by order dated 29.12.2017 under Section 143(3) of the Act had made the aforesaid addition under Section 69 of the Act.

4. In appeal, the assessee contended that copy of the statement of Shri Sandeep Runwal was neither supplied nor an opportunity of cross examination was afforded to him. It was contended that a statement cannot be relied upon which is recorded at the back of the assessee and without granting opportunity to him of testing the veracity of the same.

5. The learned CIT(A) in para 5.1.5 of the impugned order has accepted the contention on behalf of the assessee holding that the action of Assessing Officer is against the basic principles of natural justice. In that view of the matter, the appeal came to be allowed.

6. We have heard the learned DR for the appellant. None appears for the respondent.

7. It is contended by the learned DR that a credible information was received from DDIT, Mumbai during the search operation conducted by the DGIT (Inv.), Mumbai on Runwal Group and Shri Sandeep Runwal has admitted in his statement under Section 132(4) of the Act of having received on money from the assessee for the purchase of said flat in project Runwal Elegant developed by Runwal Group. It is submitted that out of several buyers, Shri Sandeep Runwal had provided list of only 21 buyers which included name of the present assessee which indicates the veracity of the statement of Shri Sandeep Runwal. It is also pointed out that Shri

Sandeep Runwal had offered to tax the entire amount which was received as on money from the buyers.

8. We have considered the submissions made and have gone through the assessment order as well as the order passed by the CIT(A) and we do not find that any case for interference is made out.

9. Admittedly, the only material on which the impugned addition is made is certain alleged incriminating material collected during the search on an independent entity, viz. Runwal Group. The principal reliance is on the statement of Shri Sandeep Runwal and a list of buyers furnished during the said search proceedings who had allegedly paid on money which contains name of respondent. We find that the said material is inadequate to make addition under Section 69 of the Act as against the assessee. It is a basic and cardinal principle that any incriminating material unless put and confronted to the assessee and the assessee being granted opportunity to test the veracity of the same by cross examination or otherwise, same cannot be relied upon. A perusal of the impugned order shows that the CIT(A) has relied upon the decision of co-ordinate bench of this Tribunal in ITA No. 5784/Mum/2019 in the case of Smt. Priya Happykumar Surya vs ACIT decided on 24.08.2021. In the said case, the appellant-assessee had purchased shop no. G-33 in Runwal Homes Pvt. Ltd. and the addition was made on similar ground of statement of Shri Subodh Runwal, which has been deleted by the co-ordinate bench vide order dated 24.08.2021. We do not find that the view taken by the CIT(A) suffers from any infirmity so as to require interference. The appeal is without any merit and is accordingly dismissed.

Order pronounced in the open court on 9th December, 2024.

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Mumbai; Dated : 09/12/2024

SSL

Sd/-

(JUSTICE (RETD.) C.V. BHADANG)

PRESIDENT

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai