

IN THE INCOME TAX APPELLATE TRIBUNAL 'H' BENCH, MUMBAI
BEFORE SHRI G.S. PANNU, AM AND SHRI PAWAN SINGH, JM

ITA No.5146/Mum/2016 Assessment Year 2011-12

ACIT-Circle-3 2 nd Floor, Rani Mansion, Murbad Road, Kalyan (W)-421301. Dist Thane	Vs.	M/s. Ashapura Builders & Developers Crown City, survey No.10 ADharwadi Jail Road Kalyan (W)-421 301.
PAN :AANFA 7239 C		
(Appellant)	..	(Respondent)

Appellant by	Shri M.C. Omi Ningshen-DR
Respondent by	Shri M. Subramanian-AR

Date of Hearing	04/07/2018
Date of Pronouncement	10/08/2018

ORDER

Per Pawan Singh , Judicial Member:

1. This appeal by the Revenue is directed against the order of Id. Commissioner of Income-tax (Appeals)-1, Thane [Id. CIT(A)] dated 25/05/2016 for Assessment Year 2011-12. The assessee has raised following Grounds of appeal.

"1.1 Whether on the facts and in the circumstances of the case and in law, the CIT (A) erred in deleting the addition of Rs. 2,74,66,992/-without appreciating the fact that the assessee has shown sale of similar flats within a short span of time at differential rates .

1.2. Whether on the facts and in the circumstances of the case and in law, the CIT (A) has erred in not appreciating the fact that each assessment year is different and that no addition can be made on a particular issue just because no adverse inference has been drawn by the AO on that issue in subsequent assessment years.

2. Whether on the facts and in the circumstances of the case and in law, the CIT(A) erred in allowing the appeal in favour of the assessee in respect of purchase difference of Rs. 5,89,28/- from M/s Sai Baba Construction despite the findings mentioned in the remand report wherein the AO submitted that only confirmation of party for labour charges of Rs. 14,03,278/- was filed and no other documentary evidences like bank statement , copy of bills etc were furnished by the assessee. Thus the CIT(A) has erred in not appreciating the fact that the assessee has failed to produce the crucial documents in order to establish the genuineness of the transactions in respect of purchase differences of Rs. 5,89,280/-from M/s Sai Baba Constructions .”

2. Brief facts of the case are that the assessee is a Builder and developer, filed its return of income for the assessment year 2010-11 on 09/09/2011 declaring total income at Rs.57,19,810/-. The return was selected for scrutiny. Assessment order was passed on 05/03/2014 u/s. 143(3) of the Act. The AO while passing the assessment order besides other additions/disallowances and made addition of Rs.2,74,66,992/- on account of undisclosed sales receipt and addition of Rs.5,89,280/- under section 69C /37 of the Act for unapproved/inflated purchases. On appeal before the CIT(A), both the additions/disallowances were deleted. Hence, aggrieved by the order of Id. Commissioner of Income tax (Appeals) Revenue is in appeal before us.
3. We have heard the Id. Authorised Representative for the assessee (AR) and Id. Departmental Representative for the Revenue (DR) and perused the material available on record. Ground No.1 relates to deleting the addition of Rs.2,74,66,992/-. The Id. DR for the Revenue supported the order of the AO.

The ld. DR further submitted that during the assessment the Assessing Officer noted that the assessee had sold flats to different persons at different rates. On comparison of the minimum and maximum booking rates it was found that the minimum booking rate was Rs.2,191/- per sq ft and maximum booking rate was Rs.3,518/- per sq ft. The AO issued show cause notice to the assessee as to why difference in sale price be not added as undisclosed sales. The assessee could not substantiate the difference in variation in rates and could not give details of any extra facilities provided to the buyers. Therefore, the undisclosed sales receipt was added to the income of the assessee.

4. On the other hand the ld. AR for the assessee supported the order of the CIT(A). The ld. AR of the assessee submitted that there was a difference in rate of bookings and payments, depending upon the prevailing market condition, business necessities and financial needs. All sales of flats are supported by registered sale deeds. All sale proceeds were received through account payee cheques. There is no allegation against the assessee for selling the flat less than the market rate. Moreover, variation in the sale price is a common phenomenon in this type of business and particularly of builders because inaugural price is generally lower than the normal rate. Moreover, the flats having better view bring better selling rate. The ld. AR further submits that the assessee explained all the situations/circumstances and factors leading to difference in rate before the AO as well as the CIT(A).

5. We have considered the rival submissions of the parties. We have also gone through the orders of lower authorities. The Assessing Officer during the assessment proceedings noted that sale consideration in respect of several flats in different buildings of the project is different. From the details furnished by the assessee the AO worked out the minimum and maximum rate per square ft. as Rs. 2191/- and Rs. 3578/- respectively and average sale price was worked out at Rs.2834 per sq.ft.. Assessee had sold tot al 36918 sq.ft. area of the flats. The difference between maximum sale rate and average rate was worked out at Rs.2,71,66,992/- and added it to the income of the assessee as undisclosed sales receipt.
6. However, the CIT(A) after considering the submission of the AO observed that assessee during the year under consideration sold flats in 4 different buildings. Starting from 27th Oct. 2009 to 13th Jan. 2011. The flats were having different area, varying from 400 sq.ft. to 648 sq.ft. The flats were situated on different floors. It is also a common practice in assessee's business that rates per sq.ft. goes up as soon as the projects are near completion. The sales shown by the assessee are duly registered; payments have been received through cheques. There is no evidence on record to suggest that assessee received over and above the cheques amount. No enquiries were carried out from the buyers for paying any excess amount by them above the cheques. The contention of the assessee that lowest sale price

of the flats are more than the fair market value notified by Govt. under Stamp Act has not been controverted. The Id. CIT(A) further noted that in subsequent assessment i.e. for AY 2012-13 and 2013-14, the AO accepted the similar variation in scrutiny assessment u/s. 143(3). In those years there was variation of Rs.688/- per sq.ft. in AY 2012-13 and Rs.1201/- per sq.ft. in AY 2013-14 in average sale price for which no adverse inference has been drawn by the AO. On the basis of the above conclusion the Id. CIT(A) held that addition made by the AO on account of undisclosed sale receipts is without supporting material on record and cannot be sustained and thereby, deleted the entire addition. No contrary facts or law is brought to our notice to take any other view. Hence, we do not find any reason to interfere with the finding of the Id. CIT(A), which we affirm. In the result Ground No.1 of the appeal raised by the revenue is rejected.

7. Ground No.2 relates to deleting the addition of difference in purchases of Rs.5,89,280/-, from Sai Baba Constructions. The Id. DR submits that the assessee has claimed purchases of Rs.14,03,278/- from M/s. Sai Baba Construction. The AO in order to verify the genuineness of such purchases issued notice u/s. 133(6) to the said parties to furnish ledger extract. In response to the notice the said party furnished its ledger extract. On perusal of the ledger extract furnished by the said party, the AO observed that the said party has shown the material amounting only of Rs.8,13,998/-. Before, the

AO the assessee could not explain the difference, therefore, difference of Rs.5,89, 280/- was considered as inflated purchases and was disallowed u/s.69C/37 of the Act.

8. On the other hand the Id. Authorized Representative of the assessee supported the order of the AO. The Id. Authorized Representative of the assessee further submits that there was no difference between accounts of both the parties. Amount of Rs. was credited by the assessee to account of M/s. Sai Baba Construction against their bills for labour charges. Against this, total payment during the year to the said party of Rs.8,13,998/- has also been debited to labour charges. All the payments were made through cheques after deducting tax at source. The assessee also furnished confirmation from M/s. Sai Baba Construction about the payments of Rs. 14,03,278/-. The Id. CIT(A) after seeking remand report from Assessing Officer deleted the disallowances.
9. We have considered the rival submissions of the parties and have gone through the orders of authorities below. The AO during the assessment sent notice under section 133(6) to M/s. Sai Baba Construction to verify the genuinity of purchases. M/s. Sai Baba Construction furnished its reply to the assessing officer and on the basis of their reply, the assessing officer added the difference of Rs.5,89,280/- on his observation that they have confirmed to have sold the material of Rs.8,13,998/- only. During the First Appellate

Stage the assessee furnished the confirmation of M/s. Sai Baba Construction and explained that there is no difference in opening and closing balance. The payments have been made through cheques after deducting TDS. On the submission of the assessee, the Id CIT(A) sought remand report was sought from AO. In the remand report the assessing officer admitted that Sai Baba Construction have confirmed to have charged labour charge of Rs. 14,03,278/- The Id. CIT(A) after considering the remand report concluded that there is no difference in opening and closing balance of the assessee reflected in the ledger extract. The payments have been made after deduction of TDS and deleted the disallowance. No contrary fact or law is brought to our notice. Hence, we do not find any justification to interfere with the finding of the Id. CIT(A) that the AO himself accepted in the remand report that there is no difference in opening and closing balance. Ground No.2 of the appeal raised by revenue is dismissed. Ground No.2 of the appeal raised by the revenue is dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 10.08.2018.

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER
Mumbai; Dated: 10/08/2018

Jv.Sr.PS.

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1.Appellant /अपीलार्थी 2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ H ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.