

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH MUMBAI

BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

&

SHRI RAM LAL NEGI, JUDICIAL MEMBER

ITA No.723/Mum/2017

(Assessment Year :2011-12)

|   |           |                             |
|---|-----------|-----------------------------|
| M/s. Aibani Enterprises<br>501, Arc Plaza, Next to Century<br>Club, Veera Desai Extn. Road,<br>Jogeshwari (W), Mumbai-400 012 | Vs.       | DCIT, Circl-24(1)<br>Mumbai |
| <b>PAN/GIR No. AAKFA3942K</b>   |           |                             |
| <b>Appellant)</b>   | <b>..</b> | <b>Respondent)</b>          |

|                              |                           |
|------------------------------|---------------------------|
| Assessee by                  | Rakesh Joshi, AR          |
| Revenue by                   | Satish chandra Rajore, DR |
| <b>Date of Hearing</b>       | <b>25/07/2019</b>         |
| <b>Date of Pronouncement</b> | <b>31/07/2019</b>         |

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax Appeals-42, Mumbai dated 19/09/2016 and it pertains to the Assessment Year 2011-12. The assessee has raised the following grounds of appeal:-

- 1. The Ld. CIT(A) has erred in confirming the action of Learned Assessing Officer in disallowing the claim of Maintenance Charges of Rs.27,00,000/- u/s.37 of the income Tax Act, 1961, without considering the facts and circumstances of the case.*
- 2) The Ld. CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.10,00,000- u/s.68 of the Income Tax Act, 1961 by treating the amount received from Shri Shalini Ashok Mukadam as alleged Unexplained Cash Credit, without considering the facts and circumstances of the case.*
- 3) The Ld. CIT(A) has erred in confirming the action of Learned Assessing Officer in making an addition of Rs.36,00,000/- u/s.68 of the Income Tax Act, 1961 by treating the Cash deposit as alleged*

*Unexplained Cash Credit, without considering the facts and circumstances of the case,*

*4) The appellant craves leave to add, amend, alter or delete the said ground of appeal.*

2. The brief facts of the case are that the assessee, M/s Aibani Enterprises is a builder and developer. The assessee has filed its return of income for AY 2011-12 on 17/07/2011, declaring total income at Rs. 13,56,540/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the I.T.Act, 1961 on 26/03/2014, determining the total income at Rs.86,56,540/-, by making additions towards disallowance of maintenance charges u/s 37(1) for Rs. 27 Lacs, additions towards unexplained cash credit u/s. 68 of the I.T.Act, 1961, for Rs. 46 Lacs, in respect of advances received for sale of flats. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The Ld.CIT(A), for detailed reasons recorded in its appellate order, dated 19/09/2016, dismissed appeal filed by the assessee and confirmed additions made towards disallowances of maintenance charges and unexplained cash credit u/s 68 of the I.T.Act, 1961. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

3. The first issue that came up for our consideration from ground No.1 of appeal is disallowance of claim of maintenance charges. The assessee is a builder and developer, developed a property called, Arch plaza and sold few units and continued to hold unsold units. The assessee has paid maintenance charges of Rs. 27 Lacs, in respect of unsold flats to a society, which is maintaining the property.

The Ld.AO has disallowed maintenance charges, on the ground that no details has been filed to justify payment of maintenance charges.

4. The Ld.AR for the assessee, at the time of hearing, submitted that the Ld.CIT(A) was erred in confirming additions towards maintenance charges of Rs. 27 Lacs, without appreciating the fact that, the assessee need to maintain the property, in respect of unsold units, for which maintenances charges including municipal taxes has been paid. The assessee, further, submitted that it has filed necessary details including receipts from Brhuan Mumbai Maha Nagara Palika for proof of municipal taxes. The AO, ignoring all evidences simply made additions, on the ground that no details has been filed. The Ld. DR, on the other hand, strongly supported order of the Ld.CIT(A).

5. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The Ld. AO never disputed fact that the assessee is a builder and developer and had developed a property called Arc plaza. It is also not in dispute that certain units were remains unsold for the impugned assessment year. When, the assessee is having unsold units of property, it needs to maintain such properties by paying necessary

municipal taxes and other incidental expenses. In this case, the assessee has filed various details including receipts for payment of municipal taxes to BMC and also bank statement of the society, which is maintaining the property called Arc plaza Cooperate Housing Society, which are part of paper book page No. 6-23 filed by the assessee. Therefore, we are of the considered view that the AO, as well as CIT(A) were erred in disallowance of maintenance charges. Accordingly, direct the AO to delete the additions made towards disallowance of maintenance charges.

6. The next issue that came up for our consideration from ground No. 2 and 3 of assessee's appeal is additions towards unexplained cash credit on u/s 68 of the I.T.Act, 1961, amounting to Rs. 46 Lacs. The AO has made additions towards unexplained cash credits towards advance received for sale of flats, on the ground that the assessee has failed to prove identity, genuineness of transactions and credit worthiness of the parties. The AO further, observed that in respect of advance for sale of flats No. 103, although, the assessee claims to have received advance from Ms. Shalini Ashok Mukumdan, but when notices issued to the said person, no details were filed. Similarly, in respect of advances claimed to have received from B.K.Ashok and Kajal D. Sankhe, it was observed that

B.K.Ashok has confirmed a sum of Rs. 5 Lacs as against Rs. 19 Lacs advance claimed to have received by the assessee. Likewise, Ms. Kajal D. Sankhe, never responded to 133(6) notices issued during the course of assessment proceedings. Therefore, he opined that amount received from Shri B.K.Ashok to the extent of Rs. 14 Lacs and Ms.Kajal D. Sankhe to the extent of Rs. 22 Lacs is unexplained and accordingly, made additions u/s 68 of the I.T.Act, 1961.

7. The Ld. AR for the assessee, submitted that the AO as well as CIT(A) were erred in additions towards advance received for sale of flats from three parties u/s 68 of the I.T.Act, 1961, even though, the assessee has filed complete details, including cash receipts during the course of assessment proceedings. The Ld. AR, further submitted that although, Shri.B.K.Ashok confirmed payment to the extent of Rs. 5 Lacs, but fact remains that he has paid a sum of Rs. 19 Lacs, which is further evidenced by sale agreement between the parties, as per which, he has confirmed having paid a sum of Rs. 27 Lacs. Similarly, in respect of Kajal D. Sankhe, although initial notices issued u/s 133(6) was returned, but assessee has filed confirmation with new address. Therefore, it is incorrect on the part of AO to

allege that no details has been filed to prove advances received for sale of flats.

8. The Ld. AR for the assessee, put forth on alternative argument in light of survey conducted in the case of assessee during subsequent period, as per which the assessee has admitted a sum of Rs. 3,40,00,000/-, in respect of possible omissions and also on account of on money received for sale of flats. Therefore, if at all amount of Rs. 14 Lacs is not confirmed by the person who gave advance, the same is covered out of disclosure made during the course of survey and accordingly, further additions towards advances for non confirmation by the party amounts to double additions and hence, the same may be deleted.

9. The Ld. DR, on the other hand, strongly supported order of the CIT(A).

10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. In respect of, additions of Rs. 10 Lacs towards advance received for sale of flat No. 103 from Shalini Ashok Mukumdan, the assessee has filed ledger account copy, as per which advance for sale of flat has been collected on various dates. In respect of advances received from B.K. Ashok, the assessee has filed cash receipt along with agreement, as per which a sum of Rs. 19 Lacs was collected up to

date of F.Y. 2010-11. Similarly, in respect of advance received from Kajal D.Sanke, the assessee has filed confirmation along with cash receipts and agreement for sale. All these evidences are part of paper book filed by the assessee. However, the Ld. AR for the assessee claims that the agreements for sale was not before the AO. Therefore, in order to verify correctness of claim of advance received from parties, the issue may be set aside to the file of the AO. We find that when, the assessee has furnished primary evidences including confirmation from the parties, it is for the AO to ascertain correctness of claim made by the assessee by carrying out, further investigation including summoning the parties for verification. In this case, we find that, the AO has taken adverse view, in respect of advances received from above parties only for the reason that the parties were not responded to u/s 133(6) notices. No doubt, when information has been called for from the parties, they should file necessary details, but non furnishing of information by the parties cannot be attributed to the assessee, because attendance of parties before the AO is not in the hands of the assessee. At best, assessee can file whatever it can file before the AO. In this case, the assessee has discharged its onus by filing primary evidences including confirmation from the parties. Therefore, we are of the considered view that the AO was incorrect in coming to the

conclusion that advances received from three parties is not proved. However, as claimed by the assessee, it has filed certain additions evidences in form of agreement between the parties to support its claim of advance received for sale of flats. These documents were not before the AO, at the time of assessment proceedings. Therefore, in order to give an opportunity to the AO, to verify a additional evidences filed by the assessee, we set aside the issue to the file of the AO and direct him to cause necessary enquiries in light of additional evidences filed by the assessee and decide the issue in accordance with law.

**11. In the result, appeal filed by the assessee is allowed for statistical purpose.**

Order pronounced in the open court on this 31/07/2019

**Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER**

**Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER**

Mumbai; Dated 31/07/2019  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

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

6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**