

आयकर अपीलीय अधिकरण
मंबई पीठ " ई "

श्री विकास अवस्थी. न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 1739/मुं/2020 (नि.व. 2010-11)
ITA NO. 1739/MUM/2020(A.Y.2010-11)

ACIT -26(3),
R.No.332, 3rd Floor, Kautilya Bhavan,
G-Block, Bandra Kurla Complex,
Bandra (E), Mumbai – 400 051

..... अपीलार्थी /Appellant

बनाम Vs.

Sangeeta Enterprises,
101, Sangeeta Enclave, Sarvoday Nagar,
Mulund(W), Mumbai 400 080

PAN:AANFS-0061-J

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Pitta Samuel

सुनवाई की तिथि/ Date of hearing : 07/07/2022

घोषणा की तिथि/ Date of pronouncement : 07/07/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-40, Mumbai (in short 'the CIT(A) ') dated 18/02/2020 for the assessment year 2010-11.

2. The Revenue in appeal has raised as many as six grounds, assailing the findings of CIT(A) deleting the addition of Rs.2,62,11,000/- made on account of undisclosed sale of flats.

3. Shri Pitta Samuel representing the Department submitted that the assessee is a Builder and Developer. During the period relevant to assessment year under appeal, the assessee sold five flats with a total consideration of Rs.2,62,11,000/-, however, the same was not disclosed in the return of income. The Assessing Officer made addition of the aforesaid amount as undisclosed business income. Against the assessment order dated 28/12/2015 passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 [in short ' the Act Act'], the assessee filed appeal before the CIT(A) inter-alia assailing the addition on merits and reopening of the assessment . The CIT(A) deleted the addition on the ground that the amount has been offered to tax in subsequent assessment years ie. Assessment year 2011-12 and 2012-13. The CIT(A) failed failed to take into consideration the fact that the sale agreement in respect of the flats was registered during assessment year 2010-11. Hence, the sale consideration received for these flats is taxable during the impugned assessment year.The Id.Departmental Representative vehemently supported the findings of the Assessing Officer and prayed for reversing the findings of CIT(A).

4. We have heard the submissions made by Id.Departmental Representative. Orders of the authorities below examined. The solitary issue raised in appeal by the Revenue is deleting addition of Rs.2,62,11,000/- made on account of undisclosed sale of flats. The assessee is following Project Completion Method. Undisputedly, during the period relevant to assessment year under appeal, the assessee has sold five flats with a total consideration of Rs.2,62,11,000/-. The assessee has been consistently offering income from sale of flats on collection of full amount and after handing over possession of flats to the purchasers. This method of accounting has been adopted by the

assessee from the commencement of its business and the same has been accepted by the Department in past. This fact has been recorded by the CIT(A) in the impugned order. The Revenue has not rebutted the said finding of fact recorded by the First Appellate Authority. The First Appellate Authority has further recorded the fact that the assessee has offered sale consideration in respect of the five flats which are under dispute in the subsequent assessment years i.e. when possession of flats is handed over to the assessee after receiving full consideration. The assessee has offered Rs.1,46,23,000/- in assessment year 2011-12 and Rs.1,15,18,000/- in assessment year 2012-13. This fact has not been disputed by the Revenue. The impugned year is the only assessment year where the Department has questioned assessee's method of recognizing sales and has disturbed the method of recognizing profit consistently followed by the assessee. The CIT(A) after examining the facts has deleted the addition made by Assessing Officer. We find no infirmity in the impugned order, hence, the same is upheld and appeal of the Revenue is dismissed being devoid of any merit.

Order pronounced in the open court on Thursday the 07thth day of July, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 07/07/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai