

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 6681/MUM/2024
Assessment Year: 2015-16**

ITO, Ward-4(1), Thane
Room No.3, A-Wing,
6th floor, Ashar IT Park,
Wagle Industrial Estate,
Thane(W),Mumbai-400604

Appellant

Vs.

Aura Navkar Developers
Gala No. 20, The Sidhupura
Ind. Est. Ltd. Gaiwadi,
S.V.Road, Goregaon West,
Mumbai- 400062
PAN NO. AAZFA 9532 A
Respondent

Assessee by : Mr. Subodh Ratnaparkhi
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 06/05/2025
Date of pronouncement : 09/05/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 22.07.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2015-16, raising following grounds:

“1. The CIT(Appeal) while concluding the appellate order has observed that "the AO was supposed to verify the details of investment like amount of investment during the financial year relevant to the impugned assessment year and sources of



investments. The AO failed to do so at the stage of remand proceedings". The CIT(Appeal), being the first fact finding authority has thereby erred in not using his co-terminus powers under section 250(4), equivalent to that of the Assessing Officer, to arrive at the correct facts by merely accepting the submissions of the assessee without any verification.

2. In order to verify the contentions of the assessee that it has paid only the amounts to M/s Sharp Realtors, as contended by it, during the impugned A.Y. under consideration, it was essential to crystallize the other fact ie, as to when did the assessee pay the balance amount to M/s. Sharp Realtors. The CIT(Appeal) being the first fact finding Authority, erred in allowing the appeal of the assessee without verifying the same.

3. The CIT(Appeal) has not discussed/ concluded the issue raised by the AO in para 9 of his remand report regarding the discrepancies of Rs. 10,00,000/- between the confirmation submitted by M/s. Sharp Realtors and that as contended by the assessee. The CIT(A) being the first fact finding authority, erred in allowing the appeal of the assessee without verifying the same.

4. The order of the Ld. CIT (Appeal) may be vacated and set aside to the table of the Assessing Officer.

5. The appellant craves leave to add amend or alter any ground/ grounds, which may be necessary."

2. Briefly stated facts of the case are that the assessee commenced the business of developing real estate project since 10.06.2014. In the year under consideration, the assessee purchased development rights for construction of a building from M/s. Sharp realtors. No return of income was filed by the assessee for the year under consideration. In view of the information of purchase of development rights worth Rs. 3,65,00,000/-, the Assessing Officer(AO) issued notice u/s 142(1) of the Income Tax Act, 1961 [in short 'the act'] directing the assessee to file return of income for the year under consideration but no compliance was



made on the part of the assessee. Subsequently, further notices were issued by the AO asking the assessee to explain the source of investment for purchase of development rights, but despite providing numerous opportunities, no compliance was made by the assessee. Therefore, the ld AO made addition for unexplained investment in purchase of the development rights amounting to Rs. 3,65,00,000/- vide impugned assessment order dated 25/03/2022 passed u/s 144 of the Act. On further appeal, the assessee filed additional evidence before the Ld. CIT(A). The Ld. CIT(A) in turn called for a remand report from the ld AO on the additional evidence along with objections for admitting the additional evidence. After considering the remand report of the AO, the Ld. CIT(A) deleted the addition holding that during the year under consideration only Rs. 33,00,000/- was paid by the assessee towards purchase of development rights and source of which was explained by the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

“ADJUDICATION

The appellant has challenged the action of the AO in adding Rs. 3,65,00,000/- as unexplained investments u/s 69 of the income tax act for the impugned assessment year.

The appellant is a partnership firm engaged in the business of builders and developers. The appellant did not file the return of income for the impugned assessment year.

The AO, based on an information that the appellant Purchased Immovable Property for Rs.3,65,00,000 during the FY 2014-15 relevant to AY 2015-16, issued notice u/s 148 of the income tax act on 31.03.2021. In response, the appellant neither filed any return nor filed



any response. The AO issued statutory notice u/s 142(1) of the income tax act calling for the details of investment. The appellant did not respond to such notices. The AO concluded the assessment within the meaning of section 144 of the income tax act by adding Rs. 3,65,00,000/- as unexplained investments u/s 69 of the income tax act.

The appellant, at the appellate stage submitted as under:

1. The appellant firm came into existence w.e.f 10.06.2014 and accordingly this was the first year of its operation.
2. The appellant for the purposes of developing real estate project in Vasal, Purchased development rights from M/s Sharp Realtors in the year under appeal.
3. Accordingly, the appellant had entered into registered agreement on 28.01.2015 for purchase of development rights in respect of building no. 1, wing G, admeasuring 2100.58 sq. mtrs, comprising of ground plus 7 floors on land bearing survey bearing survey no.49 to 56 and 77, village Achole, Taluka Vasai from M/s Sharp Realtors for the total consideration of Rs. 3.65,00,000/-.
4. The concerned development rights were acquired for construction of proposed residential building with shop line. Copy of the referred agreement dt. 28.01.2015 is enclosed herewith at page nos.28 to 109.
5. It is humbly pointed out that the appellant firm had paid Rs.33,00,000/- only to M/s Sharp Realtors, out of the total agreed consideration of Rs.3,65,00,000/-through banking channels in the year under appeal. The appellant firm had also borne stamp duty and registration charges etc. of Rs. 18,55,000/-. The appellant has funded Rs. 51,55,000/-(Rs.33,00,000/- plus Rs. 18,55,000/-) towards the said purchase of development rights from the advances received from the partners and advances against flat bookings.
6. It is further humbly pointed out that Rs.51,55,000/- is capitalized in the books of the accounts as "Plot investment" appearing under Investments & Deposits. Copy of ledger confirmation from M/s Sharp Realtors confirming receipt of Rs.43,00,000/-reflecting PAN and address of the concerned party is enclosed herewith.
7. It is humbly pointed out that M/s Sharp Realtors has confirmed Rs.43,00,000/-as against actual payment of Rs.33,00,000/- as Rs. 10,00,000/- was paid by one of the then partners of the appellant firm for his personal transaction. However, the same is recorded under the name of the appellant firm by M/s Sharp Realtors. It is reiterated that



appellant does not have any connection with the payment of Rs. 10,00,000/-,

8. Appellant has paid Rs.33,00,000/- only to the cited entity which fact is supported by plethora of documentary evidences listed in the ensuing paras.

Copy of plot purchase account in the books of the appellant company reflecting closing balance of Rs.51.55,000/- and ledger account of M/Sharp Realtors in the books of the appellant firm for the year ended on 31.03.2015 evidencing payment of Rs.33,00,000/- are enclosed herewith.

The details of payment during the FY 2014-15 is as under:

Sr.No.	Date	Date	Amount (Rs.)	Bank Name	Chq/RTGS
1	10.06.2014	Paid to Mis Sharp Realtors towards purchase consideration	8,00,000/-	Vijaya Bank	Che No. 041837
2	11.02.2015	Paid to Mis Sharp Realtors towards purchase consideration	25,00,000/-	Vijaya Bank	RTGS
			33,00,000/-		
3	29.12.2014	Stamp duty paid	18,25,000/-	Vijaya Bank	RTGS
4	29.12.2014	Registration charges	30,000/-	Vijaya Bank	RTGS
			18,55,000/-		
		Total	51,55,000/-	Shown under investment in Balance sheet	



