

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

INCOME TAX APPEAL (IT) NO. 61 OF 2020

Pr Commissioner of Income Tax-3	..	Appellant
V/s.		
Rhythm Real Estates Pvt Ltd	..	Respondent

Mr. Suresh Kumar for Appellant.

Ms. Aasifa Khan for Respondent.

**CORAM : B. P. COLABAWALLA AND
FARHAN P. DUBASH, JJ.**

DATE : 19th AUGUST 2026

P.C.:

1. The above appeal has been filed by the Revenue seeking to challenge the judgment and order dated 25th April 2018 passed by the Income Tax Appellate Tribunal (“ITAT”) in Income Tax Appeal No. 3036/Mum/2016. The appeal before the Tribunal was filed by the Revenue challenging the order of the CIT (A) deleting the addition made by the Assessing Officer to the income of the Respondent – Assessee to the tune of Rs. 8.87 Crores under Section 69B of the Income Tax Act, 1961 (“IT Act”).
2. According to the Revenue, the impugned order of the ITAT gives rise to the

following two questions of law.

- (a) *“Whether, on the facts and the circumstances of the case and in law, the Hon. ITAT was correct in facts and law in upholding the order of Ld. CIT(A) deleting the addition made by the A.O. under Section 69B of Rs. 8,87,14,048/- based on seized evidence by stating that the same is not based on any evidence?”*
- (b) *“Whether on the facts and the circumstances of the case and in law, the Hon. ITAT is right in ignoring the provisions of section 132(4A) of the Income Tax Act, as per which contents of the documents seized during the search are presumed to be true?”*

3. The brief facts of this case show that the Assessee Company was engaged in the business of real estate development during the Assessment Year under dispute, namely, Assessment Year 2006-07. For Assessment Year 2006-07, the Assessee filed its Return of Income on 29th November 2006 declaring a loss of Rs. 44,492/-. The Return on Income of the Assessee was picked up for scrutiny assessment and finally the assessment was completed under Section 143(3) of the IT Act *vide* order dated 5th December 2008. In this order passed under Section 143(3), the Assessing Officer computed the income of the Assessee as ‘Nil’, after disallowing the loss claimed.
4. It appears that thereafter, on the basis of the information received from the Director of Revenue Intelligence (“**DRI**”), Mumbai, regarding payment of on-money in cash by the Respondent – Assessee for purchasing properties

at New Delhi, the Assessing Officer reopened the assessment for Assessment Year 2006-07 under Section 147, by issuing a notice under Section 148 on 28th March 2013.

5. As mentioned by the Assessing Officer in the reasons recorded for reopening, it was the case of the Assessing Officer that during the search and seizure operation conducted in the residential premises of Ms. Zaver Cyrus Dadina, NITCO's Dy. Manager (Accounts), two electronic storage devices (hard disk and pen drive) were found and recovered. A file found in the hard disk contained details of the payment made towards purchase of 36 landed properties in Maidan Garhi area of South Delhi during the year 2005. According to the copy of the said file in excel format attached to the letter of the Additional Director General, (DRI), the file contained details of the sellers/buyers of 36 landed properties, as well as payments made, both in demand draft and cash mode. As per the said information, the total amount paid for acquisition of the properties was to the tune of Rs. 54.29 Crores comprising of a demand draft component of Rs. 14.43 Crores and a cash component of Rs. 41.86 Crores. According to the DRI, the information relating to transactions involving the present Assessee was given at serial numbers 9, 10, 16 and 23 of the excel sheet. According to the DRI from the information received, it was observed that the Assessee had paid on-money

in cash amounting to Rs. 7.07 Crores along with other cash payments totalling to Rs. 8.87 Crores. Therefore, in the course of the reassessment proceedings, the Assessing Officer proposed to treat the cash payment made on account of on-money etc. as unexplained investment of the Assessee under Section 69B of the IT Act. Though this addition was objected to by the Assessee *vide* its letter dated 14th March 2014, the Assessing Officer rejected the objections and relied upon the information received from the DRI and passed a reassessment order adding an amount of Rs. 8.87 Crores as unexplained investment under Section 69B of the IT Act.

6. Being aggrieved by the order passed by the Assessing Officer, the Assessee preferred an appeal before the CIT (A). On the ground of addition of Rs. 8.87 Crores under Section 69B, the CIT (A) allowed the appeal filed by the Assessee and directed the deletion of the addition of Rs. 8.87 Crores to the income of the Assessee as an unexplained investment under Section 69B of the IT Act.
7. Being aggrieved by the order of the CIT (A), the Revenue preferred an appeal, being ITA No. 3036/Mum/2016 before the ITAT. The ITAT, relying upon the order passed by it in the case of *ITO vs. M/s. Saturn Advisory Services Pvt. Ltd.* upheld the order of the CIT (A) before it and dismissed

the appeal of the Revenue. This is how the present appeal is filed before us.

8. We have heard Mr. Suresh Kumar, the learned Counsel appearing on behalf of the Appellant - Revenue and Ms. Khan, the learned Counsel appearing on behalf of the Assessee. The CIT (A), whilst deciding the issue in favour of the Assessee noted all the facts, as more particularly set out from paragraphs 5.2.1 to 5.2.9 of its order dated 22nd January 2016.
9. To put it in a nutshell, the CIT (A) came to the conclusion that apart from the file received from the DRI, the Assessing Officer had gathered no other evidence that the Appellant had paid any on-money. This is more so when one considers that it was the Assessee's specific case that the properties purchased were not easily saleable because of the restriction for permission of development from the Delhi Government and the fact that without Government approval they cannot even be registered by the Registrar.
10. In fact the Assessee had called upon the Assessing Officer to himself inquire about the market rate in the vicinity on the date of purchase which would establish that the price paid and reflected in the balance sheet of the Assessee is commensurate with the prevailing market price. Despite this, the Assessing Officer made no independent inquiry to ascertain the market

rate of the lands in the locality. In fact, even though a remand report was called from the Assessing Officer, the Assessing Officer *vide* its letter dated 18th August 2015 merely stated that all the documents forwarded to him were already considered while passing the Assessment Order under Section 143(3) read with Section 147 of the IT Act. The CIT (A) therefore came to the conclusion that even at the remand stage, the Assessing Officer did not make any further inquiries or produce any substantive or material evidence to establish payment of on-money by the Assessee.

11. The CIT (A), therefore, relying upon certain decisions of the Supreme Court, came to the conclusion that before any addition was made, there should be material on record as evidence. Additions made on the basis of presumption cannot be sustained in law. It is on this basis that the CIT (A) allowed the appeal of the Assessee and deleted the addition of Rs. 8.87 Crores made by the Assessing Officer under Section 69B of the IT Act.
12. The ITAT also taking note of the detailed factual findings given by the CIT (A), and which were not even controverted before the ITAT, upheld the order of the CIT (A) and dismissed the appeal. When one goes through the order of the CIT (A) as well as the order of the ITAT, we find that the entire dispute in the present case is fact driven. In our view, the CIT (A) correctly

came to the conclusion that apart from the file received from the DRI, the Assessing Officer gathered no other evidence that the Appellant had paid any on-money. In fact, the Assessing Officer did not even proceed to conduct an independent inquiry regarding the market rate of the lands in the locality in which the Assessee had purchased the property to come to the conclusion that there was a big difference between the market value and the price paid by the Respondent – Assessee, which would then lead to an inference that the Assessee had paid the difference in cash. Once these are the facts, we find that the above appeal does not give rise to any substantial question of law as projected in Question (a) reproduced by us earlier. Hence, Question (a) is not entertained.

13. As far as Question (b) is concerned, we find that the provisions of Section 132(4A), and the presumption referred to therein, would apply to persons searched and not a third party like the Respondent – Assessee. In fact, the Hon'ble Supreme Court in the case of *P. R. Metrani v. Commissioner of Income-tax, Bangalore [2006] 157 taxmann 325(SC)* has categorically held that the presumption under Section 132(4A) is available only in regard to proceedings for search and seizure under Section 132 and such presumption would not be available for framing a regular assessment. In fact, the Supreme Court has stated that Section 132 being a complete code in itself

cannot intrude into any other provision of the IT Act and similarly other provisions of the Act cannot interfere with the scheme or the working of Section 132 or its provisions. Since the factual situation before us is that the Respondent – Assessee was not the person who was searched, the reliance placed on Section 132(4A) by the Revenue is wholly misplaced. Hence, we find that Question (b) as projected by the Revenue also does not give rise to any substantial question of law, and hence is not entertained.

14. In view of the aforesaid discussion, the above appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.
15. This order will be digitally signed by the Private Secretary / Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(FARHAN P. DUBASH, J.)

(B. P. COLABAWALLA, J.)

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