

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

BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 4450/MUM/2024
(निर्धारण वर्ष / Assessment Year :2011-12)

आयकर अपील सं./ITA No. 5457/MUM/2024
(निर्धारण वर्ष / Assessment Year :2020-21)

ACIT, Circle 24(1), Mumbai 601, 6 th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai-400012	v/s. बनाम	Raiees Yasin Lashkaria 1 st Floor, Juhu Azad Nagar Society, CD Barfiwala Road, Andheri (W.), Mumbai-400058
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: ADZPB6649L		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

निर्धारिती की ओर से /Assessee by:	Shri Dipesh Ruparelia
राजस्व की ओर से /Revenue by:	Smt. Sanyogita Nagpal

सुनवाई की तारीख / Date of Hearing	10.03.2025
घोषणा की तारीख/Date of Pronouncement	24.04.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

These appeals are filed by the revenue against the orders of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Years [A.Y.] 2011-12 & 2020-21.

2. The revenue has raised the following grounds of appeal for both years:

AY 2011-12

“1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 1,14,28,026/ on account of undisclosed sale of property as reported in AIR without appreciating that there is no uniformity in the ratio of the percentage of sale accounted in P&L in respect of different units in Amman Akanksha project when the assessee has followed percentage completion of method.

2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.5,54,000/- on account of unexplained investment, representing 1% of the investment remained with assessee, as per sale agreement, on sale of rights in Shardha Dahisar project to Rose Developers Pvt. Ltd having market value at Rs. 5,54,00,000/-, when no such retained investment has been reported by the assessee in his balance sheet.

3. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in granting relief of Rs. 7,01,516/- by restricting the addition to 12.5% of the alleged purchase of Rs. 8,01,848/-.

4. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in without appreciating the fact that the onus is on the assessee to explain and substantiate the genuineness and true nature of the purchase transaction.

5. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in holding that only profit element in alleged purchase has to be added and not the entire purchase amount when the party has not been found at the address provided by the assessee when the Inspector attached to office was deputed to serve notice u/s. 133(6) of the Act, making the purchase party as non-genuine and non-existence.

6. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in restricting the disallowance of bogus purchase to 12.5% of alleged purchase ignoring the decision of the Hon'ble Punjab and Haryana High Court in the case of JR solvent Industries Pvt. Ltd. wherein it was held that where purchases were made from non-existence seller, these would be held to be bogus even if complete quantitative details of purchases were available in the assessee's books of accounts.

7. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in restricting the disallowance of bogus purchase to 12.5% of alleged purchase ignoring the decision of the Hon'ble Gujarat High Court in the case of NK Industries Ltd. vs. DCIT in tax appeal no. 240/2003 dated 20.06.2016(2016) Taxman.com 289 (Gujrat) wherein entire bogus purchases was disallowed and the Hon'ble Supreme court has dismissed the SLP filed against the aforesaid judgement vide order SLP(CC) of 963/2017 dated 16.01.2017.

8. The appellant craves leave to amend or alter or add a new ground which may be necessary.”

AY 2020-21

“1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs. 10,77,51,000/- made u/s. 56(2)(x) of the Income Tax Act, 1961 on account of difference between the property rate determined by the Stamp duty Valuation Authority at Rs. 14,54,42,000/- and the sale consideration of Rs. 3,76,91,000/-.



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

3. Brief facts of the case are that the assessee filed return declaring income of Rs. 65,05,650/- on 30.09.2011. The case was selected for scrutiny and assessment was completed at an income of Rs. 1,92,89,520/- vide order u/s 143(3) dated 28.03.2014. The following additions were made by the Ld. AO:

- i. Addition on account of sale of property as reflected in AIR – Rs. 1,14,28,026/-
- ii. Unexplained investment u/s 69B – Rs. 5,54,000/-
- iii. Unexplained expenditure u/s 69C – Rs. 8,01,848/-

4. (i) The assessee is a proprietor of M/s. Reliance Construction Company which is engaged in the business of construction and development of real estate. During the year, as per the information reflected in the Annual Information Return (AIR), the assessee had sold several properties and therefore the AO asked him to reconcile the sales reflected in his Profit and Loss (P&L) account with the figures available in the AIR. The assessee furnished copies of the sale agreements of all the sales except nine flats. Ld. AO observed that the assessee is following the percentage completion method for booking profits and therefore he made an addition in respect of these nine properties based on the percentage completion method which worked out to Rs. 1,14,28,026/-.

(ii) Further, the assessee had sold its rights in the Shradha Dahisar project for a consideration of Rs. 1,75,00,000/- to M/s. N. Rose Developers Pvt. Ltd



during the year. It was observed by the Ld. AO that the market value of the project is Rs. 5,54,00,000/- and as per the sale agreement, the assessee retained 1% of the share in the project. Accordingly, Ld. AO treated the 1% share (Rs. 5,54,000/-) in the project as not accounted for in its books and, therefore treating the same as unexplained investment made the addition u/s 69B of the Act.

(iii) Thirdly, the assessee has shown certain purchases from a party which is appearing in the list of Hawala dealers list provided by the Sales Tax Department. The assessee was required to produce the requisite documents to establish the genuineness of the purchases shown from:

M/s. Shivamani Traders Private Ltd. (Rs. 8,01,848/-)

A notice u/s 133(6) was also issued to the above-mentioned party by the Ld. AO. However, as per the Inspector's report, no such business entity was found at the given address. Accordingly, the assessee treated the purchases of Rs. 8,01,848/- from the above party as bogus and added the same as unexplained expenditure u/s 69C of the Act.

5. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A). On the basis of the sale agreements furnished during the course of appellate proceedings in respect of the nine properties, Ld. CIT(A) sought a remand report from the Ld. AO. Based on the remand report sent by the Ld. AO and after verifying relevant documents, Ld. CIT(A) deleted the addition made on account of the sale of properties amounting to Rs.



1,14,28,026/- . Further, with regard to the addition of Rs. 5,54,000/- made on account of unexplained expenditure, Ld. CIT(A), after due verification of details submitted by the assessee, held that the addition made by the AO is not justified. Lastly, Ld. CIT(A) restricted the addition on account of unexplained expenditure u/s 69C by applying the Gross Profit (GP) rate on the purchase amount of Rs. 8,01,848/-, thereby allowing part relief to the assessee.

6. Aggrieved with the order of Ld. CIT(A), the revenue is in appeal before the Tribunal.

7. Ground No. 1: Addition of Rs. 1,14,28,026/- on a/c of undisclosed sales.

7.1 Before us, Ld. AR has submitted that the only reason for making the addition on account of the sale of flats was the non-production of relevant agreements before Ld. AO. However, the same were produced before the Ld. CIT(A) who sought a remand report from the Ld. AO. A copy of the remand report sent by the Ld. AO after due verification, has been submitted to demonstrate that the Ld. AO was satisfied with the documentary evidence furnished by the assessee. As such, the Ld. CIT(A) rightly allowed the relief to the assessee based on the remand report furnished by the Ld. AO. Under these circumstances, the department has unjustifiably filed the appeal against the relief given by the Ld. CIT(A).

7.2 We have heard the rival submissions and perused the material available on record. It is clear that from the remand report, Ld. AO has not pointed out



any discrepancy in the sale of flats shown by the assessee after proper verification of the additional evidences filed before the Ld. CIT(A).

7.3 In view of these facts, we find no reason to interfere with the order of Ld. CIT(A) on this issue. Accordingly, this ground of appeal of the revenue is dismissed.

8. Ground No. 2: Addition of Rs. 5,54,000/- u/s 69B on a/c of unexplained investment.

8.1 Ld. AR submitted a chronological chart of events with regard to the addition made u/s 69B of the Act. As explained, the assessee was appointed as a developer of a Slum Rehabilitation Authority (SRA) project and a partnership firm M/s. Prashar Developers was formed to enter into a joint Venture with the assessee by the name of Reliance and Shradha Developers on 30.03.2007. An SRA certificate was obtained in the name of Mohammed Raiees Lashkaria. All the partners together spent an amount of Rs. 1,85,00,000/- in which the Mohammed Raiees Lashkaria's share was Rs. 30,00,000/-. Subsequently, on 01.06.2010, a joint Venture (Reliance and Shradha Developers) was cancelled, and a fresh agreement was entered into with M/s. N. Rose Pvt. Ltd. by Mohammed Raiees Lashkaria (assessee), Mohammed Salim Lashkaria, Prakash Surve and M/s. Shradha Developers on 27.02.2010. The assessee received two considerations from the above exercise are as under:

- i. A sum of Rs. 1,75,00,000/- which has been offered to tax as business income during the year.



ii. 1% profit in the new joint venture.

8.2 Since the market value of the entire project is Rs. 5,54,00,000/-, Ld. AO made an addition of 1% on the ground that the assessee has retained 1% share in the project. Ld. AR has explained that the assessee is one of the joint owners of the said project and has invested Rs. 30,00,000/- in it. The said amount is still reflected in the balance sheet as capital investment in the project. He has further submitted that the concept of market value u/s 43CA is applicable to business income from AY 2013-14 and is not applicable for the year under consideration. Here, the cost of investment shown in the books of account at Rs. 30,00,000/- is more than the value determined by the Ld. AO. As such, the addition made by the Ld. AO is unwarranted. After considering the assessee's submissions, Ld. CIT(A) has rightly observed that the investment of Rs. 30,00,000/- in the project is duly reflected in the audited balance sheet and P&L account of the assessee and therefore the addition of 1% share in the project made by the Ld. AO is not tenable.

Ld. DR, on the other hand, has relied on the order of Ld. AO.

8.3 After considering the rival submissions, we are of the view that there was no justification for Ld. AO to hold that the assessee had not shown its 1% share in the project, and hence, the addition made on account of unexplained expenditure u/s 69B of Rs. 5,54,000/- has been rightly deleted by Ld. CIT(A). This ground, accordingly, dismissed



9. Ground No. 3: Addition of purchases Rs. 8,01,848/- u/s 69C on a/c of unexplained expenditure.

9.1 Ld. AO made an addition of Rs. 8,01,848/-, being the purchases shown from M/s Shivamani Traders Pvt. Ltd., which were treated as bogus purchases.

9.2 Ld. AR has contended that even if the purchases were to be held as non-genuine, Ld. AO was not justified in adding the entire amount as unexplained expenditure without rejecting the books of account. He has, therefore, made an alternative argument that the addition, if at all, should be restricted to the average net profit ratio i.e. 8%, whereas Ld. CIT(A) has upheld the addition partly by applying GP rate of 12.5% on the impugned purchases.

9.3 We have heard the rival submissions. We are of the view that Ld. CIT(A), after examining the facts and circumstances in the light of various decisions of the jurisdictional High Court, has rightly applied the net profit rate of 12.5% on the impugned purchases. We are, therefore, not inclined to interfere with the order of Ld. CIT(A). This ground of appeal of the revenue is also dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24.04.2025.

Sd/-

RAHUL CHAUDHARY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 24.04.2025

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)



अनिकेत सिंह राजपूत/ स्टेनो

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,**

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

