IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “B”, MUMBAI

BEFORE SHRI D. KARUNAKAR RAO, ACCOUNTANT MEMBER AND SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 8764 /Mum/2010
Assessment Year: 2007-08

DCIT Cir-1 Pawar Industrial Estate, 2nd Floor, Edulji Road, Charai Thane (W) Mumbai	Vs.	Neelkant Mainsion and Infrastructure Ltd. 5the Floor, Fine House, M.G. Road, Anandji Lane, Ghatkoper (E), Mumbai- 400 077 **PAN: AAACN 1245 R**
(Appellant)		(Respondent)

C.O. No. 167/Mum/2012
(Arising Out of ITA No. 8764/Mum/2010)
Assessment Year: 2007-08

Neelkant Mainsion and Infrastructure Ltd. 5the Floor, Fine House, M.G. Road, Anandji Lane, Ghatkoper (E), Mumbai- 400 077 **PAN: AAACN 1245 R**	Vs.	DCIT Cir-1 Pawar Industrial Estate, 2nd Floor, Edulji Road, Charai Thane (W) Mumbai
(Appellant)		(Respondent)

Assessee by	:	Shri Vijay Mehta
Revenue by	:	Shri Ajit Kumar Srivastava
Date of hearing	:	03.12.2014
Date of Order	:	19.12.2014

<u>O R D E R</u>

<u>PER AMIT SHUKLA, JM:</u>

The aforesaid appeal has been preferred by the Revenue and Cross Objection has been filed by the assesse, against order dated 31.08.2010, passed by the Ld.CIT(A)-1, Thane. In the revenue's appeal following effective grounds have been raised.:-

> *"1.On the facts and in the circumstances of the case and in law the CIT(A) has erred in deleting the addition of Rs. 4.5 Crore being unexplained investment u/s 69C, admitting fresh evidence without giving the AO an opportunity, violating norms of Rule 46A.*
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> *2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of &s. 6,76,72.000/- being unexplained investment u/s 69B, admitting fresh evidences without giving the AO an opportunity, violating norms of Rule 46A.*
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> *3. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition of Rs.75,00,000/- out of addition of Rs. 7,55,14,200/- being unexplained receipts, admitting fresh evidences without giving the AO an opportunity, violating norms of Rule 46A.*
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> *4. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in admitting fresh evidences without giving the AO an opportunity, violating norms of Rule 46A. The procedure followed by CIT(A) is not correct."*

Thus in all the grounds, the revenue has challenged the order of the Ld.CIT(A), mainly on the ground that there is a violation of Rule 46A of Income Tax Rules.

2. Brief facts of the case are that, the assessee is engaged in the business of builders and developers. The assessing officer received information through AIR, wherein it was reported that assessee has deposited cash of Rs.4.50 crore on 12.07.2006 with Joint Sub-registrar

office Kurla. In response to the show cause notice, the assessee explained that it has not deposited any cash of Rs.4.50 crores with the Sub-registrar. In support, the assessee filed copy of registered document and relevant ledger account appearing in the books of account that the payment was made through account payee cheques. The assessee had entered into a developed agreement with M/s. Mam Ratna Developers which was registered on 12.06.2006 with Sub-registrar, Kurla for total consideration of Rs.4.50 crores. In the AIR information it was reported that the registrar had mentioned that Rs.4.50 crores was deposited in cash whereas, the assessee submitted before the AO that no cash was paid at all and enquiry can be made from the officer of registrar. However, the AO without any enquiry or verification added the said amount of Rs.4.50 crores u/s 69C.

3. Further the AIR information reported that the assesse had entered into purchase transactions with nine other parties for Rs.75 lakhs each; not shown by the assessee. In the response to the show cause notice, assessee submitted that, all the transactions were duly accounted for in the books of account and all the transaction represented sale of flats at Nilkant Heights, Thane developed by the assessee and there is no transaction of purchases. The assessing officer rejected the assessee's contention and treated the sums aggregating Rs.6,76,72,000/- as unexplained investment. From the said transaction, he also added further amount of Rs.75 lakhs u/s 69C.

4. Before the Ld.CIT(A), the assessee regarding payment of cash of Rs.4.50 crores, submitted that in the sale deed itself, there is no mention about the cash and in support a copy of confirmation letter from the Deputy Sub-registrar was also filed, which clarified that, due to

mistake by Data Entry Operator, the amount paid in cheque was shown in the column of cash. Thus there was no cash paid or cash transaction. The relevant observation and finding of the Ld.CIT(A) in this regard is as under-

> *"The clarification advanced to me by Shri Ashit Mehta, CA and AR is that the appellant never paid cash of Rs 4.50 Crore to Sub Registrar, Kurla. It is further stated that, the appellant registered a sale deed dated 12/06/06 on 12/07/06 for Rs 4.50 Crore which is duly accounted for in the books. In support of this I the appellant has also furnished a copy of Index II which revealed the aforesaid facts. The appellant has also furnished a copy of clarification letter received from Dy. Sub Registrar Kurla which states that the data entry operator committed an error by entering the amount in the cash column. It is further clarified by the Registrar that the amount of Rs 4.50 Crore was paid by cheque and the same appears in the sale document. The AIR details submissions and the supporting documents are perused. I find from the AIR details that the code of 001 is wrongly mentioned against the entry of Rs 4.50 Crore. The code 001 is actually meant for cash deposits into savings bank account above Rs 1 Lac. I also find from the documents that the sale deed is dated 12/06/06 and the same is registered on 12/07/06. Also the amount is duly accounted for in the books. I therefore come to the conclusion that, the addition of Rs 4.50 Crore is uncalled for and unjustified. Accordingly, I direct the AO to delete the addition. The ground is allowed."*

5. As regard 2nd and 3rd addition, it was explained by the assessee that, the transaction represented registration of sale documents in respect of nine flats sold by the assessee and there was no purchase transaction as wrongly understood by the AO. On this issue also, the assessee furnished the confirmation letter from the Sub-registrar. The Ld.CIT(A) deleted the said addition after observing and holding as under:-

> *"In the submission made to me by the AR , it is explained that, the transactions represented registration of sale documents in respect of 9 flats and it is further stated that, the AO has wrongly*

taken it as purchase. In this connection, the appellant approached the sub registrar, who has given copy of Index II in respect of 9 transactions. From the said Index II, I find that, the sale documents in respect of flats are executed by the appellant as seller in favour of 9 different parties. The consideration per document is Rs 38,11,200/- and the stamp duty value stands at Rs 75,00,500/-. This is also confirmed by the Dy. Sub Registrar, Kurla in his letter dated 12/01/10, addressed to the appellant. I also find from the copy of ledger account that, all the 9 transactions are duly accounted for in the books of the appellant. I therefore I hold that I the addition is uncalled for and unjustified. Accordingly I direct the AD to delete the addition. The ground stands allowed."

6. Further with regard to the addition of Rs.75 lakhs the Ld.CIT(A) noted that in the letter written by Deputy Sub-registrar and also from the perusal of the AIR details, it was clear that there was a double entry in the AIR details, accordingly he directed the AO to delete the said addition.

7. Before us, the Ld. DR submitted that the Ld.CIT(A) on receiving the additional evidences from the assesse, should have given opportunity to the AO to examine the same and then only should have given his finding on the various issues. The Ld.CIT(A) has not recorded any reasons for admitting the additional evidences, therefore, there is a clear violation of Rule 46A.

8. On the other hand learned counsel, Shri Vijay Mehta submitted that, when the AIR information was confronted to the assesse, it was requested to the AO to provide the correct details and carry out enquiry from Sub-registrar, as the assesse has neither paid any cash for the registered sale deed of development agreement nor has made any purchases of flats, rather it was sale of flats. The assessing officer refused to accept the assessee's explanation and the evidences filed by

it and also did not carry out any enquiry himself despite specific request from the office of the Sub-registrar. He drew our attention to the letters given to the AO requesting him to get the confirmation from the Sub-registrar offers, which he refused to sought any clarification. The assessee had no option, but to obtain the clarification and confirmation from the Sub-registrar. It was in this background and clarification given by the Sub-registrar, the Ld.CIT(A) has deleted the addition. It is not a case of violation of Rules 46A, because the AO has refused to perform his duty of carrying out investigation/inquiry necessary for the assessment and has also failed to consider the evidences filed by the assessee before him.

9. We have heard the rival submissions and perused the relevant finding given by the AO as well as Ld.CIT(A) and also the material placed on record. All the additions have been made by the AO based on uncorroborated AIR informations. Once such an information was confronted to the assesse, the assessee had duly clarified and explained the entries and the nature of transactions duly supported by books of accounts. Once the assessee has resulted the information, the onus was upon the assessing officer to prove that assessee's explanation and evidences are untenable. The AO has failed to discharge his onus. As regards the addition of Rs.4.50 crores, the assesse has categorically submitted that the payment regarding development agreement was made through account payee cheques which was duly mentioned in registered documents and in the books of account of the assessee however, the assessing officer without even getting a clarification from the Sub-registrar office has made the said addition. Such an uncorroborated AIR information cannot be said to sacrosanct that AO is

even precluded from examining the facts or carry out any inquiry. The AIR information cannot be adversely viewed against the assessee if the assessee has rebutted the transaction reported in the said AIR. Here in this case, the Sub-registrar has duly clarified that, there was a mistake on their part in recording the amount in the column of cash and on said clarification given by a public authority, Ld.CIT(A) has deleted the addition. There is no question of violation of any Rule 46A. Thus addition of Rs.4.50 crores has rightly been deleted.

10. Regarding addition of Rs.6,76,72,000/- it is amply clear from the records and the finding of the Ld.CIT(A) that the transaction relating to nine flats was on account of sale and not purchases, as wrongly understood by the AO. The assessing officer without even applying his mind on the nature of transaction, whether it is sale or purchase, has blindly relied upon uncorroborated AIR information. The assessee has adduced all the evidence before the AO including copy of sale agreements and the copy of ledger accounts, that it was a sale made to the various persons and not purchases. If this aspect has been clarified by the Sub-registrar, then it cannot be held that there was a violation of Rule 46A. Thus, such an addition has rightly been deleted by CIT(A).

11. Regarding addition of Rs.75 lakhs, it is seen that there was a double entry in the AIR details, the AO without applying his mind and also without verifying the assessee's contention has made the addition. Such an approach of the AO is wholly unjustified and uncalled for not only in law but also on facts. Thus, there is no merit in the grounds raised by the revenue and hence, same are dismissed.

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12. Before us, the learned counsel submitted that the grounds raised in cross objection is in support of the order of the Ld.CIT(A). Accordingly the same is treated as infructuous, in view of the finding given by us in the revenue's appeal.

13. The assesse has also raised following as additional ground in the cross objection.

> *"The Commissioner of Income Tax (Appeal) has erred in confirming the addition of Rs.4,06,566/- being the interest earned on the fixed deposit made out of corpus/proposed society funds which funds do not belong to the assessee company and which funds are held by the assessee company in fiduciary capacity."*

14. Brief facts are the issue involved is that, on perusal of the TDS certificates filed along with the return of income, the AO noted that the assesse has received interest of Rs.3,94,98,940/- from the various banks, but has only offered sum of Rs.3,88,18,540/-. The AO considering the assessee's clarification, noted that the amount of Rs.4,06,566/- was on account of interest received on account fixed deposits of society which has not been offered for income. It was explained by the assessee that it had collected maintenance charges as a corpus fund, which was kept as FDRs. Any interest is accrued and does not belong to the assessee and it is not an income of the assessee. The explanation of the assesse that the interest income does not belong to it, was rejected by the AO and accordingly the amount was added to the income of the assesse. This has been confirmed by the Ld.CIT(A) also.

15. Before us, the learned counsel submitted that the amount of deposit received from the customers, who have bought the flat in assessee's project, was kept as trust in a corpus fund for maintenance charges. The amount was shown as liability to the society in the books. Even the interest received on such deposits was credited to the same account, that is, as a liability towards the society. Further the assesse has not claimed any TDS credit on such an interest.

16. On the other hand, Ld. DR strongly relied upon the order of the Ld.CIT(A).

17. We have heard the rival submissions and also perused the relevant finding given in the impugned orders. The assessee has received deposits from the members of the housing society as corpus funds which was deposited with the bank in the form of FDR's . This amount was shown as liability towards society in the balance sheet. The interest earned on such deposits has also been treated as income of the society and liability of the assesse. The same has not been treated is income by the assesse as the money has been kept in the form of trust by the assesse. It has also been clarified by the learned counsel that the assessee has not taken any credit of the TDS deducted by the bank on such interest income. Once, the interest has been shown as income nor any credit of TDS has been taken, them, there is no reason to treat the interest income as assessee's income. Accordingly the interest income of Rs.4,06,566/- added in the hands of the assessee stands deleted.

18. In the result, the appeal filed by the **Revenue is dismissed and that the Cross Objection filed by the assessee is partly allowed.**

Order pronounced in the open court on this 19th day of December, 2014.

Sd/-	**Sd/-**
(D.KARUNAKAR RAO)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 19.12.2014
*Srivastava

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR "B" Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.