

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
**IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 653/AHD/2019

अाधरण वर्ष/Asstt. Year: 2014-2015

Sparsh Procon Pvt Ltd., 218, Saman Complex, Nr. Kameshwar School, Jodhpur Cross Road, Satellite, Ahmedabad. PAN: AAQCS7789B	Vs.	The Pr.C.I.T.-4, Ahmedabad.
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(Applicant)	(Respondent)
Assessee by :	Shri Hardik Vora, A.R
Revenue by :	Shri O.P. Sharma, C.I.T. D.R

सुनवाई का ताराख/Date of Hearing : 21/08/2019

घोषणा का ताराख /Date of Pronouncement: 18/10/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Pr. Commissioner of Income Tax, Ahmedabad dated 18/03/2019 (in short "Ld.CIT") arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt. 29/08/2016 relevant to the Assessment Year 2014-2015.

The assessee has raised the following ground of appeal.

2. The solitary issue raised by the assessee is that the learned CIT erred in holding the order passed by the AO under section 143(3) of the Act dated 29 August 2016 as erroneous insofar as prejudicial to the interest of Revenue.

3. The facts in brief are that the assessee in the present case is a private limited company and engaged in the business of developing/building the real estate projects. The assessee purchased a piece of plot along with 2 parties namely Shri Amit Rajnikant Joshi and Shri Sureshbhai Thakkar vide sale deed bearing serial No. 8778 dated 11 May 2012. The total consideration of such piece of plot was Rs. 6,18,60,000/- plus stamp duty of Rs. 30,31,200/- only. The share of the assessee in such piece of plot was 50% whereas the remaining parties owned 25% each in such piece of land.

3.1 The assessee in the year under consideration has shown 2 projects in its balance sheet namely Divine 1 and Divine 2. The relevant details of the sales, work in progress, expenses incurred with respect to such projects stands as under:

<i>S. No.</i>	<i>Particulars</i>	<i>Divine-I</i>	<i>Divine-II</i>
1.	<i>Sales</i>	<i>Rs. 7,54,21,991/-</i>	<i>NIL</i>
2.	<i>Opening working progress</i>	<i>Rs. 6,49,75,489/-</i>	<i>Rs. 22,21,822/-</i>
	<i>Add: purchases</i>	<i>Rs. 2,31,69,768/-</i>	<i>Rs. ---</i>
	<i>Construction and other site exp.</i>	<i>Rs. 6,07,03,627/-</i>	<i>Rs.4,26,96,909/-</i>
3.	<i>Total cost incurred</i>	<i>Rs. 14,88,48,884/-</i>	<i>Rs. 4,49,18,731</i>

3.2 The cost under the head construction and other site expenses includes an expense of Rs. 4,20,0000.00 which was credited/paid in equal proportion to the account of the parties who purchased the impugned plot along with the assessee i.e. Shri Amit Rajnikant Joshi and Shri Sureshbhai Thakkar. The

above cost was claimed by the assessee in pursuance to the development agreement made with these parties dated 28 March 2014 by debiting the same in its profit and loss account.

4. The learned CIT based on the assessment records observed certain facts as detailed under:

- i. The assessee in its balance sheet has shown outstanding sundry creditors amounting to Rs. 437.50 lacs. Out of such sundry creditors, there are two sundry creditors namely Shri Amit Rajnikant Joshi and Shri Sureshbhai Thakkar having outstanding balance of Rs.1.90 crores and Rs. 1.95 crores respectively. Shri Amit Rajnikant Joshi has not responded to the AO during the assessment proceedings to the notice issued under section 133(6) of the Act. Similarly, the other sundry creditor Shri Sureshbhai Thakkar confirmed receipt of Rs. 15 lakhs only. As such there was no confirmation from such party Shri Sureshbhai Thakkar for the closing balance shown by the assessee in its books of accounts. However, the AO without carrying out further verification of such sundry creditors has accepted them as genuine.
- ii. The impugned amount of sales of Rs. 7,54,21,991/- represents 87.05% of the total sales which evidences that the project was completed to the extent of 87.05%. But the assessee has claimed an expense of Rs. 4,20,00,000/- in the year under consideration vide agreement dated 28 March 2014. Thus such expenses do not relate to the projects of the assessee as discussed above.

- iii. The payment made by the assessee to the parties namely Shri Amit Rajnikant Joshi and Shri Sureshbhai Thakkar as per the agreement dated 28th March 2014 represents for the piece of land belonging to these persons. However, the assessee has claimed the same as revenue expenditure instead of capitalizing the same either as work in progress or closing stock. Accordingly the income of the assessee has been under assessed.

In view of the above, the learned CIT was of the view that the assessment has been framed by the AO without proper enquiry, application of mind or proper verification of the facts as discussed above. Accordingly the learned CIT issued a notice under section 263 of the Act bearing No. Pr.CIT-4/HQ/263/SPPL/2018-19 dated 11 December 2018 proposing the assessment order as erroneous insofar prejudicial to the interest of revenue.

5. The assessee in response to such notice submitted that the impugned sundry creditors are genuine as the payment was made to them in the year under consideration as well as in the subsequent years in pursuance to the development agreement which was duly registered dated 28 March 2014. The assessee in support of its contention filed the copy of the document agreement, copy of the PAN, driving license and voter identity card. Accordingly the assessee claimed that non-response of the notice by the parties cannot be the criteria to hold them as non-genuine. Furthermore, the assessee claimed that one of the sundry creditors/ parties has acknowledged the receipt of Rs.15 lakhs in his reply. The assessee in support of its contention also filed the ledger copies and bank statement showing the payment made to these sundry creditors/parties.

5.1 The assessee further submitted that it had 2 projects in the year under consideration which were located in different parts of the Ahmedabad namely Divine 1 and Divine 2. The assessee in support of its contention filed the copies of approved plan from Ahmedabad Municipal Corporation, NA permission, extract copy of 7/12 of the land, copy of construction permission from Ahmedabad Municipal Corporation.

5.2 The assessee further claimed that it has acquired the land from the aforesaid sundry creditors based on land development agreement dated 28 March 2014 at Rs. 4.20 crores. As such the cost of the 50% of the land acquired by the parties was of Rs. 3, 24,45,600/- but the assessee has acquired such land from them at Rs. 4.20 crores for the purpose of the development without acquiring the ownership right. Accordingly, the cost for acquiring such development right in the impugned land was recorded in the year under consideration as stock in trade in the profit and loss account. It is because, the assessee deals in the development of lands therefore this cost of such land was treated as stock in trade. Therefore the same was debited to the profit and loss account.

5.3 The assessee further submitted that it has incurred major part of the construction cost on its land as well as on the land of other parties as stated above in the year under consideration. Therefore the cost of land was also debited in the year under consideration though the same was acquired after 2 years from the start of the project. Accordingly, the project was completed in the year under consideration up-to 87.05% after including the cost of the impugned land.

5.4 Thus, the assessee recognized the revenue to the extent of 87.05% of the total value of the flat sold in the year under consideration. Accordingly the

assessee against such revenue recognized the proportionate cost of 87.05% as per the guidance note issued by the Institute of chartered accountant of India.

6. However, the learned CIT after considering the submission of the assessee held the order of the AO as erroneous insofar prejudicial to the interest of revenue by observing as under:

6. I have considered the facts of the case and the submissions made. Admittedly, the assessee has made certain fresh submissions and documents during the present proceedings, which were neither enquired into by the A.O. nor any submission was made. Whether the Motera Project is on land held exclusively by the assessee or jointly with other co-owners, was not examined at all by the A.O. All the AMC approvals are in the name of the assessee though admittedly the land was held jointly with others. The A.O. never enquired how on a jointly held land, the municipal approvals etc. could be given to the assessee exclusively. The assessee has completed 87% of the project and 87% of revenue is credited. Whether this is actually so? Moreover, the land cost booked in the account is much higher than the actual cost incurred by the assessee and the co-owners. Whether the co-owners have paid tax on the land transferred to the assessee in this year, is also not examined or verified by the A.O. Hence, the assessment has been completed erroneously in a manner that it is prejudicial to the interest of the revenue.

7. Therefore, the assessment order dated 29/08/2016 passed by the A.O. 3 (3) of the Act in the case of the assessee is set aside and the A.O. is directed to make a fresh assessment after making all necessary enquires property and verification in respect of all relevant aspects including those indentified in this order supra

Being aggrieved by the order of the land CIT, the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 33 and submitted that the necessary verification has been carried out by the AO during the assessment proceedings. Therefore the order passed by the AO cannot be held as erroneous insofar prejudicial to the interest of revenue on account of non-verification as alleged by the learned CIT under section 263 of the Act.

8. On the other hand the learner DR before us submitted that there was no enquiry conducted by the AO about the expenses of 4.20 crores and the

corresponding liabilities shown by the assessee in the books of accounts. The learned DR vehemently supported the order of the learned CIT.

9. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the assessee has shown two projects in its financial statements namely as divine-1 and Divine-2. There is no quarrel regarding the project divine-2. Therefore, our entire subsequent discussion and finding is based on the project divine-1 only.

9.1 The assessee acquired a piece of land dated 11 May 2012 in joint ownership with 2 parties namely Sureshbhai Thakkar and Amit Joshi. The assessee thereafter started the construction activity on such piece of land including the land owned by the joint owners. The assessee in the 1st year of operation did not make any sale of its property therefore no revenue was recognized in the year ending as on 31 March 2013. As such the entire cost of land (only assessee being 50%) and the expenses incurred on the construction on such land including the land of the joint owners were categorized as work in progress.

9.2 The activity of the assessee for the construction of the project continued in the 2nd year on the land owned by it as well as the land owned by the joint owners. As such at the fag-end of the 2nd year i.e. the year under consideration, the major cost of construction was completed. Accordingly, the assessee entered into a joint development agreement with the co-owners for acquiring the right on the land owned by them vide agreement dated 28th March 2014. As the major work was completed in the year under consideration, therefore the assessee incorporated the cost incurred on the acquisition of such land of the joint owners at Rs. 4.20 crores in the books of

accounts in the year under consideration. Accordingly the assessee claimed to have completed its project to the extent of 87.05% in the year under consideration.

9.3 The assessee claimed to have incurred the cost on the development of project till 31-3-2014 with respect to its project DIVINE-1 in the manner as detailed under:

<u>Calculation of closing WIP</u>	
Opening WIP-50% land & construction expenses up-to 31-03-2013	Rs. 6,49,75,489.00
Construction Expenses & development charges 50% of land	Rs. 6,07,03,627.00
Purchases 13-14	Rs. <u>2,31,69,768.00</u>
Total	Rs. 14,88,48,884.00

9.4 It is also pertinent to note that the assessee has received certain amounts against the sale of its projects. The details of the same stands as under:

<u>Flat of Sold/Unsold value</u>	
Total value of project	Rs. 17,46,46,000/-
Booked amount as on 31.03.2014	Rs. 2,49,00,000/-
Registry amount as on 31.03.2014	Rs. 48,00,000/-
Banakhata amount as on 31.03.2014	Rs. 5,69,46,000/-
Total sold value as on 31.03.2014	Rs. <u>8,66,46,000/-</u>
Total value of the unsold project	Rs. 8,80,00,000/-

9.5 The sales made by the assessee comes to 49.61% (8,66,46,000/17,46,46,000* 100) of the total project revenue.

9.6 As the project was completed to the extent of 87.05%, therefore the assessee decided to recognize the revenue as discussed above to the extent of 87.05% amounting to Rs. 754.2 lakhs (87.05% of 8,66,46,000.00 representing the value of the sales). Accordingly the assessee also worked out proportionate cost against such revenue amounting to Rs. 7,38,47,442/- being 49.61 of the total project cost incurred up-to 31-3-2014. Thus the remaining cost of Rs. 7,50,01,442/- (14,88,48,884 - 7,38,47,442/-) was classified as

work in progress in the financial statements. The necessary details shown by the assessee is available on pages 28 of the paper book.

10. The learned AR also claimed that the above working was made in accordance with the guidance note issued by the Institute of chartered accountant of India.

11. However, we note that the learned CIT held the order of the AO is erroneous insofar prejudicial to the interest of revenue on the ground that the necessary verification was not carried out by the AO during the assessment proceedings.

12. However we note that, the AO during the assessment proceedings under section 143(3) of the Act has carried out necessary verification as evident from the notice issued under section 142(1) of the Act viz a viz the reply made by the assessee which is placed on pages 1 to 9 of the paper book.

12.1 The relevant inquiries raised by the AO during the assessment proceedings are as under:

13. Furnish complete name PAN and communicable address of the sundry creditors/other/trade payables along with copy of balance sheet, return of income and confirmations of these parties. In respect of creditors/other/trade payables, furnish ledger account of all the parties having credit balance of Rs,1,00,000/- and above.

XX

18. Furnish complete details in respect of inventories with supporting documentary evidences.

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22. Please furnish following details of purchases o Rs.8,60,95,217/-

23. *Furnish complete head wise details in respect of revenue from operation along with supporting documentary evidences.*

24. *Please furnish following details of sales of Rs.7,54,21,991/-*
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33. *Please produce books of accounts, bank statements, sales bill files, purchase bill files, vouchers and bills of expenditure invoices.*

12.2 The reply of the assessee is placed on pages 6 to 9 of the paper book.

The relevant points read as under:

17. *Please find the list of major creditors as on 31st March 2014, Annexure IX.*

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21. *Please find the working for valuation of closing stock with supporting proof of price taken for valuation. Annexure XIII*

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24. *Please find details of creditors for purchases of goods during the year. Annexure XVI*

25. *Please find ledger copy of head wise revenue from operation. Supporting sales invoice are ready available for your inspection Annexure XVII.*

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28. *Please find ledger copy of all expenses accounts as your desired. All expenses bills, voucher or supporting are ready available for your inspection. Annexure XX.*

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34. *Books of accounts, voucher Bank statement invoice and purchase bills are ready available for your inspection.*

In view of the above, we hold that the assessment order was framed under section 143(3) of the Act after due verification by the AO. Accordingly, we are of the view that the order of the AO cannot be held as erroneous insofar prejudicial to the interest of Revenue on account of non-verification of the facts as stated above.

12.3 In holding so, we draw support and guidance from the judgment of the Honøble Supreme court in the case of Malabar Industrial Co Ltd Vs. CIT reported in 109 Taxman 66 wherein it was held as under:

In the instant case, the Commissioner noted that the ITO passed the order of nil assessment without application of mind. Indeed, the High Court recorded the finding that the ITO failed to apply his mind to the case in all perspective and the order passed by him was erroneous. It appeared that the resolution passed by the board of the appellant-company was not placed before the Assessing Officer. Thus, there was no material to support the claim of the appellant that the said amount represented compensation for loss of agricultural income. He accepted the entry in the statement of the account filed by the appellant in the absence of any supporting material and without making any inquiry. On these facts the conclusion that the order of the ITO was erroneous was irresistible. Therefore, the High Court had rightly held that the exercise of the jurisdiction by the Commissioner under section 263(1) was justified.

12.4 We find support and guidance from the judgment of Honøble Bombay High Court in the case of **CIT vs. Nirav Modi reported in 390 ITR 292** wherein it was held as under:

“6. It is a settled position in law that powers under Section 263 of the Act can be exercised by the CIT on satisfaction of twin conditions viz. the Assessment Order should be erroneous and prejudicial to the Revenue. By erroneous is meant contrary to law. Thus, this power cannot be exercised unless the CIT is able to establish that the order of the Assessing Officer is erroneous and prejudicial to the Revenue. Thus where there are two possible views and the Assessing Officer has taken one of the possible views, no occasion to exercise powers of Revision, can arise. Nor can Revisional power be exercised for directing a fuller inquiry to find out if the view taken is erroneous, when a view has already been taken after inquiry. This power of Revision can be exercised only where no inquiry as required under the law is done. It is not open to enquire in cases of inadequate inquiry.”

12.5 We also draw support and guidance on the judgment of Honøble Gujarat High Court in the case of **CIT vs. R. K. Construction Company reported in 313 ITR 65** wherein it was held as under:

“16. As far as law is concerned, the Assessing Officer has taken a particular view on the basis of evidence produced before him. On the basis of the said material and materials which were collected by the CIT in revisional

proceedings, the Commissioner has taken a different view. However, in the revisional proceedings under section 263, it is not open for the Commissioner to take such a different view in view of the decisions of the Hon'ble Supreme Court in the case of Malabar Industrial Co. Ltd.(supra). There is nothing on record to suggest that the view taken by the Assessing Officer is unsustainable at law. This Court has also taken the same view in case of Arvind Jewellers (supra) whereby the order passed by the Commissioner under section 263 of the Act was quashed and set aside.”

12.6 After considering the facts in totality as discussed above, we quash the order passed by the Ld. PCIT under section 263 of the Act. Hence the ground of appeal of the assessee is allowed.

13. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 18/10/2019 at Ahmedabad.

-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad; Dated 18/10/2019
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