1. The sources of such investment are as under:

Sr. No.	Date	Name	Amount (Rs.)	Source of funds	Chq/RTGS
1	09.06.2014	Arvind Jain	300,000/-	Partner's captial	RTGS
2	09.06.2014	Bhavesh Madhani	6,00,000/-	Partner's captial	RTGS
3	11.02.2015	Bhavesh Madhani	15,00,000/-	Partner's captial	RTGS
4	11.02.2015	Arvind Jain	10,00,000/-	Partner's captial	RTGS
5	26.11.2014	Hari Om Enterprises	1,75,000/-	Advance for flat booking	RTGS
6	28.11.2014	Daksha A. Mehta	6,00,000/-	Advance for flat booking	RTGS
7	26.12.2014	Bhavesh Madhani	11,00,000/-	Partner's captial	Vijaya Bank Cheque no. 267989
	Total Rs.	52,75,000/-			

1. The documents substantiating the above facts are charted above:

Sr. No.	Nature of documents	Encl. at page nos
1	Copy of Form A-Application for registration of firms dt. 10.06.2014	03 to 08
2	Copy of acknowledgement of payment of fees for registration of partnership firm dt. 30.09.2014	09
3	Copy of death certificate of one of the partners of the appellant firm viz. Dayaram Zuri Pal on 08.10.2020	10
4	Copy of reconstitution of partnership deed dt. 02.11.2020 admitting new partner shri Sandeep Dayaram Pal being son of the deceased partner	11 to 24
5	Copy of affidavit dt. 22.09.2023 of the partner of the appellant firm affirming facts	25 to 27

These documents were produced as additional evidence at the appellate stage under rule 46A. The appellant stated that it was



prevented by reasonable cause in submitting the above documents before the AO.

The appellant submits that it was prevented by reasonable cause [death of one of the partner of the appellant firm and Covid 19 pandemic] in submitting the above documents before the Id. AO. The above-mentioned facts are duly supported by affidavit of appellant enclosed herewith. The said evidences are crucial and of prime importance in determining the correct income of the appellant and therefore in the interest of justice, it is humbly prayed that the evidences submitted before your honour by way of enclosures herewith may kindly be admitted under the provisions of Rule 46A of the I.T Rules, 1962 and considered in deciding the present appeal on merits.

All the documents were forwarded to the AO for his comments. The AO submitted the remand report as under:

Since the assessee failed to furnish the details and supporting evidences, the A.O completed the assessment u/s.144 of the Act, treating the investment as unexplained u/s. 69 of the Act. It is observed from the submission made by the assessee vide their letter dated 25.09.2023 that the assessee was incorporated on 10.06.2014 i.e. during the year under consideration for development of a plot bearing survey No. 49 to 56 & 77, at Vasai from together with a building appurtenant thereto from M/s. Sharp Realtors, for Rs. 3.65 crore. The agreement was entered into with the said party on 28.01.2015. Against total amount, assessee had paid only Rs. 33 lakhs + stamp duty and registration fee of Rs. 18.55 lakhs totalling to Rs. 51.55 lakhs which is shown under investment. The source of payment was through partner's capital and advance for flat booking.

.....the submission made by the assessee may not be acceptable and the books required to be rejected. No relief may be granted to the assessee. Further, since no return was filed by the assessee on the ground that no taxable income is contrary to the provisions of the Act as it is mandatory for firms to file returns even if there is no income. As such, the assessee may not be allowed carry forward the 'work-in-progress.

The AO stated that the submission of the appellant is not acceptable and the appellant did not prove that he was prevented by reasonable cause.. The AO did not verify the details of investments made out capital contribution of the partners of the firm and advance towards sale of flats during the financial relevant to the impugned assessment year.

The appellant, on the other hand, cited death of one of partners due to corona virus during Covid Pandemic and there was re-constitution of



Partnership deed to admit the son of the deceased partner. The email id of the new partner was updated on the IT Portal in 2022. These are held as sufficient reason for holding that the firm was prevented by reasonable cause from producing the necessary evidence before the AO. All the documents produced at the appellate stage are admitted to avoid miscarriage of justice.

The AO was supposed to verify the details of investment like amount of investment during the financial relevant to the impugned assessment year and sources of such investments. The AO failed to do so at the stage of remand proceedings. The AO, in his ex-parte order did not even mention the nature of investment and the details of financial transaction between the parties to the transaction, mode of payment and date of payment etc. The AO did not make any effort to make enquires as expected from him to collect relevant material before resorting to the best judgement assessment.

The appellant has submitted that the investment was only Rs. 51,55,000/-during the year under consideration and such payments were sourced out of Partners' capital and advance towards flat booking. The appellant submitted the copy of development agreement dated 28.01.2015 along with the details of payment, receipts from the transferor of development rights, the ledger account of the firm in the books of transferor and the bank statements. The appellant has discharged the onus cast upon it and it is held that the appellant has recorded the investments in its books of accounts and offered explanation satisfactorily. The AO is not justified in making addition of Rs.3,65,00,000 as unexplained investments u/s 69 of the act for AY 2015-16 and he is directed to delete the addition made. All the grounds are allowed.”

3. Aggrieved with the finding of the Ld. CIT(A), the Revenue is appeal by way of the grounds reproduced above. In the ground revenue is mainly aggrieved that Ld. CIT(A) has accepted the explanation of the assessee without verifying the facts mentioned thereon and without providing opportunity to the assessing officer for examining/verifying those facts.

4. Before us the Ld. Departmental Representative(DR) submitted that, firstly, Ld. CIT(A) himself admitted the additional evidence



without seeking objection from the AO. Further, Ld. DR submitted that Ld. CIT(A) has not verified regarding the discrepancy of Rs. 10,00,000/- in the ledger account of the assessee as compared with the ledger account of M/s Sharp Realtor. He submitted that Ld. CIT(A) has not verified from the ledger account as from whom said amount of Rs. 10,00,000/- was received and whether it was against the purchase of the development rights or otherwise, which was not examined by the Ld. CIT(A). **Secondly**, he submitted that the source of Rs. 33,00,000/- explained by the assessee was admitted by the Ld. CIT(A) as such without verifying from the records creditworthiness of parties. The Ld. DR submitted that assessee has given mere statement that Rs. 33,00,000/- was received by of capital from partners and advanced booking from the flat. In the case, any kind of approval for the construction was not received and therefore, the Ld. CIT(A) was required to examine the source of money received against sale of the flats and therefore, in the circumstance order of the Ld. CIT(A) might be set aside and matter may be restored back to the file of the Assessing Officer for verification of the claim of the assessee.

5. On the contrary, Ld counsel for the assessee submitted that though the assessee has entered into registered agreement for acquisition of the development rights in respect of the building at Vasai from M/s Sharp Realtor on 28.01.2015 for a total consideration of Rs. 3,65,00,000/-, but during the year under consideration, the assessee had only paid Rs. 33,00,000/- to M/s



Sharp Realtors out of the total agreed consideration of Rs. 3,65,00,000/-. The assessee also incurred stamp duty and registration charges of Rs. 18,55,000/- making the total investment to Rs. 51,55,000/- (Rs.33,00,000/-+ Rs.18,55,000/-). The Ld. counsel referred that said sum of Rs.51,55,000/- was appearing in the books of account as 'plot investment' under the head investment/deposit on the asset side of balance sheet dated 31.03.2015. Regarding the receipt of Rs. 43,00,000/- appearing in the ledger confirmation from M/s Sharp Realtor, the Ld Counsel submitted that partner of the assessee firm had made payment of Rs. 10,00,000/- to said M/s Sharp Realtor in his personal capacity which was wrongly recorded by the M/s Sharp Realtor against the assessee firm. Ld. Counsel submitted that AO has failed to appreciate that development agreement dated 28.01.2015 was a conditional agreement with the developer and developer was required to perform a series of functions as described in the said agreement and balance consideration of Rs.3,32,00,000/- (Rs.3,65,00,000/- minus Rs.33,00,000/-) was payable on grant of full Commencement Certificate, which was evidenced by the para no.3(a)/page no.15 of the concerned agreement. For ready reference said para is reproduced here in below:

*"3.... The receipt of which owners doth hereby admits and acknowledges. The balance remaining amount of Rs. 3,32,00,000/- (Rs. Three Crores Thirty-Two Lacs Only) shall be payable as under.
a) Rs. 1,66,00,000 (Rs. One Crore Sixty-Six Lacs Only) within fifteen (15) days from the date of full C.C*



b) Rs. 1,66,00,000/- (Rx. One Crore Sisty-Six Lacs Only) within Sixty (60) days from the date of full C.C."

6. According to Id Counsel, the assessee was not even liable to pay the balance consideration of Rs.3,32,00,000/- in the year under appeal. Thus, the addition of entire purchase consideration of Rs.3,65,00,000/- in the year under appeal as unexplained investment u/s 69 is uncalled for. The commencement certificate was received from the municipal corporation on 03.12.2019. He further submitted that Id CIT(A) sought a remand report from the Id AO with regards to the evidences furnished by the assessee during appeal proceedings about the claim of having deposited Rs. 33,00,000/- only with M/s. Sharp Realtors. All evidences furnished before him were examined by the Id AO in remand proceedings. The remand report from the AO is reproduced by the Id CIT(A) at para 8/pg no. 17 to 20 of the CIT(A) order. In the remand report (as reproduced by the Id CIT(A) in the appeal order) the Id AO has admitted that the balance amount due to M/s. Sharp Realtors was payable and not paid. If that be the case then the addition of such amount u/s 69 as "unexplained investment" would not be merited. The Id AO has disputed the fact that only Rs. 33,00,000/- (or Rs.43,00,000/-) has been paid to M/s. Sharp Realtors and nothing more. The source of payment to M/s. Sharp Realtors has been explained and examined by the Id AO during remand proceedings. No dispute with regards such source of funds has been raised. In



such circumstances no addition is justified and the appeal filed by the ld AO might be dismissed on all grounds.

7. We have heard rival submissions of the parties and perused the relevant materials on record including paper book filed by the assessee containing pages 1 to 129.

8. At the outset, before us the Ld. counsel for the assessee raised an issue that appeal of the Revenue is covered by the monetary limited prescribed by the CBTD by way of Circular No. 9/2024 dated 17/09/2024 and therefore, appeal of the revenue is not maintainable. The Ld. DR however submitted that addition in dispute in the case made by the Ld.AO is upto 3,65,00,000/- and therefore tax effect involved being more in the threshold limit of Rs. 60,00,000/- prescribed for non filing of the appeal before the ITAT, the said circular is not applicable in the case of the assessee.

8.1 After considering the submission of the parties and verification of the record, we are of the opinion that AO had made addition of Rs. 3,65,00,000/- and which has been deleted by the Ld. CIT(A), therefore, the tax effect involved in the appeal of the Revenue being more than the threshold limit of Rs. 60,00,000/-, the can't be held as non maintainable. The contention of the Ld. counsel to dismiss the appeal at threshold are accordingly rejected.



9. As far as merit of issue is considered, neither return of income was filed by the assessee nor any submission was made before the Ld.AO during assessment proceeding. The Additional evidence filed by the assessee before the Ld. CIT(A) were forwarded to the Ld.AO. but the ld AO objected for admission of the additional ground and without prejudice gave comment that entire addition of Rs. 3,65,00,000/- should be made in the case of the assessee in view of the terms and condition provided in the development agreement, but the Ld. CIT(A) admitted the additional evidence of the assessee and thereafter accepted that contention of the assessee that only amount of Rs. 33,00,000/- was paid by the assessee. The source of the said 33,00,000/- provided by the assessee was also accepted by the Ld. CIT(A).

10. In view of the above facts and circumstances, we are of the opinion that two issues require consideration in the case.

11. **Firstly**, the discrepancy of Rs. 10,00,000/- appearing in the ledger account of the assessee as well as the ledger account of M/s Sharp Realtor from whom the assessee has purchased said development rights. On perusal of the ledger account of the assessee in the books of M/s Sharp Realtor, we find that M/s Sharp Realtor has shown payment of Rs. 10,00,000/- on 21.05.2014 from the assessee. However it is the contention of the assessee that said payment was given by one of the partner of the assessee firm and



which has been wrongly recorded by the M/s Sharp Realtor against the assessee. The relevant ledger account is reproduced as under

1-Apr-14 to 31-Mar-15

“ Given below is the details of your Accounts as standing in my/our Books of Accounts for the above mentioned period.

Kindly return 3 copies stating your I.T. Permanent A/c No., duly signed and sealed, in confirmation of the same. Please note that if no reply is received from you within a fortnight, it will be assumed that you have accepted the balance shown below.

<i>Date</i>	<i>Particulars</i>	<i>Debit Amount</i>	<i>Date</i>	<i>Particulars</i>	<i>Credit Amount</i>
			21-May-14	Bank	10,00,000.00
			10-June14	Bank	8,00,000.00
			11-Feb-15	Bank	25,00,000.00
	<i>Closing Balance</i>	<u>43,00,000.00</u>			<u>43,00,000.00</u>
		<u>43,00,000.00</u>			<u>43,00,000.00</u>

12. On verification of the above ledger account, it is seen that payment of Rs. 10,00,000/- has been only shown through bank and name of person from whom received has not been recorded in said ledger account so therefore, it is not clear whether the said amount was received from the assessee or received from partner of the assessee firm as claimed by assessee. Further, atleast from this ledger account it is not clear said payment was made by trhe partner of the firm. In the circumstance that the assessing officer



had not examined this aspect in the remand report, the Ld. CIT(A) was required to verify this issue.

13. Secondly, the issue which needed verification is regarding source of investment of Rs. 51.55 lakhs, which was explained by the assessee as under:

“The details of payment during the FY 2014-15 is as under:

Sr.No.	Date	Date	Amount (Rs.)	Bank Name	Chq/RTGS
1	10.06.2014	Paid to Mis Sharp Realtors towards purchase consideration	8,00,000/-	Vijaya Bank	Che No. 041837
2	11.02.2015	Paid to Mis Sharp Realtors towards purchase consideration	25,00,000/-	Vijaya Bank	RTGS
			33,00,000/-		
3	29.12.2014	Stamp duty paid	18,25,000/-	Vijaya Bank	RTGS
4	29.12.2014	Registration charges	30,000/-	Vijaya Bank	RTGS
			18,55,000/-		
		Total	51,55,000/-	Shown under investment in	Balance sheet



14. In the above table the assessee has shown receipt from partners as well as receipt against advance for flat booking. The assessee has not filed any confirmation or documentary evidence discharging burden of proof in terms of section 68 of the Act. Neither the assessing officer in remand report nor the Ld. CIT(A) has examined/verified the identity, creditworthiness and genuineness of the transaction in respect of those credits. The Hon'ble Delhi High Court in the case of **Jansampark Advertising and marketing P Ltd in** ITA 525/2014 has held that if the assessing officer fails in carrying out the enquiries which are required in the matter, then the Ld. CIT(A) is under obligation to carry out such enquires and he cannot seat ideal and allow relief to the either of party. The relevant part of decision is reproduced as under:

42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under Section 148 issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or



causing to be made a "further inquiry" in exercise of the power under Section 250(4). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld.

15. Respectfully, following the finding of Hon'ble Delhi High Court (supra), We find it appropriate to set aside the order of the Ld. CIT(A) on the issue and dispute to restore back the matter to him for carrying out necessary enquires in the matter himself or by way of remand report from the ld. assessing officer and then decide the issue and dispute in accordance with law. The ground of the appeal of the revenue is allowed.

16. In the result, the appeal of the Revenue is allowed

Order pronounced in the open Court on 09/05/2025.

**Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 09/05/2025
Disha Raut, Stenographer

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai