

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.2980/M/2019  
Assessment Year: 2016-17**

M/s. Tulip Land & Developers P. Ltd., Ground Floor, Rajpipla, Opp. Standard Chartered Bank, Santacruz (W), Mumbai <b>PAN: AADCT 7067N</b>	Vs.	Dy. CIT, Central Circle-6(2), Room No.1903, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

**ITA No.3727/M/2019  
Assessment Year: 2016-17**

Dy. CIT, Central Circle-6(2), Room No.1903, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s. Tulip Land & Developers P. Ltd., A/201, Rajpipla, Opp. Standard Chartered Bank, Santacruz (W), Mumbai <b>PAN: AADCT 7067N</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R. &  
Shri Anuj Kisnadwala, A.R.

Revenue by : Shri Vijay Kumar Menon, Sr. D.R.

Date of Hearing : 18.12.2020

Date of Pronouncement : 10.02.2021

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present cross appeals have been preferred against the order dated 08.03.2019 of the Commissioner of Income Tax

(Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2016-17.

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2. The grounds raised by the assessee are as under:

**“ Addition of Rs.53,75,000/- as income from on money may be deleted**

1. The Ld. CIT(A) erred in confirming the addition of Rs.53,75,000/- being 25% of on money of Rs.2,15,00,000/- [correct amount of on money is Rs. 1.50 cr. and thus, 25% comes to Rs.37.50 lakhs] without appreciating that the income, if any, quantified on the amount of on money ought to be taxed only in the year/s in which project has completed construction in accordance with the conditions prescribed as per the Revised Guidance Note of 2012 issued by ICAI and thus, the income estimated @25% of on money and taxed in the year of receipt is unjustified and liable to be deleted.

2. The Ld. CIT(A) failed to appreciate that relevant working as per the conditions prescribed in the Revised Guidance Note of 2012 issued by ICAI was duly filed before the Ld. CIT(A) and according to which, the income, if any, quantified in respect of on money could Not be taxed in the relevant year as the conditions and parameters prescribed in Revised Guidance Note of 2012 issued by ICAI for taxing income from project were not satisfied in the relevant year and hence, whatever income quantified from the construction project ought to be taxed in accordance with the Revised Guidance Note of 2012 issued by ICAI and thus, the income estimated from on money and taxed in the year of receipt is unjustified and liable to be deleted.

Without prejudice to the above, the Ld. CIT(A) has erred in estimating the income @25% of on money received without appreciating the fact that as per parallel books of account, the group had incurred overall huge loss and income from on money was estimated @12% in other group entities before the Hon'ble Settlement Commission and the Settlement Commission accepted the same @ 12% and hence, the income from on money may be estimated @ 12% as against estimate @ 25% by the Ld. CIT(A) and accordingly, relief may be given to the appellant”

3. The assessee has challenged the addition sustained by Ld. CIT(A) equal to 25% of the on money received by the assessee on the sale of flats/properties as against the 100% addition made by the AO. The assessee has prayed before the Bench that addition may be restricted to 12% of the on money received in view of the decision of the Hon'ble Settlement Commission in the assessee's group entities covered in the same search wherein

12% of the on money has been accepted. The second issue raised by the assessee is the year of assessability. The Revenue has challenged the deletion of addition to the extent of 75% by Ld. CIT(A) by ignoring the fact that evidences of cash received by the assessee were found and seized.

4. The facts in brief are that the assessee filed the return of income on 16.10.2016 by declaring income at nil. A search action under section 132(1) of the Act was conducted in Ahuja Group cases on 25.06.2015 and incriminating data/papers were found in the form of loose sheets relating to various transactions of the assessee. The search was extended to Ahuja Group Associates and residences of their directors and also Mr. Sunil Chaudhary, driver of the promoter of the group Shri Jagadish Ahuja. During the course of search parallel books of accounts were found of Ahuja Group at the residence premises of Mr. Sunil Chaudhary, the driver of the promoter. A statement of Mr. Sunil Chaudhary was also recorded under section 132(4) of the Act and he admitted the said documents were belonging to the Ahuja Group. During the course of search proceedings the statement of Shri Jagadish Ahuja principal promoter of Ahuja Group was also recorded. During the course of search it was found that the assessee has received cash to the tune of Rs.1,82,50,000/- as per details below:

