

आयकर अपीलिय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA Nos.1260 to 1263/PUN/2016
निर्धारण वर्ष / Assessment Years : 2007-08 to 2010-11

Dy. Commissioner of Income Tax,
Central Circle – 1(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Pinnacle Constro & Eco Home Pvt. Ltd.,
1641, Madhav Heritage, Tilak Road,
Pune – 411030

PAN : AAECPO400E

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suhas P. Bora
Revenue by : Ms. Sabhana Parveen

सुनवाई की तारीख / Date of Hearing : 10-10-2018
घोषणा की तारीख / Date of Pronouncement : 12-10-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

These four appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals)-13, Pune dated 09-03-2016 common for the assessment years 2007-08 to 2010-11.

Since, the issues involved in all these appeals are identical and are arising from same set of facts, these appeals are taken up together for adjudication and are being disposed of vide this common order.

2. The brief facts of the case as emanating from records are : A search action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was conducted in the case of Pinnacle Group on 10-02-2011. During the course of search it transpired that the assessee has received ‘on-money’ in cash on sale of flats and the same was not recorded in the regular books of account. The assessee admitted receipt of ‘on-money’, however the assessee offered the same to tax in the year in which project is completed. The assessee contended that ‘on-money’ is part of sale consideration. The assessee is following project completion method for income recognition, hence, ‘on-money’ received is offered to tax on the same criteria. The Assessing Officer rejected the contentions of assessee and made addition of ‘on-money’ in the year of receipt. The Assessing Officer inter alia made addition on account of ‘on-money’ on sale of flats in the impugned assessment years as under :

Assessment Year	On-money
2007-08	Rs.16,55,000/-
2008-09	Rs.2,02,21,740/-
2009-10	Rs. 86,07,500/-
2010-11	Rs.22,00,000/-

Aggrieved by the assessment order for the respective assessment years passed u/s. 153C r.w.s. 143(3) of the Act, the assessee filed appeals before Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) following the decision of Hon’ble Bombay High Court

rendered in the case of Commissioner of Income Tax Vs. Karda Constructions Private Limited in Income Tax Appeal (L) No. 1960 of 2012 decided on 25-02-2013 accepted the contentions of the assessee qua year of taxability of 'on-money' receipts. Against the findings of Commissioner of Income Tax (Appeals), the Revenue is in appeal before the Tribunal for assessment years 2007-08 to 2010-11. The Revenue has raised following grounds for assessment year 2007-08 :

- “1) *On the facts and the circumstances of the case, the Ld. CIT(A) was not justified in allowing the appeal of the assessee without appreciating the fact that the 'on money' receipts are undisclosed income falling in the category of deemed income under Chapter IV of the Income Tax Act, 1961.*
- 2) *On the facts and the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made by the Aa on account of 'on money' received by the assessee based on the contention of the assessee that accounting standards should have been applied. The Ld. CIT(A) has lost sight of the fact that the said income does not qualify for application of regularly followed Accounting Standards as per Sec. 145 of the Income Tax Act, 1961.*
- 3) *On the facts and the circumstances of the case, the Ld. CIT(A) was not justified in allowing the appeal of the assessee as undisclosed receipts and payments, the test of estimation of revenue and of costs cannot be applied as done in the case of project completion method of revenue recognition. Also, the assessee would not have disclosed the on money receipt, if Search Action would not have been conducted in assessee's case.*
- 4) *The order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.*
- 5) *The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal.”*

Identical grounds have been raised by the Revenue in remaining assessment years i.e. assessment years 2008-09 to 2010-11.

3. Shri Suhas P. Bora appearing on behalf of the assessee submitted that the grounds raised by the Revenue in all the appeals are identical and

are in respect of single issue i.e. year of taxability of 'on-money' receipts. The assessee has admitted receipt of 'on-money' and offered the same to tax in the year when the project is completed. 'On-money' is a cash component of the sale consideration, since assessee is following project completion method the assessee has offered 'on-money' along with the profits to tax in the year of completion. The Assessing Officer has not disturbed the assessee's method of accounting. The ld. AR in support of his submissions placed reliance on various decisions including :

- i. Income Tax Officer Vs. Karda Construction Pvt. Ltd. in ITA No. 971/PN/2011 for assessment year 2009-10 decided on 31-07-2012;
- ii. Dhanvarsha Builders & Developers (P) Ltd. Vs. Deputy Commissioner of Income Tax, 102 ITD 375 (Pune);
- iii. Assistant Commissioner of Income Tax Vs. Smt. Ashadevi Sushil Agarwal in ITA No. 44/PUN/2015 for assessment year 2007-08 decided on 08-09-2017;
- iv. Dy. Commissioner of Income Tax Vs. M/s. Ohm Developers in ITA No. 314/Ahd/2002 for assessment year 1990-91 decided on 08-05-2015.

3.1 The ld. AR prayed for dismissing the appeal of Revenue and upholding the order of Commissioner of Income Tax (Appeals).

4. On the other hand Ms. Sabhana Parveen representing the Department vehemently defended the assessment orders. The ld. DR submitted that the assessee had admitted receipt of 'on-money' on sale of flat. The principle of recognition of profit on project completion method would not apply on receipt of 'on-money'. The Assessing Officer has rightly taxed 'on-money' in the year of receipt.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The solitary issue raised in all the appeals by Revenue is the year of taxability of 'on-money'. As per the contentions of Revenue the 'on-money' received by the assessee on sale of flats has to be taxed in the year of receipt, whereas the contentions of the assessee is that the 'on-money' has to be tax along with the profits of project on the project completion method, as 'on-money' is cash component of the total sale consideration.

6. We find that similar issue has been decided by the Pune Bench of the Tribunal in the case of Income Tax Officer Vs. Karda Construcion Pvt. Ltd. (supra). The Tribunal after placing reliance on the decisions rendered in the cases of Dhanwarsha Builders & Developers (P) Ltd. Vs. Deputy Commissioner of Income Tax (supra) and Golani Bros. Vs. Assistant Commissioner of Income Tax reported as 75 ITD 1 (Pune) held as under :

“6. We have heard the parties and perused the record. There is no dispute in this case that the un-recorded entries of cash receipts found were in respect of the sale of the flats. In sum and substance, it was forming the part of the sale consideration of the flats. The names of the buyers of the flats are also available on record. The assessee also agreed that it was a part of the sale consideration indirectly admitting partly suppressing of the sale prices of the flats. We find that the CIT(A) has relied on the decision in the case of Dhanwarsha Builders .and Developers (Supra) as well as Golani Bros. (Supra). In our opinion, the Ld CIT(A) has rightly held that as the nature of the receipt is not disputed as that of the part of the sale consideration of the flats sold by the assessee and in that case, the same is to be taxed in the year in which the assessee has recorded the sale of the respective flat. We find no reason to interfere with the order of the CIT(A). Accordingly, the same is confirmed.”

7. The Revenue challenged the findings of Tribunal before the Hon'ble High Court. The Hon'ble High Court affirmed the decision of Tribunal and dismissed the appeal of Revenue. The relevant extract of the judgment of Hon'ble High Court reads as under :

“2. The objection of the revenue is that amount of Rs.71,68,000/- found in cash has to be taxed in the year in which cash was received by the respondent assessee and not in the year the sale of the flats took place. The Tribunal records a fact that there is no dispute that unrecorded entries of cash found with the respondent assessee were in respect of sale of flats and forming part of consideration for sale of flats. Further the names of the buyers of the flats and the cash receipts from the buyers were also found during the course of the search. In these circumstances, on the basis of the finding of fact that cash receipts were undisputedly in respect of sale of flats and the same were offered to tax in the year in which flats were sold that the appeal of the revenue before the tribunal was dismissed.

3) Since the decision of the Tribunal is essentially based on a concurrent finding of fact, we see no reason to entertain the proposed question of law.”

8. We further observe that the Tribunal in the case of Assistant Commissioner of Income Tax Vs. Smt. Ashadevi Sushil Agarwal (supra) has taken a similar view regarding taxability of ‘on-money’ in the year of recognition of profit. Similar view has been taken by the Tribunal in various other decisions placed before us by the ld. AR. In the present case we find that the Commissioner of Income Tax (Appeals) has granted relief to the assessee by following the decision of Hon’ble Bombay High Court in the case of Commissioner of Income Tax Vs. Karda Constructions Private Limited (supra). The ld. DR has not brought to our notice any contrary decision. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals). Accordingly, the same is upheld and the appeal of Revenue for assessment year 2007-08 is dismissed.

9. The ground raised by the Revenue in assessment years 2008-09, 2009-10 and 2010-11 are identical to the grounds raised in assessment year 2007-08. Both the sides are unanimous in stating that the facts in assessment years 2008-09, 2009-10 and 2010-11 are identical to the facts in assessment year 2007-08. Thus, the findings given by us while deciding the grounds for assessment year 2007-08 would mutatis mutandis apply

to the grounds raised by the Revenue in assessment years 2008-09, 2009-10 and 2010-11. Accordingly, the same are dismissed.

10. In the result, all the four appeals by the Revenue are dismissed.

Order pronounced on Friday, the 12th day of October, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 12th October, 2018
RK

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)-13, Pune
4. The Pr. CIT (Central), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune