

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'G' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

**ITA No.2001/Mum/2018
(Assessment Year : 2013-14)**

M/s. Gaurav Investments Trade Link, 1 st Floor B & C Block Kamala Mills Compound Senapati Bapat Marg Lower Parel, Mumbai-400 013	Vs.	Deputy Commissioner of Income Tax Central Circle-8(1) Mumbai – 400 020
PAN/GIR No. AADFG0064D		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal
Revenue by	Shri Jasbir Chauhan
Date of Hearing	21/02/2022
Date of Pronouncement	23/02/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.2001/Mum/2018 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-50, Mumbai in appeal No.CIT(A)-50/IT-108/15-16 dated 30/01/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 27/03/2015

by the Id. Dy. Commissioner of Income Tax, Cent. Cir-8(1), Mumbai (hereinafter referred to as Id. AO).

2. Though the assessee has raised several grounds, the effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made by the Id. AO by estimating the profit percentage @30% in respect of advances received from the project in earlier years.

3. We have heard rival submissions and perused the materials available on record. A search and seizure action u/s.132 of the Act was carried out on 09/01/2013 in the group cases belonging to M/s. Lotus-Enpar group. Subsequently, the case of the assessee was centralized u/s.127 of the Act. The assessee filed its return of income u/s.139(4) of the Act for the A.Y.2013-14 on 19/03/2015 declaring total income of Rs.4,27,97,500/-. During the course of search proceedings, the seized document containing Annexure A-14 was found and seized which contained the advance tax estimate of the assessee company for A.Y.2013-14. In the said advance tax estimate, the assessee had projected receipt of sales from the project at Rs.75 Crores. The assessee had estimated the profit percentage to be at 30%. Based on the said seized document, the assessee had offered Rs.22.50 Crores (Rs.75 Crores x 30%) at the time of search proceedings for A.Y.2013-14. However, while filing the return of income, the assessee did not disclose the same in view of the following reasons:-

a) The assessee stated that Annexure A-14 contains advance tax estimate showing expected project receipts, expected project sales revenue in F.Y.2012-13 and expected / estimated profit in respect of four entities including the assessee firm. The assessee specifically stated that the said page mentioned in the seized document shows provisional

profitability working for F.Y.2012-13 for the purpose of advance tax and therefore, the said page gives provisional figures and not actual figures. It was stated that the said page showed expected project receipts of the firm in the F.Y.2012-13 at Rs.75 Crores whereas the actual project receipts in F.Y.2012-13 was only Rs.13,47,25,000/-. Accordingly, the assessee offered 30% of the actual receipt which worked out to Rs.4,04,17,500/- as against Rs 22.50 Crores. The assessee even gave the break-up of actual receipts of Rs.13,47,25,000/- in the F.Y. 2012-13 as under:-

Name of the Party	Amount Received (Rs.)
Abha Singh	97,00,000.00
Anand Rathi Financial Services	5,57,25,000.00
Niranjan Housing Pvt. Ltd.,	4,83,00,000.00
Vijay Nanji & Sona Dhavangale	2,10,00,000.00
Total	13,47,25,000.00

b) The assessee also submitted that these sums were shown as advances received against construction project in the balance sheet. The assessee also stated that two parties had in fact cancelled their booking during the year and assessee had to refund the advance to them as under:-

i) Shweta Mundra and Om Prakash Goenka	-	Rs.14,59,91,380/-
ii) Sucheta Goenka and Om Prakash Goenka	-	<u>Rs.14,59,91,380/-</u>
Total		Rs.29,19,82,760/-

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c) The assessee even gave the movement of advances against construction project as under:-

i) Balance as on 31/03/2012	-	Rs.123,43,52,824/-
ii) Less Cancellation of booking during the year as detailed supra	-	Rs. 29,19,82,760/-
iii) Add advances against construction received during the year	-	<u>Rs. 13,47,25,000/-</u>
Total advance as on 31/03/2013	-	Rs.1,07,70,95,064 =====

3.1. It was specifically pointed out that though a sum of Rs.29,19,82,760/- was cancelled during the year which had led to decremental receipts during the year (i.e. 13,47,25,000 – Rs.29,19,82,760) still the assessee had offered estimated profit at 30% on the amounts actually received during the year in the sum of Rs.13,47,25,000/-. In other words, no deduction at all was claimed by the assessee on the cancellation of bookings during the year in respect of two parties viz., Shweta Mundra and Om Prakash Goenka and Sucheta Goenka and Om Prakash Goenka.

