

आयकर अपीलीय अधिकरण  
मुंबई पीठ " ई "

श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एमबालगणेश . लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" BENCH  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M BALAGANESH, ACCOUNTANT MEMBER

आअसं.7480/मुं/2019(नि.व. 2007-08)

आअसं.7481/मुं/2019(नि.व. 2008-09)

ITA NO.7480/MUM/2019 (A.Y.2007-08)

ITA NO.7481/MUM/2019 (A.Y.2008-09)

Assistant Commissioner of Income Tax-26(3)

..... अपीलार्थी /Appellant

Room No. 332, 3<sup>rd</sup> Floor, Kautilya Bhavan,  
Bandra Kurla Complex, Bandra East  
Mumbai 400 051

बनाम Vs.

M/s. Shree Laxmi Developers

..... प्रतिवादी /Respondent

407, Gateway Plaza, Hiranandani Garden  
Powai  
Mumbai 400 076  
Pan No. ABEFS7370Q

अपीलार्थी द्वारा/Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Brajendra Kumar, Sr. AR

सुनवाई की तिथि/ Date of hearing : 12/07/2022

घोषणा की तिथि/ Date of pronouncement : 10/10/2022

आदेश / ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the Revenue are directed against the order of Commissioner of Income Tax (Appeals) 38-Mumbai [in short "the CIT(A)] dated 29/08/2019 common for the assessment years 2007-08 and 2008-09.

2. Identical grounds have been raised by the Revenue in both these appeals assailing the findings of the CIT(A), therefore, these appeals are taken up together for adjudication and are decided vide this common order.

3. Shri Brajendra Kumar representing the department submitted that identical issues are involved in both these appeals. The learned Departmental Representative (DR) submitted that the CIT(A) has deleted the addition of Rs.4,25,73,600/- in assessment year 2007-08 (Rs.5,67,64,800/- for assessment year 2008-09) on account of suppressed sale of basement area during the relevant assessment year. The Id. DR submitted that the assessee is a building contractor and a developer. The assessee had developed a project "Dream Plaza", on a plot measuring 2864 sq. meters. The permissible built up area on the said plot was 105391 sq. ft. The assessee in its statement has shown saleable area as 73855 sq. ft. The assessee has shown 31536 sq. ft. area less, hence, the assessee has suppressed sale of aforesaid area. During the period, relevant to the assessment year under appeal, the assessee had sold 50% of the project area. The AO thus, divided the suppressed area and made addition of Rs.4.57 crores in A.Y. 2007-08 and addition of Rs.5.67 crores in A.Y. 2008-09. The CIT(A) deleted the addition without appreciating the facts on record. The Id. DR prayed for reversing findings of the CIT(A) and confirming the addition made in the assessment orders for the respective assessment years.

4. We have heard the submissions made by Id. DR and have perused the orders of the authorities below. We find that this is second round of litigation. In the first round, the addition made by AO was deleted by the CIT(A) vide order dated 26/04/2010. The department filed appeal against the said order. The Tribunal vide order dated 19/08/2015 restored the issue to the file of AO with

specific directions. The AO on the directions of the Tribunal passed the order dated 29/10/2016. The CIT(A) in the impugned order has observed that the assessment order passed by the AO is not as per the directions of the Tribunal. The CIT(A) examined the issue in detail and thereafter sought remand report from the AO. After considering the remand report dated 16/11/2018, the CIT(A) concluded that the difference between the area disclosed by the appellant and computed by the AO is due to inclusion of basement area admeasuring 18934 sq. ft. by the AO on the pretext that the same has not been included in the saleable area of the project. The CIT(A) after seeking spot inspection report from the Ward Inspector held that the basement is used as parking area which is run on a commercial basis. Parking fee is charged from the vehicles. There is no documentary evidence that the basement area was sold. The CIT(A) deleted the addition after recording the above facts. The Revenue has not rebutted the findings of CIT(A). In the absence of any contrary material, we find no reason to interfere with the reasoned findings of the First Appellate Authority, hence, the same are upheld and the appeals of the Revenue for both the impugned assessment years are dismissed.

Order pronounced in the open court on \_\_\_\_\_ the \_\_\_\_\_ day of October 2022.

(M BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/Mumbai,  
M.R. Sonavane

**प्रतिलिपि अग्रेषित Copy 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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/  
Sr.Private Secretary  
**ITAT, Mumbai**

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1	Draft dictated/directly typed on computer			Sr.PS/PS
2	Draft Placed before author			Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			