Date	Particular	V. Type	Debit	Credit
17-03-2015	Sanjay Agrawal Bhiwandi A/c	Cash Sales – Bhiwandi Project	10,00,000	
23-03-2015	Kailash Devnani Bhiwandi	Cash Sales- Bhiwandi Project	22,50,000	
08-04-2015	Sanjay Agrawal Bhiwandi A/ c	Cash Sales - Bhiwandi	20,00,000	

		Project		
20-04-2015	D. Mangni Bhiwandi Ac	Cash Sales- Bhiwandi Project	50,00,000	
24-04-2015	D, Mangni Bhiwandi Ac	Cash Sales- Bhiwandi	30,00,000	
20-05-2015	D. Mangni Bhiwandi Ac	Cash Sales- Bhiwandi	50,00,000	
<b>Total</b>			<b>1,82,50,000</b>	

5. Accordingly, a show cause notice was issued to the assessee as to why the cash received as on money of Rs.1,82,50,000/- should not be added as income of the assessee as unexplained cash credit under section 68 of the Act. The assessee submitted vide letter dated 29.11.2017 that there was only one project at hand in plot bearing survey No.92/2, 92/4, 92/7(P) near Bhadvad Talab of village Temghar, Taluka Bhiwandi District, Thane which is at initial stage and as such there is no question of assessing the income during the year. The assessee submitted that it has not entered into any sale agreement with any customer nor any registration of sale agreement has taken place and therefore the question of assessing the income does not arise in the current year. The assessee also submitted that since the assessee is following project completion method and therefore no income arose during the year from the project until the same is completed or substantially completed. Without prejudice, the assessee submitted that if at all the so called on money received is to be taxed, the entire sum can not be taxed and only the net income there from could only be assessed and brought to tax. The AO, not being convinced with the contentions of the assessee, added

a sum of Rs.2,15,00,000/- under section 68 of the Act by framing assessment under section 143(3) of the Act dated 23.12.2107.

6. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee on the issue of non taxability of the said on money in the year in which the project is completed or substantially completed and held that this money has to be taxed in the year of receipt. The Ld. A.R. vehemently submitted before us that the assessee is following the project completion method and if at all the assessee received any on money the income therefrom can only be assessed in the year when the project is completed or substantially completed and not in the year of receipt. The Ld. A.R. relied on a series of decisions in defence of his arguments as under:

1. Order of the Hon'ble Tribunal in the case of ACIT v. ISA Enterprises in ITA No. 4597/Mum/2015 dated 11.09.2017
2. Order of Hon'ble Tribunal in the case of M/s D.R. Constructions v ITO in ITA No. 2735/Ahd/2010 dated 08.04.2011
3. CIT vs. M/s Jalaram Jagruti Development Pvt. Ltd. (ITA No. 1537 of 2010) dated 23.11.2010 (Bombay High Court)
4. CIT vs. M/s Guruprerana Enterprises (ITA No. 1849 of 2011) dated 04.03.2013 (Bombay High Court).
5. Asst. CIT v. Layer Exports P Ltd [184 TTJ 469 (Mum)]
6. Dhanvarsha Builders & Developers (P.) Ltd. Vs. DCIT 102 ITD 375 (Pune)
7. S.G.R.Enterprises v ACIT [112 TTJ 377 (Bang)]
8. DCIT v Tejas Constructions [ITA 934/PN/2009 Order dated 31.1.2012]
9. Fort Projects (P) Ltd. v DCIT [145 TTJ 340 (Kol)]
10. Rakesh K. Kapadia [48 ITD 283 (And)]
11. ITO v Karda Construction P. Ltd. [ITA no.971/PN/2011 dated 31.07.2012]
12. South Calcutta Promoters (Pvt.) Ltd. Vs. ITO I.T.A. Nos. 2216 & 2217/ Kol/2003

The Ld. A.R. prayed before the Bench that in all the above cases it has been held that income has to be assessed in the year of completion of project as per the regular method of accounting when the regular income is assessed to tax and not in the year of receipt of on money. The Ld. A.R., therefore,

prayed that the order of Ld. CIT(A) may be set aside on this issue and AO may be directed to assess this income in the year of completion of project when the regular income of the assessee was offered to tax.

7. The Ld. D.R., on the other hand, relied on the order of authorities below:

8. We have heard the rival submissions of both the parties and perused the material on record. The undisputed facts are that the assessee is found to have received on money from the buyer of flats/properties on the basis of documents which have been found during the course of search and the on money received by the assessee in two years A.Y. 2014-15 & 2015-16 of Rs.32,50,000/- and Rs.1,50,00,000/- respectively. However, we find that in the assessment the AO has added Rs.2,15,00,000/- which is a typographical error and correct amount is Rs.1,50,00,000/-. We have also cross verified this from the order of settlement commission and submissions before the Ld. CIT(A) who has partly allowed the appeal of the assessee by sustaining the addition equal to 25% of the on money received by the assessee. The Ld. A.R. has argued before the Bench that since in the sister concerns cases on money has been brought to tax @ 12% by the settlement commission, therefore the same rate should be applied to assess the on money in the hands of the assessee also. We find the arguments of the assessee quite convincing and cogent and are inclined to set aside the order of Ld. CIT(A) on this issue and direct the AO to assess the same by applying 12% on Rs.1,50,00,000/- and that too in the year when the regular income of the assessee is assessed to tax as per the

regular method of accounting. In deciding so we find support from the decision of the ACIT vs. ISA Enterprises (supra) wherein it has been held that income has to be assessed on the basis of method of accounting followed by the assessee. The operative part is reproduced as under:

"7. We have heard the rival submissions and perused the relevant materials on record. We give the reasons for our decision in the succeeding paragraphs.

Having gone through the return of income filed by ISAE for the AY 2008-09 to AY 2014-15, we find that it is following the project completion method. It filed its return of income for the AY 2014-15 on 04.04.2015 declaring total income of Rs.4,45,00,710/-. The above income has been accepted without any variation by ACIT-20(1), Mumbai in the assessment dated 28.12.2016 completed u/s 143(3) of the Act.

Now it would be apposite to discuss the cited two decisions. In the case of M/s Jalaram Jagruti Development Pvt. Ltd. (supra), the issue before the Hon'ble Bombay High Court was the following:

"Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal in law, was right in holding that receipts of Rs.3,46,250/- recorded in the documents seized during the course of search were reflected in the books of accounts and could be taxed only in the year in which the project was completed?"

The Hon'ble High Court held that:

"The finding of fact recorded by the Tribunal is that the receipts in question had direct nexus with the project of the assessee and that the said cash receipts have been offered to tax in the AY 2008-09, since the assessee was following the project completion method. Once the cash in question has already been assessed to tax, the question of taxing the same assessment year in question AY 2005-06 does not arise."

7.1 In M/s M/s Guruprerana Enterprises (supra) the following questions of law were raised before the Hon'ble Bombay High Court:

- a) "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the addition holding that the assessee has not actually received any cash receipts and the declaration made by the partner of the firm was towards total sale receipts and not towards income for the year?
- b) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the addition holding that the project completion method was applicable on account receipts of Rs.5 crores even

though the assessee had not accounted the receipts in the regular books of accounts?

c) Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the addition of Rs.5 crores itself had failed to follow the norms of accounting standard regarding disclosure of receipts as per the AS-7 and as per [section 145](#) of the I.T. Act, 1961?"

The Hon'ble High Court held as under:

"Counsel for the parties state that the income which is disputed in the present proceedings has been offered to tax on the basis of the project completion method during the assessment year 2009-10 and the same has been accepted by the revenue. In these circumstances, we see no reason to entertain the proposed question of law as the entire exercise would be academic. In the above view, the questions (a) to (c) as proposed cannot be entertained."

8. We have mentioned earlier that the return of income for A.Y. 2014- 15 filed by the assessee declaring total income of Rs.4,45,00,710/- has been accepted by the ACIT-20(1), Mumbai u/s 143(3) of the Act. Therefore, we follow the decisions of the Hon'ble Bombay High Court mentioned at para 7 here-in-above and uphold the order of the Ld. CIT(A)."

9. Similar ratio has been laid down in the various other decisions as referred to by the Ld. A.R. during the hearing and stated hereinabove. We are therefore inclined to hold that on money received by the assessee would only be taxable as per the regular method of accounting of the assessee. In the present case the assessee is following project completion method and therefore this income has to be assessed along with the regular income of the assessee in the year of completion of the project.

10. The second issue raised by the assessee is against the order of Ld. CIT(A) sustaining the addition equal to 25% of the on money received.

11. The facts of the case are already narrated while dealing with the ground No.1. The only issue involved here is whether at what rate of the on money should be brought to tax. The Ld. Counsel, at the outset, submitted that since in the cases of

group concerns the settlement commission has already accepted that on money is to be assessed at the rate of 12%. We therefore find merit in the contentions of the assessee's counsel that following the settlement commission's order the same should be applied in the case of the assessee also. The case of the assessee is supported by the following decisions:

1. ACIT vs. Om Construction ITA No.6234/M/2012 A.Y. 2006-07 & ors.
2. ACIT vs. Shankar Developers ITA No.6235/M/2012 A.Y. 2003-04 & ors.

In the case of ACIT vs. Om Construction ITA No.6234/M/2012 A.Y. 2006-07 & ors. (supra) the co-ordinate bench of the Tribunal held that where the settlement commission has assessed the income at 12% then a different view can not be taken from that one taken by the settlement commission. The operative part is reproduced as under:

"6. We have already noticed that the Hon'ble Settlement Commission has accepted the contentions of the assessee that it has incurred expenses outside the books of accounts and further the impounded materials also show that many expenses have not been accounted for. Under these set of facts, the Hon'ble Settlement Commission has accepted the contention of the assessee that only net profit should be estimated on the amounts received outside the books of account. Accordingly, the Hon'ble Settlement Commission has estimated the net profit at 12% of thereon. The assessments of AY 2005-06 and also the year before us, viz., AY 2006-07 have been taken up for scrutiny only on the basis of survey operations and hence the facts prevailing in both the cases are identical in nature. Hence, we do not find it necessary to take a different view from that one taken by the Hon'ble Settlement Commission. Accordingly, we are of the view that the Ld CIT(A) was justified in estimating the profit at 12% (it is stated that the rate of profit was wrongly mentioned as 17% in the order of Ld CIT(A)).

7. During the course of hearing, the Ld D.R submitted that there is a reference of 35% in the Settlement Commission's order. However, on a perusal of the said order, we notice that the assessee has given a working of the profit of the project by considering the value of scrap sales and adhoc disclosure in order to substantiate the offer of 12%. Hence, in our view, the said reference of 35% is not relevant here.

8. In view of the foregoing discussions, we do not find any reason to interfere with the order passed by Ld CIT(A)."

12. Similarly in the case of ACIT vs. Shankar Developers ITA No.6235/M/2012 A.Y. 2003-04 & ors. the co-ordinate bench of the Tribunal has held as under:

"13. We heard the parties and perused the record. We notice that the assessing officer has determined the on-money receipts as per the disclosure made by the assessee before the Settlement Commission. There is no dispute that the Settlement Commission has agreed with the contentions of the assessee that the entire amount of on-money receipts cannot be considered as income of the assessee. Accordingly the Settlement Commission has estimated the income from on-money receipts @ 17% in AY 2005-06. Since the assessing officer has estimated the on-money receipts as per the disclosure made before Settlement Commission, we are of the view that the Ld CIT(A) was justified in estimating the income from the on-money receipts @ 17% for this year also by following the order passed by the Settlement Commission. Accordingly we confirm the order passed by Ld CIT(A). Accordingly we reject the appeal filed by the revenue."

13. Following the above decisions, we are inclined to held that the Ld. CIT(A) is not correct in not following the order of settlement commission wherein a rate of 12% has been applied on the on money to assess income embedded therein. Accordingly, we modify the finding of Ld. CIT(A) and direct the AO to assess the on money @ 12% as per the system of accounting followed by the assessee as has been decided by us in ground No.1.

14. In the result, the appeal of the assessee is allowed.

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15. This is the cross appeal by the revenue challenging the order of ld CIT(A) wherein the ld CIT(A) has partly deleted the on money addition to the tune of 75%. The assessee has also raised the issue of part sustaining the addition to the tune of 25% in ITA No.2980/M/2019 for A.Y. 2016-17. In view of our decision

in ITA No.2980/M/2019 for A.Y. 2016-17, the appeal of the revenue becomes infructuous and is accordingly is dismissed.

16. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 10.02.2021.**

**Sd/-**  
**(Pavan Kumar Gadale)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 10.02.2021.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.