

आयकर अपीलिय अधिकरण "SMC" न्यायपीठ मुंबई

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

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री एन. के. प्रधान, लेखा सदस्य के समक्ष

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 5398/Mum/2019

(निर्धारण वर्ष / Assessment Year 2016-17)

Brookefield Constructions Pvt. Ltd. 602, 6 th floor, Sant Niwas, 394 linking Road, 14 th Road, Khar(W), Mumbai-400 052	बनाम/ Vs.	The Income Tax Officer Ward 12(1)(3) Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AAFC A2216E		

अपीलार्थी की ओर से Appellant by	:	Shri Satish Mody, AR
प्रत्यर्थी की ओर से Respondent by	:	Ms Smita Verma, DR

सुनवाई की तारीख / Date of hearing:	11.03.2021
घोषणा की तारीख / Date of pronouncement:	16.03.2021

आदेश / ORDER

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-20, Mumbai [in short 'the CIT(A)'] dated 28.06.2019 for the AY 2016-17.

2. Shri Satish Mody appearing on behalf of the assessee submitted that the primary issue raised in this appeal is with respect to addition of Rs. 23,62,069/- on account of undisclosed sales. The learned AR contended that the assessee is engaged in real estate development. A development agreement dated 27.12.2010 was executed by the



assessee with M/s Nirman Trimurti Developers for construction of a project at Pisoli Pune. As per the agreement, the assessee was eligible to receive 35% of the gross sales receipts from the sale consideration of aforesaid project. The assessee received its share of receipts from M/s Nirman Trimurti Developers in FY 2016-17 i.e. relevant to the AY 2017-18. The assessee has offered the same in its return of income for AY 2017-18. In assessment proceedings, the AO held that since M/s Nirman Trimurti Developers has offered the sales receipt in AY 2016-17, the assessee's share in receipts is assessable to tax in AY 2016-17. The learned AR pointed that in Form 26AS a rectification was carried out after which no TDS amount was credited in the account of the assessee by M/s Nirman Trimurti Developers for the AY 2016-17. The learned AR submitted that if an opportunity is granted, the assessee would furnish the relevant documents to show that the amount has been actually received by the assessee from M/s Nirman Trimurti Developers in FY 2016-17.

3. Per contra, Ms. Smita Verma representing the department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The learned DR submitted that the assessee has not placed on record any documentary evidence to show that the amount was in fact received by the assessee in the period relevant to the AY 2017-18. On the contrary, M/s Nirman Trimurti Developers have offered the amount to tax during the period relevant to the AY 2016-17 and as per assessee's own case and the development agreement, the assessee is entitled to receive 35% share in the gross



sales. Therefore, the assessee should have offered the receipts for tax in the impugned assessment years.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. At the outset, we observe that the assessee has not appeared before the CIT(A) despite services of notices on five occasions between the month of May and June, 2019. In the absence of any contrary material, the CIT(A) was constrained to uphold the findings of AO.

5. The contention of the assessee before us is that the amount received from M/s Nirman Trimurti Developers has been offered to tax in the return of income for AY 2017-18, whereas, according to the AO the amount is taxable in the impugned assessment year. Thus, the dispute is with regard to the year of taxability. M/s Nirman Trimurti Developers the co-developer of the project has offered the sales receipts to tax in AY 2016-17. We find that the assessee has not furnished documentary evidences before the AO or the CIT(A) to substantiate that the assessee has received its share of 35% of sales receipts in the period relevant to AY 2017-18. Considering the fact that this factual aspect is required to be examined, we deem it appropriate to restore this issue back to the file of AO for *denovo* examination. The AO shall tax the assessee's share in sale considered from the project in the year of actual receipt. Consequently, the ground nos. 1 to 3 of the appeal are allowed for statistical purpose.



6. In ground No. 4 of the appeal, the assessee has assailed issuance of penalty notice u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), challenge to penalty proceedings at this stage is premature, consequently ground No.4 of the appeal is dismissed.

7. In the result, appeal of the assessee is partly allowed for statistical purpose in the terms aforesaid.

Order pronounced in the open court on Tuesday the 16th day of March, 2021.

Sd/-

(एन. के. प्रधान / N.K. PRADHAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 16.03.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

अपीलार्थी / The Appellant

प्रत्यर्थी / The Respondent.

आयकर आयुक्त(अपील) / The CIT(A)

आयकर आयुक्त / CIT

विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /

DR, ITAT, Mumbai

गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai