IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI

BEFORE VIKAS AWASTHY (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.1107/Mum/2023
(Assessment year2016-17)

Ketan Tokershi Shah 76, Laxmi Palace, Mathuradas Road Kandivali (West), Mumbai-400 067 **PAN : AAIPS0195C**	vs	The DCIT, Central Circle-2, Thane Ashar IT Park, 6th Floor, Road No.26Z, Wagle Industrial Estate Thane (West), Mumbai-400 604
APPELLANT		**RESPONDENT**

Assessee represented by	Shri Akshay Jain, CA
Department represented by	Shri Prashant Mahajan Sr.AR

Date of hearing	12-07-2023
Date of pronouncement	26-07-2023

O R D E R

PER : MS PADMAVATHY S. (AM)

This appeal is against the order of the Commissioner of Income-tax (Appeals), Pune-11 [in short, CIT(A)] dated 09/02/2023 for A.Y. 2016-17.

2. The assessee raised three grounds on merits with respect to the addition made by the Assessing Officer to the tune of Rs.6,16,89,505/- on account of alleged cash credit under section 68 of the Act. Besides the assessee raised the following additional grounds on the legality of the assessment:-

"Additional Ground of Appeal: -

1 "That on the facts and circumstances of the case and in law, the assessment order passed by Ld. DCIT is wholly without jurisdiction. Hence, the assessment order along with consequential proceeding are liable to be quashed.

It is humbly submitted that as per CBDT Instruction No. 1/2011 dated 31-01-2011. if the declared income of the assessee is less than Rs.20 lakhs, the jurisdiction of the assessee case lies with ITO and not with DCIT. In the present case for AY 2016-17. the assessee has declared an income of Rs.l1,50,260/-. Therefore, in view of the aforesaid instruction, the jurisdiction of the assessee case lies with ITO and not with DCIT. Hence, the, assessment order passed by Ld. DCIT is wholly without jurisdiction and liable to be quashed."

2. The assessee is an individual and is a partner in various firms including the partnership firm, viz. M/s Monarch and Qureshi Builders, which is engaged in business of real estate and construction activities. The assessee filed the return of income for the assessment year 2016-17 on 12/10/2016 declaring the total income at Rs.11,50,250/-. The case was selected for scrutiny and the notice under section 143(2) was duly served on the assessee. During the assessment proceedings, the Assessing Officer noticed that the assessee has shown share of income from partnership firm amounting to Rs.11,97,78,596/- which has been claimed as exempt. The share of income consists of Rs.6,16,83,505/- from the partnership firm M/s Monarch and Qureshi Builders and Rs.3,99,50,000 from M/s.Ravi Developments. The Assessing Officer further noticed that the partnership firm M/s Monarch and Qureshi Builders has offered income of Rs.12,33,67,010 for A.Y. 2015-16 under Income Declaration Scheme, 2016 (IDS - 2016) but did not pay taxes due under the said scheme. Since the partnership firm did not pay tax on the income the Assessing Officer was of the view that the share of profit cannot be claimed as exempt in the hands of the assessee. The assessee submitted tht the

income as disclosed under IDS-2016 is declared as income in the partnership firm for A.Y. 2015-16. The assessee also submitted that out of the said credit, a sum of Rs.7,53,49,860/- is reversed in F.Y. 2016-17. The Assessing Officer did not accept the submissions of the assessee and held that the amount of assessee's share of Rs.6,16,83,505/- can be claimed as exempt only when the tax on such income is pid by the firm. Therefore, the Assessing Officer assessed the share of profit as unexplained cash credit under section 68 in the hands of the assessee.

3. Aggrieved, the assessee preferred further appeal before the CIT(A). The CIT(A) upheld the addition made by the Assessing Officer by holding that –

> *"15. In the present case an amount of Rs. 6,16,83,505/- has been credited in the capital account of the assessee on 01/04/2015. Further, the said credit entry is not a mere book entry because out of this amount, the appellant has utilized Rs. 3,76,74,930/- by way of cash withdrawal on 30/12/2016. Therefore, the said credit entry of Rs. 6,16,83,505/- clearly falls within the ambit of sec. 68 of the Act. It is a well settled legal position that in case of a credit entry, the primary onus of explaining the nature and source of said credit entry, is on the assessee and the assessee is required to prove the identity of creditor, genuineness of transaction and the creditworthiness of the creditor by way of filing the supporting documents. In the present case, the appellant has not explained as to how the amount of Rs. 6,16,83,505/- was credited in his capital account even though no corresponding profit was shown by the partnership firm. It may also be mentioned that till date the appellant has not filed any financial statements of M/s Monarch and Qureshi explaining as to how credit entry on account of profit has been made in the capital account of partners, without showing corresponding profit in the P/L Account. In such situation, the genuineness as well as source of this credit entry stands unproved. Accordingly, the appellant has failed to discharge his primary onus as casted on him u/s 68 of the Act. It is a well settled legal position that if an assessee fails to discharge his primary onus u/s 68 of the Act, the Assessing Officer is justified in treating the credit as unexplained cash credit taxable u/s 68 of the Act.*
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> *16. The appellant has taken an argument that the profit of Rs. 12,33,67,010/- is taxable in the hands of the partnership firm and not in the*

hands of the partners. On the other hand, the partnership firm has filed appeal against the assessment order passed in its case. Thus, the appellant is taking contradictory stand. This flip-flop approach of the appellant cannot be accepted. The appellant has further contended that the entries in the books of accounts are not conclusive in determining the taxability of a transaction. While there is no dispute about this legal position, however, in the present case, the amount of Rs. 6,16,83,505/- is not being taxed merely on the basis of entries in the books of accounts. As explained earlier in this order, after crediting this amount in the capital account, the appellant has withdrawn a substantial amount of Rs. 3,76,74,930/- in cash for his use. Further, the balance amount is still outstanding as credit in his capital account. These facts clearly suggest that it is not a mere book entry which is being taxed in the hands of the appellant.

17. The appellant has further contended that the partnership firm is incurring losses. In this connection, it may be mentioned that if the firm is making losses in that case it is all the more important for the appellant to explain the source of huge cash which was withdrawn by the partners on 30/12/2016. However, same has not been explained by the appellant. It may also be mentioned that till date the appellant has not filed any financial statements of M/s Monarch and Qureshi explaining as to how credit entry on account of profit has been made in the capital account of partners, without showing corresponding profit in the P/L Account.

18. The appellant has further contended that the share of profit of a partnership firm in the hands of the partners is always exempt. This contention is of no help to the appellant because as explained earlier in this order, it is an admitted fact that no profit corresponding to Rs. 12,33,67,010- has been shown by the firm M/s Monarch and Qureshi Builders in its return or P/L Account. Therefore, this contention of the appellant cannot be accepted in view of specific facts of this case.

19. Considering the totality of facts of the case, I am of the opinion that the appellant has miserably failed in discharging his onus for satisfactorily explaining the credit entry of Rs. 6,16,83,505/- made in his capital account on 01/04/2015. Therefore, the addition of Rs. 6,16,83,505/- made by the Assessing Officer u/s 68 of the Act, is upheld. The ground no. 1 raised by the appellant is ***DISMISSED."***

4. Aggrieved, the assessee is in appeal before the Tribunal. In support of the admission of the additional ground, the ld A.R. submitted that it involved only adjudication of pure legal issue and no fresh facts were required to be examined. The learned DR opposed the admission of additional ground. Taking into consideration the entire conspectus of the facts and circumstances of the case and the additional ground raised before us we are convinced that its adjudication does not require any fresh investigation of facts and involves pure legal issue. Respectfully following the judgement of the Hon'ble Supreme Court in the case of National Thermal Power Company Ltd. Vs. CIT [(1998) 229 ITR 383 (SC)] we admit this additional ground for adjudication. Accordingly we will first proceed to adjudicate the legal objection raised by the Ld.AR through additional ground.

5. It is submitted that as per the return of income, the assessee has declared income of Rs.11,50,260/-. The Ld.AR drew our attention to Instruction No.1/2011 dated 31/01/2011 whereby the non corporate returns filed in metro cities having declared income upto Rs. 20 lakhs should be assessed by the ITOs. The Ld.AR submitted that in the assessee's case, the assessment is done by DCIT, Central Circle-2, Thane instead of the ITO and, therefore, the order is void ab initio. The Ld.AR in this regard relied on the decision of Hon'ble Bombay High Court in the case of Ashok Devichand Jain vs UOI & Ors in Writ Petition No.3489 of 2019 judgement dated March 08, 2022, where the notice under section 148 was quashed as issued without jurisdiction for the reason the same is issued by the ITO instead of DCIT when the returned income was more than Rs.20 lakhs. The Ld AR submitted that the ratio is applicable in assessee's case since the returned income by the assessee is less than Rs.20 lakhs and the assessment is done by the DCIT instead of the ITO. The ld AR therefore submitted that the assessment done is

without jurisdiction and bad in law. The ld AR placed further reliance on the decision of the Kolkata Bench of the Income-tax Appellate Tribunal in the case of Krishnendu Chowdhury Vs Income-tax Officer (2017) (5) TMI 290 (Kolkatta) where similar view was held by the Tribunal.

7. The Ld.DR, on the other hand, submitted that the monetary limits cannot be applied rigidly since the same is for the administrative purpose of proper distribution of work among various levels of officers of the department. The ld DR further submitted that there was another circular issued by the CBDT dated 08/04/2011 in which the CIT was given the power to adjust the monetary limit depending on the work load and therefore the monetary limit set in instruction dated 31.01.2011 is not rigid. The ld DR placed reliance in this regard on the decision of the Hon'ble Madras High Court in C. Krishnan vs The Income Tax Officer Ward I(4) in W.P. Nos.792 & 5793 of 2013 judgement dated 27th November, 2014.

7. We heard the parties and perused the materials on record. We notice that the Kolkata Bench of the Tribunal in the case of Krishnendu Chowdhury (supra) has considered a similar issue and held that -

> *8. We have heard the rival submissions and gone through the facts and circumstances of the case. We have also perused the assessment records. The crux of the issue in the case is that the notice under section 143(2) of the Act was not issued by the Income-tax Officer in terms of Instruction No. 1 of 2011 [F. No. 187/12/2010-IT(A-I)], dated January 31, 2011. As per the instruction the notice was to be issued by the Income-tax Officer but the notice was issued by the Assistant Commissioner of Income-tax. Therefore in view of above the notice issued by the Assistant Commissioner of Income-tax is invalid and consequently the assessment framed by the Income-tax Officer becomes void. Now the issue before us arises so*

as to whether the notice issued by the Assistant Commissioner of Income-tax under section 143(2) of the Act is without jurisdiction in terms of the aforesaid instruction. In this connection we consider it fit to incorporate the relevant portion of Instruction No. 1 of 2011, dated January 31, 2011 of the CBDT Circular in respect of issuance of notice to non-corporate assessees which reads as under:

Instruction No. 1 of 2011 [F. No. 187/12/2010-IT(A-I)], dated 31-1-2011

"References have been received by the Board from a large number of taxpayers, especially from mofussil areas, that the existing monetary limits for assigning cases to Income-tax Officers and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to a DC/AC who is located in a different station, which increases their cost of compliance. The Board had considered the matter and is of the opinion that the existing limits need to be revised to remove the abovementioned hardship.

An increase in the monetary limits is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the present income limits were introduced. It has therefore been decided to increase the monetary limits as under:

	Income declared (mofussil areas)	
	ITOs	***AC/DCs***
Corporate returns	*Up to ₹ 20 lakhs*	*Above ₹ 20 lakhs*
Non-corporate returns	*Up to ₹ 15 lakhs*	*Above ₹ 15 lakhs*

Metro charges for the purpose of above instructions shall be Ahmedabad, Bangalore, Chennai, Delhi, Kolkata, Hyderabad, Mumbai and Pune. The above instructions are issued in supersession of the earlier instructions and shall be applicable with effect from April 1, 2011.

The notice under section 143(2) and order sheet entries which were referred by the learned counsel for the assessee are placed at Annexures 2 and 5 of the paper book respectively. Admittedly the notice under section 143(2) in the instant case was issued by the learned Assistant Commissioner of Income-tax to initiate the assessment proceedings which was later transferred to the Income-tax Officer. However, the Income-tax Officer did not further issue any notice under section 143(2) of the Act. Therefore, the Income-tax Officer assumed the charge without issuing notice and consequently completed assessment under section 143(3) of the Act without jurisdiction. In similar facts and circumstances, the co-ordinate Bench

of this Tribunal has decided the issue in favour of the assessee in the case of Ajanta Financial Services Pvt. Ltd. v. ITO in I. T. A. No. 1426/Kol/2011, dated May 21, 2012. We consider it fit to incorporate the relevant portion of the Tribunal order which is as under :

> *"5, We find that the Hon'b/e Chhattisgarh High Court in the case of Deputy CIT v. Sunita Finlease Ltd. [2011] 330 ITR 491 (Chhattisgarh) has considered the same Instruction No. 9 of 2004 dated September 20, 2004 which are applicable in the present case also and quash the selection of scrutiny and completion of assessment by holding as invalid. The Hon'ble Chhattisgarh High Court in Sunita Finlease Ltd.'s case (supra) has considered section 119 of the Act by stating that section 119 of the Act, empowers the Central Board of Direct Taxes to issue orders, instructions or directions for the proper administration of the Act or for such other purposes specified in sub- section (2) of the section. The Hon'ble High Court further held that such an order instruction or direction cannot override the provisions of the Act. Direction by issuing instructions to the officers for the process of selection of cases for scrutiny for returns for a particular financial year and allowing time of three months for completion of the same cannot be considered to override or detract from the provisions of the Act. It only directs that the above exercise should be completed within three months of the date of filing of return by the assessee, which amounts to an assurance to the assessee that the return filed by him can be scrutinised by the Assessing Officer within three months of filing of the return. The Hon'ble High Court, dismissing the appeal held that Instruction No. 9 of 2004 dated September 20, 2004, was applicable in the present case, in view of the specific stipulation in the circular that 'for returns filed during the current financial year 2004-05, the selection of cases for scrutiny will have to be completed within three months of the date of filing the returns' and considering that the return had admittedly, been filed by the assessee on October 29, 2004, i.e., during the current financial year 2004-05. The selection for scrutiny of the assessee's case and completion of the assessment was not valid.*
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> *6. We find that the Hon'ble Chhattisgarh High Court in Sunita Fin/ease Ltd. 's case (supra) has also considered the decision of the Hon'ble Supreme Court in*

the case of UCO Bank v. CIT [1999] 237 ITR 889 (SC) and quoted from page 896 as under :

'Such instructions may be by way of relaxation of any of the provisions of the sections specified there or otherwise. The Board thus has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under section 119 of the Income-tax Act, which are binding on the authorities in the administration of the Act. Under section 119(2)(a), however, the circulars as contemplated therein cannot be adverse to the assessee. Thus, the authority which wields the power for its own advantage under the Act is given the right to forgo the advantage when required to wield it in a manner it considers just by relaxing the rigour of the law or in other permissible manners as laid down in section 119. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It /s a beneficial power given to the Board for proper administration of fiscal law so that undue hardship may not be caused to the assessee and the fiscal laws may be correctly applied. Hard cases which can be properly categorised as belonging to a class, can thus be given the benefit of relaxation of law by issuing circulars binding on the taxing authorities.

The facts and circumstances in the present case are that the selection of scrutiny in this case is also completed beyond the prescribed period as prescribed in Instruction No. 9 of 2004 dated September 20, 2004. The assessee's case was selected for scrutiny first time on October 18, 2004 as per copy of order sheet entry, and notice was issued fixing the hearing on October 18, 2004 itself. As per Instruction No. 9 of 2004 dated September 20, 2004 the process of selection of cases for scrutiny for returns filed up to March 31, 2004 in the present case assessee filed its return of income on December 1, 2003 must be completed by October 15, 2004. The factual position as noted by the Commissioner of Income-tax (Appeals) in his appellate order that notice under section 143(2) is dated October 10, 2004, is not supported by the learned senior Departmental representative at the time of hearing rather the assessee contested that this finding of fact is erroneous and actual case was selected by issuing notice as on October 18, 2004. Even the basis of recording this fact is only from the assessment order wherein it is mentioned that notice

under section 143(2) is dated October 10, 2004 and the same was served on the assessee on October 19, 2004 fixing the date of hearing on December 16, 2004. When going through the order sheet entry, which is taken by the assessee from the assessment records clearly reveals that factually notice under section 143(2) was first time issued on October 18, 2004 and not on October 10, 2004. This fact has not been contested by the learned senior Departmental representative. Respectfully following the decision of the Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd. (supra), we quash the issuance of notice under section 143(2) of the Act and subsequent assessment framed under section 143(3) of the Act. Appeal of the assessee is allowed."

Keeping in view of the above and the facts relating to I. T. A. No. 1426/Kol/2011 this Tribunal has quashed the assessment framed under section 143(1) of the Income-tax Act since the issuance of notice under section 143(2) of the Act is beyond the dates specified in Instruction No. 9 dated September 20, 2004. At this juncture, we would like to clarify that Instruction No. 9 of 2004 dated September 20, 2004 referred by the Tribunal in I. T. A. No. 1426/Kol/2011 in the case of Ajanta Financial Services Pvt. Ltd. (supra) as well as the Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd. (supra) are in respect of the corporate assessees. However, in the case of the non-corporate assessees similar instruction has been issued in Instruction No. 10 dated September 20, 2004. In this case also as per the order sheet entries incorporated in the preceding para graphs, it is observed that the selection of scrutiny was made on June 20, 2005 and notice under sections 143(2)(ii) and 142(1) was issued on July 11, 2005 i.e., beyond the period of the scrutiny as specified in Instruction No. 10 of 2004 dated September 20, 2004. Therefore, keeping in view of the decision of the Hon'ble Chhattisgarh High Court in the case of Sunita Finlease Ltd. (supra) as well as the Tribunal's order in I. T. A. No. 1426/Kol/2011 in the case of Ajanta Financial Services Pvt. Ltd. (supra).

8.1 In view of above we set aside the orders of the Revenue authorities by quashing the order of the assessment framed under section 143(3) of the Act since the issue of notice under section 143(2) of the Act was not done by the Income-tax Officer as specified in CBDT Instruction No. 1 of 2011 dated January 31, 2011. As the assessment proceedings under section 143(3) of the Act have been held as invalid,

therefore in our considered view the other issues raised by the assessee do not require any adjudication. Hence the ground raised by the assessee is allowed.

8. We also notice that the Bombay High Court had also held a similar view in the case of Ashok Devichand Jain (supra). The facts of the present case is identical where the returned income of the assessee is less than Rs.20 lakhs and the assessment is completed under section 143(3) by the DCIT by issuing notice under section 143(2). Therefore respectfully following the ratio laid down by the Hon'ble High Court and the Tribunal, we hold that the assessment completed under section 143(3) by the DCIT, Central Circle is without jurisdiction and is liable to be quashed.

9. Though we have held the legal ground in favour of the assessee, for the sake of completeness we will consider the submissions of the ld AR on merits for adjudication. On merits, the Ld.AR submitted that the only reason stated by the Assessing Officer for making the addition under section 68 of the Act is that the partnership firm which has declared the income under IDS, 2016 has not paid the taxes on declared income. For this reason the assessing Office held that the share of profit received by the assessee cannot be claimed as exempt and thus taxable in the hands of the partners. The Ld.AR submitted that the income which is offered in the hands of the partnership firm on which taxes were not paid can only be assessed in the hands of the partnership firm. The Ld.AR further submitted that the additions towards the income declared have already been made in the hands of the partnership firm and the firm is in appeal before the CIT(A). Given that it is submitted that adding the same in the hands of partner once again would result in double taxation. The Ld.AR relied on the decision of the Special Bench of Cochin Tribuna in the case of ACIT vs KT. Joseph reported in 2009 (8) TMI 122- ITAT

COCHIN order dated 14/08/2009 in which the Third Member has held that the income once assessed in the hands of the partnership firm cannot be again treated as the income in the hands of the partner. Applying the same ratio the ld AR submitted that the Assessing Officer is not correct in treating the income as unexplained in the hands of the assessee. The Ld.AR also drew our attention to the CBDT circular No.8/2014 dated 31/03/2014 where it is clarified that income of the firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of the partners. Accordingly, the entire profit credited to the partner's account in the firm would be exempt from tax in the hands of such partners even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption or deduction as per the provisions of the Act. Therefore, the Ld.AR summarised by saying that the income which is declared under IDS, 2016 by the firm under no circumstance can be treated as the income of the partner.

