

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.333/PUN/2019
निर्धारण वर्ष / Assessment Year: 2012-13

DCIT, Panvel Circle, Panvel.	Vs.	M/s. Gopi Resorts Pvt. Ltd., Tanaji Malussare City (TMC) Site, Shirse Village, Karjat, Raigad-410201. PAN : AABCG7150R
Appellant		Respondent

Revenue by : Shri Hitendra B. Ninawe
Assessee by : None

Date of hearing : 22.08.2022
Date of pronouncement : 24.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)- 20, Mumbai [‘the CIT(A)’] dated 30.11.2018 for the assessment year 2012-13.

2. The Revenue raised the following grounds of appeal :-

“1. “On the facts and circumstances of the case, and in law, the Ld.CIT(A) erred in not appreciating the fact that there is disparity between the base and parameter considered for the revenue recognition and the construction cost to be claimed as expenditure in respect of the revenue recognized”

2. *“On the facts and circumstances of the case, and in law, the Ld.CIT(A) erred in not appreciating the fact that the AO followed uniform criteria for the recognition of revenue as well as the cost of the construction in order to recognize the correct profit for the year under consideration.”*

3. *The order of the CIT(A) may be vacated & that of the Assessing Officer may be restored*

4. *The appellant craves leave to add, amend, alter or delete any ground of appeal.”*

3. Briefly, the facts of the case are as under :

The respondent-assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of real estate development. The return of income for the assessment year 2012-13 was filed on 26.09.2012 declaring total income of Rs.2,88,16,804/-. Against the said return of income, the assessment was completed by the Assistant Commissioner of Income Tax-12(2)(2), Mumbai (‘the Assessing Officer’) vide order dated 30.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) by disallowing the cost of construction as expenditure by treating, as part of the closing work-in-progress.

4. Being aggrieved by the assessment order, an appeal was filed before the ld. CIT(A), who vide impugned order allowed the claim of the respondent-assessee company by holding as under :-

“5.4.1 I have considered the rival contentions. As per the guidance note on accounting of Real Estate Transactions (Revised, 2012) issued by ICAI, for the purpose of determining profit from a project in progress, expenditure considered should bear to the total cost incurred the same proportion as area sold bears to the total area of the project. Therefore, the AO erred in considering 41.338% of the cost incurred upto 31.03.2012 as allowable expenditure. The computation of profit from the project declared by the appellant is in conformity with the guidelines issued by ICAI mentioned above. I, therefore, direct the AO to delete the additions of Rs.12,16,18,098/-. In the result, the ground of appeal No.2 is allowed.”

5. Being aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us contending that the ld. CIT(A) had failed to appreciate the fact that the cost of construction to be claimed as expenditure should be in proportionate to the area sold. The ld. CIT(A) without verifying the cost incurred in respect of area sold, allowed the claim of the respondent-assessee.

6. When the matter was called on, none appeared on behalf of the respondent-assessee despite due service of notice of hearing.

7. We heard the ld. CIT-DR and perused the material on record. From perusal of para 5.4.1 of the order of the ld. CIT(A), it would clear that the ld. CIT(A) simply accepted the submissions made on behalf of the respondent-assessee company without carrying out verification that the expenditure claimed bear to same proportion of area sold to the total area of the project as well as without

discussing in detail as to the total cost incurred and what is the area sold etc. Thus, the order of the Id. CIT(A) is bereft of any discussion on factual aspects. Therefore, we are of the considered opinion that the matter requires fresh consideration by the Id. CIT(A). Accordingly, we remit the issue to the file of the Id. CIT(A) for *de novo* consideration in accordance with law. Thus, the grounds of appeal raised by the Revenue stand partly allowed.

8. In the result, the appeal filed by the Revenue stands partly allowed.

Order pronounced on this 24th day of August, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th August, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-20, Mumbai.
4. The Pr. CIT-12, Mumbai.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "A" बेंच, पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.