

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1233/Bang/2011
(Assessment Year : 2005-06)

Shri. T. D. Ramakrishna,
S/o. Desunaidu,
Flat No.203, R. K. Hoysala Residency,
3rd Main, 9th Cross, Hoysalanagar,
Bengaluru 560 016 .. Appellant
PAN : ABLPR5616F

v.

Income-tax Officer,
Ward – 12(2), Bengaluru .. Respondent

Assessee by : Shri. K. Kiran Kumar, Advocate
Revenue by : Shri. Bipin C. N, JCIT

Heard on : 14.07.2016
Pronounced on : 26 .08.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee it is aggrieved on an addition
of Rs.11,42,707/- confirmed by the CIT (A).

02. Facts apropos are that assessee, Managing Director of a company called M/s. Subha & Prabha Builders P. Ltd, had filed a return declaring income of Rs.15,53,152/- for the impugned assessment year. There was a survey conducted in the premises of the said company whereupon it seems certain documents and books of account were impounded. Documents impounded included sale agreements and certain receipts. AO on examination of the sale agreements and the books of account of the assessee found that there were differences in the amount recorded in the sale agreement and in the books. Such differences as per the AO were there in the case of 35 different persons who had agreed to purchase flats. Statements were recorded from the assessee on 20.09.2005, 30.09.2005 and 20.11.2005. Assessee was inter alia required to explain the difference between the agreement amount and what was recorded in the books of account. Assessee stated that what was stated in the books alone were received and no amounts in excess of that were received. As per the assessee the agreements were not entirely acted upon. Contention of the assessee was that part of the amounts mentioned in the sale agreement was foregone for various reasons including non-adherence to work specification. AO was of the opinion that sale agreement under the para nomenclature as "obligation of the purchasers" clearly mentioned

purchasers' liability to carry out extra work after taking possession. As per the AO, the version given by assessee could not be accepted. He held that difference between the amounts mentioned in the sale agreements and those recorded in the books coming to Rs.28,93,188/- was undisclosed income of the assessee. Addition was accordingly made.

03. Aggrieved assessee moved in appeal before the CIT (A). Argument of assessee was that amounts mentioned in sale agreements were not final and the actual receipts were much less due to various reasons. As per the assessee there was no evidence to show that he had received any amounts mentioned in the sale agreement. Assessee also filed confirmation letters from 22 buyers of flats wherein they affirmed that they had paid only the amounts recorded by the assessee in the books of account and not what was stated in the sale agreements. CIT (A) was of the opinion that in respect of the 22 buyers of flat whose confirmation were filed by assessee his contentions could be accepted. However in so far as 10 cases where assessee could not file confirmation, CIT (A) sustained the addition. These ten cases and the amount involved were as under :

Sl. No.	Name	Consideration as per agreement	Consideration as per books	Difference
1	Babu, 206, P-12	6,80,000	6,57,250	22,750
2	George Johnson, 309, P-12	5,72,000	4,65,000	1,07,000
3	Shyam Sunder, G-3, P-12	9,00,000	7,16,618	1,83,382
4	Suraj Kumar, 304, P-12	6,50,000	5,45,000	1,05,000
5	Suresh Kumar, G-6, P-12	6,25,000	3,50,000	2,75,000
6	V. Balagopal, 406, P-12	7,65,000	6,70,705	94,295
7	Vikram Vaidyanathan, 410, P-12	7,15,000	6,43,270	71,730
8	Vishwanath, 203, P-12	5,70,000	4,86,450	83,550
9	S.R.Chandran, 302, P-12	6,60,000	5,60,000	1,00,000
10	N. Ganesh, 201, P-12	6,60,000	5,60,000	1,00,000
		67,97,000	56,54,293	11,42,707

04. Now before us Ld. AR strongly assailing the addition of Rs.11,42,707/- sustained by Ld. CIT (A), submitted that the learned authorities had assumed receipt of money by assessee without any evidence. As per the Ld. AR, the sale agreement was executory in nature and unless and until all the conditions mentioned in the agreement was acted upon, assessee would not be eligible for receiving the consideration. As per the Ld. AR what was received was only the amounts recorded in the books of account. Ld. AR submitted that affidavits were also filed before this Tribunal stating that only the amounts mentioned in the books were received. Further as per the Ld. AR no investments or assets were found from the assessee to represent the alleged undisclosed income. Ld. AR further submitted that sale agreements were also not stamped properly and ought not have been relied upon for making the addition. In any case as

per the Ld. AR, if an opportunity was given assessee could even now produce confirmation letters from ten persons in whose case additions were sustained by Ld. CIT (A).

05. Continuing his submission Ld. AR submitted that the books of account were maintained by the assessee and these were not rejected. According to him without rejecting the books of account addition could not be made based on the sale agreement. As per the Ld. AR, even if the Department rejected the books of account, it was obliged to follow the procedure mentioned in Section 145(3) of the Act. Once the books of account was accepted, there was no scope for addition. As per the Ld. AR department was estopped from making an addition based on the sale agreement alone. Reliance was placed on the judgment of Hon'ble jurisdictional High Court in the case of CIT v. M/s. Anil Kumar & Co [ITA.200001 & 200002/2014, dt.25.02.2016] and also on a coordinate bench decision in the case of M/s. Anil Kumar & Co v. ITO [ITA No.956/Bang/2011].

06. Per contra, Ld. DR submitted that assessee could not show that sale agreements were incorrect. As per the Ld. DR assessee himself had stated that the signature appearing in the sale agreement was of the assessee

himself. Once an agreement is signed by the assessee and the party, as per the Ld. DR it could not be ignored. Assessee could not show why the amount recorded in the books of account should be accepted disregarding the sale agreements.

07. I have perused the orders and heard the rival contentions. Out of the total additions made for variation between the sale agreements and what was recorded in the books of account by the assessee, CIT (A) has given relief to the extent of Rs.17,50,481/- since assessee could produce confirmation letters from 22 persons. CIT (A) had accepted the contention of the assessee that what was mentioned in the books of account alone could be accepted as true and correct since this was supported by the confirmations. However it is an admitted position that assessee could not file confirmations in respect of 10 parties mentioned at para three above. No doubt Ld. AR stated that books of account maintained by the assessee was not rejected. In my opinion for making an addition based on a sale agreement which was duly signed by the assessee, it was not necessary to reject the books of account. When the amounts recorded in the sale agreements were more than what was mentioned in the books of account it would only mean that excess amounts were received by the assessee from

the prospective buyers over and above what was recorded in the books of account. Hence I am unable to accept the contention of Ld. AR that the only course AO was left with what was mentioned in Section 145E(3) of the Act. There is no rule that an addition could be made only after rejecting the books of accounts. Cases relied on by the Ld. AR were on additions made in gross profit after rejecting the books of accounts. These are not applicable here since the AO has nowhere stated that he was rejecting the books of accounts. As for the reliance placed on the judgment of Hon'ble jurisdictional High Court in the case of Anil Kumar & Co., (supra), the books were not rejected but there was estimation of income. In the case before us there is no estimation of income because the amount added was only the difference between the sale agreements and what was recorded in the books of account. Assessee despite various opportunities given was not able to file confirmation in respect of ten persons mentioned at para three above. Pleading of the assessee that if given a chance it can now produce confirmation letters cannot be acceded to because it would result in prolonged litigation and would not be in the interest of justice. Especially so since sufficient opportunity was given by the lower authorities in this regard. In the circumstances, I do not find any reason to interfere with the order of CIT (A).

08. In the result, appeal of the assessee stands dismissed.

Order pronounced in the open court on 26th day of August, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar