

THE INCOME TAX APPELLATE TRIBUNAL  
"D" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4784/Mum/2017 (Assessment Year 2012-13)

ITO-20(1)(4) Room No. 112 1 <sup>st</sup> Floor, Piramal Chambers, Lalbaug Mumbai-400 012.	Vs.	M/s. Dhudhwala Real Estate & Investment 292, Dudhwala House Belasis Road, Mumbai Central, Mumbai-400008.  PAN : AA EFD4072H
(Appellant)		(Respondent)

Assessee by	Ms. Rituja Pawar
Department by	Shri Akhtar Ansari
Date of Hearing	13.10.2020
Date of Pronouncement	14.12.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the revenue is directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 6.3.2017 and pertains to assessment year 2012-13.

2. The grounds of appeal read as under :-

- (1) "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in law not appreciating that the assessee has made disclosure of Rs. 3 crore in his statements recorded on oath during survey proceedings.
- (2) "On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering the fact that the assessee has not filed affidavit of retraction.
- (3) "On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering the fact the assessee has handed over a cheque of Rs.93,00,000/- as advance tax against income offered of Rs. 3crore during the survey proceedings and disclosure made by the assessee was voluntary and without any force, coercion and threat.
- (4) "On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in not considering the retraction of the assessee was without any corroborative evidences and reasoning.

(5) The appellant prays that the order of the GIT(A) on the above grounds be reversed and that of the Assessing officer be restored.

3. Brief facts of the case are that the assessee firm has undertaken the project at Retreat Compound Building at Belasis Road. A survey u/s 133A was conducted in the case of assessee on 28.09.2011. During the survey proceedings, a statement of Shri Nisar Ahmed Patel (Partner of assessee firm) was recorded wherein he had offered the net profit of Rs. 3 crores as the income for the financial year 2011-12 and also paid advance tax of Rs. 93,00,000/-. However, at the time filing return, the income declared was Nil, and the assessee claimed a refund of Rs. p,000/-. During assessment proceedings, the assessee was show caused as to why the declaration given at the time of survey proceedings should not be treated as net profit and Accordingly the amount of Rs. 3 crores should not be added to its total income. In response, the AR stated that the assessee is not bound to offer the income of Rs. 3 crores merely on the basis of offer of such income during survey by one of the partners who is not looking after accounting and taxation matter of the assessee firm. He stated that the assessee firm is consistently following judicially accepted 'project completion method' of accounting and that the project was not completed during the assessment year under reference. He also stated that Department has accepted the project completion method of accounting in the case of assessee in earlier years in respect of the said project and hence the said position must not be disturbed during the current year too keeping in view the "rule of consistency". Also the AR stated that the Guidance Note on accounting for real estate transactions (Revised 2012) issued by ICAI is not applicable to the assessee. The reply of assessee was not found acceptable by Assessing Officer and for reasons given in assessment order, he made addition of the amount of Rs. 3,00,00,000/- to income of assessee.

4. The Assessing Officer made the addition by observing as under :-

The reply of the Assessee has been carefully perused, however it is not acceptable for the following reasons.

a. As per the answer to question No. 12 in the statement given by Shri Nisar Ahmed Patel is as follows " we offer the net profit of Rs. 3 crores from the project undertaken by us. The detail working of the profit will be given to tax within a period of 10 days. The tax due on the said income will be paid by March 2012. We are handing over you three post dated cheques for the amount totaling to Rs. 93,00,000/-" The Assessee has not submitted any detailed working of the net profit within 10 days. They have not filed any application before the A.O. regarding the factual position of the matter. The Assessee has failed to submit the detailed working to the A.O. before filing the return of income. They have failed to submit an affidavit of retraction before the Department. At the time of filing of the return, the firm retracted from its statement and declared NIL income.

b. On perusal of the balance sheet it is seen that Sundry Creditors also includes advance received from prospective customers. The Assessee should have shown the receipts from buyers/customers in the recipients in the Work in progress account, which they have failed to do.

Therefore I hereby add the amount of Rs.3 crores as the Aessee's income for the A.Y. 2012-13. Penalty proceedings u/s. 271(1)(c) for concealment/ furnishing of inaccurate particulars are initiated."

5. Upon assessee's appeal learned CIT(A) deleted the addition.
6. Learned CIT(A) found that there was no corroborative evidence for the addition of Rs. 3 crores, except the statement by one of the partners. Learned CIT(A) accepted the submission that the said partner was not looking after the tax and accounting of the assessee firm. That assessee was consistently following project completion method. That the same was duly accepted by the Department in earlier years.
7. We may gainfully refer to the observations of learned CIT(A) in this regard as under :-

"I found that during the survey proceedings no tangible or corroborative evidence or material was found to establish the quantum of disclosure made. The disclosure was also not backed by unexplained assets and/or unexplained income. No detail of working out such figure of income was available at the time of survey nor was insisted upon by the authorities even after survey action even though stated in the statement of the partner. I also found from the letter dated 16.02.2015 produced before the A.O. during the course of assessment proceedings therein appellant firm reiterate the fact that the Appellant firm is following project completion method of accounting or completed contract method of accounting. The Appellant has submitted that the project was not completed during the current year and the project

was still in initiative stage considering the amount of development expenses incurred till that date i.e. on 31.03.2012. The project was stopped due to various reasons in the interregnum and is still not complete even today in view of various litigations, obstacles and changes in government policies and was awaiting various legal clearances, hence income not offered for the year under consideration.

As the appellant firm is following project completion method of accounting or completed contract method of accounting. This method of accounting is a method of recognizing revenues and costs from a long-term project in which profit is recorded only when the project has been completed/substantially completed. Even if payments are received while the project is in progress, no revenues are recorded until its completion. The completed-contract method is a conservative way of accounting for long-term undertakings and is used for certain types of building projects. This method is judicially accepted by Courts (including Apex Court) and Tribunals all over the country for the purpose of income tax assessment of builders and developers.

The appellant before me submitted assessment order completed in earlier years in the assessee's case. I found that project completion method of accounting in the Appellant's case in earlier years was accepted the in respect of the said project. For assessment Year 2013-14, the Assessing Officer has also accepted the said method of accounting. The appellant has been following the Project Completion Method or Completed Contract Method right from the inception of the projects and the same position is consistently accepted as no addition on account of estimated profits on work-in-progress was made in earlier years. The Appellant has continued to follow this method of accounting in the current year also and even till date and the Appellant's case is covered by the decisions Hon'ble Supreme Court in Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC)."

8. Thereafter learned CIT(A) placed reliance upon following case laws from honourable Supreme Court for the proposition that without any corroborative evidence addition is not sustainable only on the basis of admission.

- CIT vs. S. Khader Khan Son (254 CTR 228/210 Taxman 248)
- Pullangode Rubber Produce Co. Ltd. vs. State of Kerala (1973) 91 ITR 18(SC)

9. Accordingly learned CIT(A) deleted the addition. Against the above order, the revenue is in appeal before us.

10. We have heard both the parties and perused the records. Learned counsel of the assessee stated that the addition is made solely on the basis of statement on survey. She reiterated that no corroborative evidence has been found and referred in the orders of the Assessing Officer. She reiterated the

submissions before the authorities below. She placed reliance upon the Hon'ble Supreme Court decision in the case of S Kader Khan (supra).

11. Per contra learned departmental representative regard upon the orders of the assessing officer. He submitted that the addition was based upon clear admission by the partner of the firm during survey proceedings. That the assessee firm also paid advance tax of Rs.93 lacs on the said undisclosed income. That the admission has never been retracted. Hence he submitted that the addition should be sustained.

12. We have carefully considered the submissions and perused the records. We note that in this case there is a clear admission by one of the partners of the firm of the assessee for having made and offered undisclosed income for taxation. This was duly backed by payment of advance tax of ₹ 93 lakhs. Thereafter, there was no retraction or a statement on oath by the assessee that the said offer was made wrongly. Having offered the sum for taxation and paid the tax due thereon assessee firm did not offer the same in the return of income. On enquiry in this regard, it was stated that the said disclosure was done by one of the partners who was not looking after the taxation aspect of the firm. However, this is a clearly self-serving statement. The assessee firm has paid tax of ₹ 93 lakh on the above said disclosure, now it cannot say that advance tax was paid without understanding the tax implication. Hence, this plea is totally unsustainable. Learned CIT appeals has totally erred in this regard in not taking into account this fact that the assessee has paid ₹ 93 lakh on the undisclosed income of ₹ 3 crore offered to tax. Thereafter, the assessee has claimed that though the assessee has offered to give the working of the undisclosed income within 10 days, the assessee was not called upon to give the said detail and the requirement by the assessing officer came only at the stage of assessment. We find that to our astonishment, the learned CIT appeals has accepted this statement. We find it is strange that assessee having accepted the undisclosed income paid the tax due thereon and promised to give the details within 10 days and if the assessing officer asks the assessee to

give the same at the stage of assessment how can adverse inference be taken against the Department for having not pursued with the assessee to give the said detail prior to the assessment is beyond our comprehension.

13. Another plank of the learned CIT appeals is deleting the addition by accepting the assessee's submission that assessee has been following project completion method consistently in the past. We fail to understand how the disclosure of undisclosed income and payment of tax thereon can be nullified by simply stating that assessee is following project completion method consistently. Offer of undisclosed income and payment of tax thereon has no relationship whatsoever with the said consistently applied method of tax.

14. Furthermore the learned CIT appeals has relied upon case was for the proposition that without corroborative evidence, addition cannot be made for undisclosed income on the basis of the statement on survey. Here again we note that the addition in this case is not solely on the basis of the statement on survey. The said statement was duly corroborated by payment of corresponding advance tax. Hence, the learned CIT appeals has totally misled himself in giving a finding that there was no corroborative evidence other than the statement on survey. Furthermore, in the case laws referred by him there was due retraction by the person who made the statement. In the present case, there is no retraction whatsoever of the person who is a partner of the firm. Hence, these case laws are absolutely not applicable on the facts of this case. Moreover, it is settled law of partnership laws operating in India that a partner can bind the firm for his actions done on behalf of the firm. Hence, the disclosure of undisclosed income by one of the partners and coupled with payment of tax by the firm thereon and thereafter no retraction by the said partner leads to the irrefutable conclusion that the disclosure of undisclosed income and its assessment as such by the assessing officer is correct.

15. Accordingly, in the background of above said discussion, in our considered opinion, the order of learned CIT appeals is not sustainable. Hence,

we set aside order of learned CIT appeals and restore that of the assessing officer.

16. In the result, the Revenue's is allowed

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 14.12.2020

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 14/12/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS