

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./I.T.A. No. 4601/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

| | | |
|----------------------------------------------------------------------------------------|----------------------|----------------------------------------|
| Ms. Priyanka Chopra 705, 706 & 806, Raj Classic, B-Wing, Versova, Mumbai-400 061 | बनाम/ Vs. | Dy. CIT, Central Circle – 3, Mumbai |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACXPC 1741 R | | |
| (Assessee) | : | (Revenue) |

&

आयकर अपील सं./I.T.A. No. 4565/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

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|-----------------------------------------------------|----------------------|----------------------------------------------------------------------------------------|
| Dy. CIT, Central Circle – 3, Mumbai | बनाम/ Vs. | Ms. Priyanka Chopra 705, 706 & 806, Raj Classic, B-Wing, Versova, Mumbai-400 061 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACXPC 1741 R | | |
| (Revenue) | : | (Assessee) |

आयकर अपील सं./I.T.A. No. 4569/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

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|--------------------------------------------------------------------------------------------------------|----------------------|--------------------------------------------------------------------------------------------|
| Dy. CIT, Central Circle – 3, Room No. 905, Old CGO Building Annex, M. K. Road, Mumbai-400 020 | बनाम/ Vs. | Mrs. Madhu Ashok Chopra 705, 706 & 806, Raj Classic, B-Wing, Versova, Mumbai-400 061 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACEPC 5502 F | | |
| (Revenue) | : | (Assessee) |

| | | |
|-------------|---|-------------------|
| Assessee by | : | Shri Naresh Kumar |
| Revenue by | : | Shri B. Srinivas |

| | | |
|-------------------------------------------|---|------------|
| सुनवाई की तारीख / Date of Hearing | : | 15.03.2018 |
| घोषणा की तारीख / Date of Pronouncement | : | 01.06.2018 |

आदेश / ORDER

Per Shamim Yahya, A. M.:

These are appeals relating to two different assessee's. Since the issues are common and connected and the appeals were heard together these are being consolidated and disposed of by this common order.

ITA Nos. 4601 & 4565/Mum/2015

These are cross appeals by the assessee and Revenue arising out of order of the Id. Commissioner of Income Tax (Appeals) dated 15.05.2015 and pertain to the assessment year 2011-12.

2. The grounds of appeal raised in assessee's appeal read as under:

1. The Hon'ble Commissioner of Income Tax (Appeal) erred in confirming the addition of Rs.4,80,000/- made by the Ld. AO, being alleged unaccounted/undisclosed income in respect rent received in cash from Shivani Oil and Gas Exploration. It is submitted that Ld. AO has made such addition on the basis of loose paper marked as Annexure A-I page no. 127 found in premises of Mr. Chand Mishra. It is submitted that no such rent receipts have been received in cash by the appellant.

It is further submitted that neither evidences whatsoever have been found by the Income Tax Search team nor any loose papers have been found during search proceedings which indicates that your appellant has received such Rs.4,80,000/- out of books and therefore assumption and presumptions of receipt of alleged undisclosed Income of Rs.4,80,000/- is unreasonable and unlawful.

Without prejudice, we would like to state that appellant follows Cash system of accounting and therefore, such receipts can be taxed only on the basis of evidence of receipt of such cash. It is further submitted that no evidence regarding receipt of cash has been found by search party as well as by the Ld. AO hence, adding of same on assumptions and presumptions is against basic of principles of law and against Natural justice. In view of the above facts, such addition should be deleted.

2. On the facts and circumstances of the case and in law, Hon'ble Commissioner of Income Tax (Appeal) erred in confirming addition made by AO of Rs. 14,00,000/-being alleged notional rent for penthouse at Flat no.901 and 904 of Navkaran, It is submitted the Ld AO erred in relying on the statements (recorded during search proceedings) made by the Ms. Deepika Prakash Rajjak

(employee of Appellant) wherein she stated that the said office was never utilized for business or residence. During the assessment proceedings, It was explained to the Ld AO that the said employee was not in employment with Appellant during the year under consideration and accordingly making addition on the basis of such statement is not unjustified and bad in law.

It is further submitted that the Ld AO was explained that the assumption of flat no.901 and 904 by treating the same as deemed let out is unreasonable, as it is submitted that for the AY 2008-09 as well as for AY 2009-10 the flat no. 402 (owned by Ashok Chopra and Madhu chopra) and 403 (owned by the Appellant) were let out on rental basis and in view of such flats being given on rent, the flat at 901/904 was used for office purpose of the Appellant's business / profession. It is further submitted that the details of rent receipts for such intervening period in respect of Flat no. 402 and 403 were submitted to the Ld AO and duly explained to Hon'ble Commissioner of Income Tax (Appeal). In view of these the presumption of Hon'ble Commissioner of Income Tax (Appeal) that flat no.901/904 being vacant and not utilized for business of the Appellant is not justified and incorrect.

Further the Hon'ble Commissioner of Income Tax (Appeal) erred in confirming the action of Ld AO who stated that Appellant representative have made only oral statement, however Ld AO as well Hon'ble Commissioner of Income Tax (Appeal) has failed to appreciate the submission made before them wherein all of the facts relating to this issue was explained to him in detailed.

Without prejudice, it is submitted that Hon'ble Commissioner of Income Tax (Appeal) erred in confirming the action of Ld AO who has arbitrarily calculated such notional rent @ 7% of Rs.2,00,00,000/-, being cost of the flat. It is submitted that the Hon'ble Commissioner of Income Tax (Appeal) ad Ld AO while determining the notional rent has erred in relying in the case of Smt. Radhadevi Dalmiya Vs. CIT 125 ITR 134 wherein hon'ble ITAT had adjudged that fair return of about 7% on the investment in properties can be taken into account for determining Annual ratable value.

It is further submitted that consequential to the above act of determining the notional rent, Hon'ble Commissioner of Income Tax (Appeal) erred in confirming the action Ld. AO who erred in making disallowance of depreciation of Rs.18,43,347/- as claimed by your appellant in respect of said office on the pretext that the same was not used for the office purpose for the year under consideration. It is to state that such assumptions and presumptions were made by the learned assessing officer without verifying the facts.

It is therefore prayed to your honour to delete such addition made on arbitrary basis and allow the depreciation claim in respect of such office. It is therefore prayed to give necessary direction in this regard.

3. The grounds of appeal raised in Revenues appeal read as under:

(i) Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.3,35,00,000/- being cash component of the payment for purchase of commercial property from MIs.Arjun Realtors Private Limited without appreciating the fact that the addition has been made on the basis of documents seized from assessee's premises and voluntarily admitted by her mother Smt. Madhu Chopra during the search to be cash component of the payment made to the said party over and above payment of Rs.4.3 crores made by cheque and subsequently retracted without giving any supporting evidence to the contrary ?

(ii) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.1,06,00,000/-, made on substantive basis, being unaccounted I undisclosed income towards cash payment for purchase of property at Sawantwadi at Coa without appreciating the fact that the addition has been made on the basis of documents seized from assessee's premises and voluntarily admitted by her mother Smt. Madhu Chopra during the search to be cash component of the payment for purchase of property at Sawantwadi and subsequently retracted without giving any supporting evidence to the contrary ?

(iii) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.50,000/- being cash payment to Ms.Suzzan Roshan for interior decoration in Raj Classic, but not recorded in the books by allowing credit of disclosure made by Smt.Madhu Chopra mother of the assessee as undisclosed income without appreciating the fact that the credit of disclosure made by assessee's mother cannot be allowed to assessee Ms.Priyanka Chopra?"

(iv) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.1,70,000/- being cash payment for expenses not explained by the assessee by allowing credit of disclosure made by Smt.Madhu Chopra mother of the assessee as undisclosed income without appreciating the fact that the credit of disclosure made by assessee's mother cannot be allowed to assessee Ms.Priyanka Chopra?"

(v) "Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.1,20,00,000/- being undisclosed income received during the wedding ceremonies without appreciating the fact that the addition has been made on the basis of statement of assessee's personal secretary Shri Chand Mishra, who handled and managed her entire business I endorsement and which is corroborated by other evidences seized during the course of search?"

Assessee's appeal:

4. Apropos ground no.1 - addition of Rs.4,80,000/- being undisclosed income in respect of rent received in cash from Shivani Oil and Gas Exploration:

4.1 On this issue the assessing officer made the addition by observing as under:

On verification of the Annexure A-1 page no, 127 of the loose papers seized from Navkaran Office on 21-03-2011, it is seen that the assessee was charging an amount of Rs.55,000/- as gross rental per month from M/s.Sivani Oil & Gas Exploration Services in respect of Sky Garden, Oberoi property and as per the scribbling on the back side, it is evident that along with Rs.55,000/- in cheque on which TDS was being deducted by the payee, the assessee was also receiving Rs.60,000/- per month in cash. Thus the total monthly rent comes to Rs.1,15,000/- per month, while the assessee is offering only Rs.55,000/- per month in the books. Thus from combined reading of all these papers, it is very evident that assessee from June, 2009 onwards has been charging Rs.60,000/- in cash from M/s.Shivani Oil & Gas Exploration Services Ltd. Thus the same amount for 18 months, till November, 2010 comes to Rs.10,80,000/- i.e., from June, 2009 to March, 2010 total rent is Rs.6,00,000/- (A.Y.2010-11) and from April, 2010 to November, 2011 total rent is Rs.4,80,000/- (A.Y.201M2).

During the course of assessment proceedings, the assessee was asked to show cause why the cash rental receipts should not be added to her income. In this regard, the assessee vide her representative's letter dated 17-12-2012 has submitted as under;

“This is working of rental received in cash ofRs.60,000/-from M/s,Shivani Oil and gas Exploration services Ltd. It is submitted that your assessee i.e. Mrs.Madhu Chopra, Mr. Ashok Chopra and Ms.Priyanka Chopra has already offered such cash rental receipts in respect of rent received as undisclosed income in the return filed in response to notice U/S.153A of Income Tax Act, 1961 in A.Y.2009-10 and 2010-11 and the details of the same is as under:

| Name | A.Y.2009-10 | A.Y.2010-11 |
|--------------------|-------------|-------------|
| Ms.Priyanka Chopra | 1,90,278 | 1,86,667 |
| Mrs. Madhu Chopra | 1,90,278 | 1,86,667 |
| Mr. Ashok Chopra | 1,90,278 | 1,86,667 |
| Total | 5,70,834 | 5,60,001 |

It is therefore, submitted that the above mentioned rental receipts offered as undisclosed income includes the cash rental receipts of Rs.60,000/- and tax on the same is already paid."

The above submission of the assessee has been carefully perused, however the same cannot be accepted. The above said declaration of undisclosed rent is in respect of Page 121 & 126 of Annexure A 1 of the loose paper seized from the NavKaran Office on 21/03/2011(Rs.75000/-, Page 124 of Annexure A 1 of the loose paper seized from the NavKaran Office on 21/03/2011(Rs.8,79,000/-). However, the assessee has merged the property of Oberoi Sky Gardens, which is quite an another property and the cash rental so found also pertains to A.Y.2010-11 & 2011-12. The loose paper seized in respect of Navakaran office pertains to A.Y.2009-10 & A.Y.2010-11, which the assessee has merged her explanation with that of Oberoi Sky Garden cash rental receipts. Therefore, the explanation of the assessee is not accepted.

Therefore, the cash rental receipts to the tune of Rs.4,80,000/- is added to the income of the assessee under the head income from house property for A.Y.2011-12 and is taxed accordingly.

5. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the addition.

6. Against this order assessee, the assessee is in appeal before us.

7. We have heard both the counsel and perused the records. We find that the assessee's submissions on this issue are same as considered by us in assessee's own case for assessment year 2010-2011 vide order dated 16.01.2018. In the said order, the issue has been dealt with as under:

10. In this regard, we note that the assessee has submitted as under:
It is submitted that Ld. A.O. has made such addition on the basis of loose paper marked as Annexure A-1 page no. 127 found in premises of Mr. Chand Mishra. It is submitted that no such rent receipts have been received in cash by the appellant.

It is further submitted that neither evidences whatsoever have been found by the Income Tax Search team nor any loose papers have been found during search proceedings which indicates that you appellant has

received such Rs.6,00,000/- out of books and therefore assumption and presumptions of receipt of alleged undisclosed income of Rs.6,00,000/- is unreasonable and unlawful.

Without prejudice, we would like to state that appellant follows Cash system of accounting and therefore such receipts can be taxed only on the basis of evidence of receipt of such cash. It is further submitted that no evidence regarding receipt of cash has been found by search party as well as by the Ld. A.O. hence; adding same on assumptions and presumptions is against basic of principles of law and against Natural justice. In view of the above facts, such addition should be deleted.

11. Upon careful consideration, we find that it has been clearly brought out in the assessment order that the addition is based upon the loose papers seized in which there was scribbling found for the cash component of the rent receipt. In the assessment proceedings, the assessee has duly accepted the same and has submitted to the Assessing Officer to telescope the same against other incomes disclosed. However, the Assessing Officer has clearly given a finding that the income against which the assessee wants them to be telescoped related to separate piece of loose papers and they have nothing to do with the seized paper with reference to which this addition has been made. Now the assessee is submitting that there has been no such rent receipt in cash. Merely making such a statement will not support the case of the assessee when incriminating material has been found. Furthermore, the assessee pleads that the assessee follows cash system of accounting. This also does not help the case of the assessee. The assessment being based upon specifically identified loose paper which the assessee has duly agreed during the course of assessment cannot be said to be arbitrary. Hence, we do not find any infirmity in the order of the authorities below and confirm the same.
8. Since the facts are identical, following the above said decision, we do not find any infirmity in the order of authorities below and confirm the same.
9. Another issue raised is that the ld. Commissioner of Income Tax (Appeals) erred in confirming the addition made by the assessing officer of Rs.14 lacs being notional rent for Penthouse at flat nos. 901 and 904 of Navkaran Building. On this issue the assessing officer has made the addition by observing as under:

In the return of wealth filed, the assessee had claimed the penthouse at 9* Floor in Navkaran apartments as exempt as an office, being used for the business purpose. However, during the course of search, it was noticed that the flat No.403 was used as office rather than 901. In this regard, statement on oath of one of the assessee's employee Ms.Deepika Prakash was recorded u/s.132(4) of the I T Act on 24-01-2011, wherein she stated in reply to Q.5 that;

"As per my knowledge the flat was purchased by Ms. Priyanka Chopra in 2008. The flat was since then never utilized for business or residence purpose. Hence the flat is vacant since it was purchased."

On further verification it is noticed that the said penthouse is of two different units and separate agreements are made. Further, as admitted above, the penthouse was not utilized, however, the assessee is claiming depreciation on the same.

In this regard, the assessee was asked to submit the details with supporting documentary evidence that the said penthouse has been used for office purpose and why annual value under the provisions of sec.23(1)(c) should not be determined treating it as income from House Property by disallowing depreciation. In reply to the same the assessee's representative orally stated that the said penthouse is used for keeping the assessee's dresses as godown, however he has not furnished any documentary evidence that it has been utilized for official use.

Further, it can be seen that the property under consideration is a penthouse which is located in the residential area. Hence, it cannot be considered as commercial property. Therefore, the annual value of the above said properties has to be determined under the provisions of sec.23(1)(c) and charged under Income from House property.

Relying on the case of Smt. Radhadevi Dalmiya Vs. CIT 125 ITR 134 the Tribunal had adjudged that a fair return of about 7% on the investment in properties can be taken into account for determining annual rateable value and shall be regarded as just and fair for determining the annual value of the above said properties. Therefore, the annual value of the above said properties is computed as under:

| S.No | Flat No. | Investment Value (Rs.) | Annual Rent (7% of Investment] |
|------|---------------|------------------------|--------------------------------|
| 1 | Penthouse 901 | 1,25,00,000 | 8,75,000 |
| 2 | Penthouse 904 | 75,00,000 | 5,25,000 |
| | Total | 2,00,00,000 | 14,00,000 |

Therefore, deemed rental income of Rs.14,00,000 is charged on estimate basis and is taxed accordingly. Further, as the property has not been used for any official use, the depreciation claimed on Penthouse and depreciation on furniture

& fixture totaling to Rs.18,43,347 is disallowed and is added to the income of the assessee for the year under consideration.

(Addition of Rs. 14,00,000)

10. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the addition by holding as under:

11.1 I have carefully perused the assessment order and the written submission of the appellant. The flat was vacant throughout the entire year but had been apparently let out in the earlier years. Therefore as per the provisions of the Act it attracts the view of notional rent. It is seen that the AO has correctly calculated the notional rent at the rate of 7% of Rs.2,00,00,000/- being the cost of the flat. Such view is based on the Hon'ble Tribunal decision in the case of Smt. Radhadevi Dalmiya Vs. CIT -125 ITR 134. Again, since the flat was lying vacant and not utilized and used for any business purpose the depreciation claimed has also been correctly disallowed by the AO. The AO has very clearly shown in the assessment order as to how the view of notional rent is attracted and as to how depreciation is not allowable on such notional rent.

11. Against this order, the assessee is in appeal before us.

12. We have heard both the counsel and perused the records. Upon careful consideration we note that this addition has been made by the assessing officer on the basis of a statement of the assessee employee that the said flat was vacant. Apart from the above, no other evidence is available with the Revenue. The assessing officer has noted that assessee was asked to submit with supporting documentary evidence that the said Penthouse has been used for office purpose. In response, the assessing officer has noted that assessee 's representative stated that the said Penthouse is used to keep the assessee's dresses as godown, however ,the assessing officer noted that no evidence has been furnished for official use. In this regard, now the learned counsel of the assessee has submitted that the said flat was used for office purpose of the assessee's

business/profession, as assessee was not having any other premises inasmuch as the flats owned by the assessee and her parents were let out. In this regard, the learned counsel of the assessee submitted that the details of rent receipt for such intervening period were duly submitted to the assessing officer and the Id. Commissioner of Income Tax (Appeals).

13. Upon careful consideration we note that this limb of the Id. Counsel of the assessee's submission are that assessee was not having any other premises for office and this was only premises for use of office, has not been addressed by the authorities below. In our considered opinion, the assessee being a professional artist is entitled to have a proper office and storage space. Hence, in our considered opinion, this issue needs to be remitted to the file of the assessing officer. The assessing officer is directed to consider the issue afresh taking into account the submissions of the assessee and documentary evidence produced in this regard. Needless to add the assessee should be granted adequate opportunity of being heard.

Revenues appeal:

Apropos ground no. 1

14. Brief facts of the case are that this addition has been made on the basis of loose papers found at assessee's premises numbered as page nos.114-117 of Annexure A-1 showing cash payment of Rs.3.5 crores, out of an amount totaling to Rs.7.65 crores on account of purchase of commercial unit of 5100 sq ft from one M/s. Arjun Realtors Pvt Ltd. During the course of hearing the assessee has explained and substantiated with

documents that such transaction was cancelled and not completed at all. It was only a proposal carried out through one broker, namely, Mr. Goldie Ahuja. The assessee also explained and substantiated that cheques issued to Mr. Goldie Ahuja for Rs. 29 lacs and Rs.50 lacs was also cancelled as the proposal was not accepted by the assessee due to the involvement of cash component as proposed by the broker Mr. Goldie Ahuja. Rather since the assessee preferred to carry out all payments through cheque she went in for a smaller property at 2995.79 sq. feet by paying the full amount of Rs.4.65 crores in cheque.

15. It was further explained as per loose papers found at assessee's premises numbered as page nos.109-113 of the same Annexure A-1 which contains the details of allotment of premises by M/s Arjun Realtors Pvt Ltd which was agreed upon by the assessee for Rs.4.65 cores having an area of 2995.79 sq. ft only which is much less than the area of 5100 sq. ft. offered earlier. The assessee has substantiated this fact by submitting the agreement aggregating to Rs.4.65 crores showing the details of payments through cheque which are recorded in the books of accounts of the assessee.

16. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) deleted the addition holding as under:

It is seen that the Assessing Officer had relied only on page no. 114 for making addition, without taking cognizance of page no, 109 to 113 of the same Annexure A-1 which also shows the details of the actual transaction. Further, the retraction statement filed by the assessee's mother states that assessee has not made such cash payment to M/s Arjun Realtors Pvt Ltd which has not been considered by Assessing Officer. It is seen that Assessing Officer has not brought anything on record to substantiate the addition of Rs.4.65 crores. Addition cannot

be made on the basis of loose papers only which are not substantiated by documentary proof. Therefore the assessee's submission is accepted in light of Hon'ble Supreme Court decision in CIT Vs. Kalyanansundaram (2007) 294 ITR 49 (SC) and Hon'ble Mumbai Tribunal decision in SP Goyal vs. DCIT (2002) 82 ITD 85 (Mum Tribunal). Therefore, in the light of the above discussion, this addition is deleted.

17. Against the above order, the Revenue is in appeal before us.

18. We have heard both the counsel and perused the records. We note that this addition has been made by the assessing officer on the basis of scribbling in loose sheets found in the course of search. The figures culled out from these documents are as under:

| | | |
|-------------|--------------|----------|
| Area | 4775 | |
| | 326 | |
| Area | 5100 sq. ft. | |
| | 765/- | 7 cr. 65 |
| Agreement = | 430/- | 4.30 |
| | | 6000 |
| Cash | 3.35 | |
| Cheque | 2.15 | |

From the above document it is seen that the same is a scribbling for a real estate property of 5100 ft. total price this has been mentioned as Rs.7 cr 65. There is also mention of cash Rs.3.35 and cheque of Rs.2.15. In this regard, the assessee's case is that the said paper was only a proposal and was later on cancelled with the same party. The assessee entered into a new agreement for 2995.70 ft. for Rs.4.65 crore. Assessee has duly submitted confirmation of payment and agreement for the new project. The cancellation of the cheques given for the earlier project have also been shown and conformed. The sole basis of this addition is the above said document found. In our considered opinion, the above said document cannot be said to be a conclusive proof of

cash payment of Rs.3.5 crores. The assessee's plea that the same is a proposal which was not carried through cannot be brushed aside in light of the confirmation from the parties involved. It is also on record that the assessee never purchased estate property of 5100 sq. ft. from the said builder. Hence, the claim that it was a proposal later on not carried through and cancelled is having sufficient cogency. In similar circumstances, the Hon'ble Apex Court in the case of CIT vs. P. V. Kalyanasundaram [2007] 294 ITR 49 (S.C.) had affirmed the deletion of similar addition. Accordingly, in light of the aforesaid discussion and precedent, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals). Hence, we affirm the same.

Apropos ground no. 2:

19. The assessing officer made addition in this regard by observing as under:

19.2 Purchase of Sawantwadi property

In respect of the property purchased at Sawantwadi, during the course of search, Axis Bank diary was seized which is marked as Annexure A-3. On the top of page 10 it was mentioned that 15th - 1.06 is the "cash". Further, it was also mentioned that Rs.30 lakhs to clear to Vithal Kamat due, which is an admitted fact as per the assessee's statement. Further, as per the above said page Rs.1.10 crores was paid by cheque and Rs.66 lakhs was paid by cash as on 22.12.10.

The above said transaction of Rs.66 lakhs is supported by cash vouchers marked as page no.13 dated 18-10-2010 paid to Manual Fernandis Rs.1,00,000/-, Page no.14 dated 30-10-2010 paid to Manual Fernandis Rs.5 lakhs (signed), page no.16 dated 30-10-2010 paid to Selestian Almeida which was received and signed by Manual Fernandis, Page no.20 dated 15-12-2010 paid to Manual Fernandis of Rs.3 lakhs, page no.21 dated 21-12-2010 paid to Manual Fernandis Rs.10 lakhs, page no.24 dated 22-10-2010 paid to Manual Fernandis of Rs.20 lakhs, page no.42 dated 30-10-2010 paid to Manual Fernandis of Rs.5 lakhs, page no,41 paid to Manual Fernandis of Rs.5 lakhs. The dates of these receipts also match with what is written on Page 10 of Annexure A 3.

Further more it can be seen that the page 11 of the said diary shows that "balance ofRs.85 lakhs cash and payment ofRs.7 takhs Cash" and Rs.2,71,000/- was paid as Registration & Stamp duty charges, which was also paid in cash.

Further, at the top of the page it was mentioned that Rs.40 lakhs was for land agreement, Rs.125 lakhs for house agreement totaling to Rs.165 lakhs as agreement amount and at the bottom was written as Payment of Rs.5 lakhs - land and Rs.35 lakhs - House.

The balance of cash as well as cheque have been paid subsequently in Jan 11 when on page 12 it was written that chq paid and NO balance. The same cheque was realized on 8/1/2011. In the receipt book (annexure A 2), wherever there is a cheque entry, at least name of bank is mentioned. However there are no bank name mentioned in the cash receipts.

It was admitted by the assessee and her mother Smt. Madhu Chopra that the above said writings are the payment made for the purchase of the property at Sawantwadi near Goa. Out of this, they have admitted that an amount of Rs.1.00 crore is paid in cash and the rest in cheque in the F.Y. 2010-11.

In the retraction statement filed by the assessee's mother she had submitted that assessee has infact entered into two agreement of Rs.40 lakhs and Rs.1.10 crores (as against Rs.125 lakhs mentioned in seized papers) respectively towards purchase of property of Sawantwadi and payments in relation to such agreement are made in cheques. Details of cheques paid are as under:

| Date | Cheque No. | Name of the Bank | Amount (Rs) |
|------------|------------|-----------------------|-------------|
| 30-10-2010 | 102727 | Axis Bank Lokhandwala | 5,00,000 |
| 02-11-2010 | 102726 | Axis Bank Lokhandwala | 5,00,000 |
| 15-11-2010 | RTGS | Axis Bank Lokhandwala | 35,00,000 |
| 14-12-2010 | 102740 | Axis Bank Lokhandwala | 20,00,000 |
| 14-12-2010 | 113201 | Axis Bank Lokhandwala | 15,00,000 |
| 15-12-2010 | 103058 | HSBC Bank Chembur | 35,00,000 |
| 08-01-2011 | 103060 | HSBC Bank Chembur | 35,00,000 |
| | | Total | 1,70,00,000 |

From the above, Smt. Madhu Chopra had clarified that cash only to the extent of Rs.7 lakhs has been made as mentioned in page no.11.

To substantiate her statement, the assessee was asked to submit the copy of agreement along with the mode of payment in the bank entries to substantiate her claim that no cash payments are being made for purchase of the above said property.

Accordingly during the course of assessment proceedings the assessee has submitted the copy of agreement dated 30-12-2012 entered into between Manual Fernandes and Smt.Madhu Chopra and second agreement dated 15-12-2010 entered into between Mr.Salestin Augustine Almedia and Smt. Madhu Chopra for Rs.1.10 crores and Rs.40 lakhs respectively.

It is noticed that the above said two agreements were registered in the name of Smt. Madhu Chopra and the payments were made by Ms.Priyanka Chopra and Shri Ashok Chopra and after that the book entries were transferred as loans. This

practice is followed for various payments in the group. Therefore, though the agreement was made in the name of Smt. Madhu Chopra, this issue of on-money payment in cash was taken in the case of the assessee, as most of the payments were gone through her account only. No payment whatsoever was paid by Smt. Madhu Chopra. Hence, this issue of Rs.1.06 crores is taken in the case of Ms. Priyanka Chopra on substantive basis.

On further verification of the details of payment made to Manual Fernandes it was mentioned as follows:

| | | |
|------------|--------------------------------|-----------------------|
| 30-12-2010 | Cheque No,103060 HSBC, Chembur | Rs. 40,00,000 |
| 15-12-2010 | Cheque No,103058 HSBC, Chembur | Rs. 35,00,000 |
| 15-11-2010 | RTGS | <u>Rs. 35,00,000</u> |
| | Total (Agreement Value) | <u>Rs.1,10,00,000</u> |

On verification of the details of payment made to Mr. Salestin Augustine Almedia it was mentioned as follows:

| | | |
|------------|-----------------------------|---------------------|
| 30-10-2010 | Cheque No. 102727 AXIS Bank | Rs. 5,00,000 |
| 14-12-2010 | Cheque No,102740 AXIS Bank | Rs.20,00,000 |
| 14-12-2010 | Cheque No. 113201 | <u>Rs.15,00,000</u> |
| | Total (Agreement Value) | <u>Rs.40,00,000</u> |

In this regard, the assessee has filed the ledger copy of the payments made for purchase of the above said property, which are follows:

| Date | Name of the Payee | Amount (Rs.) |
|------------|-------------------|--------------|
| 02-11-2010 | Ashok Chopra | 5,00,000 |
| 02-11-2010 | Ashok Chopra | 5,00,000 |
| 15-12-2010 | Ashok Chopra | 1,65,000 |
| 18-12-2010 | Ashok Chopra | 15,00,000 |
| 18-12-2010 | Ashok Chopra | 20,00,000 |
| 16-03-2011 | Ashok Chopra | 1,83,875 |
| | Total | 48,48,875 |

| Date | Name of the Payee | Amount (Rs.) |
|------------|-------------------|--------------|
| 16-12-2010 | Priyanka Chopra | 35,00,000 |
| 03-01-2011 | Priyanka Chopra | 55,00,000 |
| 24-02-2011 | Priyanka Chopra | 2000,000 |
| 05-03-2011 | Priyanka Chopra | 1,25,000 |
| | Total | 1,11,25,600 |

From the above it can be seen that the ledger copy filed by the assessee and the cheque payments made does not co-relate the same. On confronting with the same, the assessee's representative has submitted that the above said ledger entries are the entries passed in the books, thereafter the cheques will be issued. However, it can be seen that the entries passed in the ledger are beyond the dates of cheques issued. Further, in support of the same, the assessee has submitted the bank pass book from where the above said cheque payments are reflected.

Further, during the course of assessment proceedings, the assessee was asked to explain the seized material in respect of the following page nos.

| Annexure | Page No. | Date of Payment | Description | Amount (Rs) |
|----------|-------------|-----------------|----------------------------------------------------------------------------------------|-------------|
| A-1 | 39 | 30-10-2010 | Payment made to Manuel Fernandes, in respect of Sawantwadi property purchase | 5,00,000 |
| A-1 | 39 | 30-10-2010 | Payment made to Salestin Augustine Aimedia, in respect of Sawantwadi property purchase | 5,00,000 |
| A-1 | 40, 41 & 42 | 30-10-2010 | Payment made to Mr. Manuel Fernandes | 5,00,000 |
| A-1 | 43 | 18-10-2010 | Cash payment made to Mr. Manual Fernandes in respect of Sawantwadi property purchase | 32,00,000 |
| A-2 | 13 | 18-10-2010 | -Do-- | 1,00,000 |
| A-2 | 20 | 15-12-2010 | -Do- | 3,00,000 |
| A-2 | 21 | 21-12-2010 | -DO-- | 10,00,000 |
| A-2 | 22 | 27-12-2010 | -Do- | 10,00,000 |
| A-2 | 24 | 22-12-2010 | -Do- | 20,00,000 |

In reply to the above said payments, the assessee vide her representative's letter dated 17-12-2012 had submitted as under:

"Cheques dated 30-10-2010 No. 102726 of Rs.5,00,000 in favour of Mr.Manual Fernandes

Cheques dated 30-10-2010 No.102727 of Rs.5,00,000 in favour of Mr. Salestin Augustine Alrneida

It is submitted that the said cheques are duly recorded in the books of account and ledger account.

It is submitted that page nos. 40, 41 & 42 are one and the same. Further Rs.5 lacs was paid in cash which is fanning part of Rs.7 lacs cash admitted by Mrs. Madhu Chopra as undisclosed income in case of transaction for

acquisition of Sawant Property in the clarificatory statement filed before your honour.

In respect of Rs.32 lacs it is submitted that out of total 32 lacs, Rs.30 lacs is the amount paid to Plaza Hotels Pvt Ltd., on behalf of Manuel Fernandes. Further, Rs. 2 lacs was paid in cash which is forming part of Rs.7 lacs cash admitted by Mrs. Madhu Chopra as undisclosed income in the case of transaction for acquisition of Sawantwadi property.

However, the assessee has not been able to explain the above said other payments on which vouchers have also been made and signed by Manuel Fernandes. Further, in her above said statement, the assessee had accepted that cash component to the tune of Rs.7 lakhs has been made in the above said transaction.

Further in respect of Rs.32 lakhs the assessee has submitted that the same was paid to M/s.Plaza Hotel Pvt Ltd. Though, as per the assessee's submission, if the same has been paid to said Hotel as per the MOU entered before the said agreement, it is part of the payments made through cheque as per the agreement. Then also it is over and above the agreement value, which was not disclosed in the books of account of the assessee. The assessee tried to substantiate that the entire transaction entered is only two agreements of Rs.40 lakhs and Rs.1.10 crores, on which the payments have been made by cheque. It is not debatable that the agreement value of Rs.1.10 crores and Rs.40 lakhs has been paid by cheque. However, the other payments, which are reflecting in the bank books and the vouchers seized during the course of search indicates that cash above Rs.7 lakhs has been made i.e., to the extent of Rs.1.06 crores has been accepted as cash component, for which the assessee has not been able to substantiate the same. Therefore, the assessee's explanation/ submission that only Rs.7 lakhs cash has been made in the above said transactions of property purchase at Sawantwadi, Goa is not acceptable and the cash component in this regard is considered as Rs.1.06 crores based on the seized material, bank statement and the statement on oath of Smt. Madhu Chopra taken during the course of search proceedings. Penalty proceedings u/s.271(1)(c) of the I T Act are initiated for furnishing inaccurate particulars of income and thereby concealing the said income.

During the course of assessment proceedings, the authorized representative of the assessee has contended that they had offered Rs.54 lakhs in respect of the cash component involved in the above said transaction in the return of income of Mrs.Madhu Chopra and requested to give its application in Rs.1.06 crores. The assessee's representative's contention is not accepted for the following reasons:

- i) The undisclosed income of Rs.54 lakhs was offered in the case of Mrs. Madhu Chopra, therefore, its application cannot be given in the assessee's case.
- ii) Further, the application of Rs.54 lakhs was given in the case of Mrs. Madhu Chopra in respect of cash found during the course of search

of Rs.21 lakhs, unexplained jewellery of Rs.1,80,110/- and the balance of Rs.31,19,890/- in the protective addition made on account of purchase of sawantwadi property as an application.

(Addition of Rs. 1,06,00,000)

20. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) deleted the addition. On some aspects of the addition made by the assessing officer, she referred to assessee's explanation and accepted the same. She further noted that assessing officer has made the addition without considering the page wise submission of the assessing. What are these page wise submission have not been brought on record by the learned CIT-A. She has also referred to Hon'ble Apex Court decision in the case of *P. V. Kalyanasundaram* (supra). However, we find that this Hon'ble Apex Court case relates to some scribbling in loose sheets found in the course of search, but in the present case it is not a case of jotting but a number of materials including proper receipts of cash payment which were found by the revenue in the course of search. One of us in this Bench was the author of the Tribunal order in this case which had travelled upto the Hon'ble Apex Court and got confirmed. Hence, the Id. Commissioner of Income Tax (Appeals)'s reliance upon this case law is not sustainable. In the light of aforesaid discussion, in our considered opinion, this issue needs to be remitted to the file of the assessing officer. The assessing officer directed to consider the issue afresh in light of the submission of the assessee referred by the Id. Commissioner of Income Tax (Appeals) in her order. Accordingly, the issue stands remitted the file of the assessing officer. Needless to add the assessee should be granted adequate opportunity of being heard.

Apropos ground nos. 3 & 4:

21. These additions were made on the basis of loose sheets found. The assessee had not disputed the basis of addition. But she had sought telescoping of the same through the disclosure of income of unaccounted receipts in the hands of her mother Mrs. Madhu Chopra.

22. The Id. Commissioner of Income Tax (Appeals) has deleted the addition by accepting the assessee's plea as under:

7.1 This addition has been made on the basis of loose papers found at appellants premises numbered as page no. 93 of Annexure A-2 (Navkaram) showing cash payment of Rs.50,000/- to Mrs. Suzzan Roshan. The appellant has explained that such cash payment is made out of cash receipts received on the sale of Gurgaon property for Rs.54 lakhs and the same has been offered for tax as undisclosed income in the return of income filed by appellant's mother Smt. Madhu Chopra for A.Y. 2011-12. Further, it is seen that appellant's mother has already offered the source for tax and application of the same has also been explained in the case of Mrs. Madhu Chopra. Therefore, taxing the application of the funds tantamount to double taxation. I have carefully perused both the assessment order and the appellant's submissions. The explanation of the Appellant is accepted and the ground of appeal is allowed.

8.1 This addition has been made on the basis of loose papers found at appellants premises numbered as page no.44 of Annexure A-1 showing cash payment of Rs. 1,70,000/- for expenses. The appellant has accepted that such cash payment is made out of cash receipts received on the sale of Gurgaon property for Rs.54 lakhs and same has been offered for tax as undisclosed income in return of income filed by appellant's mother Smt. Madhu Chopra for A.Y.2011-12. Further appellant's mother has already offered the source for tax and application of the same has also been explained in the case of Mrs. Madhu Chopra and therefore, taxing the application of the funds tantamounts to double taxation. I have carefully perused both the assessment order and the appellants' submission/Therefore the explanation of the Appellant is accepted and the ground of appeal is allowed.

23. Against the above order, the Revenue is in appeal before us.

24. The main grievance of the Revenue is that the Id. Commissioner of Income Tax (Appeals) should not have allowed telescoping of the income with the declaration of undisclosed income by her mother. Here we find that the Revenue's plea is not sustainable. Throughout the search assessment it has been noted that assessee's mother

has been handling all the affairs of the assessee. When the Revenue can make additions in the hands of the assessee, on the basis of that it was so stated and accepted by the assessee's mother, there is no reason why such telescoping cannot be granted. Accordingly, we do not find any infirmity in the order of the Id. Commissioner of Income Tax (Appeals) on these issues.. Hence, we affirm the same.

Apropos ground no. 5:

25. Addition on this account was made by the assessing officer by holding as under:

Further, in the statement recorded on 24-01-2011 of Shri Chand Mishra, the secretary he had admitted that he had arranged 4 wedding functions for the assessee, -wherein an amount of Rs.30 lacs., was charged in cash for each function, which was not accounted for in the books of accounts.

In this regard, in the retraction statement Smt. Madhu Chopra had submitted that such weddings was attended in view of and part of contract with M/s.Cineyug Media & Entertainment FVt Ltd and no cash component has been received. Except the above written retraction, Smt. Madhu Chopra had not submitted any substantive evidence like copy of contract agreement with M/s.Cineyug Media & Entertainment reflecting the attendance of wedding functions as part of their contract nor the details of receipts offered as income of the assessee. Therefore, the cash component for the said 4 weddings is worked out at Rs.1.20 crores and the same is added as unaccounted income of the assessee for A. Y. 2011-12 and is taxed accordingly.

26. The said addition was deleted by the Id. Commissioner of Income Tax (Appeals)

by holding as under:

9.1 This addition has been made on the basis of statement recorded of Shri Chand Mishra/ secretary of the appellant that he had arranged 4 wedding functions for appellant to which, appellant has charged Rs. 30 lakhs cash for each of such function, plie appellant explained that she had attended one marriage at Mahalaxmi Race Course/ Mumbai as a part of contractual agreement entered into with M/s. Cineyug Media & Entertainment Pvt Ltd for certain events. The details of the same were submitted to AO vide appellants letter dated 26.12.2012. However, AO has not taken cognizance of the same. Further during appellate hearing the undersigned called for the statement recorded of Chand Mishra during

the course of search and the same has been perused and kept on record.] It can be seen that there is no evidence whatsoever or any incriminating documents which indicates attendance of marriage functions by the appellant. The addition made by the AO on the basis of the statement of her secretary is not correct since it is based on hearsay and has no evidentiary value. I have carefully perused both the assessment order and the appellants' submission and accordingly the explanation of the appellant is accepted. The ground of appeal is therefore allowed.

27. Against this order, the Revenue is in appeal before us.

28. We have heard both the counsel and perused the records. We find that this addition has solely been made on the basis of a statement obtained from the secretary of the assessee. There is no corroborative material whatsoever. A mere statement by the secretary cannot be said to be a conclusive proof of undisclosed income earned. Hence, we are of the considered opinion that the Id. Commissioner of Income Tax (Appeals) has correctly accepted the assessee's submission in this regard and deleted the addition. Hence, we accept the Id. Commissioner of Income Tax (Appeals)'s finding and affirm her order.

29. In the result, both the appeals are partly allowed for statistical purposes.

ITA No. 4569/Mum/2015

30. This is an appeal by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals) dated 11.05.2015 and pertains to the assessment year 2011-12.

31. The grounds of appeal read as under:

“Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) is justified in deleting the addition of Rs.74,80,110/-, (out of cash payment of Rs.1,06,00,000/- out of which Rs.31,19,890/- has been offered to tax by the assessee) made on protective basis, being unaccounted/undisclosed income

towards cash payment for purchase of property at Sawantwadi at Goa without appreciating the fact that the addition has been made on the basis of assessee's confessional statement, which has been duly confirmed by her daughter Ms. Priyanka Chopra, and substantive addition in this case of Ms. Priyanka Chopra has been deleted?"

32. In this case, the addition was made on protective basis in the hands of the assessee against substantive addition done in the case of Ms. Priyanka Chopra dealt above in ITA No. 4565/Mum/2015, in ground no.2. Since in the above decision, the issue has been remitted to the file of the Assessing Officer, the issue raised in this appeal also stands remitted to the file of the Assessing Officer. The Assessing Officer shall decide this in accordance with our direction as above.

33. In the result, this appeal by the Revenue stands allowed for statistical purpose.

34. In the result, ITA Nos. 4601 & 4565/Mum/2015 are partly allowed for statistical purposes and ITA No. 4569/Mum/2015 is allowed for statistical purpose.

Order pronounced in the open court on 01.06.2018

Sd/-

Sd/-

(Sandeep Gosain)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01.06.2018

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**