

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 5527/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s Prabhav Properties Pvt. Ltd. 28, Jayshree J. Nehru Road, Vakola, Santacruz(E), Mumbai-400 018	Vs.	The Income Tax Officer, Ward 14(2)(4)
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AADCP3588Q		

अपीलार्थी की ओर से / Appellant by	:	Shri Rajeev Khandelwal, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajeev K. Gubgotra, DR

सुनवाई की तारीख / Date of hearing:	26.07.2019
घोषणा की तारीख / Date of pronouncement :	14.10.2019

आदेश / ORDER

महावीर सिंह, न्यायिक सदस्य/
PER MAHAVIR SINGH, JM:

This appeal filed by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-17, Mumbai [in short CIT(A)], Appeal No. CIT(A)-17/IT-212/16-17 vide order dated 30.06.2017. The Assessment was framed by the Income Tax Officer, Ward 14(2)(4),



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Mumbai (in short ITO / AO') for the A.Y. 2012-13 vide order dated 27.03.2015 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) upholding the addition of Rs. 6,51,41,621/- made by the AO holding that the entire amount of Rs. 8.51 crores were received during the relevant assessment year and also holding that proportionate land cost of free hold area was Rs. 1,99,58,379/- ignoring the calculation error pointed out in the rectification petition. For this assessee has raised the following ground NO. 1 to 6 as under : -

“1. Because, the Ld. CIT(A) has erred in law and on facts in upholding the addition of ₹ 6,51,41,621/- made in the assessment order.

2. Because, the Ld. CIT(A) has erred in law and on facts in holding that the entire amount of ₹ 8,51,00,000/- was received during the impugned assessment year.

3. Because, the Ld. CIT(A) has erred in law and on facts in holding that the entire amount of ₹ 8,51,00,000/- received over a span of the three assessment years was chargeable to tax in the impugned assessment years.

4. Because, the Ld. CIT(A) has erred in law and on facts in holding that the proportionate land cost of freehold area was ₹ 1,99,58,379/- ignoring the calculation error pointed out in the rectification petition as well as before him.



5. *Because, the Id. CIT(A) has erred in law and on facts in holding that appellant was not entitled to set off SRA costs against ₹ 8,51,00,000/- received on account of the development agreement.*

6. (i) *Because, the Id. CIT(A) has erred in law and on facts in ignoring that development of slum area and free race areas was a composite projects, specifically sine the receipt of ₹ 8,51,00,000/- was contingent upon construction of slum area by the appellant.*

(ii) *Because, the Id. CIT(A) has erred in law in ignoring the express and clear provisions of the development agreement which mandated that construction of free sale area was incumbent to the successful construction and handing over of slum area."*

3. Briefly stated facts are that the assessee company is engaged in the business of construction and development of real estate. For the AY 2012-13, the assessee filed its return of income on 22.03.2013 declaring total income at ₹ Nil. The AO during the course of assessment proceedings noted that the assessee company has received a consideration of ₹ 8.51 crores in lieu of development of agreement entered with M/s Raajyam Realty LLP (RRL) for transfer of development rights in the land but the same was not credited as sale proceeds to P & L Account. The AO further noted that in lieu of the entire transactions, the assessee has actually earned profit from transfer of development rights at ₹ 6,51,41,621/-. Aggrieved against the assessment order, assessee



preferred the appeal before CIT(A). The CIT(A) confirmed the action of the AO vide Para 4.2 of his order as under: -

“4.2 The assessee company held rights in the piece of land at village Kale Kalyan, Taluka Andheri, Dist. Mumbai. The SRA authorities issued commencement certificate for the construction of rehab building in favour of the assessee company. Pursuant to this scheme, the assessee was entitled to certain free sale building of approx, 3062 sq mtrs of FSI. The rehab building was to be constructed by the assessee themselves and the free sale building would be developed through reputed developers. The assessee company entered into a development agreement on 24.06.2011 with M/s. Raajyam Realty LIP (RRL) pursuant to which a consideration of Rs.8.51 crores was received during the year for transfer of development right in the land. This portion of the land for which the development rights were transferred was treated as stock in trade in the books of accounts. The assessee has incurred expenses of Rs. 7,84,67,971/- on the said plot of land. The AO computed the cost attributable to the sale building against which the assessee received consideration of ₹ 89.51 crores would compute at ₹ 1,99,58,379. Accordingly, the AO computed profits of ₹ 6,51,41,621 as profits or gains from transfer of development rights.

The assessee has submitted that the AO had failed to understand the nature of business in which the appellant had sought to develop the property by



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typing up with independent developer raising funds, constructing rehab building, getting the developer to construct and handover the assessee's share of area and finally earn profit out of selling share of free sale area. The construction and sale of free land building would be based on the successful completion of the Slum project i.e. the rehab building. The following date event chart may be referred to –

Date	Event
24.04.2009	Revised letter of intent from SRA granting 2.910 FSI
28.07.2009	Obtained commencement certificate from SRA
24.06.2009	Agreement between M/s Prabhav Properties and M/s Raajyam Realty LLP.
02.01.2012	Intimation of approval issued by SRA
04.06.2012	Obtained occupancy permission for part project from SRA
10.10.2012	Obtained commencement certificate for free sale area
22.03.2013	ROI for AY 2012-13 filed declaring nil gross total income (all expenditure relating to SRA project debited to WIP.

I have considered the facts of the case, submissions of the assessee and AO's order. The sum and substance of the development agreement entered into between the assessee and RRL is that the assessee had sold the development rights to RRL for a consideration of Rs.8.51 crores and RRI. would provide flats to the assessee after retaining their own entitlement.



Thus, the assessee has actually first transferred the development rights pursuant to which the assessee was obligated to construct the rehab building and the developer to develop the free sale land.

Now, let us examine the Clause 2 of the Development Agreement, which states that -

“In consideration of Owners granting Development rights in respect of the said property, the Developers Shall:

(a) pay a sum of ₹ 8,51,00,000 (Eight Crores fifty One Lacs Only) to the owners in the manner set out hereinafter; and

(b) Provide flats other than Developers entitlement as set out hereunder in the said building, free of any construction costs.”

Thus, the terms of the agreement make it explicitly clear that the assessee has received the consideration for the transfer of the development rights.

The amount spent by the assessee in developing the rehab building is not related to this consideration received of Rs.8.51 crores. The assessee has utilized the consideration received from RRL towards the construction of rehab building, hut, that is only for managing the cash flow and working



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capital. This really does not alter the basic nature of transaction and the taxability thereof.

I wish to also point out here that the assessee has raised an objection that the AO has incorrectly considered the consideration of Rs.8.51 crores instead of Rs.8.50 crores: I have perused the development agreement and noted that the consideration agreed between the parties was Rs.8.51 crores and not Rs.8.50 crores. Accordingly, the AO has correctly considered the transfer consideration to be Rs.8.51 crores.

Now, coming back to the taxability of the rights transferred under the development agreement, as the land was held as stock in trade by the assessee, the consideration of Rs.851 crores is being treated as the sales price.

The question under appeal is also the cost to be considered to be reduced from the sales price. The total land cost is Rs.784,67,971. The assessee has argued that the cost of construction of the rehab project should be considered as cost and allowed as a deduction.

I do not agree with this view of the assessee. The assessee has received the consideration for transfer of development rights. Thus, the cost of the same will have to be reduced, which in this case would be the proportionate land cost for development of the tree sale building. The cost of construction of the rehab building has no relevance here except that



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the costs have been met by the assessee from the consideration receive which has impacted the assessee's cash [low and not the taxability.

As regards the total area of land, the assessee had filed a rectification application with the AO requesting that the total land area be considered at 2130 sq. meters as against 2855.90 sq. meters. The AU disposed off the rectification application stating that the area as per development agreement works to 2855.90 meters.

The AO has rightly held in his order that in the substance all the development k was to be carried on by RRL. and all the costs and expenses related to the sale building shall be borne by RRL. After granting the development rights, the assessee is only required to complete the SRA project (i.e. rehab building) and sign other documents in order to enable RRL to construct the free sale building and transfer flats to ultimate customers. Hence, I agree with the view taken by the AO that the assessee has transferred the development rights for ₹ 8,51,00,000 and the proportionate cost of the free hold land is ₹ 1,99,58,379/- should be reduced thereby holding the net income of ₹ 6,51,41,621 be considered as taxable income. In the result, the assessee's ground of appeal is dismissed."

Aggrieved, assessee is in second appeal before Tribunal.



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4. Before us, the assessee Counsel only made contention that the assessee is following project completion method and he filed a statement of Vakola project details which read as under: -

PRABHAV PROPERTIES PRIVATE LIMITED VAKOLA PROJECT DETAILED			
Opening Balance as on 01.04.2008		67,04,944.24	
Add:	Expense during FY 2008-09	55,64,018.58	
Add:	Expenses during FY 2009-10	65,47,655.15	
Add:	Expenses during FY 2010-11	2,54,62,283.05	
Op. Balance as on 01.04.2011		4,42,78,901.02	
Add:	Expenses during FY 2011-12	3,41,89,069.02	
Total Expenses Project Till 31.03.2012		7,84,67,970.07	
Less: Received from Rajyaam Realty During FY 2011-12		8,25,00,000.00	
Balance In Rajyaam Realty A/c (Trade Payable) AY 2012-13			40,32,029.93
Add:	Expenses during FY 2012-13	1,20,71,829.09	
Less: set off Agst Op Bal (Trade Payable) & amt Recd fm Rajyaam during FY 2012-13 (Op. bal 4032029.93+2500000)		65,32,029.93	
Balance as per B/Sheet Inventories as on 31/03.2013		55,39,799.16	
Add:	expenses during FY 2013-14	60,10,539.95	
Add:	expenses during FY 2014-15	52,10,687.00	
Add:	Expenses during FY 2015-16	50,28,865.60	
Add:	Expenses during FY 2016-17	27,81,923.50	
Add:	expenses during FY 2017-18	23,31,512.20	
Add:	expenses during FY 2018-19	40,00,000.00 Aprox	
Balance as per B/Sheet inventories as on 31.03.2019			3,09,03,327.41
Ready recknor rate			
Vakola – Santacruz East			
₹ 12025/- per sqr feet			
12025 X 11223			13,49,56,575.00

5. He argued that the above detail was as on 31.03.2019 and project would be completed within 6 months i.e. during the financial year ending as on 21.03.2020. The assessee filed a letter dated 27.03.2019 which read as under: -



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“In this connection, and as required by the Honourable Bench, please find enclosed a statement showing the projected details of the Vakola Project upto 31st March, 2019. It is expected, as mentioned during the course of hearing that the project would be completed within six months, that is, during the financial year ended 31st March 2020.

Further, on perusal of the aforesaid statement, it can be seen that upon completion, the project is expected to make a profit of approximately ₹ 10.40 crores, which will be included in the computation of total income for income-tax assessment year 2020-21 in as much as our clients are following the project completion method for calculating their area where the project is being developed. This is the minimum profit that our clients expect though the ultimate realization may be on higher side.”

6. The assessee also contended that the AO as well as CIT(A) failed to understand the composite nature of business activity in which the assessee has sought to develop the property in question by tying up with an independent developer raising funds, constructing rehab building, getting developer to construct and hand over the assessee's share of area and finally earn profit out by selling its share for free sale area. It was also contended that assessee has completed its parts of obligation by developing the rehab area and in that process incurred substantial cost over and above the amount of ₹8.50 crores received from RRL. On the other hand, the learned Sr. Departmental Representative stated that these facts now argued have not been examined by the AO as whether



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the project is going to be completed upto 31.03.2010 and the project details filed now before the Bench upto 31.03.2019. He strongly opposed to entertain these evidences.

7. We have heard rival contentions and gone through the facts and circumstances of the case. After going through the orders of the lower authorities, we noted that none of the authorities have gone into the method of accounting adopted for computation of income which is very basic for deciding the issue. It is also not clear that even after almost 5 years from the grant of completion certificate in respect of free sale building, the construction is not completed because of several issues regarding clearance from BMC and when the company will obtain constructed area available for free sale and earn profit there from. These facts need to be examined in detail. In view of the above, we are of the view that let the matter be restored back to the file of the AO for fresh adjudication on this very issue.

8. In the result, the appeal of assessee is allowed for statistical purposes.

Order pronounced in the open court on 14-10-2019.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)
(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)
(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 14-10-2019.

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**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)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai