

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2372/MUM/2023
Assessment Year: 2018-19

DCIT-2(2), Old CGO Building,
806, 8th floor, M.K. Road,
Mumbai-400020.

Vs. M/s Madhu Developers,
10, Planet Industrial Premises
Off. Subhash Road, Vile Parle
(East) Mumbai-400057.

PAN No. AAQFM 9577 Q

Appellant

Respondent

Assessee by : None
Revenue by : Mr. Rajendra Chandekar, DR

Date of Hearing : 16/11/2023
Date of pronouncement : 28/11/2023

ORDER

PER OM PRAKASH KANT, AM

This appeal has been preferred by the Revenue against order dated 05.04.2023 passed by the Ld. Commissioner of Income-tax (Appeals)-48, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2018-19, raising the sole ground reproduced as under:

Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition u/s 69A of the Income Tax Act, 1961 amounting to Rs. 2,26,00,000/- made by the assessing officer, without considering the facts and circumstances of the case and settled position of law.



2. Despite notifying that neither anyone attended on behalf of the assessee nor any request for adjournment was filed and therefore, appeal was heard ex-parte qua the assessee after taking into consideration Paper Book filed by Shri Ruturaj Gujar i.e claimed to be an authorized representative of the assessee however no letter of authority is available on record, and arguments of Id Departmental Representative.

3. Briefly stated facts of the case are that during relevant period, assessee firm was engaged in building and developing a real estate project of residential flats. A survey action u/s 133 of the Income-tax Act, 1961 (in short 'the Act') was carried out on 29.11.2017 at the premises of the assessee. In the course of survey action certain incriminating loose papers were impounded which indicated cash receipts on sale of flats over and above the registered value of the flats and which had not been recorded in the books of the firm. The partner of the firm Shri Raj Manohar Ahuja admitted that the said cash receipts was undisclosed and unaccounted income of the assessee firm but could not be recorded in the books of accounts due to mistake on the part of the accountant. In the return of income filed the assessee included said amount of Rs.2,26,00,000/- as business receipt and paid taxes thereon. But in the assessment order passed u/s 143(3) of the Act dated 04.05.2021, the Assessing Officer treated the said amount of Rs.2,26,00,000/- as unexplained in terms of section 69A of the Act and levied tax on the said amount



at higher rate under provisions of section 115BBE of the Act. On further appeal, the Ld. CIT(A) deleted the treatment of said undisclosed receipt u/s 115BBE of the Act. The relevant finding of the Ld. CIT(A) is reproduced as under:

"5.1 I have carefully considered the facts of the case, submissions of the Appellant, the observations of the AO contained in the assessment order and the other materials on record on this issue.

5.2 It is observed that the appellant has not objected to the declaration of Rs.2.26 Crs declared by him during the survey proceedings and incorporated it in its return of income for relevant AY 2018-19. The question is that the AO make this amount of addition u/s69A of the Act and taxed as per provisions of section 115BBE of the Act.

5.3 It is relevant to mention over here that, the AO in his assessment order in para 7 has discussed this issue elaborately.

5.4 It is observed that the AO in para 7.17 has observed that the cash receipts of Rs.2.26 Crs as per noting in impounded note pads are nothing but the receipts over and above the registered sale value of the flat which are not accounted for in the books of account.

5.5 During the course of the Survey proceedings, a statement of Shri. Raj Manohar Ahuja, Partner of M/s. Madhu Developers was recorded wherein he has accepted that these receipts were not recorded in the books of accounts due to omission on the part of the accountant. He had also accepted that these were his recordings in his hand writing which were intended to be recorded in the books of account. He had admitted to the fact that there was an undisclosed, unaccounted income in the form of cash receipts to the tune of Rs. 2.26,00,000/- based on which the assessee had declared an additional income of this amount, in its ITR.

5.6 The plain reading of section 69A is : "Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year."

5.7 In my considered view, once the appellant had admitted the cash receipts of Rs.2,26,00,000/- as an undisclosed income in survey



proceedings and declared it in its return of income, there is no reason to hold that the appellant has failed to produce supporting documents /evidences in support of it that Rs.2,26,00,000/-crore is not its business income. During the survey proceedings, it is clearly admitted that these cash receipts are out of sales. No contradictory finding has been given by the AO. To state that source of disclosure/ cash receipts is not established before the AO, is not acceptable in view of statements recorded during survey proceedings and circumstances involving the same.

5.8 In view of this, the AO's action in adding again the additional income of Rs.2,26,00,000/-declared during the survey u/s 69A of the Act is unjustified. Further, taxing it under the provisions of section 115BBE of the Act is also unjustified. Accordingly, ground No. 1,2 & 3 of appeal are allowed."

4. We have heard arguments of the Ld. Departmental Representative (DR) and perused the relevant material available on record including the paper book filed on behalf of the assessee. The issue in dispute in the case is whether the undisclosed income of Rs.2,26,00,000/- appearing in the loose papers impounded during the course of survey at the premises of the assessee, is in the nature of the 'business receipt' or in the nature of the 'unexplained cash receipt' liable to be assessed u/s 69A of the Act. In the case of the assessee it is undisputed that assessee was engaged in the real estate project namely 'Platina' situated in Mira Road, Mumbai. In the course of the survey action, the assessee admitted that amount of Rs.2,26,00,000/- recorded in the loose papers as cash receipts was undisclosed income of the assessee from sale of the flats which he omitted to record in the books of accounts due to mistake on the part of the accountant. The Ld. DR submitted that as per the mandate of section 69A of the Act, the assessee was required to explain nature and source of such cash receipt. He submitted that



though the assessee has explained nature of the same as the business receipt but did not explain the source as from which particular sale of the flat said amount was received. He submitted that purpose of section 69A of the Act is to identify the other leg of the transaction and bring the other leg also to the tax but since assessee has not explained from which flat's sale, it has received the said receipt of cash and therefore, the said cash receipt is liable to be assessed u/s 69A of the Act, because that assessee has explained only nature and not source of the cash receipt. We agree with the argument of the Ld. DR. For the purpose of considering those cash receipts as the business receipt, the assessee is required mentioning the name of the person from whom such cash was received i.e. the source of the cash receipt, but the assessee has not demonstrated the name and address of those person and therefore, provisions of section 69A are attracted in the case of the assessee. However, in the interest of the justice, we feel it appropriate to restore this issue back to the file of the Assessing Officer with the direction to the assessee to provide said details of name and address of the parties from whom said cash receipt of Rs.2,26,00,000/- was received by the assessee. The Assessing Officer shall adjudicate the issue in dispute after allowing adequate opportunity of being heard to the assessee. Accordingly, the ground of appeal of the Revenue is allowed for statistical purposes.



5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 28/11/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 28/11/2023

Rahul Sharma, Sr. P.S.

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