

IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI

SHRI OM PRAKASH KANT ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 6682/MUM/2016
(ASSESSMENT YEAR: 2012-13)

M/s Sundaram Developers,
Flat No. 68, Goyal Shopping Centre,
S.V. Road, Borivali (West), Mumbai - 400092
[PAN: ABCFS3290F] Appellant

Dy. Commissioner of Income Tax,
Central Circle-5(1), Mumbai,
19th Floor, Air India Building,
Nariman Point, Mumbai - 400021 Respondent

Vs

Appearances

For the Appellant/Assessee : None
For the Respondent/Department : Shri Hoshang B. Irani

Date of conclusion of hearing : 04.05.2022
Date of pronouncement of order : 28.07.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 29.07.2016, passed by the Ld. Commissioner of Income Tax (Appeals)-53, Mumbai, [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2012-13, whereby the Ld. CIT(A) had dismissed the appeal filed by the Appellant against the Assessment Order, dated 30.03.2015, passed under section 143(3) of the Act.
2. The Appellant has raised the following grounds of appeal read as under:

1. The learned Hon'ble CIT(A) erred in upholding the Order of AO in brining to tax the alleged notional rent of Rs. 21,08,904/- as

“Income from House Property” when no such income actually arose or accrued to the appellant and more so in view of the fact that the shops which this notional income was added were held as Stock in Trade of the appellant and not as Capital assets or Investments.

2. *The Learned Commissioner of Income Tax Appeals-53 ('CIT(A') erred in upholding the Order of Assessing Officer (AO) in bringing to tax the alleged income of Rs. 1,36,24,118/- arising out of the sale of shop for the A.Y. 2012-13, when the sale was actually completed in the AY 2013-14 on the facts and circumstances of the case, though the Appellant agreed to consider in the AY 2012-13 and paid entire tax with interest before the completion of this Assessment.*
3. When the matter was taken up for hearing, none appeared on behalf of the Appellant/Assessee despite notice. A perusal of order-sheet shows that this has been the case for last many hearing and therefore, taking into consideration the material placed on record which included written submission filed by the Appellant/Assessee, we proceeded with the hearing in absence of the Appellant/Assessee.
4. The relevant facts, in brief, are that the Appellant filed return of income on 30.07.2012 declaring total loss of INR 19,19,335/-. The case of the Appellant was selected for scrutiny and notices under Section 142(1) and 143(2) of the Act were issued. The assessment under Section 143(3) of the Act was framed on the Appellant vide assessment order, dated 30.03.2015, at assessed income of INR 1,38,13,690/- after making (a) addition of INR 21,08,904/- being notional rental income in respect of unsold shops held as stock-in-trade by the Appellant, and (b) addition of INR 1,36,24,118/- being business profit on account of sale of shop.

5. Being aggrieved the Appellant preferred an appeal before the CIT(A) which was dismissed vide order, dated 29.07.2016.
6. The Appellant is now in appeal before us against the order of CIT(A) confirming the additions made by the Assessing Officer.

Ground No. 1

7. Ground No. 1 raised by the Appellant pertains to an addition of INR 21,08,904/- made by the Assessing Officer. During the assessment proceedings the Assessing Officer noticed that the Appellant held unsold shops as stock-in-trade. Applying the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Housing Finance & Leasing Co. 354 ITR 180 (Del), the Assessing Officer concluded that the Appellant was liable to pay income tax on the rental income computed on the basis of annual letting value of the unsold shops held as stock-in-trade by the Appellant and made an addition of INR 21,08,904/-. In appeal preferred by the Appellant/Assessee, the CIT(A) confirmed the aforesaid addition.
8. On perusal of the written submission, dated 11.12.2019, filed by the Appellant we note that this has been decided in favour of the Appellant by the Tribunal in Appellant's own case for the Assessment Year 2013-14 [ITA No. 2846/MUM/2018, decided on 08.08.2019] wherein identical addition made by the Assessing Officer was deleted by the Tribunal.
9. Respectfully following the above decision of the co-ordinate bench of the Tribunal, we allow Ground No.1 raised by the Appellant and delete the addition of INR 21,08,904/- made by the Assessing Officer.

Ground No. 2

10. Ground No. 2 raised by the Appellant pertains to addition of INR 1,36,24,118/- made by the Assessing Officer in the hands of the Appellant in the Assessment Year 2012-13 holding the same to be business income arising from sale of Shop No. 103 in a project names 'Sun Plaza' [hereinafter referred to as 'the Shop'] during the relevant previous year.
11. The contention of the Appellant before the authorities below has been that sale of the Shop did not take place during the relevant previous year since the possession of the Shop was not handed over to the original buyer, i.e., Rajesh Mehta HUF, during the relevant previous year on account of some disputes. The amount of INR 1,92,00,000/-, being the entire sale price received by the Appellant, was reflected as amount received as advance against booking the inventory in his books of accounts of the Appellant. It was contended on behalf of the Appellant before the Assessing Officer and CIT(A) in order to resolve the dispute with the Rajesh Mehta, HUF [hereinafter referred to as 'the Original Buyer'], the Appellant had to arrange a new buyer who purchased the Shop from the Original Buyer, inter alia, to save stamp duty on 19.07.2012 which should be taken as the date of sale of the Shop.
12. The aforesaid contentions did not find favour with the authorities below. The relevant extract of the order of CIT(A) reads as under:

"5.3.1. I have considered the submissions of the appellant and perused the materials available on record. The point for adjudication is whether the A.O. was justified in

bringing to tax the income of Rs.1,36,24,118/- arising out of the sale of aforesaid shop for the A.Y.2012-13. In this connection, as stated above, it was noticed from the CIB/AIR information that the appellant had entered into agreement of sale with Rajesh J. Mehta (HUF) on 16.01.2012 in respect of sale of shop No.103 admeasuring 1118 sq. ft. located on first floor of "Sun Plaza" building developed by the appellant for a consideration of Rs.1.92 crores. It was observed that the said agreement of sale had been registered and stamp duty thereon had been duly paid. It was also found that the appellant had received the entire sale consideration of Rs.1.92 crores during the relevant period. In these circumstances, the appellant had no valid reason to show the said amount under the head "Advance against booking of Shop No.103" in its books of account when the sale of the shop was already completed. Once the sale agreement was registered conveying the title to the shop in question and the agreed consideration for sale of shop was received by the appellant on 16.01.2012, the appellant could no longer in law treat the said amount as "advance against booking" and instead ought to have offered the profit on sale of shop to tax in the A.Y. under consideration. The appellant has not drawn attention to any legal provision or judicial precedents or accounting standards or principles for taking the view that income on sale of the said shop was to be offered to tax only in the subsequent F.Y. relevant to A.Y.2013-14 in which possession was given, notwithstanding the receipt of full consideration and the execution of registered sale agreement in the F.Y. relevant to the AY. under consideration. Thus, the appellant's plea that no sale of said shop took place during the A.Y. under appeal or that the profit on sale of the said shop was required to be shown when the effective possession was given to the new buyers in the subsequent A.Y.2013-14 is legally untenable.

5.3.2. I also do not find merit in the appellant's plea that the actual sale of the shop for all practical and commercial purposes took place only in A.Y.2013-14 under the subsequent agreement dated 19.07.2012, because the appellant was not at all a party to the said agreement which was executed directly between Rajesh J. Mehta (HUF) [First purchaser] and Ms.Harsha

K Shah and Mrs. Chhaya Ganger [second purchasers]. Thus, as far as the appellant is concerned, there can be no doubt that it had sold the shop in question to Rajesh J. Mehta (HUF) vide registered agreement of sale dated 16.01.2012 and hence it was liable to disclose the profit arising on sale of the said shop in its return of income for the A.Y. under consideration which was not done. It deserves to be noted that the subsequent sale of said shop by Rajesh J. Mehta (HUF) [first purchaser] to Ms. Harsha K Shah and Mrs. Chhaya Ganger [second purchasers] vide agreement dated 19.07.2012 was a separate and independent transaction wherein the appellant was not at all involved. There is no supporting documentary evidence available on record to substantiate the claim that the aforesaid sale of shop by the appellant to Rajesh J. Mehta (HUF) vide registered agreement of sale dated 16.01.2012 "eventually got rescinded". The appellant's further plea that consent cannot offer jurisdiction is also found to be misconceived because having pocketed the entire sale consideration of the said shop and executed the registered sale agreement dated 16.01.2012 with Rajesh J. Mehta (HUF) in this behalf, the appellant cannot claim that the profit arising on sale of said shop was not liable to be taxed in A.Y.2012-13 on the ground of imagined absence of real income.

