

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA Nos.3607 & 3598/M/2023
(Assessment Years: 2013-14 & 2014-15)

Deputy Commissioner of Income Tax Mumbai	Vs.	Shri Nilesh Shantilal Tank B-102, Mayur Maa Krupa, Shimpoli Road, Borivali (West), Mumbai – 400 092
PAN/GIR No. AACPT5851E		
(Revenue)	:	(Assessee)

ITA No.2780/M/2023
(Assessment Year: 2014-15)

Shri Nilesh Shantilal Tank A-1103, Shree Rameshwar Tower Shimpoli Road, Borivali (West), Mumbai – 400 092	Vs.	Deputy Commissioner of Income Tax , Central Circle 3(3) Mumbai
PAN/GIR No. AACPT5851E		
(Assessee)	:	(Revenue)

ITA Nos.2781 & 2782/M/2023
(Assessment Years: 2014-15 & 2013-14)

M/s. Akshar Shanti Realtors Pvt. Ltd. A-1103, Shree Rameshwar Tower Shimpoli Road, Borivali (West), Mumbai – 400 092	Vs.	Deputy Commissioner of Income Tax , Central Circle 3(3) Mumbai
PAN/GIR No. AAGCA4470R		
(Assessee)	:	(Revenue)

ITA No.3590/M/2023
(Assessment Year: 2014-15)

Deputy Commissioner of Income Tax , Mumbai	Vs.	M/s. Akshar Shanti Realtors Pvt. Ltd. B-102, Mayur Maa Krupa, Shimpoli Road, Borivali (West), Mumbai – 400 092
PAN/GIR No. AAGCA4470R		
(Revenue)	:	(Assessee)

Assessee by	:	None
Revenue by	:	Shri Ramakrishna Bandi, CIT(DR)

Date of Hearing	:	07.03.2024
Date of Pronouncement	:	18.03.2024

ORDER

Per Bench :

The captioned appeals are cross appeals filed by the assessee and the Revenue, pertaining to the Assessment Year (A.Ys.) 2013-14 and 2014-15, challenging the order of the learned Commissioner of Income Tax (Appeals) ('ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961.

2. As there was no representation on behalf of the assessee, we hereby dispose of this appeal by hearing the learned Departmental Representative ('ld.DR' for short) and on perusal of the materials available on record by passing a consolidated order in these appeals which are on identical facts by taking ITA No. 2781/Mum/2023 and 3590/Mum/2023 for A.Y. 2014-15 as a lead case.

ITA Nos. 2781/Mum/2023 and 3590/Mum/2023 (A.Y. 2014-15)

3. The grounds of appeal raised by the assessee pertains to the addition @ 12.5% made on bogus purchases in which the Revenue is also in appeal against the order of the ld. CIT(A) in restricting the addition @ 12.5% on the alleged bogus purchase.

4. The Revenue is also in appeal, challenging the deletion of addition of Rs.5,96,43,560/- on account of on-money received by the assessee.

5. The brief facts are that the assessee company is engaged in the business of construction and development of property. Pursuant to a search and seizure action u/s. 132 of the Act dated 03.03.2014, in the case of Bharat Shah Group and Tank Group, notice u/s. 153A of the Act dated 15.09.2014 was issued and served upon the assessee where the Id. Assessing Officer ('A.O.' for short) observed that the assessee was one of the beneficiary of accommodation entries by way of bogus purchases availed from the above mentioned concerns. The assessee filed its return of income u/s. 139 of the Act dated 29.11.2014, declaring total income at Rs.Nil. Notice u/s. 143(2) and 142(1) were issued and duly served upon the assessee.

6. The Id. A.O. had sought for details pertaining to the impugned transactions with regard to the bogus purchases and on-money received by the assessee during the year under consideration which was unearthed during the search and seizure action. The Id. A.O. then passed the assessment order dated 31.03.2016 u/s. 153A r.w.s. 143(3) of the Act determining the total income at Rs.13,97,10,580/- after making an addition on bogus purchases and towards on-money received by the assessee.

7. The assessee was in appeal before the first appellate authority, challenging the impugned addition.

8. The Id. CIT(A) had partly allowed the assessee's appeal by restricting the bogus purchases to 12.5% on the gross profit margin and by deleting the addition towards on-money received by the assessee on the ground that the Hon'ble Settlement Commission

had in assessee's related concerns disregarded the seized material, documents and the statements recorded which are also the basis in the assessee's case.

9. Both the assessee as well as the Revenue are in appeal before us challenging the order of the Id. CIT(A).

10. We would first take up the ground challenging the addition made on alleged bogus purchases by the assessee. The facts of these grounds are that the Id. A.O. observed that from 4 GB pen drive seized from the residential premises of Shri Daxesh Parmar, it was observed that the assessee has availed bogus accommodation entry by way of bogus purchase bill without any actual delivery of goods. This was further corroborated by the statement of Shri Rajesh Doshi who had acted as the broker for availing such bogus purchases. The Id. A.O. during the assessment proceeding had sought for details of all the purchases made by the assessee along with the copies of bills, transportation bills, payment slips, octroi receipts pertaining to 128 parties listed in the notice u/s. 142(1) of the Act dated 09.11.2016. The assessee's contention was that the Id. A.O. has failed to furnish the copies of materials relied upon by the Id. A.O. and contended that Shri Daxesh Parmar was a black mailer whose intention was to extract money from Shri Nilesh Tank who was the director of the assessee company and M/s. Strawberry Construction Pvt. Ltd. which is a sister concern of the assessee. The assessee further to this stated that it had lodged a criminal complaint against Shri Daxesh Parmar who had undertaken to stay away from the assessee but had continued to forge bogus records and was hand in glove with the investigation wing to conduct search and survey on the assessee company and its directors. The assessee vehemently opposed to the reliance on

the statement of Shri Daxesh Parmar against whom there are pending criminal cases. Further the assessee relied on the order of the Hon'ble Settlement Commission for A.Ys. 2010-11 to 2012-13 in the case of M/s. Strawberry Construction Pvt. Ltd. which was the sister concern of the assessee where the Hon'ble Settlement Commission held that the evidence seized from the residential premises of Shri Daxesh Parmar was *prima facie* ambiguous and not corroborated with documentary evidences and had discarded the said evidences vide order dated 20.08.2014 passed u/s. 245D(4) of the Act. The assessee also contended that even in the case of Bharat Shah Group for A.Y. 2007-08 where the Id. A.O. had reopened based on the materials seized from the premises of Shri Daxesh Parmar which was held to be unrelatable thereby quashing the reassessment proceeding. The assessee also opposed to the reliance placed on the statement of Shri Rajesh Doshi.

11. The Id. A.O. failed to consider the assessee's contention on the premise that the criminal case lodged by the assessee against Shri Daxesh Parmar is still pending before the court of law and that the cross examination of Shri Daxesh Parmar was not granted for the reason that Shri Nilesh Tank had already confirmed the statement of Shri Daxesh Parmar in his statement recorded u/s. 131 of the Act dated 04.03.2014 in which Shri Nilesh Tank had accepted the role of Shri Daxesh Parmar, explaining the modus operandi of the impugned transactions though the same was retracted on a later date. The Id. A.O. made an addition on the entire bogus purchase of Rs.8,00,67,017/- on the ground that the assessee has failed to furnish the details by way of documentary evidence to contradict the seized material. The Id. CIT(A), on the other hand, had restricted the impugned addition to 12.5% on the gross profit margin of the impugned bogus purchases on the

ground that the Id. A.O. has not disputed the sales made by the assessee by relying on the decision of Hon'ble Gujarat High Court in the case of *Simit P. Sheth* [2013] 356 ITR 451 (Guj).

12. The Revenue has challenged the Id. CIT(A)'s order for restricting the addition towards the bogus purchase to 12.5% instead of the entire purchase being added by the Id. A.O. and the assessee has also challenged the addition of 12.5% on the gross profit margin. It is observed that the Hon'ble Settlement Commission has not discarded the evidentiary value of the statement of Shri Rajesh Doshi who has admitted to the modus operandi of availing bogus purchase bill. It is also pertinent to point out that the assessee has not raised this contention that Shri Rajesh Doshi was neither an employee nor a partner and that the assessee had not transacted with the said person before the Hon'ble Settlement Commission and the fact that Shri Rajesh Doshi has also not denied the transaction between him and the assessee. The assessee has failed to rebut the said statement of Shri Rajesh Doshi by any documentary evidence neither before the lower authorities nor before us. In the absence of any such contradictory evidences, we do not find any infirmity in the order of the Id. CIT(A) in making an addition on the gross profit margin @ 12.5% on the alleged bogus purchase where the sales are not in dispute. We, therefore, deem it fit to dismiss ground nos. 1 to 3 raised by the assessee and ground nos.1 to 3 raised by the Revenue.

13. The next ground of appeal pertains to on-money of Rs.5,96,43,560/- received by the assessee. As per the seized material from the residential premises of Shri Daxesh Parmar, the Id. A.O. had sought for details of name, address of clients and on-money

received during the year along with share of income of partners from unaccounted income from sale of flats along with the *modus operandi* of receiving such on-money by cash. The Id. A.O. made an addition on the impugned on-money received by the assessee on the ground that the assessee has failed to substantiate the same by documentary evidences. The first appellate authority, on the other hand, deleted the impugned addition by relying on the order of the Hon'ble Settlement Commission in the case of sister concern of the assessee namely M/s. Strawberry Construction Pvt. Ltd. and M/s. Ramnagar Development Corporation.

14. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

15. The Id. DR for the Revenue contended that the order of the Hon'ble Settlement Commission does not pertain to this assessment year and was also not the case of the present assessee. The Id. DR further stated that both the lower authorities have not specified the nature of the seized material relied upon by the Id. A.O. during the search and seizure action and further stated that the remand report sought for by the Id. CIT(A) could not be produced for the reason that the assessee has failed to co-operate with the proceedings.

16. After hearing the Id. DR and on perusal of the materials available on record, it is observed that the assessment order has not specified any details as to what was the seized material that was available before the Id. A.O. It is also pertinent to point out that the remand report sought for by the Id. CIT(A) was also not furnished by the Id. A.O. for the reason that the assessee has failed to co-operate. We also have observed that the retracted statement of Shri Daxesh Parmar, Shri Rajesh Doshi was also not in record for our

consideration. The Id. CIT(A) has placed reliance on the order of the Hon'ble Settlement Commission which again was not placed on record. In order to fill the lacuna, we hereby deem it fit to remand this issue back to the file of the Id. CIT(A) for proper adjudication after duly seeking for the remand report and duly considering the same on the merits of the case. We, therefore, remand this issue back to the file of the Id. CIT(A) on the above observation. Ground no. 4 raised by the Revenue is allowed for statistical purpose.

17. In the result, the appeals filed by the assessee are dismissed and the appeals filed by the Revenue are partly allowed for statistical purpose.

Order pronounced in the open court on 18.03.2024

Sd/-

(Amarjit Singh)
Accountant Member

Mumbai; Dated :
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai