

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" C " BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**  
**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.1404/AHD/2014  
निर्धारण वर्ष/Asstt. Year: 2008-2009

M/s Pratham Properties, "Pratham", Makarand Desai Road, Nr. Mother's School, Baroda-390007.  <b>PAN: AAHFP5012C</b>	Vs.	D.C.I.T., Circle-2(2), Vadodara.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Shri Nimit Mehta, A.R
Revenue by :	Shri L.P. Jain, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **31/05/2021**  
घोषणा की तारीख/**Date of Pronouncement**: **23/06/2021**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-II, Baroda, dated 16/01/2014 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2008-2009.

2. The assessee has raised the following ground of appeal:

1. *The learned Commissioner of Income Tax (Appeals) - II, Baroda ( hereinafter referred to as the "CIT(A)") erred in fact and in law in confirming the action of Deputy Commissioner of Income Tax Circle-2(2), Baroda ( hereinafter referred to as "the AO") in rejecting the books of accounts without pointing out any defects in the same.*

2. *The learned CIT(A) erred in fact and in law in confirming the action of AO in estimating Gross Profit @ 30% from residential units and 40% in case of Commercial units thereby making a total addition of Rs. 10,83,700/-.*
3. *The learned CIT(A) erred in fact and in law in confirming the action of AO 1 charging interest u/s. 234B of the Income Tax Act, 1961.*
4. *The learned CIT(A) erred in fact and in law in confirming the action of AO in initiating penalty proceeding u/s.271(l)(c) of the Income Tax Act, 1961.*
5. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.*

3. The only effective issue raised by the assessee in ground number 1 & 2 is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of Rs. 10,83,700.00 on estimate basis without rejecting the books of accounts.

4. The facts in brief are that the assessee in the present case is a partnership firm and engaged in the business of real estate developers, dealing in shares securities, F & O and mutual funds. There was also a sister concern of the assessee with the name M/s Pratham Developers which was eligible for deduction under section 80 IB (10) of the Act. The AO during the assessment proceedings observed certain facts as detailed under:

- i. The sister concern of the assessee has declared profit approximately 30% whereas the assessee has declared the profit with respect to residential projects at 23.47%. Accordingly the AO was of the view that the assessee has declared lesser profit with respect to its residential project.
- ii. The assessee has shown cost of construction including land with respect to its residential project at ₹ 671.51 and the selling price per unit per square feet at Rs. 877.47 only. Likewise the cost shown by the assessee including the land with respect to the commercial project stands at ₹ 751.06 square feet and selling rate stands at ₹ 1,175.69 per square feet. As per the AO the cost of construction shown by the assessee with respect to the commercial projects which is higher than the residential project is

not satisfactory. It is for the reason that the assessee has to provide several amenities with respect to the residential projects whereas no such amenity is required with respect to commercial projects. As such the assessee with respect to commercial projects has to provide 3 walls with shutter. Therefore the AO was of the view that the assessee has shown higher cost with respect to the commercial projects.

4.1 On question by the AO, the assessee contended that the land cost shown by the sister concern namely M/s Pratham Developers eligible for deduction under section 80 IB(10) of the Act was lesser than the cost of its project. Therefore, the sister concern has shown higher amount of profit.

4.2 However, the AO being dissatisfied rejected the contention of the assessee and concluded that the assessee has declared lesser profit in its residential as well as commercial projects. In view of the above the AO estimated the profit with respect to the residential project at the rate of 30% against the profit declared by the assessee at the rate 23.47%. Similarly, the AO estimated the profit with respect to the commercial project at the rate of 40% against the profit declared by the assessee at the rate of 36.11%. The AO finally enhanced the profit by ₹ 5,61,700.00 in respect of residential project and ₹5,22,000.00 in respect of commercial projects aggregating to ₹10,83,700.00 and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

*I have considered the submissions of the learned Authorized! Representative and the order of the Assessing Officer. The contention of the id. Authorized Representative that the profit rate of M/s. Pratham Developers in which the assessee has claimed deduction u/s. 80 IB(10) and has shown profit on around 30% cannot be applied, is without any basis. The Assessing Officer has made the estimation of profit on the basis of assessee's own sister concern which is building projects in almost same vicinity. Appellant has not been able to demonstrate in any manner that how the profit rate in his case should be lower than the neighboring projects. The assessee was asked for the explanation why the profit in the case where claim u/s. 80 18(10) is higher rate of profit as compared to the project undertaken as shown 23.47% in the case of residential projects and 36.12% in the case commercial project The only argument of the assesses is that it is due to differential rate of land of the project under taken and different projects undertaken in which*

*deduction u/s. 80 IB of the Act. The cost of construction is almost same. The assessee has submitted statement of cost of residential and commercial project from which it was observed that the cost of construction including land in the case of residential project is 671.51 and selling price of per unit per sq.ft is 877.47. Whereas, in the commercial project the total cost is Rs.751.06 sq.ft and selling rate is 1175.69. The Assessing Officer has rightly contended that the assessee has shown cost of construction of residential at Rs.671.51 and cost of construction of commercial unit as 751.06. Normally in the case of Flats, the different type of amenities to be provided whereas in the case of commercial shops no such amenities required to be provided. In the shops, three walls with shutter are to be provided and therefore, the cost of construction of the shop should be less than the cost of construction of flats. In view of above the Assessing Officer held that the assessee has not satisfactorily cost of construction, selling rate comparing with his other projects in which deduction u/s. 80 IB[10J claimed. He therefore, estimate profit of residential unit at 30% as against 23.47% shown by the assessee and in the case of commercial 40% as against 36,11%. the Assessing Officer accordingly made addition of Rs,10,83,70G/- i.e. Rs.5,22,000/- in respect of commercial units sold (40-36.12% on sales of Rs.1,34,47,287/-) and addition of Rs.5,61,700 in respect of residential units sold (30-23.47% on sales of Rs.86,04,400}. Considering the total facts, it is held that the action of the Assessing Officer does not call for any interference and the addition made by him is confirmed.*

6. Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 102 and submitted that the assessee during the assessment proceedings has produced audited financial statements, books of accounts, bills, vouchers, cash book, ledger accounts and the bank book which were verified by the AO on test check basis. Accordingly the learned AR contended that the question of estimating the profit does not arise without rejecting the books of accounts. Accordingly the learned AR prayed before us to accept the result declared by the assessee in its books of accounts.

8. On the other hand the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The short controversy that arises for our adjudication so as to whether the AO can estimate the profit without rejecting the books of accounts. Admittedly the assessee has produced necessary details during the assessment proceedings which were verified by the AO on test check basis and no

defect of whatsoever was pointed out by him. The relevant observation of the AO as recorded in the assessment order is extracted as under:

*Books of accounts, bills, vouchers, cashbook, ledger account, bankbook etc. produced during the course of hearing have been verified on rest check basis. The firm has developed residential cum commercial project Viz. Pratham Plaza. The case was discussed with authorized representative of the assessee in the light of various and relevant documents furnished during the course of assessment proceedings.*

9.1 Undoubtedly, the AO has not pointed out any defect in the details furnished by the assessee during the assessment proceedings. Likewise, the contention of the assessee before the authorities below that the cost of land in the project of the sister concern was lesser than the cost incurred by it, was not doubted by them (the authorities below).

9.2 However, the AO has made the addition after recording the finding that the assessee has shown lesser profit with respect to its residential project in comparison to the project of its sister concern which was eligible for deduction under section 80 IB(10) of the Act. Likewise, the AO made the addition with respect to its commercial projects on the reasoning that the assessee has declared higher cost in the commercial project than the residential project. The view of the AO was based on the reasoning that there was no amenity to be provided with respect to commercial projects.

9.3 Now the question arises whether the basis adopted by the AO for estimating the profit is sustainable in the eyes of law. The answer stands in negative. It is because the books of accounts of the assessee were duly audited and no defect was pointed out by the AO. There can be several factors for having shown lesser profit in the project. One of the major factor as highlighted by the assessee was that the land cost with respect to the residential project was higher than the project of the sister concern eligible for deduction under section 80-IB(10) of the Act. The contention of the assessee has not been doubted by the authorities below. Thus we are of the view that in the absence of any specific defect in the books of accounts

of the assessee there cannot be any addition based on estimate to the total income of the assessee.

9.4 We also find that Hon'ble Madras High Court in the case of CIT versus Marg Limited reported in 396 ITR 580 has held as under:

*"there is no merit whatsoever in the appeal filed by the Revenue as the addition of income on estimate basis for certain projects has admittedly/concededly (as admitted/conceded by the Revenue before ITAT) been done without scrutiny and without rejecting the Books of Accounts."*

9.5 From the above, there remains no ambiguity that the profit declared by the assessee cannot be enhanced on estimated basis without rejecting the books of accounts. The learned DR at the time of hearing has not brought any judgment of jurisdictional High Court in support of his favour. Therefore we hold that the profit enhanced by the AO and confirmed by the learned CIT (A) on estimated basis cannot be added to the total income of the assessee for the reason that the books of accounts were not rejected by the authorities below. Hence the ground of appeal of the assessee is allowed.

10. In the result the appeal filed by the assessee is **allowed**.

**Order pronounced in the Court on 23/06/2021 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated  
*Manish*

**(True Copy)**  
23/06/2021