3.2. We find that the Id. AO had observed that assessee had disclosed profit percentage @16% in earlier years i.e. A.Yrs 2010-11, 2011-12 and 2012-13 in respect of advances received during the respective assessment years. The same has been accepted by the Revenue in the past. But since the assessee itself had estimated the profit percentage @30% during the year, the Id. AO concluded that the same profit percentage at 30% ought to have been offered to tax in respect of advances received during the respective earlier assessment years. Having stated so, the Id. AO brought

to tax the additional profit percentage of 14% (30-16%) on the advances received as on 31/03/2012 and brought to tax the differential sum of Rs.17,28,09,395/- while completing the assessment. This action of Id. AO was upheld by the Id. CIT(A).

3.3. The aforesaid facts stated above are not in dispute and hence the same are not reiterated for the sake of brevity. It is a fact that assessee had been offering estimated profit percentage @16% from A.Yrs. 2010-11, 2011-12 and 2012-13. Due to the change in the market rates decided on demand and supply, the assessee had resorted to estimate the profit percentage @30% on the advance receipts against construction projects during the year and had offered to tax accordingly. This extra offer of profit percentage during the year had triggered the action of the Id. AO to apply the same profit percentage at 30% for earlier years also. In our considered opinion, if the Id. AO resorts to apply the profit percentage of 30% for earlier years, then the proper recourse for the revenue would have been to reopen the assessment for the earlier years and to bring the tax in the manner known to law. There is absolutely no basis for revenue to take the advance received against the construction project remaining in the balance sheet as on 31/03/2012 and apply the differential profit percentage @14% (30-16%) on the same and bring to tax a sum of Rs.17,28,09,395/- in the year under consideration i.e A.Y. 2013-14. The Id. AR made a statement from the Bar that the project is yet to be completed as on date. He also placed on record a tabulation enclosed in page 49 of the paper book containing status report of all profits offered by the assessee from A.Y.2010-11 to A.Y.2016-17. We find that assessee in subsequent years i.e. from A.Y.2014-15, 2015-16 and 2016-17 had offered 30%, 29% and 20% respectively. The Id. AR also made a statement from the Bar that this profit percentage offered by the

assessee has been duly accepted by the Revenue. None of these facts were controverted by the Id. DR before us.

3.4. We find that the Id. DR argued that assessee had given statement u/s.132(4) of the Act at the time of search proceedings offering Rs.22.50 Crores. Despite this statement, assessee had not offered the same in the return of income. Hence, he argued that the Id. AO was justified in making the addition in the aforesaid manner.

3.5. We find that the said offer made by the assessee in the sum of Rs.22.50 Crores was made based on expected project receipts and expected project sales during the year under consideration of Rs.75 Crores. But it is a fact on record that actual receipts during the year was only Rs.13,47,25,000/- on which profit percentage of 30% was duly offered to tax by the assessee. The Revenue in the instant case has not doubted the profit percentage of 30% offered by the assessee for the year under consideration. The assessee has also not retracted the said offer of profit percentage @30%. But since projected receipts and actual receipts were substantially different, there was no occasion for the assessee to keep up its commitment given in the statement u/s.132(4) of the Act. Hence, we are in complete agreement with the arguments advanced by the Id. AR in this regard. In view of the aforesaid observations, we have no hesitation in holding that the revenue had not made any case at all for taxing the opening balance of advances received against construction project as on 31/03/2012 by applying the differential profit percentage of 14% during the year under consideration. Accordingly, the ground No.1 raised by the assessee is allowed.

4. The ground No.2 raised by the assessee is regarding chargeability of interest u/s.234B and 234C of the Act which are consequential in nature. The law is now very well settled that interest u/s.234C of the Act should be only on the returned income and not on the assessed income.

5. The ground No.3 raised by the assessee is challenging the initiation of penalty u/s.271(1)(c) of the Act which would be premature for adjudication at this stage and hence dismissed.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced on 23/02/2022 by way of proper mentioning in the notice board.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai; Dated 23/ 02 /2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai