

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1217/PUN/2013
निर्धारण वर्ष / Assessment Year : 2009-10

The Asst. Commissioner of Income Tax,
Central Circle – 1(3), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

CPI Gera Realty India Pvt. Ltd.,
200, Gera Plaza, Boat Club Road,
Pune – 411001

PAN : AACCG6818R

.....प्रत्यर्थी / Respondent

Assessee by : Shri S.K. Tyagi &
Shri Soniminde
Revenue by : Ms. Nandita Kanchan

सुनवाई की तारीख / Date of Hearing : 18-09-2019

घोषणा की तारीख / Date of Pronouncement : 24-09-2019

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the Revenue against the order dated 08-03-2013 passed by the Commissioner of Income Tax (Appeals)-1, Pune [‘CIT(A)’] for assessment year 2009-10.

2. The appellant revenue raised as many grounds of appeal, amongst which, only issue remains for our consideration, whether the CIT(A) is justified in holding that the method of accounting i.e. project completion

method to recognize followed by the assessee is correct in the facts and circumstances.

3. The brief facts relating to the issue in hand are that the assessee is a private limited company engaged in the business of real estate development. During the year under consideration, the assessee has undertaken a project consisting of nine buildings having 185 units and following mercantile system of accounting and accordingly the profit and loss account is prepared.

4. During the scrutiny proceedings, the Assessing Officer issued a show-cause notice to assessee seeking explanation why an amount of Rs.13,47,24,228/- shown as sales should not be taxed. The Assessing Officer by referring to Para 2 of Schedule 10 of Audit Report held that the assessee is following percentage completion method and the above said amount is to be recognized as income in the year under consideration. The assessee vide its submissions dated 28-12-2011 contended that the assessee changed its method of revenue recognition from percentage completion to project completion from 31-03-2010. The Assessing Officer did not find submissions of assessee acceptable and brought Rs.17,51,41,496/- to tax vide its order dated 30-12-2011 passed u/s. 143(3) of the Act and determined the income of assessee at Rs.16,61,41,815/- as against the claim of loss of Rs.88,99,681/- in the return of income.

5. Aggrieved by the order of Assessing Officer, the assessee preferred an appeal before the CIT(A). It is noticed before the CIT(A) detailed submissions were made by the assessee including by placing reliance on the case laws. Considering the same, the CIT(A) particularly the audited

accounts for A.Y. 2008-09 (immediate previous year to that of audited accounts of year under consideration) held that the assessee is following consistently the project completion method and the said method should not be disturbed and deleted the additions made by the Assessing Officer.

6. Aggrieved by the order of CIT(A), the Revenue is before us. Ms. Nandita Kanchan, the ld. CIT-DR vehemently opposed the findings of CIT(A). She referred to para 3.2 and submitted that CIT(A) held the assessee is following project completion method and in para 3.8 held the assessee follows percentage completion method. She argued that there is contradiction between the findings of CIT(A) in respect of method being followed by the assessee to recognize revenue. The Assessing Officer clearly held by examination of audited accounts that the assessee is following percentage completion method. She placed on record Accounting Standard-7 (revised 2002) and submitted by referring to para 24 that the recognition of revenue and expenses by reference to stage of completion of contract is often referred as per percentage of completion method. Under this method contract revenue is matched that the contract cost incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the profession of work completed. She argued that this method provides useful information on the extent of contract activity and performance during a period and submitted that the findings of CIT(A) is wrong so far as to say that the consistent method followed by the assessee should not be disturbed and she placed reliance on the Accounting Standard-7 (supra). Ms. Nandita Kanchan, the ld. CIT-DR prayed to allow the grounds raised by the Revenue and restore the order of Assessing Officer.

7. Shri S.K. Tyagi, the ld. AR filed case sheet and placed reliance on the submissions made and case laws therein.

8. Heard both parties and perused the materials available on record. At the outset, the short point arises is to when an amount Rs.13,47,24,228/- to be taxed in the hands of assessee. According to ld. DR it is to be taxed in the year under consideration for the reason, it is being shown as sales, the method to recognize the revenue followed is percentage completion method. We note that, for A.Ys. 2007-08 and 2008-09, the assessee accounted the sale proceeds in its books under completion method and offered to tax. There is no dispute that for A.Y. 2007-08 similar issue was examined by Assessing Officer and no addition was made. For A.Y. 2008-09 no scrutiny assessment was effected. Therefore, if we go by the stand taken by the appellant-revenue in the present appeal that the CIT(A) is wrong in holding that the method followed by the assessee is correct to recognize revenue i.e. percentage completion method, would be contrary to its view taken in earlier assessment years, resulting into disturbance in method of recognizing revenue, as rightly held by the CIT(A), therefore, we find no infirmity in the impugned order and it is upheld.

9. At the same time, it is relevant to mention that the assessee in its Audit Report has itself indicated to follow percentage of completion method. If we go with the impugned order that the income should be taxed on the basis of project completion method, then there is some contradiction between the assessee's stand as taken in the Audit Report and that of the ld. CIT(A). However, the facts remains that one income cannot be taxed twice. The ld. AR submitted that the amount in question has been offered to tax on the completion of project in succeeding years. If this contention is correct, then obviously no amount can be charged to tax in the year under consideration. Since the assessee could not specifically point out as to whether the sum of Rs.13,47,24,228/- was offered for tax in

succeeding years, we set aside the impugned order and remit the matter to the file of Assessing Officer. The Assessing Officer is directed to examine the assessee's point of view about having offered Rs.13,47,24,228/- to tax for succeeding years. If such a contention is found to be correct, then no addition should be made in the year under consideration. In the otherwise scenario, the Assessing Officer will be at liberty to decide this issue afresh as per law after allowing reasonable opportunity of hearing to the assessee. Therefore, the grounds raised by the Revenue are allowed for statistical purpose as indicated above.

10. In the result, the appeal of Revenue is allowed for statistical purpose.

Order pronounced in the open court on 24th September, 2019.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 24th September, 2019

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)-1, Pune
4. The Commissioner of Income Tax-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.
//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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