

**आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“G” BENCH, MUMBAI**

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं  
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
(Hearing through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.01/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>Shakti Property Developers Pvt.Ltd.</b> 27/28, ‘P’ Wing, Sharda Vihar Shakti Complex, Charkop Kandivali (W), Mumbai-400 067.	<b>बनाम</b> / Vs.	<b>DCIT- Circle-8(1)</b> CPWD Building, M.K. Road New Marine Lines Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>AAECS-8479-E</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Kirit Sanghavi-Ld. AR
<b>Revenue by</b>	:	Shri T.S. Khalsa- Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	14/01/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	14/01/2021

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. In this appeal for Assessment Year 2013-14, the assessee is aggrieved by levy of penalty u/s 271(1)(C) for Rs.77.53 Lacs. The same was initiated as well as levied by Ld. Commissioner of Income Tax (Appeals)-50, Mumbai vide order dated 18/09/2017 in the light of its appellate order passed on 30/03/2017.

2.1 The chronology of the event is that in assessment framed u/s 143(3), the assessee was saddled with addition of Rs.57.62 Lacs,

being 20% of alleged on-money component stated to be received by the assessee on sale of certain flats during the year. Upon further appeal, Ld. CIT(A) deleted the same by observing that Ld. AO could not bring enough evidence on record that the assessee received on-money. At the same time, Ld. CIT(A) proposed an enhancement of Rs.258.43 Lacs in view of the fact that the assessee was required to follow percentage of completion method of accounting to recognize the revenue. After perusing requisite project details as furnished by the assessee, the Ld. CIT(A) arrived at project profits of Rs.258.43 Lacs and proposed the same in its appellate order dated 30/03/2017.

2.2 Consequently, penalty proceedings were initiated against the assessee and the assessee was saddled with impugned penalty of Rs.77.53 Lacs by Ld. CIT(A) vide penalty order dated 18/09/2017. The same is the subject matter of appeal before us.

2.3 We find that the assessee assailed the enhancement as proposed in appellate order before this Tribunal vide ITA No.5049/Mum/2017 order dated 19/02/2020. The coordinate bench, vide para-11 of the order, directed Ld. AO to estimate the profits to the extent of sales achieved by the assessee during the year i.e. 1032 Sq. Ft. and estimate the profits at Rs.55.64 Lacs. It is evident from the order that the enhancement as proposed by Ld. CIT(A) has substantially been reduced and in para-12 of the order, it has been observed that the method proposed by Ld. CIT(A) is not applicable to the present case. This being the case, penalty u/s 271(1)(c) as levied by Ld. CIT(A) would not survive. However, since Ld. AO has been directed to estimate the profits in certain manner

and the order of the Tribunal would certainly result into certain additions in the hands of the assessee, Ld. AO is free to initiate fresh penalty proceedings against the assessee based on his assessment order, if found applicable.

3. The appeal stand allowed in terms of our above order.

*Order pronounced on 14<sup>th</sup> January, 2021.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 14/01/2021  
Sr.PS, Jaisy Varghese

**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/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**