



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.12/CTK/2018

Assessment Year : 2014-2015

DCIT, Circle 4(1), Bhubaneswar.	Vs.	Shri Praveen kumar Batra, Plot No.366, Sahid Nagar, Bhubaneswar.
PAN/GIR No.ABEPB 1094 J		
(Appellant)	..	(Respondent)

Assessee by : None

Revenue by : Shri Subhendu Dutta, DR

Date of Hearing : 15 /01/ 2020

Date of Pronouncement : 17 /02/2020

ORDER

Per C.M.Garg,JM

This is an appeal filed by the revenue against the order dated 25.9.2017 of the CIT(A)-2, Bhubaneswar for the assessment year 2014-15.

2. None appeared on behalf respondent-assessee when the matter was called for hearing. Therefore, we proceed to decide the appeal of the revenue exparte after hearing Id D.R. and on the basis of materials available on record.

3. The revenue has raised the effective ground of appeal as under:

" On the facts and in the circumstances of the case, the Id CIT(A) is not justified in law as well as on facts in deleting the entire addition of Rs.3,98,21,463/- made by the AO when the assessee only explained about the investment made of Rs.1,37,90,000/- out of the payment made of Rs.1,84,35,311/- during the relevant assessment year."

4. The relevant facts, as emanating from the order of the CIT(A) are that the assessee is an individual derives income from sales of mobile handsets and its services. During the course of assessment proceedings, the Assessing Officer noticed that the assessee had purchased immovable property of Rs.3,98,21,463/- in Mumbai and the assessee has shown in his proprietary concern of Rs.1,75,73,549/-. In response to the Assessing Officer's requisition, the assessee submitted that the amount of Rs.1,75,73,549/- has nothing to do with investment in the house property and this amount represents his business investment in his proprietary concerns. It is submitted by the assessee that total consideration of Rs.3,98,21,463/- would be paid till delivery of the property which is 31.12.2017. The Assessing Officer did not accept the contention of the assessee and made addition of Rs.2,60,31,463/-. Hence, the assessee filed appeal before the CIT(A).

5. Before the Id CIT(A), the assessee produced agreement to sale dated 4.5.2013 and the relevant portion of the submissions is as under:

" (a) The audited statement of account i.e. balance sheet & profit & loss account for the year ending 31.3.2014, is the financial statement of the business organisation of the assessee consists of Nokia Priority Division (NPD), Nokia Care Division (Care), Airtel Division (Airtel), Talktel Resources Division (Resources), which does not include other assets & liabilities held in personal capacity.

(b) The investment of Rs.1,75,73,849.66 shown in the balance sheet as on 31.3.2014 is the investment made by the proprietor for business asset. The detail of investment has already given to AO and extract of the nature of investment and amount of investment is reproduced in the assessment order by the AO.

(c) The Builder 'M/s. Jawala Real Estate Private Ltd.' has made a AGREEMENT TOP SELL' contract with the assessee dated 04.05.2013, to sale a property AT Flat No.B 1102, 11 Floor, 3BHK apartment carpet area 1052 sqft. whose value is Rs.3,98,21,463/- and where construction of the building to be made and payment to be made on installment basis and

approximate delivery schedule is 31st December 2017. (Copy of the Agreement to sell is attached herewith)

(d) The reporting in the AIR is made on the basis of registered agreement with builder made in Mumbai Sub-Register Office for Rs. 398,21,463/-. It is not a SALE DEED. The purchase of property (as per agreement to sale) is a personal property and it is not reflected the Balance Sheet prepared as on 31.03.2014. The ITR return filed on the basis of Computation of Income and Profit & Loss Account of business and statement of affairs of the business as on 31.03.2014.

(e) For purchase of property the assessee has taken two housing loan from ICICI Bank for Rs. 71,00,000/- and Rs. 66,90,000/-. The loan statement and sanction letter of the Loan has been submitted during assessment to AO (the photocopy enclosed herewith),

(f) The total amount paid by the assessee to the builder is Rs. 1,84,35,311 upto 31.03.2014 is also submitted to AO during assessment (photocopy enclosed)

(g) From the above it is clear that assessee has entered an AGREEMENT TO SELL contract ' with the builder to purchase a property for Rs. 3,98,21,463 and it is not a SALE DEED."

6. After considering the submissions of the assessee as well the agreement for purchase of the property, the Id CIT(A) deleted the addition by observing as under:

" I have carefully examined the assessment order as well as the submissions made by the appellant. In the first place, I find that it is an "Agreement to Sale" and not a 'Sale Deed'. The assessing officer has wrongly assumed that the appellant has paid the entire consideration of Rs. 3,98,21,463/-. In fact, on page 46 of the agreement, it is stated that the builder has received Rs.1,00,34,889/- from the appellant on the date of the agreement. In Annexure-2 of the agreement, on page 46, the schedule of payments has been mentioned and the date of offer of possession has been mentioned as 31.12.2017. The AO has ignored all these facts while framing the assessment. Considering this, the addition made by the AO of Rs.2,60,31,463/- is ordered to be deleted."

7. Ld D. R could not controvert the findings of the Id CIT(A) that the agreement of sale cannot be treated as sale deed and the builder has received only Rs.1,00,34,889/- at the time of executing the agreement and the schedule of

payment has been mentioned in the agreement to sale deed. No where, it is stated that the assessee has paid the entire consideration to the builder. In view of above, we do not find any infirmity with the conclusions drawn by Id CIT(A) in deleting the addition of Rs.2,60,31,463/- made by the AO.

8. In the result, appeal of the revenue is dismissed.

Order pronounced on 17 /02/2020.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

sd/-
(Chandra Mohan Garg)
JUDICIAL MEMBER

Cuttack; Dated 17 /02/2020

B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : DCIT, Circle 4(1), Bhubaneswar
2. The Respondent. Shri Praveen kumar Batra, Plot No.366, Sahid Nagar, Bhubaneswar.
3. The CIT(A)-2, Bhubaneswar
4. Pr.CIT-2 , Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack