

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)
I.T.A. No. 4777/Mum/2017 (Assessment Year 2012-13)

M/s. Babar Estate Pvt. Ltd. Taj Talkies, 280 Maulana Shukat Ali Road Grant Road Mumbai-400 008. PAN : AAACB1986F (Appellant)	Vs.	ITO Ward 5(1)(2) Aayakar Bhavan M.K. Road Mumbai-400020. (Respondent)
--	-----	---

Assessee by	Shri Prakash G. Jhunjhunwala & Shri Abhishek Jhunjunwala
Department by	Shri Suman Kumar
Date of Hearing	19.04.2018
Date of Pronouncement	30.05.2018

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 31.1.2017 passed by the learned CIT(A)-10, Mumbai confirming the order passed by Ld CIT(A) estimating business income at 10% of the sale consideration received on sale of flats.

2. The appeal is barred by limitation by 54 days. The assessee has moved an application seeking condonation of delay. Having heard the parties and having regard to the petition filed by the assessee, we are of the view that there was reasonable cause in filing the appeal belatedly before the Tribunal. Accordingly, we condone the delay and admit the appeal for hearing.

3. We have heard the parties and perused the record. The assessee-company is engaged in the business of construction of building consisting of commercial and residential units along with a cinema theater at Maula Saukat Ali Road, Grant Road, Mumbai. The assessee did not declare any income from sale of flats. The Assessing Officer noticed that the assessee has received ₹

561.90 lakhs as sale consideration on sale of 22 flats. The Assessing Officer estimated 10% of the sale consideration as income of the assessee and accordingly assessed ₹ 56.19 lakhs as income of the assessee from sale of those flats. The learned CIT(A) also confirmed the same.

4. The Learned AR appearing before the assessee submitted that the assessee had sold the 22 flats in various years relevant to A.Y. 2009-10 to 2011-12, i.e., earlier to the year under consideration. He submitted that the assessee could not complete the project due to litigations between the owner of land and the assessee. He submitted that the matter is pending before the Hon'ble High Court, which has prohibited sale of flats to the public. The Learned AR submitted that the assessee will offer income once dispute in the Court is settled and the project is completed.

5. On the contrary, learned DR submitted that the assessee itself has admitted that it has already sold 22 flats and hence income from such sale has to be assessed in the hands of the assessee. Since the assessee has not offered any income till date, the Assessing Officer was justified in estimating income at 10% of the sale consideration.

6. We heard the parties and perused the record. We noticed that the assessee had started project long back and it has started selling the flats since June 2007 onwards. Since more than 10 years have already elapsed, the Bench asked learned AR to furnish the details of flats, which were given physical possession to the buyers. The assessee submitted that it has not given possession of the flats till date. Since the first sale has taken place in June 2007, the Bench asked learned DR on 08-02-2018 to obtain a status report on the project from the assessing officer after physically inspecting the project. Accordingly the case was adjourned to a later date. The Learned AR was also directed to furnish details relating to the status of project and the details of occupation given to the buyers. However, on the subsequent date of hearing on 19-04-2018, the Ld DR submitted that the Assessing Officer has

not sent the report till date. The learned AR also reiterated the submissions made by him earlier.

7. We noticed that both the parties have failed to furnish details of possession of flats given to the buyers of the property and also status of the project. Hence the assessee was asked to furnish a certificate confirming that the physical possession was not given to any of the buyers. In response thereto, the assessee has filed a certificate dated 21-05-2018 obtained from an Architect named M/s. Nandkihsore Udas, wherein he has simply mentioned that occupation certificate of the building has not been received. Thus we notice that the Architect has also not given the details of physical possession given to the buyers of the flat. The assessee has also not furnished any details relating to physical possession given to the buyers of the flats.

8. We shall now recapitulate the facts of this case. The assessee is engaged in the business of construction of commercial and residential flats. The assessee has also received money on sale of certain flats. Before us, the Ld A.R claimed that the assessee is following project completion method. However, we noticed from the order passed by the learned CIT(A) that the assessee has stated before Ld CIT(A) that it was following method of offering income for taxation in the year of sale. Thus, submissions made before us is contradictory to the submissions made before the learned CIT(A).

9. Whichever may the method of accounting followed by the assessee, in our view, if the assessee has given possession of the flats and received sale consideration, the property in the flat would get transferred and hence the said sale should be considered as completed. In that case, income relating to those flats so sold should be offered to tax.

10. As noticed earlier, neither the Assessing Officer nor the assessee is furnishing details of flats, which were given physical possession. In the absence of these details, the Tribunal is unable to decide the issue urged before us. Under these set of facts, the Tribunal has no other option but to

remit the matter to the file of the Assessing Officer with the direction to ascertain details of flats which were given physical possession to the buyers and determine profit relating to those flats as per the principles discussed in the preceding paragraph and assess it accordingly. With these direction, we modify the order of the learned CIT(A) and restore the issue to the file of the Assessing Officer for examining the issue afresh by carrying out necessary enquiries and inspection. After considering all the relevant information, the AO may take appropriate decision in accordance with the law.

11. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 30.05.2018.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/05/2018

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

PS

Senior Private Secretary
ITAT, Mumbai