10. The Ld.DR, on the other hand, relied on the order of the lower authorities.

11. We heard the parties and perused the materials on record. We notice that the M/s Monarch and Qureshi Builders., in which assessee is a partner has declared a sum of Rs.12,33,67,010 as income under IDS 2016 but the declaration failed as the taxes due on income declared was not paid by the firm. The Assessing Officer held that the income from partnership firm can be claimed as exempt only when the firm has paid tax on such income. Since M/s Monarch and Qureshi Builders did not pay the taxes, the assessing officer did not accept that the share of profit of the assessee from partnership firm can be exempt. The Assessing Officer proceeded to treat the income as unexplained cash credit under section 68. The CIT(A) upheld

the addition for the reason that the genuineness as well as source of this credit entry stands unproved by the assessee. We notice that the CBDT has issued a circular No.8/2014 dated 31/03/2014 where it is clarified that income of the firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of the partners even if the income of the firm is declared as NIL on account of deductions and exemptions. We further notice that the Cochin Bench of the Tribunal in the case of KT.Joseph (supra), the third member agreed with the view taken by the Judicial Member by holding that -

11. Reverting to the facts as found by both the learned Members, it is not in dispute that the documents found in the course of search from the premises of Shri K.K. Sasi belonged to the firms. The AO also took some share income (40 per cent and 70 per cent) in the hands of the assessee. jHhe income was earned by the firm or on behalf of the firm, whether disclosed or undisclosed, it has to be assessed in the hands of the firm only. Provisions of Chapter XIV-B relate only to assessment of undisclosed income which makes the position more than clear. There is no machinery to assess the income of the firm in the hands of the partner, merely because it is not disclosed in the accounts of the firm. Such assessment in the hands of the partner cannot be justified merely because the income is pocketed By the partner. In my opinion, the view taken by the learned AM is against the basic schemes of assessment contained in the IT Act and therefore cannot be accepted as correct.

12. It is further to be noted that in similar circumstances, undisclosed income of Hotel Amritha at Calicut and all several other concerns has been assessed in the hands of the firms. Having made assessment in the hands of the firm, there was no question of taking any share of above income in the hands of the partner, in the light of the provisions referred to above. The Revenue has also accepted similar position in the assessment of firm M/s Associate Liquors and matter has not been challenged before the Tribunal. Why no proceedings were taken in the hands of M/s Malabar Associates under Chapter XIV-B is not clear from the record. Even if the assessee did not furnish the requisite details regarding above firm that would not be a ground to make the assessment of alleged share of undisclosed (or disclosed) income in the hands of the firm (sic-assessee). As per th settled law, income has to be assessed in the hands to which it belongs.

13. The learned representative of the assessee during the course of hearing has also pointed out errors in the proposed order of learned AM. He rightly said that

observations that firm M/s Malabar Associates is not in existence or defunct or dissolved, are factually incorrect. Legal inference drawn by learned AM was also not correct. On his own showing that in the case of firm, partners have joint and several liability,- the firm M/s Malabar Associates could have been assessed through the assessee partner and liability of that firm recovered from the assessee and other partners in accordance with law. It was further not possible or permissible under the law to make assessment of income of firm in the hands of the assessee partner, merely because he had pocketed some portion of undisclosed income of the firm. Income of firm could only be assessed in the hands of the firm and not in the hands of the partner, i.e., the assessee.

12. The ld AR during course of hearing submitted that the addition towards the income declared under IDS 2016 is made in the hands of M/s Monarch and Qureshi Builders and the firm is in appeal before the CIT(A) against the impugned addition. Therefore we see merit in the submission of the ld AR that the revenue on the one hand taking a stand that the income belongs to the partnership firm and on the other hand taxing the same income again in the hands of the assessee resulting in double taxation. From the perusal of the CBDT circular and considering the ratio of the decision of Cochin Bench of the Tribunal, it is clear that the income belonging to the firm whether disclosed or undisclosed can be taxed only in the hands of the firm and not in the hands of the partner. Accordingly we are of the considered view that the income of Rs. 6,15,83,505/- cannot be taxed as income of the assessee under section 68 of the Act and the addition thus made stands deleted on merits also.

13. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 26/07/2023.

Sd/-	**sd/-**
(VIKAS AWASTHY)	**(PADMAVATHY S)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt : 26th July, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

Asstt. Registrar / Senior Private Secretary
ITAT, Mumbai