

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE SHRI R.C.SHARMA, AM AND SHRI RAVISH SOOD, JM**ITA No. 3278/Mum/2015
(निर्धारण वर्ष / Assessment Year:2011-12)

M/s Mumbai Shelter Housing Development Pvt. Ltd., 8, Andheri Ekta, 4 Bungalows, Loki Road, Mumbai-400053	बनाम/ Vs.	DCIT 8(2) Aaykar Bhavan, M.K. Road, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No. AABCM4888N		
(अपीलार्थी / Applicant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Applicant by	:	Shri Venugopal C. Nair, A.R
प्रत्यर्थी की ओर से / Respondent by	:	Shri Saurabh Kumar, D.R

सुनवाई की तारीख / Date of Hearing	:	04.08.2017
घोषणा की तारीख / Date of Pronouncement	:	25.10.2017

आदेश / ORDER**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal is directed against the order passed by the CIT(A)-17, Mumbai, dated 19.01.2015, which in itself arises from the

order passed by the A.O u/s 143(3) of the Income tax Act, 1961, (for short 'Act'), dated 17.02.2014. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1. *The Learned CIT(A) erred in facts and circumstances of the case and in law in holding that nothing is on record to suggest that the case of the appellant was selected for Limited Scrutiny and thus upholding action of A.O taking up wider scrutiny.*

Without Prejudice to the above

2. *The Learned CIT(A) erred in facts and circumstances of the case and in law in confirming action of A.O ignoring of revised computation of income furnished during assessment proceedings.*

Without Prejudice to the above

3. *The Learned CIT(A) erred in facts and circumstances of the case and in law confirming additions when the A.O had not furnished reply to the remand report sought from him.*

Without Prejudice to the above

4. *The Learned CIT(A) erred in facts and circumstances of the case and in law confirming the action of the A.O considering receipts and expenses of a project not completed as income, by relying on a guidance note effective from a later date.*

5. *The learned CIT(A) erred in facts and circumstances of the case and in law in confirming disallowance that A.O made of Rent to Tenants without appreciating that when the both receipts and payments from ongoing projects were segregated in revised computation of income the payments to tenants on in completed projects stood disallowed suo-moto.*

6. *The Learned CIT(A) erred in facts and circumstances of the case and in law in confirming action of A.O disallowing expenses booked in name of a supplier for the alleged failure of the supplier to comply with notice U/s 133(6).*

7. *The learned CIT(A) erred in facts and circumstances of the case and in law in disallowing as expenses the return of booking amount as an expense when the receipt of booking amount had been considered as income in the earlier year.*

Reasons given by CIT(A) in confirming order of A.O are wrong, insufficient and contrary to facts and evidence on record and in law.

Appellant craves leave to amend, alter, modify or omit any of the aforesaid grounds of appeal as occasion may arise or demand.

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business as that of property

developer and labour contractor had e-filed its return of income for AY:2011-12 on 30.09.2011, declaring total income of Rs.32,85,920/-. The assessee thereafter revised its return of income on 02.11.2011, showing total income at Rs.32,85,920/-. The revised return of income filed by the assessee company was processed as such u/s 143(1) of the 'Act'. The case of the assessee was thereafter taken up for scrutiny assessment under Sec. 143(2).

3. The assessee company had during the year under consideration generated income from construction of Rs.11,83,55,538/-, as under:

Sr. No.	Name of the project	Income credited to Profit & loss A/c (in rupees).
1.	Matru Ashish	71,67,500/-
2.	Jai Ratna Building	8,28,59,234/-
3.	Samata CHS Building	4,00,000/-
4.	Jai Bhavani	2,79,28,804/-
	Total	11,83,55,538/-

Against the aforesaid income of Rs.11,83,55,538/-, the assessee had debited to its profit and loss account for the year ended 31.03.2011 an amount of Rs.10,61,44,155/- under the head Cost of construction. Further, during the course of the assessment proceedings it was observed by the A.O that only a few of the projects were completed/substantially completed, while for the remaining had not even yet started. It was further observed by the A.O that the assessee had debited its profit and loss account with expenses pertaining to projects which had not even started till 31.03.2011. The project wise details of the expenses booked by the assessee in its profit and loss

account along with their respective stage of completion was furnished by the assessee, as under:

Sr. No.	Name of the project (2)	% of completion (3)	Cost debited to P/L A/c (4)	Revenue credited to P/L A/c (5)	Net cost booked [(6) (4)-(5)]
1.	Gorai Mataru Ashish CHS Ltd.	100	0	71,67,500	Not Relevant
2.	Arvindo CHS Ltd.	100	35,700	-	Not Relevant
3.	Kandivali Sai Darshan CHS Ltd.	100	25,09,316	-	Not Relevant
4.	Kandivali Jai Bhavani CHS Ltd.	100	9,67,863	2,79,28,804	Not Relevant
5.	Jairaj Ratna CHS Ltd.	85	3,74,18,503	8,28,59,234	Not Relevant
6.	Siddharth Nagar Abhiman CHS Ltd.	0	68,97,097	NIL	68,97,097
7.	Siddharth Nagar Samata CHS Ltd.	0	69,61,231	4,00,000	65,61,231
8.	Nehru Nagar Mangal prabhat CHS Ltd.	0	1,35,31,726	NIL	1,35,31,726
9.	Durga Smruti CHS Ltd.	0	9,30,000	NIL	9,30,000
10.	Goregaon Happy Home CHS Ltd.	0	15,26,950	NIL	15,26,950
11.	Vishal CHS Ltd.	0	19,14,535	NIL	19,14,535
12.	Shree Visovani CHS Ltd.	0	15,65,945	NIL	15,65,945
13.	Sai Krupa Society	0	1,13,595	NIL	1,13,595
14.	Ekta Prasad CHS	Not mentioned	12,000	NIL	12,000
15.	Kalpaka CHS	Not mentioned	12,000	NIL	12,000
16.	Nisarg CHS	Not	32,120	NIL	32,120

		mentioned			
				Total	3,30,97,199

That during the course of the assessment proceedings the assessee realized that while computing its income for the year under consideration, it had erroneously shown the receipts and booked expenses in respect of the incomplete projects. Therefore, with the intent to correct its aforesaid mistake and to remove the anomaly, the assessee recomputed its income as per the 'Project completion method' and furnished a revised computation of income. The assessee as per its revised computation of income sought for exclusion of certain receipts and payments relatable to its ongoing projects, which though had neither accrued nor crystallised in its hands during the year under consideration, but however, was wrongly recognised as income, as well as booked as expenses while computing the income for the year, as under:-

- (i) Receipts of Rs.8,32,59,234/- pertaining to ongoing projects which had erroneously been considered as income.
- (ii) Payments of Rs.8,17,38,113/- pertaining to ongoing projects which had erroneously been considered as expense.

The A.O after deliberating on the aforesaid figures provided by the assessee, however, did not find favour with the same. The A.O referred to the details which were earlier provided by the assessee and observed that out of total income from construction of Rs.11,83,55,538/- credited by the assessee in its profit and loss account, an amount aggregating to Rs.11,79,55,538/- pertained to three projects out of which two projects were 100% complete, while for one project was 85% complete. As regards the expenses, it was

observed by the A.O that out of total cost of construction of Rs.10,61,44,155/- debited by assessee to its profit and loss account, an amount of Rs.3,30,97,199/- (net of Rs.4 lac of revenue booked against Siddharth Nagar Samata CHS Ltd. project) was in respect of the projects which had not started at all. The A.O holding a conviction that as per the guidance note on accounting for all real estate transactions issued by the Institute of Chartered Accountant of India (ICAI), the percentage completion method was to be applied in the accounting of all real estate transactions/activities. The A.O further observed that the project revenue and project cost associated with the real estate project was to be recognised as revenue and expenses, only if the stage of completion of the project was 25% or more. That in the backdrop of the aforesaid observations it was concluded by the A.O that in respect of three projects, viz. Kandiwala Sai Darshan CHS Ltd., Kandiwali Jay Bhavani CHS Ltd. and Jairaj Ratna CHS Ltd., as the level of completion was more than 25% (100% in first two projects and 85% in the third project), therefore, the revenue relatable thereto was to be offered for taxation, as well as expenses incurred in respect of the same were to be allowed. The A.O on the basis of his aforesaid observations concluded that as the other projects were underway and the assessee had not credited any revenue against the said respective projects, therefore, as per the principle of matching cost and revenue, the assessee could not have charged expenses amounting to Rs.3,30,97,199/- in its profit and loss account for the year under consideration, viz. A.Y: 2011-12, relatable to the said projects. Thus, on the basis of his aforesaid deliberations the A.O disallowed the claim of expenses of Rs.3,30,97,199/- raised by the assessee, and added back the same to its income for the year under consideration.

4. The A.O further disallowed certain other expenses which were claimed by the assessee as an expense in its profit and loss account:

(i) Rent to tenants : The A.O observed that the assessee had debited its profit and loss account by a sum of Rs.1,26,76,217/- as rent paid to tenants for various projects. The A.O called upon the assessee to furnish details in respect of the aforesaid expenses, viz. name of the party, PAN and address, amount paid during the year etc. However, the assessee failed to comply with the directions of the A.O and furnish the requisite details. The A.O being of the view that the assessee had failed to discharge the onus as regards the genuineness and veracity of the aforesaid expenses, therefore, disallowed the entire amount of rent expenses of Rs.1,26,76,217/- and added back the same to the income of the assessee.

(ii). Construction Expenses: The A.O further observed that the assessee had debited an amount of Rs.1,25,44,055/- under the head "Cost of construction" in the name of M/s Shri Ganesh Entreprises, as under:-

For Civil work: Rs.1,05,44,055/-

For RCC work: Rs. 20,00,000/-

Total Rs.1,25,44,055/-

The A.O in order to verify the genuineness and veracity of the aforesaid expenses issued notice u/s 133(6) to the aforesaid party at the address provided by the assessee, which however was returned unserved with the remarks 'not known'. The A.O deputed his inspector to serve the notice u/s 133(6) on the aforementioned party at the address provided by the assessee. However, the inspector of income tax vide his report dated. 23/12/2013 informed the A.O that neither

the party was available at the aforesaid address, nor could its whereabouts be gathered from the persons in the vicinity. The aforesaid facts as regards the non-availability of the aforesaid party, viz. M/s Shree Ganesh Enterprises was brought to the notice of the counsel for the assessee, and he was directed to produce the party for cross examination. The assessee despite specific directions failed to produce the aforementioned party, viz. M/s Shree Ganesh Enterprises for examination before the A.O. Thus, in the backdrop of the aforesaid facts, the A.O holding a conviction that the assessee had failed to discharge the onus in respect of the creditworthiness of the party and the genuineness of the transaction, therefore, held the claim of the assessee in respect of the *alleged* expenses of Rs.1,25,44,055/- as inadmissible and added back the same to the total income of the assessee.

(iii) Refund of booking amount : The A.O observed that the assessee had claimed an expense of Rs.10,00,000/- as refund of amount on account of cancellation of booking which was earlier received on January, 2010, from one Shri Kamlesh Limbachiya. The A.O directed the assessee to prove the genuineness of its aforesaid claim of expenses of Rs.10,00,000/- emerging from the refund of cancellation of booking amount. However, as the assessee failed to discharge the onus which was necessary on its part to claim deduction in respect of the aforesaid amount, therefore, the A.O added back the amount of Rs.10,00,000/- to the returned income of the assessee.

The A.O thereafter assessed the income of the assessee as per the normal provisions at Rs.6,26,03,390/- and computed its book profit u/s 115JB at Rs.32,83,495/-.

5. The assessee being aggrieved with the order passed by the A.O, therein carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions of the assessee in the backdrop of the facts of the case, however did not find favour with the same and dismissed the appeal of the assessee.

6. Aggrieved, the assessee had assailed the order of the CIT(A) before us. That at the very outset of the hearing of the appeal the Id. Authorized Representative (for short 'A.R') for the assessee assailed the validity of the assessment framed by the A.O under Sec. 143(3) of the 'Act'. It was submitted by the Id. A.R that as the case of the assessee was selected for a 'limited scrutiny', therefore, the A.O had gravely erred in law by traversing beyond the scope of his jurisdiction and carrying out a wider scrutiny without the permission of the administrative Commissioner of Income tax. It was submitted by the Id. A.R that the said challenge to the validity of the assumption of jurisdiction by the A.O was though raised before the CIT(A), however, the latter had declined to accept the said contention of the assessee for the reason that there was nothing available on record to suggest that the case of the assessee was selected for 'limited scrutiny', and not for the detailed scrutiny. The Id. A.R drew our attention to the Notice u/s 143(2), dated 31.07.2012 (Page 6) of the 'Paper book' (for short 'APB') which was issued by the A.O to the assessee company. The Id. A.R drawing our attention to the aforesaid notice, therein drew out attention to the fact that '**Limited scrutiny**' was specifically mentioned on the very face of the notice. The Id. A.R further took us through the CBDT Instruction F.No. 225/26/2006-ITA.II(PT); dated 08.09.2010, wherein the board referring to its earlier letter dated 23.05.2007 in context of the scope of enquiry in scrutiny cases selected on the basis of information received through the AIR returns,

