

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

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

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 3330/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

Nikunj Developers Nikunj Signature, Manav Mandir, Ambadi Road, Vashi(W), Thane	बनाम/ Vs.	The Asst. Commissioner of Income Tax, Circoe-4, Ashar IT Park, 6 th Floor, A Wing, Road No.162, Ambika Nagar, Wagle Industrial Estate, Thane (W)-400 602
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABFN5346D		

अपीलार्थी की ओर से / Appellant by	:	Shri Rahul K. Hakani, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri Kavita P. Kaushik, DR

सुनवाई की तारीख / Date of hearing:	14.01.2020
घोषणा की तारीख / Date of pronouncement:	14.01.2020

आदेश / ORDER

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

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-3, Mumbai in Appeal No. 86-THN/15-16 dated 03.02.2017. The Assessment was framed by the Asst. Commissioner of Income Tax, Circle-4, Thane (in short ACIT/ AO) for AY 2012-13 vide dated 30.03.2015, under



section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of 50% of professional fee amounting to ₹10,98,365/- considering the same against the tax free housing project i.e. building No.5 instead of building No.6 which is taxable income. In this assessee has raised the following ground No.1: -

"1. The Ld. CIT(A) erred in law and in facts by disallowing 50% of professional fees amounting to ₹10,98,365/- incurred by the appellant firm, treating the same as expenses incurred for tax free housing project (building No.5) instead of building No.6."

3. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the AO during the course of assessment proceedings noticed that the assessee has debited the professional fee of ₹21,96,730/- against Veena Saaz building No.6 which is a non-taxable unit of the assessee. The AO noted that the entire professional fee cannot be attributed to non-taxable project as the same has to be considered against taxable project because, the assessee is maintaining separate accounts for each project and 50% of the professional fee should be attributed to Veen Saaz building No.5 which is claimed as exempt. The assessee could not file any details hence, the AO treated the 50% of professional fee at ₹10,98,365/- relatable to Veena Saaz building No.5 which is claimed exempt under section 80IB(10) of the Act and

accordingly, disallowed the 50% of the professional fee. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the disallowance on the same reasoning that the assessee could not file the details before the Assessing Officer.

Aggrieved, assessee came in appeal before Tribunal.

4. We noted that the assessee could not submit any explanation or justification in support of claim of expenses in respect of professional fee towards Veena Saaz building No. 6 as to why these are expenses relatable to Veena Saaz building No. 6. Now, both the parties, agreed that the issue can be remitted back to the file of the AO so that the assessee can lead evidence or justify with explanation in support of this claim of expenses towards Veena Saaz Building No.6. This issue is remitted back to the file of the AO and set aside the order of CIT(A) and that of the AO.

5. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in enhancing the estimated net profit declared by assessee from 15% to 18% in respect of Veena Saaz Building No.6. For this assessee has raised the following ground No. 2:-

"2. The Ld. CIT(A) erred in law and in facts by confirming additions amounting to ₹39,61,883/- made by the AO by enhancing the estimated net profit from 15% to 18% in respect of building No.6"

6. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that in this issue



also the assessee could explain as to why the estimated net profit at the rate of 18% on advance received during the year on Veena Saaz building No.6 be not taken as the assessee could not lead any evidence. Now, both, agreed that this issue can be remitted back to the file of the Assessing Officer. Hence, with the consent of both the parties, we are remitting this issue back to the file of the Assessing Officer and set aside the order of CIT(A) and that of the AO.

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

Order pronounced in the open court on 14.01.2020.

Sd/-

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

Sd/-

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

मुंबई, दिनांक/ Mumbai, Dated: 14.01.2020

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