

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUH RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 1680/MUM/2019 (A.Y: 2015-16)

Smt. Darshana Anand Damle D-101, Shreeneewas Residency Near Old Katrap Petrol Pump Badlapur (E) - 421503 PAN: AAQPD6358N	v.	DCIT – Central Circle – 2 Kalyan
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Dharmvir Yadav
Date of Hearing	:	23.06.2022
Date of Pronouncement	:	23.06.2022

ORDER

PER S. RIFAUH RAHMAN (AM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-3, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 03.12.2018 for the A.Y. 2015-16.
2. Assessee has raised following grounds in its appeal: -

"1. On the facts and in the circumstances of the cases and in law the Honorable CIT (A)-3. Thane erred in confirming the addition made by the learned AO of Rs. 3,00,50,000/- on the ground that the appellant has received the said amount as a confirming party against advance paid for land purchase and is business receipt of the appellant without appreciating the facts of the case in proper perspective. The appellant prays that the addition made may please be deleted.

1.1) On the facts and circumstances of the same the learned CIT (A)- 3 Thane, erred in confirming addition of Rs. 3,00,50,000/-by AO without considering the fact that the said amount was received as an advance and was so accounted as advances in audited financial statements and that the said amount was received to settle the pending litigation in the concerned property that was subject matter of agreement in question.

2) On the facts and in the circumstances of the cases and in law the Honorable CIT (A)-3, Thane erred in confirming the disallowance made by the learned AO of Rs 4,32,30,560/- claimed as business loss on the ground that the cost of construction considered for calculating Work In Progress is much higher without appreciating the facts of the case. The appellant prays that the addition made please be deleted.

2.1) On the facts and circumstances of the case and in law the Honorable CIT (A) 3, Thane erred in confirming disallowance made by learned AO of Rs. 4,32,30,560/- claimed as business loss without considering the fact that the said loss was arrived at post deduction of direct expenses of Rs. 20.05,32,947/- and indirect expenses of Rs. 1,49,15,456/- which was supported by corroborative evidences such as invoices, bills, bank payments, vouchers etc. and were duly audited.

2.2) The learned CIT (A)-3 Thane, erred in confirming the addition of Rs 4,32,30,560/- without allowing depreciation of Rs 50,98,555/- u/s 32 of Income Tax Act, 1961.

2.3) The learned CIT (A)-3 Thane, erred in confirming addition of Rs 4,32,30,560/ by completely disregarding audited financial statements.

2.4) *The learned CIT(A)-3 Thane, confirmed the per square feet construction cost arrived at by the learned AO without providing any substantive basis for the same.*

3) *The learned CIT (A)-3 Thane, erred in confirming the interest levied by the AO u/s 234B of Rs.35,53,740/*

4) *The appellant craves leave of your Honour to add to, alter, amend and/or delete all or any of the grounds on or before the date of hearing and further prays that additional income so assessed be deleted and allowed."*

3. We observed from the record that the hearing was posted 16 times since 14.01.2020, none appeared on behalf of the assessee until today. We deem it fit and proper to proceed to dispose off the appeal as it is pending from 2020. The bench has issued notice by RPAD on 06.04.2022 and 03.02.2022. Since the assessee has not appeared in spite of the several notices, we dispose off this appeal on merits after hearing the Ld.DR.

4. Ld. DR briefly explained the facts on record and supported the orders of the lower authorities.

5. Heard Ld. DR and perused the material placed on record, orders of the authorities below. On perusal of the order of the Ld.CIT(A), we find that the Ld.CIT(A) considered this aspect of the matter elaborately with reference to the submissions of the assessee and the averments in the

Assessment Order and sustained the addition made by the Assessing Officer. While holding so, the Ld.CIT(A) observed as under: -

"5.0 Ground No.1 is directed against addition of ₹.3,00,50,000/- as undisclosed income.

5.1 In this regard, DCIT, Central Circle – 2(1), Pune, vide letter dated 15.12.2017, has intimated the AO that the appellant had received Rs.5.01,00,000/- from Mr. Manikchand N. Dugad as being a Confirming Party in respect of land dealing at S.No.165/12 Kolewadi, Pune. In response to show cause, the appellant filed written submission dated 22.12.2017 wherein she had stated she had paid Rs.6,00,00,000/- as advance to Mr. Manikchand Duggad for purchase of land at S.No.12 Koliwadi, Pune. However, purchase of land could not be executed due various reasons including litigation etc. Thereafter, Shri , Bharat Patel & family agreed to purchase the said plot. Shri Manikchand N Dugad had already returned Rs.4,00,50,000/- out of Rs.6,00,00,000/-. On going through the details, it is seen that, the appellant had received Rs.5,01,00,000/- from Shri Bharat Patel & Family instead of Rs 1,99.50,000/- Vide order sheet dated 13.12.2017, the AR of the appellant was asked to explain and the AR of the appellant filed written submission dated 22.12.2017. The information furnished by the appellant is appearing in the ITS information. The money received from Patel family pertaining to this land transaction (Duggad Land) is appearing under" Other current liabilities" Schedule III, totaling to Rs.5,50,50,000/- received from Bharat Patel, Hardik Patel, Minal Patel, Ruchit Patel.

It is seen that, the appellant has received a sum of Rs.9,00,50,000/- as against the advance payment of Rs.6,00,00,000/- and the appellant is not denying this fact, therefore, the excess amount of Rs.3,00,50,000/- is nothing but business receipt of the appellant but not offered in the returned income filed by the appellant. The appellant has stated that the excess advance received is towards settlement of disputes on the land concerned and for clearance of title, but without giving any supporting or corroborative documents. On perusal of the agreement entered, it has clearly mentioned that, the land is free from dispute and has been conveyed to the purchasers. Therefore, in view of the above stated facts, the difference of Rs.3,00,50,000/- is treated as undisclosed business receipt of the appellant and the same is added to the total income

of the appellant. The addition made by the AO is sustained and the appeal of the appellant on this ground is rejected.

6.0 Ground No.2 is directed against disallowance of the entire loss claimed by the appellant of Rs.4.32 crores without considering the fact.

6.1. In this regard, the appellant has debited Rs.16,95,21,695/- towards WIP expenses and the appellant was asked to explain the same. In fact, the appellant herself has agreed that the purchases & expenses of Rs.1,62,22,732/- is pertaining to F.Y 2009-10 and the amount was erroneously taken into consideration. The appellant has given the working of WIP, however, it is seen that, there are major discrepancies and the WIP expenses of Rs.16,95,21,695/- has been arrived on the basis of the cost of construction at Rs.1,800/- per sq feet whereas 80% of the project is constructed with cost of construction, being less than Rs.1100/- per sq ft. In explain at the time of assessment as well as appellate proceedings, the disallowance of net loss of Rs.4.32 crores made by the assessing officer is justified. The appeal of the appellant on this ground is rejected."

6. On a careful perusal of the order of the Ld.CIT(A) and the reasons given therein, we do not find any reason to interfere especially when there is no representation from the assessee side. Accordingly, appeal filed by the assessee is dismissed.

Order pronounced in the open court on 23rd June, 2022

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai / Dated 23.06.2022
Giridhar, Sr.PS

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

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.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum