

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ , मुंबई ।

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

BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND

SHRI C.N. PRASAD, JUDICIAL MEMBER

आयकर अपील सं /I.TA No. 7366/Mum/2014

(निर्धारण वर्ष / Assessment Year:2011-12

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| The ACIT, CC -3(4), Central Range-3, Mumbai | बनाम/ Vs. | M/s. Sky Build Pvt. Ltd., 1 st Floor, Henleen, 32, Main Avenue, |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACS 9956L | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| अपीलार्थी ओर से/ Appellant by: | | Shri S. Sathya Moorthy |
| प्रत्यर्थी की ओर से/Respondent by: | | Shri V.C. Shah |
| | | |

सुनवाई की तारीख / Date of Hearing :12.07.2016

घोषणा की तारीख /Date of Pronouncement :23.09.2016

आदेश / O R D E R

PER C.N. PRASAD, JM:

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-39, Mumbai dated 01.09.2014 pertaining to assessment year 2011-12.

2. The only grievance of the Revenue in its appeal is that the Ld. CIT(A) erred in deleting the addition of Rs. 78,24,992/- in respect of sales of flats/office space made by the assessee which was much less than the stamp duty valuation.

3. Brief facts are that the assessee is a Private Limited company engaged in the business of construction filed return of income on 30.9.2011 declaring loss of Rs. 82,26,873/-. The assessment was completed u/s. 143(3) on 29.1.2014 determining income at Rs. 56,40,630/-. While completing the assessment, the Assessing Officer made addition of Rs. 78,24,992/- on the ground that the sale value reported by the assessee in the agreement is less than the stamp duty value as per Maharashtra State Government ready reckoner therefore, for the purpose of computing profit and gains from the above sales, the value so adopted by the State Government authority is deemed to be the full value of consideration received by the assessee. Thus, the difference between the ready reckoner value and the agreement value was treated as income of the assessee ignoring the submission of the assessee that it is constructing a commercial building and started construction in the year 2004 and not yet completed as on date. There were hurdles from land owners and others, the matter was in the Court, some bookings were done in the initial year and only the allotment letters were given, only part payment was received. There has been abnormal delay due to litigation. Moreover, the price agreed was much earlier when initial part payment was received. Registration is now done and hence ready reckoner value adopted is of the date when agreement was entered into. Ready reckoner gives value of ready premises and not for under construction premises. More than 3 years have passed after agreement and till today possession has not been given. The premises were sold to third party not related to any directors at market value. Hence the market value being the sale value is required to be accepted as correct. However, the Assessing Officer

without appreciating the above submissions added the difference as income observing that assessee did not submit intermediate deeds or any other evidence/document supporting such claim.

4. On appeal, the Ld. CIT(A) deleted the addition observing that the provisions of law do not enable the Assessing Officer to treat the value as declared by the Stamp Valuation authority as deemed sales as on the date of agreement. Against this order, the Revenue is in appeal before us.

5. The Ld. Departmental Representative submits that the assessee has not furnished any details before the Assessing Officer or the Ld. CIT(A) in support of its claim that the ready reckoner value cannot be adopted as deemed consideration. He vehemently supported the order of the Assessing Officer in bringing to tax the difference between the agreement value and the ready reckoner value as income of the assessee.

6. The Ld. Counsel for the assessee brought our attention to the written submissions filed before the Ld. CIT(A) and placed reliance on the order of the Ld. CIT(A) in deleting the addition. He further submits that assessee has received only advances and there was no completed sale, no possession has been given till today, therefore he submits that there is no justification in bringing to tax the difference between the ready reckoner value and the agreement value.

7. We have heard the rival submissions and perused the orders of the authorities below. The issue has been considered by the Ld.

CIT(A) with reference to the averments in the assessment order and the elaborate submissions made by the assessee before him. The Ld. CIT(A) concluded that no addition can be made as per provisions of law as it stood then treating the value as declared by the Stamp Valuation authority as deemed sales as on the date of agreement observing as under:

7.1. The discussion on this matter is found in Paragraph 7 of the assessment order. In respect of sale of office premises, as detailed in Para 7 of the assessment order, the A.O. has stated that the consideration received or accruing is shown to be less than the value adopted by the Stamp Valuation Authority/State Government. The AO noticed that the value as appended in the agreements is less than the Stamp Duty Value and the A.O. computed the difference at Rs. 78,24,992/- which has been considered as income for the captioned year. The appellant objected to the said addition stating that the prices were agreed much earlier when initial part payment was received and that more than 3 years have passed after the agreement but till today possession has not been given. According to the appellant, due to bad track record regarding possession, the actual price was much less than the Ready Reckoner Value. The A.O. however rejected the said explanation on the ground that there has been no deed or document provided to substantiate that the bookings were done earlier and the agreements were registered much later. The A.O. has stated that no intermediate deeds or any other evidence was provided so as to enable the A.O. to adopt the Ready Reckoner values for that date on which the booking was done. Accordingly, the A.O. treated the value adopted by the Stamp Valuation Authority as the full value of consideration received and thereby made addition of Rs. 78,24,992/-.

7.2. The appellant has been heard in the matter. It is the submission of the appellant that the government did not provide for adopting Ready Reckoner value for premises under construction particularly by builders being Stock in Trade until 31.03.2013. In the said circumstances, when sale of stock is effected, the prescribed value by the Maharashtra Government in Ready Reckoner is not material. It is further pointed out that the

A.O. has erred in calculating the difference in ready reckoner value by comparing the same with agreement value and including the difference in the total income. The appellant has also pointed out that some of the agreements considered by the A.O. pertained to the preceding financial year. It is further pointed out that there is no sale completed by the appellant in the impugned year and hence, no such inclusion can be made to the total income.

7.3 I have very carefully considered the matter. The A.O. has calculated the difference between the Ready Reckoner value and the agreement value and treated the difference as income. In other words, the A.O. has treated the valuation as made by the Stamp Valuation Authority as on the date of agreement as deemed sales consideration. I am unable to sustain the s aid action of the A.O. The provisions of law, as it stood then do not enable the A.O. to treat the value as declared by the Stamp Valuation Authority as deemed sales as on the date of Agreement. The provisions of Sec. 43CA has come into effect only with effect from 01.04.2014. In the circumstances, the addition is not sustained. Ground III is allowed.

8. On careful reading of the Ld. CIT(A)'s order and the observations therein, we do not find any valid reason to interfere with the findings. Thus, we sustain the order of the Ld. CIT(A) and reject the grounds of the Revenue.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 23rd September, 2016.

Sd/-

Sd/-

(RAJENDRA)

(C.N. PRASAD)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 23rd September, 2016

व.नि.स./ Rj , 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,
मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai