

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No. 1838/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2012-13)

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| Shah & Chheda Homes Pvt. Ltd. 4, Mahavir Ornate, Plot No. 13B, Sector-11, Near Balaji Garden, Koparkhairane, Navi Mumbai-400 709 | बनाम/ Vs. | CIT(A) – 15 6 th floor, R. No. 610, Earnest House Nariman Point Mumbai-400 021 |
| स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAACS-7318-G | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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|--------------------|---|-------------------------------------|
| Assessee by | : | Shri Navin B. Gandhi– Ld. AR |
| Revenue by | : | Shri Vijay Kumar Menon – Ld. Sr. DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 28/09/2021 |
| घोषणा की तारीख / Date of Pronouncement | : | 04/10/2021 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2012-13 arises out of order of learned Commissioner of Income-Tax (Appeals)-15, Mumbai [CIT(A)], dated 28/08/2020 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 23/03/2015. The grounds raised by the assessee read as under:-

The Hon'ble CIT(A)-15,Mumbai has erred in confirming addition made by the Ld.AO [ACIT -8(2)(1), Mumbai u/s 41(1)] of Rs.2,08,19,001, on the ground that "liability outstanding for a long period of time is assessable as income even if no write-back

of liabilities in its books of accounts made and further if the assessee is unable to prove genuineness of liability".

The Hon'ble CIT(A)-15 failed to consider the fact that

- a) In remand report dated 01.10.2018 the Ld AO confirmed that the confirmation letters of the creditors were submitted by the assessee company during the assessment proceedings and are on the record.
- b) The company did not write off the said liability of Rs.2,08,19,001/- in his books and confirmed that the said liability is payable by the appellant company as on 31.03.2012.

Relief Claimed

The appellant company humbly request your honor to delete the entire addition made u/s 41(1) of Rs 2,08,19,001/- as the same is totally incorrect and highly unjustified .

Ground 2

The Hon'ble CIT(A)-15,Mumbai has erred in confirming addition made by the Ld.AO [ACIT-8(2) (1)], Mumbai of Rs. 1,04,38,981/- on the ground that "the assessee has received on money on the flats sold to certain buyers at lower rates than the others during the year under consideration".

The Hon'ble CIT(A)-15 has failed to consider the fact that

- a) Majority of flat owners confirmed on oath the sale consideration of the flat purchased by him vide respective affidavits, which were submitted before the Ld. AO during the assessment proceedings and
- b) There is no direct and indirect or remote evidences of receipt of on money and the on money theory of the Ld AO is mere guess work, assumption and surmise .
- c) The agreement value of all the flats sold during the year under appeal was far more than the stamp duty value.

Relief Claimed

The appellant company humbly request your good honor to delete the entire addition of Rs 1,04,38,981/- which is baseless, totally incorrect and not justified.

As evident the assessee is aggrieved by confirmation of certain addition u/s 41(1) as well as by another addition of alleged on-money on sale of flats.

2. The Ld. AR advanced arguments to assail both the additions as confirmed in the impugned order. The Ld. DR submitted that the appeal is liable to be dismissed.

3. Having heard rival submissions and after careful consideration of material on record, our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. The material facts are that the assessee being resident corporate assessee is state to be engaged as builder. An assessment was framed for the year u/s 143(3) on 23/03/2015 wherein certain additions were made in the hands of the assessee and the same are the subject matter of appeal before us.

Remission / Cessation of Trading Liability u/s 41(1)

5.1 It transpired that the assessee had long outstanding sundry creditors aggregating to Rs.208.19 Lacs as detailed in para-4 of the assessment order. The Ld. AO, invoking the provisions of Sec.41(1), show-caused the assessee as to why the same may not be added to the income of the assessee. The assessee defended the same by submitting that the liabilities have not been written-off and no benefit has been received whatsoever by way of remission or cessation of trading liability. The outstanding amounts were payable by the assessee at the year-end. However, rejecting the same, the amount was added to the income of the assessee u/s 41(1).

5.2 During appellate proceedings, the assessee drew attention to the confirmation letters of the creditors as filed before Ld. AO and submitted that the amounts were still payable. The aforesaid fact was also confirmed by Ld. AO in the remand report. Another pertinent fact brought to the notice was that after payment / certain adjustment of Rs.13.73 Lacs in financial year 2016-17, the balance amount payable to the creditors for Rs.194.51 Lacs was found to be not payable as on 31/03/2018 and the same was, therefore written-back in AY 2018-19 and offered to tax. However Ld. CIT(A), observing that the aforesaid amount could have been offered earlier, confirmed the action of Ld. AO. Aggrieved the assessee is in further appeal before us.

5.3 From the factual matrix as enumerated hereinabove, we find that no case of remission of cessation of trading liability could be made out by revenue against the assessee. The assessee had filed confirmation of the sundry creditors and the amounts were shown as payable in the books of accounts. There was no write-back of the amounts either by the assessee or by the sundry creditors. This is further fortified by the fact that certain payments / adjustments have been done in subsequent financial year and the balance amount has been offered to tax when the liability has actually ceased. Therefore, the facts of the case do not convince us to confirm the impugned addition u/s 41(1). By deleting the same, we allow this ground of appeal.

Addition on account of alleged on-money

6.1 The assessee sold 6 flats during the year as detailed in para 5.1 of the order. The sale occurred evenly throughout the year. Though the area of the flats was quite similar, however, there was variation in rate per square feet ranging from 4428 per square feet to 6958 square feet. The assessee submitted that the flats were sold at prevailing market prices as per negotiations with the respective buyers. Each of the flat was sold over and above the stamp duty value of the flat. The variation in rates was bound to arise due to location of the flat, floor-rise, view of the surroundings from the flat, compliance to vastu-shastra, urgency and need of the buyer, situation of the site and reputation of the builder. However, since there was vast difference in the sale prices per square feet, Ld. AO adopting uniform benchmarking rate of 6958 per square feet, worked out differential of Rs.104.38 Lacs and added the same to the income of the assessee as alleged on-money on sale of flats.

6.2 During appellate proceedings, the assessee, inter-alia, drew attention to its letters dated 21/01/2013 & 15/03/2015 as filed before Ld. AO during the course of assessment proceedings wherein the reasons for selling the flats at different rates were explained. The assessee also submitted that aggregate sale consideration of Rs.421.07 Lacs was much higher than the aggregate stamp duty value of Rs.295.31 Lacs. The assessee had also filed affidavit of three buyers during assessment proceedings whereas affidavit of another buyer was filed during appellate proceedings. Thus, it was the submission that the addition was made on assumptions, surmises and estimates. The Ld. AO, in the remand report, submitted that sale consideration of each of the flat was higher than fair market value. The fact of affidavit of three buyers was also confirmed. However, finding large variation in the sale price, Ld. CIT(A) chose to confirm the addition. Aggrieved the assessee is in further appeal before us.

6.3 From the factual matrix as enumerated hereinabove, we find that all the flats sold by the assessee has been sold at much higher prices than the stamp duty value of each of the flat and therefore, the provisions of Sec.50C were not applicable to the facts of the case. The assessee has sold the flats evenly throughout the year in price range of 4428 per square feet to 6958 square feet. The factors leading to variation in the sale price were duly explained by the assessee before Ld. AO which could not be disputed and no fact based findings could be rendered to controvert the same. In fact, the affidavits of 4 buyers confirming the sale price have been filed by the assessee. The assessee has duly discharged the onus of proving that the sale consideration as actually received by the assessee was reflected in the sale agreement as well as

in the books of accounts. It is also evident that no further investigations have been carried out by lower authorities to rebut the documents of the assessee and bring on record any contrary evidence to prove transfer of excess sale consideration to the assessee, in any manner. Thus the conclusion that that all the flats would have been sold at highest prices is nothing more than an assumption of Ld. AO. Hence, we are inclined to delete the same. This ground stand allowed.

Conclusion

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

Order pronounced on 4th October, 2021.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 04/10/2021
Sr.PS, Dhananjay

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.