IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1963 OF 2017

Pr. Commissioner of Income Tax -2 ….Appellant

V/s.

Nexus Builders and Developers Pvt. Ltd. ….Respondent

Mr. Suresh Kumar for appellant.
Mr. S.C. Tiwari a/w. Ms. Hetal Laghave for respondent.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 29th NOVEMBER 2021

P.C. :

1 The following substantial questions of law are proposed in this appeal :

> *(a) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was right in deleting the addition made u/s. 69A of the IT Act without appreciating the fact that the same is based on, documents and CD's impounded during the course of survey proceeding which shows that the assessee is indulging in the activity of receiving "on-money" in cash on sale of flats, which is over and above the sale value shown in the registered sale deed and which is not disclosed in the return of income filed.*
>
> *(b) Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was right in deleting the addition made u/s. 69A of the IT Act by not properly appreciating the evidence in form of impounded documents and CD's which are admissible evidence u/s. 65B of the Indian Evidence Act, 1872.*

2 The facts in brief are during a survey and search in the office premises of respondent, a CD was found. In the CD, a letter in respect of sale transaction with one Mr. Devendra Singh Tomar was found. According

to the Assessing Officer, the letter dated 8th August 2008 addressed to the said Devendra Singh Tomar showed that the sale price payable by Devendra Singh Tomar is Rs.57,73,000/- towards the purchase of flat, whereas the agreement value with reference to the same was Rs.49,18,000/-. The Assessing Officer called upon respondent to show cause as to why the difference in the sale price of Rs.8,55,000/- should not be added to the total income of respondent and further, why the same proportion should not be adopted for the other flats sold during the year 2008-2009. During that year, respondent had sold many other flats. Respondent showed cause and explained why the difference should not be added. Respondent's contentions were rejected and the Assessing Officer simply multiplied this figure of Rs.8,55,000/- to the number of flats sold and added a sum of Rs.3,05,89,980/- under Section 69A of the Income Tax Act, 1961 as disallowance on account of undisclosed money.

3 Respondent impugned this order of the Assessing Officer by way of an appeal before Commissioner of Income Tax (Appeal) [CIT (A)], who dismissed the appeal but reduced the undisclosed income to Rs.2,97,34,980/-. Aggrieved by this order, respondent preferred an appeal before the Income Tax Appellate Tribunal (ITAT), who set aside the order of the CIT (A) by an order dated 31st January 2017, which is impugned in this appeal.

4 We have considered the appeal memo and the impugned order with the assistance of Mr. Suresh Kumar and Mr. Tiwari. We do not see any reason to interfere with the order impugned. The crux is that there was no evidence found against respondent and no enquiry was carried out by the Assessing Officer to find out more details and the entire addition has been made on hypothetical basis.

5 The ITAT has also accepted the explanation of respondent that initially the said flat, of which the letter was found, was negotiated and sold for a sum of Rs.59,34,000/- to one Mr. Milind Bhingare and the party had made a token payment of Rs.1 lakh. The booking was cancelled on the ground that the agreed price was much higher than prevailing market price and Rs.1 lakh was returned to Mr. Milind Bhingare. Thereafter, Mr. Devendra Singh Tomar approached respondent and negotiated to purchase the flat at Rs.49,18,000/- which amount the said Devendra Singh Tomar paid in three installments. The said Devendra Singh Tomar has also filed an affidavit giving details as well as proofs of payment. In our view, the conclusions of the Assessing Officer and supported by CIT (A) are all conjectures.

6 In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the

issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7 The appeal is devoid of merits and it is dismissed with no order as to costs.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**