had specifically directed that the scrutiny of such cases were to be limited only to the aspects of the information received through the AIR. The ld. A.R submitted that as per the aforesaid CBDT instruction, in case it was felt that apart from the AIR information there was a potential escapement of income of more than Rs.10 lacs, then in order to facilitate wider scrutiny the approval of the administrative Commissioner of Income-tax was mandatorily required. Thus, it was submitted by the ld. A.R that now when the case of the assessee was picked up for 'Limited scrutiny', therefore, the A.O had gravely erred in law by transgressing the scope of his jurisdiction and resorting to a wider scrutiny without the approval of the administrative Commissioner of Income-tax. In the backdrop of the aforesaid facts, it was averred by the ld. A.R that the CIT(A) had most arbitrarily brushed aside the aforesaid contention of the assessee by wrongly concluding that there was nothing available on record which could go to suggest that the case of the assessee was selected for 'limited scrutiny', and not for the detailed scrutiny.

7. The ld. A.R further submitted that the CIT(A) during the course of the hearing of the appeal, while adjudicating as regards the admission of the 'additional evidence' which was furnished by the assessee under Rule 46A, had vide his letter dated 04.07.2014 (Page 1 of 'APB') called for a remand report from the A.O, by observing as under:-

- (i) That as per the assessee the A.O had not commented on the claim of deduction u/s 80IB raised by the assessee in its revised computation of income;

- (ii) That as per the assessee the revised computation of income filed with the A.O had not been considered properly in the right perspective; and
- (iv) That as per the assessee the institutional guidelines which were relied upon by the A.O were not operative for the year under consideration.

Thus, the CIT(A) had in respect of the aforesaid issues directed the A.O to submit a detailed report in this regard, after examining the facts. It was submitted by the ld. A.R that a copy of the aforesaid letter dated 04.07.2014 was also forwarded by the office of the CIT(A)-17, Mumbai, to the assessee, who was directed to cooperate with A.O and submit the details as would be required by him. The ld. A.R submitted that despite the fact that the A.O was directed by the CIT(A) to make certain verifications after obtaining the information from the assessee and furnish a report with him, however, the aforesaid directions of the CIT(A) were aborted and without the needful having been done by the A.O, the appeal of the assessee was disposed of by the CIT(A) vide his order dated 26.03.2014. It was submitted by the ld. A.R that the A.O had erred in bypassing the aforesaid directions of the CIT(A), wherein the latter too had gravely erred by losing sight of the very fact that now when the very process for seeking of the aforesaid information through the A.O was triggered by him, therefore, the appellate proceedings could not have been culminated without gathering the requisite details which were called for by him. It was thus averred by the ld. A.R that the order passed by the CIT(A) was premature and thus could not be sustained in the eyes of law. The ld. A.R further assailed the disallowance/additions made by the A.O and thereafter sustained by the CIT(A) on merits. The ld. A.R in the backdrop of the aforesaid facts submitted that in all fairness the matter may be

restored to the file of the A.O for fresh adjudication. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the order of the CIT(A).

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and find ourselves to be in agreement with the contention of the Id. A.R, that now when the case of the assessee was picked up for 'Limited scrutiny', therefore, the powers of the A.O to embark upon a wider scrutiny stood jeopardised. We find that as per the CBDT Instruction F.No. 225/26/2006-ITA.II(PT); dated 08.09.2010, if in a case which had been picked up for 'limited scrutiny', the A.O after deliberating on the facts felt that there was a potential escapement of income of more than Rs.10 lacs, then in such a case a wider scrutiny could be resorted to only with the approval of the administrative Commissioner of Income tax. We are of the considered view that now when the notice under Sec. 143(2), dated 31.07.2012 clearly mentioned that the case of the assessee had been picked up for '**Limited scrutiny**', therefore, the CIT(A) was incorrect in declining to adjudicate the aforesaid issue for the reason that as per him there was nothing on record to suggest that the case of the assessee was selected for limited scrutiny, and not for the detailed scrutiny. We find that the scope of the A.O to frame assessment in a case which had been picked up for limited scrutiny had recently been looked into by the **Income-tax Appellate Tribunal, Amritsar**, in the case of **Smt. Gurpreet Kaur, Jalandhar Vs. ITO, Ward-III (9) Jalandhar (ITA 87/ASR/2016, dated 24.03.2016)**, wherein the Tribunal after referring to the CBDT instruction F.No. 225/26/2006 – ITA-II (PT), dated 08.09.2010, has held that in a case which had been

picked up for limited scrutiny, the A.O has to confine himself to the limited reason on the basis of which the case of the assessee had been picked up for scrutiny, and was not vested with the jurisdiction to widen the scope of the scrutiny assessment. It was further observed by the Tribunal that in case the A.O felt that there was a potential escapement of income of more than Rs. 10 lacs, then the case could be taken up for wider scrutiny only after getting the approval of the administrative Commissioner of Income-tax. We find ourselves to be in agreement with the aforesaid view of the Tribunal, and are of the considered view that the scope of the jurisdiction of the A.O to frame an assessment in the case of a 'limited scrutiny' of the assessee, had not been properly appreciated and therein adjudicated upon by the CIT(A), specifically in the backdrop of the aforesaid CBDT instruction F.No. 225/26/2006 – ITA-II (PT), dated 08.09.2010. We thus, in the backdrop of the aforesaid facts, in all fairness restore the matter to the file of the CIT(A) for fresh adjudication on the issue as regards the scope of jurisdiction of the A.O keeping in view the aforesaid CBDT Instruction F. No. 225/26/2006 – ITA-II (PT), dated 08.09.2010.

10. We are also not impressed by the manner in which the CIT(A) had disposed of the present appeal. We find from the records that though the CIT(A) had vide his letter dated 04.07.2014 called for a remand report from the A.O (with a copy to the assessee with a direction to cooperate in the proceedings before the A.O), however, thereafter as averred by the ld. A.R before us, neither did the A.O acted upon the aforesaid directions, nor the CIT(A) wait for the requisite information as was called for from the A.O. We find that all of a sudden, without any rhyme and reason, the proceedings which were pending before the A.O at the instance of the CIT(A) were most whimsically aborted and the appeal was thereafter disposed of by the

CIT(A). We are unable to persuade ourselves to be in agreement with the aforesaid mode of disposal of appeal by the CIT(A). Though, we have restored the matter to the file of the CIT(A) on the jurisdictional aspect itself, however, as observed by us hereinabove, as the appeal of the assessee had not been brought to a logical end and the remand proceedings pending before the A.O had wrongly been aborted at the back of the assessee, therefore, all the other grounds of appeal raised by the assessee before us as regards the merits of the case are also restored to the file of the CIT(A), who is directed to readjudicate the same afresh after affording sufficient opportunity of being heard to the assessee.

11. Before parting, we may herein observe that before us it was submitted by the ld. A.R that the assessee had for the first time raised before the CIT(A) its claim towards deduction u/s 80IB. We find that the CIT(A) had declined to admit the claim of the assessee raised under Sec. 80IB, for the reason that the same was not raised by the assessee in the return of income. We are unable to persuade ourselves to accept the aforesaid finding of the CIT(A). We are of the considered view that in the backdrop of the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT, Central-II, Mumbai Vs. M/s Sheth Developer (P) Ltd. (ITA No. 3724/Mum/2010, dated 27.07.2012,** wherein it has been held by the Hon'ble jurisdictional High Court that where an assessee had not raised a claim of deduction u/s 80IB(10) in its return of income, the same could validly be raised before the appellate authorities. We thus, are of the considered view that as the assessee in the case before us had raised a claim towards deduction u/s 80IB(10) for the first time before the CIT(A), therefore, the latter's entitlement towards claim of the said deduction may therein be

adjudicated, as per law, in the backdrop of the aforesaid judgment of the Hon'ble High Court.

11. The matter is restored to the file of the CIT(A) for fresh adjudication, in terms of our aforesaid observations. Needless to say, the CIT(A) shall in the course of set aside proceedings afford sufficient opportunity of being heard to the assessee.

12. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 25.10.2017

Sd/-

(R.C. Sharma)
Accountant Member

मुंबई Mumbai; दिनांक 25.10.2017

Sd/-

(Ravish Sood)
Judicial Member

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

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