5.3.3. Further, it is pertinent to note that u/s.145 of the Act, income chargeable under the head "Profits and gains of Business or Profession" etc. shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. In view of this, it is noticed that the non-disclosure of income arising on sale of the said shop in the A.Y under consideration was also not in accordance with the accounting policy regularly followed by the appellant. A perusal of "significant accounting policies" contained in "Notes forming part of accounts" reveals that "the assessee follows the mercantile system of accounting for all income/expenditure. In the year of completion of building, agreement value for each flat/ gala sold is transferred to sales and balance unsold flats/ galas are valued at average sales price.....". It is seen that the construction of its redevelopment project named "Sun Plaza" was completed by the appellant in the F.Y. relevant to the A.Y

2010-11 and since then, the appellant has been accounting for the sales of flats/galas based on the agreement value in the year of execution of registered sale agreement without any reference at all to the date of handing over possession thereof. Therefore, the appellant ought to have offered to tax the profit arising on sale of the said shop in the AY under consideration in accordance with its consistent and regular accounting policy which was not done. It is a matter of record that the appellant had neither disclosed the profit earned on sale of said shop in its return of income for the subsequent A.Y.2013-14 filed belatedly on 31.03.2015 nor declared the same even in its return for the A.Y. under consideration. It is also noticed from the record that the appellant finally agreed to offer the income arising on sale of said shop to tax in the A.Y. under appeal by filing revised computation of income and paying due tax along with interest only when it was confronted with the CIB/AIR information during the course of assessment. Despite raising the claim in its ground of appeal as reproduced above, the appellant has not taken any steps at the appellate stage to demonstrate with the help of cogent materials as to how the profit on sale of said shop assessed by the A.O. at Rs.1,36,24,118/- is excessive. In view of above discussion, I do not find any error or infirmity with the action of the A.O. in bringing to tax the undisclosed income of Rs.1,36,24,118/- on sale of aforesaid shop under the head "Profits and gains of Business or Profession" and the addition so made by the A.O. is, therefore, confirmed. Ground No.3 of the present appeal is found to be devoid of merit and is accordingly dismissed."
(Emphasis Supplied)

13. We have perused the Agreement for Sale, dated 16.01.2012 and 19.07.2012. The Appellant had entered into the aforesaid agreement with the Original Buyer and consequent thereto had received entire sale consideration of INR 1,92,00,000/-. The Original Buyer had, vide Agreement for Sale dated 19.07.2012, sold the Shop directly to the subsequent buyers by exercising rights as legal owner of the Shop and/or rights therein. Further, the CIT(A) has returned a finding that as per the accounting

policy followed by the Appellant, the Appellant was required to offer the sale consideration to tax when the project was completed and the same has remained uncontroverted. In the written submission it has been contended on behalf of the Appellant that for all practical and commercial purposes 19.07.2012 should be taken as date of sale. However, the Appellant had not offered the sale consideration of INR 1,92,000/- to tax even in the Assessment Year 2013-14. It is pertinent to note that though the Appellant has challenged the addition of INR 1,36,24,118/- in appeal, the Appellant had, during the assessment proceedings for the relevant previous year, filed a revised return and paid due taxes along with interest.

14. In view of the above, we are not persuaded to overturn the decision of CIT(A). Ground No. 2 raised by the Appellant is dismissed.
15. In result, the present appeal is partly allowed.
Order pronounced on 28.07.2022.

Sd/-
(Om Prakash Kant)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.07.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai