

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI RAVISH SOOD, JM
ITA No.5060/Mum/2015
(Assessment Year :2010-11)

ITO WD 1(3) Ashar IT Park, 6 th Floor B Wing, R.No.10, Wagle Industrial Estate, Road No.16Z, Thane (W)-400604	Vs.	Shri Chandrashekhar D Lotlikar 19, 1 st Floor, Swarna Co-op Housing Society, Panchpakhadi Thane (W), Thane – 400 602
PAN/GIR No.		ACEPL2911R
Appellant)	..	Respondent)

Revenue by	Shri Rajat Mittal
Revenue by	Shri Subodh Ratnaparkhi
Date of Hearing	11/09/2017
Date of Pronouncement	29/11/2017

आदेश / O R D E R

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

This is an appeal filed by the revenue against the order of CIT(A)-1, Thane dated 24/07/2015 in the matter of order passed u/s.143(3) wherein following grounds have been taken by the revenue:-

- 1. Whether on the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in not confirming the addition of Rs. 1,55,64,475/- on account of profit on sale of plots.*
- 2. Whether on the facts and in the circumstances of the case, and in law, the Hon'ble CIT(A) erred in giving relief to the assessee on the basis of fresh evidences and income figures of A.Ys 2013-14 and 2014-15 without calling for remand report from the A.O. specially considering the fact that these figure were not available to the A.O. at the time of passing the assessment order.*
- 3. The order of the CIT(A) may be vacated and that of the Assessing Officer may be restored.*

4. *The appellant craves leave to add, amend, alter or delete any ground of appeal.*

2. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the business of construction and development. For the year under consideration assessee filed its return of income declaring total income at Rs.13,37,940/-. During the course of assessment, the AO rejected assessee's books of accounts by invoking provisions of Section 143(3) and made an addition of Rs.1,55,64,475/- after observing as under:-

7. In view of the inconsistency in accounts and the inability of the assessee to furnish the documents required during the course of assessment proceedings coupled with the facts observed on physical verification and scrutiny proceedings, it is clear that the assessee has deferred the actual profits from the activity. On the basis of facts observed and juxtaposing the same against the details filed alongwith the return the assessee's profit are arrived as under:

Sales (shown as advances from customers)		
Less:		Rs.6,98,38,150.52
<u>WIP</u>		
i) Closing Stock :	Rs. 4,98,27,074.46	
ii) Property at Sajan :	Rs. 6,79,781.00	
iii) Development of land	<u>Rs. 32,66,820.00</u>	
		<u>Rs. 5,37,73,675.46</u>
<u>PROFIT on Sale of plots</u>		Rs. 1,55,64,475.46

7.1 The profit worked out as above comes to Rs. 1,55,64,475.46. The same is accordingly added to the total income of the assessee for the year under consideration. However, since the total closing stock has been taken into consideration while calculating the above no set-off for the same shall be allowable to the assessee in subsequent years. The assessee's representative was asked to submit his response to the above proposition regarding the basis of arriving at the profits earned from the project as on 31.03.2010. He expressed his / consent for the same.

5. By the impugned order, CIT(A) deleted the addition after observing as under:-

10. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant is a real estate developer. The appellant acquires land and after developing the infrastructure facilities like internal roads, lights, garden, etc., sells the land in the form of smaller plots. The amounts received in respect of various plots were being shown by the appellant as advances on the ground that he was following the "percentage completion method" which was consistently followed by him. This contention of the appellant has been found to be factually incorrect as can be seen from the following table –

A.Y.	Closing stock of work-in-progress	Gross profit	Income on account of maintenance charges.
2014-15	6,72,00,000	17,46,229	15,44,942
2013-14	6,32,00,000	21,43,874	16,80,538
2012-13	5,69,85,000	16,75,869	20,22,437
2011-12	5,38,24,134	14,52,116	12,41,540
2010-11	4,98,27,074	24,35,569	16,68,860

11. While working out the above GP, the income on account of maintenance charges is also being taken on the credit side along with the closing stock. The total of the gross profit shown by the appellant for the above mentioned 5 years is Rs.94,53,657/- whereas the appellant has received an amount of Rs.81,58,362/- on account of maintenance charges only. After excluding these maintenance receipts from the gross profit it is seen that the appellant has hardly shown any gross profit for the above mentioned 5 assessment years in spite of doing substantial work in these years. In fact in AY 2012-13, if income on account of maintenance charges is taken out, there was a gross loss to the appellant. Thus from a perusal of the above table it is seen that the appellant is not showing the GP either on a percentage of the closing work-in-progress or on any other consistent basis. Therefore, the contention of the appellant that he was following the percentage completion method is not correct.

12. Further, it is seen that in respect of a majority of the plots, the appellant had received 100% of the sale amount of the plots which fact has been admitted by the appellant himself in the details filed during the course of assessment proceedings as well as the present proceedings. The total sales which the appellant had shown as advances in his books of accounts till the year under consideration amounts to Rs.6,86,38,150/- (mistakenly taken by the AO at Rs. 6,98,38,150/-). Therefore, the AO had rightly adopted the figure of

advances as sale proceeds of the plots sold by the appellant till the year under consideration. However, while working out the profit on the sale of these plots, the subtraction of the figure of the closing stock as on 31.03.2010 by the AO was not correct because the closing stock included expenses incurred in respect of plots sold as well as those plots which are yet to be sold. As per the Matching principle of accounting, for arriving at the correct profit, the revenues have to be matched to the expenses i.e. only those expenses are to be allowed which have been incurred to earn those revenues. Therefore, only those expenses were required to be deducted from the receipts which pertained to plots which had been sold till the year under consideration. To work out these figures, the appellant was asked to file details of year-wise expenses incurred as well as year-wise receipts of amounts in respect of various plots. The appellant furnished the following details:

<i>Assessment Year</i>	<i>Advances during the year</i>	<i>Site expenses during the year</i>	<i>Profit declared</i>
2005-06	10,50,000	34,83,931	47,250
2006-07	12,87,000	11,29,800	1,75,950
2007-08	2,53,96,647	1,81,49,117	16,19,844
2008-09	2,71,31,281	1,17,79,755	23,51,216
2009-10	80,00,259	1,02,72,576	46,68,661
2010-11	57,72,964	32,18,797	56,92,449
2011-12	26,96,644	33,08,353	63,81,156
2012-13	6,00,000	18,58,145	76,83,877
2013-14	35,71,699	57,37,449	82,08,678
2014-15	12,99,001	33,49,132	88,59,546
<i>Expected</i>	3,27,00,000	3,73,53,618	
	10,97,05,495 (Expected Revenue)	9,96,40,673 (Expected Total Cost)	

13. From the above chart, it is seen that in the last row, the appellant has added some expected receipts and expected expenses. No basis has been given by the appellant for arriving at these estimated figures of receipts and expenses. Therefore, the profits of the appellant till the year under consideration are being

worked out as under after ignoring the estimated figures of receipts and expenses mentioned in the last row by the appellant.

<i>Particulars</i>	<i>Amount (Rs.)</i>
<i>Receipts in respect of plots shown by the appellant till A.Y. 2014-15 on actual basis</i>	<i>7,68,05,495/-</i>
<i>Add: Income on account of maintenance charges till AY 2014-15</i>	<i>81,58,362/-</i>
<i>Total receipts on actual basis till A.Y. 2014-15</i>	<i>8,49,63,857/-</i>
<i>Actual receipts in respect of plots sold till the A.Y. 2010-11 i.e. year under consideration</i>	<i>6,86,38,150/-</i>
<i>Add: Current year's receipts of maintenance charges</i>	<i>16,68,860/-</i>
<i>Total receipts till the year under consideration</i>	<i>7,03,07,010/-</i>
<i>Receipts of the current year as percentage of total receipts till A.Y. 2014-15 (7,03,07,010/8,49,63,857*100)</i>	<i>82.75%</i>
<i>Closing stock of work-in-progress shown by the appellant in the A. Y. 20 14- 15</i>	<i>6,72,00,000/-</i>
<i>Add: Purchase price of land</i>	<i>6,79,781/-</i>
<i>Add: Development charges of the land</i>	<i>32,66,820/-</i>
<i>Total expenses incurred till AY 2014-15</i>	<i>7,22,46,601/-</i>
<i>82.75% of the above</i>	<i>5,88,73,812/-</i>

14. Therefore, this is the amount of expenses which are relatable to the sale of the plots because the receipts in respect of sale of plots are 82.75% of the total actual receipts till A.Y. 2014-15. Therefore, the profit of the appellant till the year under consideration = Rs.1,14,33,197 [i.e. Rs.7,03,07,010 - Rs.5,88,73,812/-]. As the appellant has already declared income amounting to Rs.56,92,449/- in various years till the year under consideration, this amount is reduced from the profits worked out as above, which means the profits of the appellant for the year under consideration, excluding the income already offered for taxation are Rs.57,40,748/- (i.e. Rs. 1,14,33,197/- - Rs. 56,92,449/-) This amount is therefore, added to the declared income of the appellant at Rs.13,37,940/-. The taxable income of the appellant for the year under consideration is therefore, determined at Rs.70,78,688/-.

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

6. We have heard rival contentions and carefully gone through the orders of the authorities below and found from record that during the course of appellate proceedings, assessee was asked by CIT(A) to file details of year-wise expenditure incurred as well as year wise receipt of amount in respect of various plots. The assessee has furnished details which are reproduced by CIT(A) at page 6. On the basis of these details, the CIT(A) reached to the conclusion and deleted the addition partly under rule 46A. The CIT(A) is required to call for a remand report if any additional evidence is being called for during the course of appellate proceedings and submitted by the assessee. The AO should be given an opportunity to comment on those facts and figures and remand report is required to be called from AO. As the CIT(A) has not called for the remand report nor given any opportunity to AO to comment on the documents filed before him, we set aside the order of CIT(A) and restrict the matter to the AO for deciding the same afresh after considering the details filed by assessee before the CIT(A).

7. In the result, appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 29/11/2017

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/11/2017
Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai