

आयकर अपीलिय अधिकरण  
मुंबई पीठ "एस एम सी", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "SMC", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
आअसं. 2979/मुं/2019 (नि.व 2015-16)  
ITA NO.2979/MUM/2019(A.Y 2015-16)

M/s. Tulip Land & Developers P. Ltd.  
Ground Floor, Rajpipla,  
Opp.Standard Chartered Bank,  
Santacruz (W),Mumbai 400 054.

**PAN-AADCT-7067-N**

..... अपीलार्थी /Appellant

बनाम Vs.

Dy.CIT, Central Circle -6(2),  
Room No.1903, 19<sup>th</sup> Floor,  
Air India Building, Nariman Point,  
Mumbai – 400 021

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Anuj Kisnadwala

प्रतिवादी द्वारा/Respondent by : Shri Sanjay J. Sethi

सुनवाई की तिथि/ Date of hearing : 28/06/2021

घोषणा की तिथि/ Date of pronouncement : 24/09/2021

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-54, Mumbai (in short 'the CIT(A)') dated 08/03/2019 for the assessment year 2015-16.

2. The solitary issue raised by the assessee in appeal is against the addition of Rs.8,12,500/- confirmed by the CIT(A) in respect of on-money alleged to have been received by the assessee.

3. Shri Anuj Kisnadwala appearing on behalf of the assessee narrating the facts submitted that the assessee is a Real Estate Developer. A search and seizure action

under section 132 of the Income Tax Act,1961 (in short 'the Act') was carried out in the case of Ahuja Group on 25/06/2015. The assessee company is part of Ahuja Group. On the basis of seized material and the statements recorded during the course of search the Assessing Officer held that the assessee has received on-money aggregating to Rs.32,50,000/- during the period relevant to the assessment year under appeal and made addition of the aforesaid amount.

Aggrieved by the assessment order dated 23/12/2017 passed under section 143(3) r.w.s. 153C of the Act, the assessee filed appeal before the CIT(A). During First Appellate proceedings, the assessee made two fold submissions. First, the assessee is following Project Completion Method, therefore, the amount of on-money, if any, received in respect of flats/shops sold should be taxed in the year in which income from sale of flats/shops is offered to tax by the assessee. The second contention of the assessee were that entire on-money cannot be taxed, as there were certain cash expenditure that have been recorded in the parallel set of books found during search action, the same be allowed. Therefore, addition, if any, on account of on-money to be restricted to 12% i.e. the percentage of profit applied by the Settlement Commission. The CIT(A) dismissed first contention of the assessee. In so far as second contention, the CIT(A) partly accepted the same and restricted the addition on account of on-money to 25%.

3.1 The Id. Authorized Representative of the assessee pointed that in assessee's own case for assessment year 2006-17 in ITA NO.2980/Mum/2019, the Tribunal vide order dated 10/02/2021 in identical set of facts has restricted the addition on account of on-money to 12%. The Tribunal has further held that since the assessee is following Project Completion Method, therefore, the on-money has to be assessed along with regular income of the assessee in the year of completion of the project.

4. Per contra, Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for upholding the same. However, Id. Departmental Representative fairly admitted that assessee's appeal for assessment year 2016-17 wherein identical relief was claimed by the assessee was allowed by the Tribunal.

5. Submissions made by rival sides heard, orders of authorities below examined. The assessee in appeal has sought relief on two counts:

(i) Since the assessee is following Project Completion Method the addition on account of on-money is taxable in the year in which the assessee would offer income from the project to tax; and

(ii) The addition on account on-money be restricted to 12% of the total on-money received.

A perusal of the assessment order reveals that the addition on account of on-money has been made in assessment year 2015-16 and 2016-17 as under:-

Assessment Year	On-Money received	On-Money Reverse	Net On-Money
2015-16	32,50,000/-	Nil	32,50,000/-
2016-17	2,15,00,000/-	Nil	2,15,00,000/-
Total	2,47,50,000/-		2,47,50,000/-

I find that in appeal for assessment year 2016-17 in ITA No.2980/Mum/2019 (supra), identical grounds were raised by the assessee. The Tribunal after considering the decision rendered in the case of ACIT vs. ISA Enterprises in ITA NO.4597/Mum/2015 decided on 11/09/2017 concluded as under:-

*"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."*

Thus, the first issue raised in the appeal was decided in favour of the assessee.

6. In so far as the second issue relating to restricting the addition to 12% , I find that the Division Bench followed the decision rendered in the case of ACIT vs.OM Constructions in ITA No.6234/Mum/2012 for assessment year 2006-07 and the decision in the case of ACIT vs. Shanker Developers in ITA NO.6235/Mum/2012 for assessment year 2013-14 and held as under:-

*“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.”*

Thus, the second issue raised in the appeal was also decided in favour of assessee.

7. Since, both sides are unanimous in stating that the facts in the impugned assessment year are identical to assessment year 2016-17 in assessee's own case, I find no reason to take a contrary view. Respectfully following the decision of Division Bench in assessee's own case, appeal of the assessee is allowed in similar terms.

8. In the result, appeal by the assessee is allowed.

Order pronounced in the open Court on Friday the 24<sup>th</sup> day of September, 2021

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 24/09/2021  
Vm, Sr. PS (O/S)

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**