



**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI C.N. PRASAD, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.2534/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2011-12)

Ashford Housing Corporation 10, Ashford Centre Shankar Rao Naram Path Opp. Peninsula Corporate Park Lower Parel, Mumbai-400 013.	बनाम/ Vs.	Addl. CIT-Range 15(1) Mumbai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAKFA-1087-D		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Sanjay Parikh- Ld. AR
Revenue by	:	Shri Rajesh Kumar Yadav - Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	22/04/2019
घोषणा की तारीख / Date of Pronouncement	:	25/04/2019

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-33, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No.CIT(A)-33/Rg.21/332/2013-14,341/14-15 & 21/277/2015-16* dated 04/01/2018 on following Grounds of appeal :-

Valuation of opening stock to be considered same as closing stock of preceding year



1. The learned CIT(A) erred in holding that the stand taken by the learned Assessing Officer of not considering the closing stock as assessed in AY 2010-11 as the opening stock for the year under reference, as a correct proposition.
2. The learned CIT(A) failed in appreciating that since addition was made to closing stock in the last year during assessment, corresponding adjustment to the opening stock of the next year ought to have been made by the learned Assessing Officer.
3. The learned CIT(A) erred in not appreciating that the ground raised by the Appellant was based on the assessment order of the preceding year passed by the AO which was already on records of the AO during the present assessment proceedings and which has attained finality.
4. Your Appellant prays before Your Honour that sum of Rs. 8,64,000/- which was added in the closing stock in the preceding year i.e. AY 2010-11 should have been correspondingly added to the opening stock of the year under reference.

Facts leading to the dispute are that the assessee being *resident partnership firm* engaged in the business of builders & developers was assessed for impugned AY u/s 143(3) on 20/12/2014 wherein the income was determined at Rs.13.13 Crores after sole disallowance of Rs.8.30 Lacs.

2.1 The assessee is aggrieved by the fact that certain expenditure of Rs.8.64 Lacs as claimed by the assessee in AY 2010-11 as *Society Maintenance Charges* were disallowed by Ld. AO. It was held that the same were to be capitalized and would go on to increase the value of closing stock of unsold flats as on 31/03/2010. Upon further appeal, Ld. first appellate authority, vide order dated 02/05/2017, confirmed the stand of Ld. AO. It has been submitted that no further appeal has been preferred by the assessee against the same and therefore, the issue has already attained finality. A copy of the appellate order has been placed on record.

2.2 In this background, it is the submission of Ld. Authorized Representative for Assessee [AR], that since value of closing stock as on 31/03/2010 has been increased and the issue has attained finality,



the same would become opening stock as on 01/04/2010. In other words, it is the submission of Ld. AR that the opening stock of financial year 2010-11 would be increased by the corresponding amount and the effect of the same should be given while framing the assessment of this year. The attention has been drawn to the fact the Ld. first appellate authority has denied the same merely by observing that such a claim was never made during assessment proceedings and Ld. AO had no occasion to deal with such a claim.

2.3 The Ld. DR submitted that that issue would require factual examination by lower authorities.

3. We have carefully heard the rival submissions. The undisputed position that emerges is that the assessment for impugned AY was already framed on 20/01/2014 whereas the assessee's grievance arises out of appellate order for AY 2010-11 which was passed on 02/05/2017. Naturally, as rightly held by Ld. first appellate authority, Ld. AO had no occasion to consider the same while framing the assessment. However, the same, *per se*, could not be a reason to deny the legitimate benefit to the assessee. The expenditure claimed by the assessee in AY 2010-11 was a legitimate expenditure which was allowed to be capitalized with closing stock of the flats. As a natural corollary, the opening stock for impugned AY would increase by corresponding amount. It also appears from the record that inventory in the shape of 6 flats have been sold by the assessee during the impugned AY which further strengthens assessee's claim.

4. Therefore, Ld. AO is directed to examine the assessee's claim in the light of our above observations. The assessee is directed to substantiate his claim, in this regard.



5. The appeal stands allowed for statistical purposes in terms of our above order.

Order pronounced in the open court on 25th April, 2019.

Sd/-

(C.N. Prasad)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 25/04/2019

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.