

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE S. RIFAUR RAHMAN, AM &
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 5049/Mum/2017
(निर्धारणवर्ष / Assessment Year: 2013-14)

Shakti Property Developers Pvt. Ltd. 27/28 P Wing, Sharda Vihar Shakri Complex Charkop Kandivali (W), Mumbai-400 067	बनाम/ Vs.	DCIT Cen Cir-8(1), Room No. 656, 6 th floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAEC8479E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Kirit Sanghavi, AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri V. Vinod Kumar, DR
सुनवाईकीतारीख/ Date of Hearing	:	26.11.2019
घोषणाकीतारीख / Date of Pronouncement	:	19.02.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 50 in

short referred as 'Ld. CIT(A)', Mumbai, dated 30.03.17 for Assessment Year (in short AY) 2013-14.

2. The brief facts of the case are, AO completed the assessment u/s 143(3) of the Act by making addition of Rs. 57,62,623/-. The above addition was made based on the search and seizure proceeding carried on in the case of M/s Kamla Group and the assessee being one of the group concern, was covered under search and seizure operations. Based on the information collected in search, it was found that assessee has received on money for sale of certain flats in the AY's 2007-08 to 2010-11.

3. Aggrieved by the above order, assessee preferred appeal before Ld. CIT(A) and contested before him that AO made the addition on adhoc basis and based on surmises and conjecture.

4. After considering the submissions of the assessee, Ld. CIT(A) deleted the addition made for this AY 2013-14. Ld. CIT(A) observed that assessee was following percentage completion method of accounting for computing its profit from

the project. He noted that the profit from the project called 'NOP' was not determined using the percentage completion method by the assessee. Accordingly, Ld. CIT(A) issued enhancement notice and asked for the clarification from the assessee. In order to enhance the profit from the project 'NOP' at Rs. 2,60,77,525/- for the current assessment year, a notice was issued in this regard. In reply, assessee filed following submissions before him:-

"In this regard, under instructions from our client, we object to the proposed enhancement in the following grounds:

1. You have furnished the working that forms the basis of arriving at the income of Rs.2,58,43,592/- by which you propose to enhance the income.

We respectfully submit that the method improperly rests on an assumption that 25.97% was the margin on sales even in the years prior to F.Y.2012-13, which is incorrect. For example, in your working, you work out the absolute profit of the project at Rs.8,41,32,873/-. However, this figure is not in order when you express Rs.8,4132,873/- in terms, of per centage of project revenue of Rs.32,39,15,113/-, which includes the

revenue of Rs. 18,88,63,756/- which relates to prior years where the net margin was 13.53% and the profit has been booked in those earlier year accordingly. By applying the new margin of profit at 25.97% even to Rs.18,88,63,756/-, you attribute the profit worked out at the differential rate of 12.44% (25.97% - 13.53%) to the years which have been closed. Thus, the extra profit of Rs. 2,34,94,651/- is attributed to the sales of Rs.18,88,63,756/-, which are sales of the post years. The indirect fall out of your Honour's method in that this profit of Rs.2,34,94,651/- though belongs to the years prior to F.Y.2012-13, it cannot be attributed to these years since they are closed. Therefore, it comes in the working as profit of F.Y.2012-13. In other words, the profit with which you propose to enhance the income includes profits of earlier years. It is the cardinal rule of taxation that income of a year should be taxed in that year. The incorrectness of the working will be apparent from the fact that the profits of Rs.2,60,97,525/- that you propose to tax for A.Y.2013-14 exceeds the turnover of Rs.1,30,00,00,000/-. You will appreciate that profits derived from a turnover cannot exceed the turnover.

With respect, we state that what is significant is the net absolute margin of Rs.8,41,32,873/- and not the

proportion which represents the margin from the revenue. Thus, Rs.8,41,32,873/- is significant but the 25.97% being a proportion of the revenue is not significant We show below the correct application of Rs.8,41,32,873/-.

<i>Profit of the Project.</i>	<i>8,41,32,873</i>
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<i>Less: Profit accounted up-to A.Y.2012-13</i>	<i><u>2,57,42,130</u></i>
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(yea closed and figures have become final)

Profit to be derived from sale of

<i>A.Y.2013-14 and of unsold stock</i>	<i>5,83,90,743</i>
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<i>Less: Profit for A.Y.2013-14</i>	<i>33,76,100</i>
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1,30,00,000 x 8,41,32,873

32,39,15,113

<i>Profits to be derives from Unsold Stock</i>	<i>5,50,14,643</i>
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Profit expected from Soles of

<i>12,20,51,357 @ 45%</i>	<i>5,50,14,643</i>
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Thus, It may be noted that the maximum profit that can be attributed to previous year relevant to A. Y.2013-14 is Rs.33,76,100 which is worked out without considering the expenses. Though the NOP project was completed before the relevant previous year, it was not the case where no expenses were incurred after the

construction of the NOP project was completed. Thus, the actual profit from NOP project is lower than Ks. 33,76,100/-. A statement showing expenses incurred in F.Y.2012-13, and the net profit is worked out as under:

<i>Sales</i>		<i>As per</i>	<i>As per</i>
<i>Less: Cost of Sales</i>		<i>formula</i>	<i>Books</i>
		<i>1,30,00,000</i>	<i>1,26,04,476</i>
		<u><i>96,23,900</i></u>	<u><i>43,10,000</i></u>
		<i>33,76,100</i>	<i>82,94,476</i>
<i>Less:</i>			
<i>Employees</i>	<i>9,91,310</i>		
<i>Cost Finance</i>	<i>52,70,956</i>		
<i>Cost Depreciation</i>	<i>5,28,424</i>		
<i>Other Expenses</i>	<i>18,43,454</i>		
		<u><i>86,34,244</i></u>	<u><i>86,34,244</i></u>
		<i>(-)52,58,144</i>	<i>(-)3,39,768</i>

Thus, other client has shown loss of Rs.3,39,768/- which is lower than that worked out on the basis of the formula. This leaves no scope for enhancement.

In view of the above, we object to the proposed enhancement."

5. After considering the submissions of the assessee, Ld. CIT(A) rejected the contention of the assessee by observing as below:-

The appellants contention that the profit for a particular year cannot exceed the sale made during the year is not correct. This will be clear from the following exemple:-

The projected revenue of a project is Rs. 10 crore. The projected cost is Rs. 9 crore. The cost incurred in the first year is Rs. 2 crore. The sales in the first year of the project is Rs. 1 crore. The cost up to the end of the second year is 3 crore. The sale up to the end of the second year is 1 crore (i.e., there is no sale in the second year)

In this case:

(P) The projected profit of the project = Rs. 10 crore minus Rs. 9 crore = Rs. 1 crore.

(Q) The percentage of completion up to the end of the first year=0% (cost incurred is less than 25% of the projected cost of the project)

(R) The percentage of sales made upto the end of the first year = 10%

(S) Profit after the end of the first year =0.

The percentage of completion upto the end of the second year- 30%

The percentage of sales made upto the end of the second year = 10%

*(V) Profit upto the end of the second year
= (P)*(T)*(U) = Rs. 1 crore * 30% * 10% = Rs. 3 lakhs.*

*(W) Profit to be recognized in the second year = (S)-
(V) = Rs. 3 lakhs.*

7.4.3 Thus in the example above, the profit was Rs, 3 lakhs though there was no sale during the second year. Therefore, the appellant's contention that the profit for the year cannot exceed the sale during the year is not correct. The profit may exceed the sale value in some years where the profit for the earlier years are understated due to a conservative estimate of the profit of the project.

7.4.4 In his reply to the notice proposing enhancement, the appellant contended that expenses incurred in respect of the 'NOP' project was not accounted for. This claim is not correct. It can be seen from para 7.2.4 above that cost incurred during the year of Rs. 80,34,214/- {as per appellant's own claim} was taken into account while arriving at the projected cost and, in turn, in arriving at the profit for the year. Therefore, the claim of the appellant is rejected.

7.4.5 Accordingly, the income of the appellant is enhanced by Rs. 2,58,43,592/- as proposed.

6. Aggrieved with the above order, assessee is in appeal before us raising the following grounds of appeal:-

1.1 Uncalled for Enhancement of Income

The learned CIT(A) erred on facts and in law in not appreciating that the method adopted by him for working out profit of a year on the basis of the percentage of completion method of revenue recognition was wrong.

1.2 The learned CIT(A) erred on facts and in law in not appreciating that though estimates of project revenue and project costs are reviewed every year, such estimates are relevant for the work to be carried out, and the outcome of the estimates reflects expectation from the project work to be carried out.

***Relief claimed:** Rs.2,58,43,592/- worked out by the wrong method and by which the income is enhanced be directed to be deleted.*

1. Percentage of completion method not appreciated

The learned CIT(A) erred on facts and in law in not appreciating that the percentage of completion method

is used to decide the amount of revenue to be recognized and the cost of sale to be attributed to such revenue, and not for working out straight profits.

2. Profits exceeding Revenue

The learned CIT(A) erred on facts and in law in not appreciating that the net profit of a year cannot exceed the gross revenue of or attributable to the relevant year.

Relief claimed: *Rs.2,58,43,592/- being the income by which the income is enhanced, be directed to be deleted.*

7. Before us, Ld. AR of the assessee brought to our notice to the facts of the case by referring the findings of Ld. CIT(A) and submitted that assessee is following the percentage completion method. He further submitted that as far as finding of Ld. CIT(A) with regard to estimated revenue, expenditure and estimated net profit are concerned, there is no dispute. However, he submitted that as per the guidance notice issued by the ICAI, GN(A) 23 (Revised 2012) that the percentage of completion method is applied on a cumulative basis in each reporting period to the current estimates of the project revenues and costs. Since in the

given case, assessee has already accounted for the project revenue and costs proportionately in the previous assessment years, the balance can be estimated based on the revenue recognized by the assessee and whatever the cost of profit to be proportionately recognized based on the pending unsold flats.

8. In respect of current assessment year and stock-in-trade, Ld. AR submitted a calculation, which is reproduced below:-

*WORKING OF PER SQ FT COST AND PROFIT AFTER
THE ESTIMATE WAS REVISED*

<i>Sales up to 31 March 2012</i>	<i>18,88,63,756</i>
<i>Less: Cost of Sales</i>	<u><i>16,25,37,264</i></u>
<i>Profit up to 31 March 2012</i>	<u><i>2,63,26,492</i></u>
<i>Project Profit (Revised) (As per the appellate order)</i>	<i>8,41,32,873</i>
<i>Less: Profit booked till 31 March 2012</i>	<u><i>2,63,26,492</i></u>
<i>Profit to be booked from sale of inventory</i>	<u><i>5,78,06,381</i></u>
<i>Sq ft to be sold after 1 April 2012</i>	
<i>Total sq ft 56,727 minus already sold 46006 till 31 March 2012 =10721 sq ft</i>	
<i>Per sq ft profit=57806381/10721</i>	<i>5,391.88</i>
<i>Profit for FY 2012-13</i>	

Sale of Sq f *1032*

Profit of Rs. *5,391.88*

Total profit 1032 x 5391.88 = ***55,64,424***

9. On the other hand, Ld. DR relied on the findings of Ld. CIT(A) and also relied upon the orders passed by the revenue authorities.

10. Considered the rival contentions and the material placed on record, we notice from the record that assessee is following percentage of completion method and assessee has two main stream of revenues, one from 'NOP' Project and from other project. Assessee is basically construction contractor and also indulged in developing and sale of project named 'NOP'. On overall basis, assessee is following percentage completion method. Whether the method of percentage of completion method can be applied for construction contract as well as real estate development project with reference Guidance Note GN(A) 23 (R2012). We notice that assessee has commenced this project in AY 2006-07 and completed the whole project. It developed the

total saleable area of 56727 Sq. ft. and upto AY 2012-13, it sold 46006 Sq. ft, this assessment year, it sold 1032 Sq. ft. only and it carried unsold stock of 9689 Sq.ft. This indicates that assessee has divergent business module. As per guidance note, percentage completion method can be applied only when revenue, costs and profit from transactions and activities of real estate which have same economic substance as construction contracts. Though, it is clear that **only when the economic substance in real estate development and construction contract has to be same**. In the given case, the project 'NOP' does not have same economic substance as construction contract. The difference in revenue generating pattern. The 'NOP' project already completed but certain portion of development remain unsold. It shows that revenue model is not same i.e. in construction contract, the whole revenue is already determined and only construction has to be completed. Therefore, the revenue can be recognized significantly based on principle of AS-9 (Accounting Standard as per ICAI). Where the sale of goods for recognizing revenue, cost and profits from transactions which are in substance similar to delivery of goods. In the given case, the principle of AS-9 alone

can be applied as far as revenue recognition is concern. We notice that percentage of margin recognized by assessee upto 31.03.12 at 13.94% and the revised estimate indicate that it is at 25.97% of the whole project. There is short recognition of profit of past sales. As per prudent method of accounting, the revised estimate cost to be recognized immediately and as far as income is concerned, the construction is already completed and still 9689 Sq. ft pending for sale. The economic situation might change when the actual sales of stock in trade i.e. pending area of sale. The prudent method would be to recognize the profit based on the unsold stock and balance profit to be recognized based on actual sales. In the given case, unsold stock as of 31.03.12 is 10721 Sq. Ft and balance profit is Rs. 5,78,06,381/-. The balance profit can be absorbed based on sales of the balance unsold area of 10721 Sq. Ft. The assessee sold 1032 Sq. Ft. in this assessment year, hence proportionate of profit alone should be charged to tax and balance can only be charged to tax as per actual sales in the subsequent assessment years.

11. After careful consideration of the revised calculation submitted by the assessee, we are in agreement with the proposed absorption of the profit during this year based on the revised estimation of profit of Rs. 5,391.88 per Sq. ft. Accordingly, we direct the AO to estimate the profit of the assessee to the extent of sales achieved by the assessee during this year i.e. 1032 Sq. ft. and to estimate the profit of Rs. 55,64,424/-.

12. From the above proposition, we are of the view that assessee carries stock-in-trade for the next assessment year at 9,689 Sq. ft and we are not sure whether the cost of sales will remain same and there may be cost of holding the stock which might reduce the profit of the assessee, therefore it is prudent to absorb the profit based on the revenue not based on estimation which should have been earned by the assessee by the end of this year. Accordingly, enhancement proposed by the Ld. CIT(A) are reduced to Rs. 55,64,424/-. The method proposed by Ld. CIT(A) is not applicable to the present case as explained above. Accordingly, the grounds raised by the assessee are **allowed**.

13. In the net result the appeal filed by the assessee is **allowed**.

Order pronounced in the open court on 19th Feb 2020.

<i>Sd/-</i>	<i>Sd/-</i>
(Ravish Sood)	(S. Rifaur Rahman)
न्यायिकसदस्य / Judicial Member	लेखासदस्य / Accountant Member
मुंबई Mumbai;दिनांक Dated :	19.02.2020
<i>Sr.PS. Dhananjay</i>	

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
 2. प्रत्यर्थी/ The Respondent
 3. आयकरआयुक्त(अपील) / The CIT(A)
 4. आयकरआयुक्त/ CIT- concerned
 5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
 6. गार्डफाईल / Guard File
- आदेशानुसार/ BY ORDER,**

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai