

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1809/Chny/2016

निर्धारण वर्ष / Assessment Year : 2007-08

M/s Land Marvel Homes,
Old No.2, New No.3, 1st Main Road,
Indira Nagar, Adyar,
Chennai - 600 034.

v. The Assistant Commissioner of
Income Tax,
Business Circle – IV,
Chennai - 600 034.

PAN : AABFL 4387 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 03.07.2018

घोषणा की तारीख/Date of Pronouncement : 12.07.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -15, Chennai, dated 09.03.2016 and pertains to assessment year 2007-08.

2. Shri D. Anand, the Ld.counsel for the assessee, submitted that the original assessment was completed under Section 143(3) of

the Income-tax Act, 1961 (in short 'the Act') after scrutiny, determining the total income of ₹1,49,33,350/-. Later on, according to the Ld. counsel, the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Act. According to the Ld. counsel, the assessee filed the return of income and asked for the copy of reasons recorded for reopening. The assessee has also raised objections for reopening of assessment. According to the Ld. counsel, the Assessing Officer was expected to dispose of the objection of the assessee independently before passing any assessment order in view of the judgment of Apex Court in GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19. However, no order was passed so far. According to the Ld. counsel, the objection of the assessee for reopening of assessment was not disposed of so far by the Assessing Officer.

3. Coming to the merit of the appeal, the Ld.counsel for the assessee submitted that the Assessing Officer found there was difference of ₹52,98,152/- in the work in progress. According to the Ld. counsel, the assessee has shown the amount of ₹52,98,152/- as a project done by other concern and the same was reflected in the books of account. The Ld.counsel for the assessee further

submitted that the sum of ₹52,98,152/- on work in progress was not unexplained credit. It is an actual cost of development incurred by the assessee-firm. Therefore, according to the Ld. counsel, there is no justification in disallowing the claim of the assessee.

4. With regard to the next disallowance of ₹2,83,66,050/-, the Ld.counsel for the assessee submitted that it was genuinely incurred by the assessee-firm against the sale of projects, which was offered for taxation. According to the Ld. counsel, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee could not produce any evidence. The additional evidence was produced before the CIT(Appeals). However, she refused admit the same. Therefore, according to the Ld. counsel, an opportunity may be given to the assessee.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the non-disposal of objection of the assessee for reopening of assessment is a curable defect, therefore, the matter may be remitted back to the file of the Assessing Officer in view of the judgment of Madras High Court in Home Finders Housing Ltd. v. ITO (2017) 82 taxmann.com 17. In respect of the addition on merit, the Ld. D.R. submitted that with

regard to difference in work in progress and disallowance of ₹2,83,66,050/-, the matter may be re-examined by the Assessing Officer on the basis of the material that may be filed by the assessee.

6. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the Assessing Officer has not disposed of the objection of the assessee for reopening of assessment. As found by the Madras High Court in Home Finders Housing Ltd. (supra), the failure of the Assessing Officer to dispose of the representation / objection of the assessee for reopening of assessment is only a curable defect. Therefore, the Assessing Officer has to dispose of the same. In view of the above, the issue raised by the assessee on merit also needs to be reconsidered. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer is directed to dispose of the objection filed by the assessee for reopening of assessment and thereafter re-examine the matter on merit, if necessary and decide the same in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 12th July, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 12th July, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त /CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.