CASE NO.:
Appeal (civil) 5795 of 2002

PETITIONER:
Dy. CIT Special Range

RESPONDENT:
Ravi Holdings Pvt. Ltd

DATE OF JUDGMENT: 17/01/2008

BENCH:
ASHOK BHAN & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

O R D E R

CIVIL APPEAL NO.5795 OF 2002
WITH
CIVIL APPEAL NOS.1830/2002, 5794/2002, 4488-4490/2002

This order shall dispose of Civil Appeal Nos.5795/2002, 1830/2002 and 5794/2002 filed by the revenue and Civil Appeal Nos.4488-4490 of 2002 filed by the assessee relating to the same assessment years. Facts are common.

For the sake of convenience, the facts are taken from Civil Appeal No. 5795 of 2002.

Respondent/assessee is a builder which belongs to Ravi Builders Group of cases and carried on business of construction. Search under Section 132 of the Income Tax Act, 1961 (for short 'the Act') was carried out at the residence as well as business premises of the assessee/partner/director(s) of the company on 24-25/12/1996. During the course of search, a statement on oath of Chandrakant Patel, Director of assessee's company was recorded under Section 132(4) of the Act. Chandrakant Patel admitted that the assessee's company had charged "on money" on sale of flats/tenements of Ravi Ratna Park Project and admitted concealed income of Rs.15 lacs in the case of the company and another Rs.11 lacs in other group of cases.

The Assessing Officer on 31st August, 1988 passed an order under Section 158 BC read with 158 BD of the Act for block assessment for the period 1985-86 to 21.12.1996. The Assessing Officer made various additions on the following basis:

"a) During course of search, voluminous incriminating were also seized which contained information regarding charging of "on money" at different rates for different types of premises. On the basis of these, the AO estimated that the assessee had earned "on money" of Rs.2,48,52,961/- on sale of flats in various projects. This included extra money charged by the assessee from certain tenement holders who were given larger land area. After considering all the relevant factors and also written submissions of the assessee, an addition of Rs.2,48,52,961/- was made.

(b) An addition of Rs.82,43,909/- was made on account of unaccounted expenditure on the basis of seized material out of which Rs.28,17,909/- was made on substantive basis, whereas addition of Rs.2,26,000/- was made on protective basis.

) An addition of Rs.15 lacs was made on the basis of statement recorded under Section 132(4) of the Act.

Accordingly, the block assessment dated 31.8.1998 was finalized under section 158 BC read with Section 158 BD of the Act by the Assessing Officer after making the following additions:

"(1) admitted concealment Rs.1500000.oo under Section 132(4)

(2) On money charged on Rs. 24852961.00 sale of flats.

(3)Unaccounted income on the basis of seized papers:

Substantive Rs. 28,17,909/-
Protective Rs.54,26,000/-

Rs.82,43,909/-"

In appeal, the Income Tax Appellate Tribunal (for short 'the Tribunal') vide its order dated 19th August, 1999 deleted the additions made at serial Nos. 1 and 3, quoted above. The addition at serial No.2 regarding 'On money" was reduced to Rs.64,35,000/- and further allowed deduction of estimated expenditure against "on money" @ 30% of the estimated "on money" receipts i.e. Rs.19,20,000/-.

Tribunal accepted the assessee's contention that it had charged on money @ 30% of the document price. Accordingly, the Tribunal reduced the estimate of "on money" to Rs.64 lacs including the money of Rs.2.17 lacs charged by the assessee for extra land given to certain tenement holders. Tribunal also directed the AO to allow deduction of 30% as unaccounted expenditure incurred out of unaccounted receipts. Thus, the Tribunal estimated on money receipts at Rs.64 lacs and expenses at Rs.19.20 lacs, leaving unaccounted income of Rs.44.80 lacs as against Rs.2,48,52,961/- made by the Assessing Officer.

While doing so, the Tribunal recorded its findings by observing thus:

"16.We have carefully considered facts and material placed before us as well as the rival submissions made on both sides. In so far as the basis issue of charging of on money on booking of flats in the Ravi Ratna Park project is concerned, we find that there is ample supporting evidence on records. Documents and papers seized from the residence of Sri Piyush R.Patel, Director and the office premises of the assessee company elaborately discussed in the impugned order and referred above by us clearly indicate that the assessee has charged on money while booking of units in the projects. The statements of Shri Chandrakant R.Patel, Director of the assessee company, recorded on 25.12.1996 and again on 8.1.1997 constitute unequivocal admission of on money charged by the assessee company. These sworn statements are corroborated by seized documents and records from the premises of the assessee company. Shri Chandrakant R.Patel submitted an affidavit during the assessment proceedings resiling from the aforesaid sworn testimony. However, it is to be borne in mind that the admission of the Director regarding charging of on money on the booking of flats is corroborated by documents seized during the search operations. Admission made by the assessee during search operations constitute substantial evidence in view of Section 17 and 21 of the Indian Evidence Act. The admission is fully corroborated by documents and records which are inculcatory in nature. The affidavit of the Director filed by the assessee company is in our opinion merely a self serving document and does not deserve any weight. A very heavy onus lay upon the assessee to refute and controvert the admission made at the time of search operations and the said onus has not

been discharged in the instant case. Since the Ld. counsel for the assessee very candidly submitted that the assessee company no longer wishes to resile from the statements of Shri Chandrakant Patel, Director and the affidavit filed during the assessment proceedings may be ignored, we need not dwel upon this aspect of the matter further.

17.In the facts and circumstances of the case as discussed above, we feel that the estimates of on money charged on flats in the various blocks adopted by the AO in the assessment order at Rs.2,48,52,961 are excessive and cannot be sustained. The same price adopted by the AO for block A,D and E Flats at Rs.5 lacs per unit on the basis of the seized documents A/3 page 1 does not appear to be reasonable. The said paper pertains to sale of Flat Nos. 132 and 133 in D block, which is situated at the corner of the main road having the ideal location in the block. Further more it is to be borne in mind that the area of the plot of land for D type flat is 132 sq. yds. whereas in E Block the area of the plot of land is 78 sq. yards only. As regards A block, in this block, the purchasers of the flat do not get the ownership rights over the plot of land. Looking to the fact that the same price fixed by the Govt. in respect of flats in A, D and E blocks at Rs.2,29,000 and Rs.2,24,000 per unit, we felt that the on money charged per flat @ Rs.66000 for A & D block and Rs. 67,000 for E block, admitted by Shri Chandrakant Patel, Director in his statement dated 25.12.1996 appears to be reasonable .
Similarly, with regard to F type documents the sale price fixed by the govt. per unit is Rs.1,90,000 whereas the AO has adopted the figure of Rs.2,25,000 which is almost double the price fixed by the govt. the on money charged with respect to this block @ Rs.36,000 per unit admitted by the Director in his statement appears to be reasonable and is upheld. Similarly with regard to shops, 23 shops have been booked during the block period under consideration and the sale price fixed by the govt. per shops is Rs.49,393 the on money charged per shop indicated by the ld. counsel before at Rs.15,000 per shops appears to be a reasonable estimate. We feel that the figure of total on money receipts as per the submissions of the ld. counsel before us is I the circumstances of the case a reasonable estimate and we uphold the same. By sustaining the on money receipts at Rs.64 lacs as above (including Rs.2,17,000 received on account of extra land as conceded by the ld. counsel before us) is broadly based on adopting the on money received per unit @ 30% of the price fixed by the Govt. So various factors, like location of blocks as well as the flats, reasurement of plot of land attached thereto etc. have been taken into consideration while adopting the aforesaid estimate. The fact that the director of the company in his statement before the tax authorities has indicated the aforesaid figures of on money charged and reiteration of this on money figure before us by the Ld. counsel have also been relevant consideration with us.

18.One of the contentions raised by the Ld. counsel, which remains to be considered by us, is that on money receipts on booking of flats can be brought to tax only in the years during which conveyance deeds in respect of the flats are executed and sales thereof are complete. According to the Ld. counsel, on money receipts cannot be taxed during the block period, since no deeds are executed. We are not persuaded to accept the arguments o the Ld. counsel on money received by the assessee in cash outside the books of account at the time of booking of the flats is over and the advance money paid by the buyers which are accounted for in the books of account. Thus, according to the mercantile system of accounting, on money received by the assessee outside the books of account at the time

of booking becomes the income of the assessee and it is in no way related or connected with the completion of the sales transaction. Whether the booking of the flats ultimately culminates in the execution of the conveyance deeds or not, premium or on money received by the assessee at the time of booking partakes of the character of commercial receipts of the assessee and is, therefore, liable to be assessed as income according to the accepted principles of commercial accounting. The contention of the ld. counsel is, therefore, rejected.

19.The next issue, which is required to be considered is the claim of deduction of expenses incurred by the assessee outside the books of account against the on money receipts. We find, there is merit in the contention of the Ld. counsel that the assessee company has incurred expenses outside the books of account, which is duly corroborated by the documents and records seized during the search operation. The AO has enumerated such expenses in the assessment order and made substantive addition of Rs.218,17,909 on account of such unaccounted expenses incurred outside the books of account. Ld. counsel has made before us detailed submissions with regard to various items of the expenses treated as unexplained by the AO in the assessment order. Ld. counsel submitted that out of the aforesaid addition of Rs.28,17,909 certain expenses are accounted for in the books and the balance expenses even if these are unaccounted, they are liable to be allowed as deductible business expenditure against the on money receipts. The particulars of such unaccounted expenses as indicated by the Ld. counsel are as under:

The AO has adopted
The figure as Rs.3,49,000

According to the assessee, amount of Rs.1,13,000 represents receipts for extra land and therefore, the amount involved as per this paper is Rs.2,39,000 only.

20.Ld. counsel submitted that apart from the aforesaid expenses, which are incurred outside the books of account evidenced by seized documents, there may be other expenses also incurred by the assessee outside the books of account, like, extra payments made to the land owners or other expenses for which documents have not been found during the search operations. In the circumstances of the case, we feel that deduction on account of expenses may be estimated at 30% of the on money receipt of Rs.64 lakhs indicated above. On this basis, the AO would allow deduction of Rs.19.20 lakhs. We would accordingly uphold the addition of Rs.64 lakhs \026 19.20 lakh = Rs.44.80 lakhs as against Rs.2,48,52,961 added by the AO on account of on money receipts. The balance addition of Rs.2,03,72,961 is deleted. This disposes of ground No.4 in the assessee’s appeal."

Revenue as well as assessee filed appeals before the High Court and raised the follo wing
questions of law arising from the order of the Tribunal for its consideration. Assessee’s questions of law read thus:

a. Whether in the facts and circumstances of the case, the ITAT was right in law in holding that the assessment proceedings were not barred by the period of limitation?

b. Whether in the facts and circumstances of the case, the ITAT was right in law in estimating "on money" receipt at Rs.64,00,000/-?

c. Whether in the facts and circumstances of the case, the ITAT was right in holding that the appellant would have incurred expenditure of only 30% as against the claim of the appellant of at least 92%?

d. Whether in the facts and circumstances of the case, the findings reached by the ITAT that the appellant received "on money" of Rs.64,00,000/- or that the expenditure of the appellant could have been only Rs.19.2 lacs is not contrary to record and perverse?

Revenue's questions of law read thus:

a.Whether the Appellate Tribunal is right in law and on facts in restricting the addition made on account of on money receipt to Rs.44.80 lacs as against Rs.2,48,52,961/- made by the assessing officer?

b.Whether the appellate Tribunal is right in law and on facts in deleting the addition of Rs.82,43,909/- which included substantive addition of Rs.28,17,909/- on account of unaccounted expenses incurred by the assessee and Rs.54,26,000/- made on protective basis?

c.Whether the Appellate Tribunal is right in law and on facts in deleting Rs.15 lacs made on the basis of statement recorded under section 132(4) of the Act?

d.Whether the finding of Appellate Tribunal in deleting the addition are perverse in case it does not take into consideration material facts available on record and taking into accounts only the submissions made by the assessee?

The questions raised by the assessee were rejected. It was held that the findings recorded by the Tribunal were on facts and therefore no substantial question(s) of law arose from the findings recorded by the Tribunal. In so far as revenue's appeals are concerned, the High Court accepted the second question and formulated the same as under:

"Whether the Appellate Tribunal is right in law and on facts in deleting the addition of Rs.82,43, 909/- and whether the said finding is not perverse in the absence of any reasons?"

The aforesaid question formulated and accepted by the High Court is pending consideration before the High Court. Questions of law at serial Nos. a, c and d were rejected by observing that findings recorded by the Tribunal were on facts and therefore no substantial question of law arose.

After perusing the findings recorded by the Tribunal, we are in agreement with the view taken by the High Court that question Nos. a, c and d are based on facts and therefore, substantial question of law did not arise from the findings recorded by the Tribunal.

In view of the foregoing reasons, the appeals filed by the revenue are dismissed.

In view of dismissal of revenue's appeal, counsel for the assessee does not press the assessee's appeals.

The Appeals are dismissed accordingly.