

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'आई', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

आयकर अपील सं./ITA No.429/Mum/2011

(निर्धारण वर्ष / Assessment Year :2007-08)

Jaycee Homes Ltd., Ground Floor, Panchratna, Panch Marg, off Yari Road, Varsova, Andheri(W), Mumbai-400061	Vs.	ITO 8(2)(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCJ 0791 K		

निर्धारिती की ओर से /Assessee by : Shri M.G.Vashi

राजस्व की ओर से /Revenue by : Shri Sunil Kumar Agarwal

सुनवाई की तारीख / Date of Hearing : 16/11/2015

घोषणा की तारीख/Date of Pronouncement 30/12/2015

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-Mumbai, for the assessment year 2007-08, wherein the assessee is aggrieved for addition of Rs.1,71,66,084/-.

2. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in construction and development work. During the year under consideration, the assessee has shown total sales (of flats) of Rs.15,13,42,036/- against which profit as per P&L A/c. has been shown of Rs.43,64,225/-. During the year the assessee had claimed deduction u/s.80IB of Rs.37,62,803/-. The claim u/s.80IB was subsequently revised to Rs.1,41,19,017/-. After filing the original return, the assessee revised its computation wherein the AO observed that the assessee has enhanced its claim of deduction u/s.80IB from Rs.37,62,803/- to Rs.1,41,19,017/-. On further analysis, it was observed

that the increase in the claim of deduction was because of the sum of Rs.1,71,66,084/- added to the total income on account of income not disclosed in the original return. This total amount of Rs.1,71,66,084/- was claimed to have been received in cash. During the assessment proceedings, the assessee was repeatedly asked to explain nature and source of the above said cash receipt. The assessee was also asked to explain as to how it is eligible for deduction u/s.80IB on the said receipt. The assessee filed its submission vide letter dated 04.12.2009. the contentions of assessee's explanation is reproduced hereunder for ready reference :-

“The return of income was filed on 30th October, 2007 vide receipt No.6155650301007 declaring taxable income of Rs.37,62,803.00 under section 115 JB(MAT). The revised return of income was filed on 10.03.2008 vide acknowledgement No.142559301000008 due to fact that cash amount of Rs.1,03,66,214/- was generated from the business and the same was utilized for the expenditure related the same business activities. The said amount was voluntarily offered for taxation to avoid litigation with Department and to buy a peace of mind. Since the same are related to the business activities only deductions under section 80IB of the Income Tax Act, 1961 was legally claimed and due taxes were paid.”

3. The assessee was asked to produce documentary evidence with regard to purchase of surplus material which was sold in cash. Assessee was also asked to provide name and address of the parties, who had purchased unutilised material. On assessee's failure, the AO added the same as income from other sources.

4. By the impugned order the CIT(A) confirmed the addition after observing as under :-

“3.5 The submissions made have been carefully considered. The issue at stake is the treatment meted out to the amount of Rs.1,71,66,084/- said to be received in cash and fully utilized for the payment of raw material suppliers and as labour charges. The appellant has at no stage in the assessment proceedings &

appellate proceedings produced the details of the unutilized materials which have been sold to receive the cash of Rs.1,71,66,084/-. It is one thing to argue that it had only the activity of building and property development and therefore any receipt should relate to it and another to produce evidence & furnish details to substantiate the claim. The appellant has not stated to whom the unutilised materials were sold and when. It has also not stated when the cash was received whether in one lumpsum or in instalments. In the absence of details, it is difficult to determine the nature of the receipts. As there had been failure on the part of the appellant to furnish these details the AO was left with no alternative but to treat these receipts as income from other sources. Regarding the contention that AO failed to verify the payment of these amounts to M/s Jyoti Traders, M/s D.R. Traders and M/s Shivam Realtors is concerned, even if the payments to these three parties are found to be correct, that would not affect the conclusion reached that amount received in cash was income from other sources. This is because these payments would be only application of income received by the appellant. The issue is about the nature of the receipt and not its application. In the circumstance the action of the AO in treating the receipts as income from other sources and consequently denying deduction claimed u/s.80IB is sustained.”

Against the above order of CIT(A), the assessee is in further appeal before us.

5. We have considered rival contentions and found that assessee has not produced any evidence before the lower authorities with regard to the parties from whom these materials were purchased nor the name and address of the parties to whom surplus material returned after completion of the project or the name of parties to whom this materials was sold. U/s.80IB deduction is allowable only out of the profit of eligible project under consideration and development of residential house with specified area. However, nothing was brought on record by the assessee to substantiate its claim of sale of surplus material retained after completion of project. The contention of Id. AR was that addition if any, is to be made only with respect to the net income earned on sale of these materials. Accordingly, we restore this matter with limited issue for verifying again the net profit earned on sale of surplus material. Assessee is also

required to prove eligibility u/s 80IB with respect to additional income so generated. Thus, the addition is to be confined to the net income and not to the gross receipts. The assessee is directed to place on record the name and address of the parties from whom these materials were purchased as well as name and address of the parties to whom these materials were sold, so as to establish the genuineness of the transaction of the purchase and sales. We direct accordingly.

6. In the result, appeal of the assessee is allowed in part for statistical purposes.

Order pronounced in the open court on this 30/12/2015.

**Sd/-
(PAWAN SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **30/12/2015**

प्र.कु.मि/pkm, नि.स/ 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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai