

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA Nos.7726 & 7727/Mum/1994  
(A.Ys. 1986-87 & 1987-88)**

Param Anand Builders LLP (formerly known as Param Anand Builders P. Ltd.) Plot No. 13/A, Agarwal Golden Chamber, Fun Republic Road, Andheri West, Mumbai – 400 053	Vs.	ITO, 6(1) Piramal Chambers, Lalbaug, Parel, Bombay – 400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAXFP7195C		
Appellant	..	Respondent

**ITA Nos.3707 & 3708/Mum/1992  
(A.Ys. 1985-86 & 1988-89)**

ACIT- 6(1) Aayakar Bhavan, Room No. 349, 3 <sup>rd</sup> Floor, M.K. Road, Bombay – 20	Vs.	Param Anand Builders LLP (formerly known as Param Anand Builders P. Ltd.) Plot No. 13/A, Agarwal Golden Chamber, Fun Republic Road, Andheri West, Mumbai – 400 053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAXFP7195C		
Appellant	..	Respondent

Appellant by :	K. Shivram
Respondent by :	Samuel Pitta

Date of Hearing	14.10.2022
Date of Pronouncement	31.10.2022

## आदेश / O R D E R

### **Per Amarjit Singh (AM):**

During the course of appellate proceedings before us at the outset the ld. Counsel stated that ITA Nos. 3707 and ITA Nos. 7726 were wrongly listed in appeal and the same had already been adjudicated and neither the assessee nor the revenue have filed any further appeal. Considering the same the listing of these two appeals treated as infructuous.

### **ITA No. 3708/Mum/1992 &**

- “1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the assessee was following project completion method and therefore application of rate of profit becomes redundant ignoring the fact that the assessee itself was showing profit on estimate basis.
2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting Rs.5,09,600/ ignoring the fact that there was a work-in-progress of Rs.52,04,379/- at the end of the year and hence the project was not substantially completed.
3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that estimation of profit @ 7.5% would amount to 40% if on money of Rs.40,00,000/- was included ignoring the fact that on money related to sale of flats/ shops in earlier years also.”

### **ITA No. 7727/Mum/1994**

- “1. On the facts and in the circumstances of the case the learned Commissioner of Income-tax (Appeals) - XV, Bombay (hereinafter referred to as the CIT(A)) erred, in total disregard to the submissions made before him, in confirming the impugned order passed by the assessing officer.
2. On the facts and in the circumstances of the case the learned CIT(A) erred, in total disregard to the submissions made before him, in not appreciating the facts that the Assessment proceeding as well as the assessment orders are clearly malafide, arbitrary, perverse, without any justification and as such, bad in law.

3. *On the facts and in the circumstances of the case the learned CIT(A) erred, in total disregard to the submissions made before his, in not setting aside the impugned order passed by the assessing officer.*
4. *On the facts and in the circumstances of the case the learned CIT(A) erred, in total disregard to the submissions made before him, in confirming the quantum of impugned on money received.*
5. *On the facts and in the circumstances of the case the learned CIT(A) erred, in total disregard to the submissions made before him, in holding that the provisions of section 69A are applicable to the fact of the case.*
6. *on the facts and in the circumstances of the case the learned CIT(A) erred, in total disregard to the submissions made before him, as well as the method of accounting regularly followed by the assessee in confirming the Impugned addition of on money received in the concerned previous year.*
7. *The assessee crave leave to add, to alter, amend or withdraw all or any of the above grounds of appeal.”*

2. Fact in brief is that the assessee was engaged in the business of construction and sale of building. During the period from 1980-81 to 1987-88, the assessee entered into the various agreement for sale of flats in its project for aggregate consideration of Rs.3,77,34,000/-. The assessee had followed project completion method to account the income earned from the project. A search action u/s 132 of the Act was carried out on the premises of the assessee on 11.03.1887 and it was found that assessee had obtained on money from the buyers of the flats over and above the sale consideration disclosed in the agreement for sale. This was revealed on the basis of statement of various employees recorded during the course of search. Subsequently, these statements were retracted by the concerned employees, however, in the course of proceedings u/s 132(5) of the Act, the assessee itself came forward with a disclosure of Rs.66,00,000/- on money which was offered for taxation in two assessment year namely 1987-88 and 1988-89 at Rs.26,00,000/- Rs. 40 lacs, respectively. This disclosure was made on the basis that assessee had followed project completion method of accounting and the

project of the assessee was substantially completed during these two assessment years. However, during the course of assessment the A.O had not accepted project completion method reported by the assessee and stated that on money should be assessed in every year in which the agreement for sale were made by the assessee. Further, the A.O has also not accepted the quantum of money offered to taxation and held that on money should be assessed @ 25% of the aggregate of the agreement value plus on money. Therefore, the A.O had made addition on account of on money to the income disclosed by the assessee in the assessment year 1981-82 to 1986-87 in the following manner:

Assessment year	Agreement Value of flats sold during the year. (Col 2)	Addition of the 'on money' made by the ld. A.O = 0.25 (Col 2)/0.75
1981-82	8,12,000	2,71,000
1982-83	65,74,000	21,91,000
1983-84	27,86,000	9,28,000
1984-85	87,21,000	29,07,000
1985-86	76,25,000	27,21,000
1986-87	24,47,000	25,42,000

However, the A.O had not made any addition on account of on money for the assessment year 1987-87 and 1988-89 in view of the fact that the assessee company had disclosed on money of Rs. 26,00,000/- and Rs.40,00,000/- respectively, for these two years.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) vide order dated 17.10.1994 for A.Y. 1981-82 to 1987-88 confirmed the additions made by the A.O. In respect of assessment year 1988-89 vide order dated 31.01.1992, the ld. CIT(A) has partly allowed the appeal of the assessee by deleting the addition of Rs.5,09,600/- holding that income of Rs.40,00,000/- by the assessee under the project

completion method was more than on money receipt worked out by the A.O for A.Y. 1987-88 and earlier years, the Ld. CIT(A) vide order dated 17.10.1994, confirmed the addition made by the A.O.

4. Both the assessee and the revenue filed appeal before the ITAT. The ITAT vide order dated 29.03.1996 dismissed the appeal of the assessee and allowed all the appeal of the revenue.

5. The assessee thereafter filed miscellaneous application u/s 254 of the Act stating that there was an excess addition on account of on money in the case of the assessee in respect of two year 1987-88 and 1988-89 stating that the Tribunal has confirmed the working of addition made by the assessee on project percentage method whereas in the last two years the Tribunal has applied project completion method. The Tribunal has rejected the assessee's miscellaneous application. Thereafter, the assessee has challenged the ITAT's miscellaneous application order by filing writ petition before the Hon'ble jurisdictional High Court of Bombay. The Hon'ble High Court of Bombay has allowed the writ petition of the assessee and set aside the impugned order of the ITAT dated 29.06.1996 passed by the Tribunal on the miscellaneous application to the extent it relate to assessment year 1987-88 and 1988-89 and directed the ITAT to consider the alternative plea raised by the assessee in light of the following observations:

*"7. The assessee has challenged the order passed by the Tribunal in the miscellaneous application by way of the writ petition herein. Simultaneously, on its application, the Tribunal has framed the following question of law for our consideration:*

*"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in not accepting the plea taken by the assessee during the course of hearing of the appeals before the Tribunal that for the assessment years 1987- 88 and 1988-89 the Assessing Officer was not correct in assessing the amount of 'on-money' as disclosed by the assessee*

*in its returns of income instead of the sums of Rs.8,16,000/- and Rs.2,02,000/- as worked out by the Assessing Officer himself at page 5 of the assessment order for the assessment year 1987-88?"*

8. *The real question which falls for our consideration both in the reference and the petition is whether the Tribunal is duty-bound to grant relief to the assessee as claimed during the hearing on the basis of the case eventually found by it, even if there is no specific ground of appeal raised before it in support of such relief. The assessee's case before the Tribunal was that it had received a total 'on-money' of Rs.66,00,000/- in the whole project which it offered to tax in the last two assessment years, i.e. Assessment Years 1987-88 and 1988-89, on the basis of project completion method. The department did not accept this case. The authorities below did not accept either the quantum of on-money (i.e. Rs.66,00,000/-) or the method of accounting (i.e. project completion method) proposed by the assessee. Instead the authorities proceeded on a normative basis and concluded that the total on-money received in the project worked out to Rs.1,25,78,000/-. They spread this 'on - money' over all eight years on the basis of percentage completion method, the figures for Assessment Years 1987-88 and 1988-89 coming to Rs.8,16,000/- and Rs.2,02,000/- respectively. (The assessments for Assessment Years 1981-82 to Assessment Years 1986-87, were on the basis of the respective normative figures for these years, which were accepted by the assessee.) The question is, having done so, can the authorities disregard the normative figures (of Rs.8,16,000/- and Rs.2,02,000/-) for Assessment Years 1987-88 and 1988-89 and instead take Rs.66,00,000/- (i.e. Rs.26,00,000/- and Rs.40,00,000/- for Assessment Years 1987-88 and 1988-89) offered in the assessee's returns for the particular assessment years."*

During the course of appellate proceedings before us the Id. Counsel contended that during the course of assessment proceedings the A.O. has applied project percentage method by estimating the on money @ 25% of the aggregate as per agreement value plus on money. He further submitted that on the similar basis for assessment year 1987-88 and 1988-89 the A.O should have also computed on money to the amount of Rs.8,16,000/- and Rs.2,02,000/- for A.Y. 1987-88 and 1988-89. However, the A.O had erroneously considered the on money for these two assessment year on the basis of income offered by the assessee of Rs.26,00,000/- and Rs.40,00,000/-. The Id. Counsel submitted that in this way the A.O has made total addition to the amount of Rs.1,81,60,000/- as against the amount of income offered by the

assessee to the amount of Rs.66,00,000/-. He also submitted that assessee has offered an amount of Rs. 66,00,000/- for the whole project on the project completion method and A.O himself has computed the on money on the basis of project percentage method to the amount of Rs.1,25,78,000/-. The ld. Counsel submitted that if the A.O himself applied the project percentage method then the amount of Rs.66,00,000/- cannot be added has held by the Hon'ble High Court vide order dated 15.11.2016.

On the other hand the ld. D.R supported the order of lower authorities.

6. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated supra in this order, the assessee has offered for taxation of Rs.66,00,000/- in assessment year 1987-88 and 1988-89 @ 15% of on money received on the basis of project completion method. However, the A.O had estimated on money @ 25% of total consideration received by the assessee as per project percentage method for assessment year 1980-81 to 1988-89 totaling to the amount of Rs. 1,25,78,000/-. The A.O had categorically stated that against the figure of Rs.1,25,78,000/- assessee had offered for taxation in A.Y 1987-88 and A.Y. 1988-89 a sum of Rs.26 lac and Rs.40 lac respectively. The assessee had declared total on money of Rs. 66 lac for A.Y. 1987-88 and A.Y. 1988-89 on the basis of project completion method stating that project was substantially completed in these years. After considering the aforesaid facts and circumstances Hon'ble jurisdictional High Court vide order dated 15.11.2016 held that the total on money for the project assessed by revenue was worked out to Rs.1,25,78,000/- and spread over 8 year of the project in the following manner:

A/c year	A.Y.	Total agreement value for the flats sold during the year	% on money @ 25% 0.25 (Col. 1/0.75)	% on money 15% undisputed
1980	81-82	8,12,000	2,71,000	1,42,000
1981	82-83	65,74,000	21,91,000	11,50,000
1982	83-84	27,86,000	9,28,000	4,87,000
1983	84-85	87,21,000	29,07,000	15,25,000
1984	85-86	81,64,000	27,32,000	14,25,000
1985	86-87	76,25,000	25,42,000	13,34,000
1986	87-88	24,47,000	8,16,000	4,28,000
1987	88-89	6,05,000	2,02,000	2,06,000
		3,77,54,000	1,25,78,000	66,00,000

As against the assessee's offered amount of Rs.66,00,000/- the revenue had instead of worked out the disallowance at Rs.1,25,78,000/- for the whole length of the project from A.Y. 1981-82 to 1988-89. It is clear that revenue has substituted the amount of Rs.66,00,000/- declared by the assessee by estimating the same amount at Rs.1,25,78,000/-. Further, if again Rs.26,00,000/- and Rs.40,00,000/- were added then the total income worked out to Rs.1,81,70,000/- [Rs.1,25,78,000/- + Rs.66,00,000/- (-) Rs.81,16,000/- and Rs.2,02,000/-]. The A.O cannot make same addition on the project percentage method and also on project completion method. Since, the A.O has assessed the income on the basis of project percentage method, therefore, the on money of Rs.81,16,000/- and Rs.2,02,000/- is required to be added for A.Y. 1987-88 and 1988-89 instead of Rs.26,00,000/- and Rs.40,00,000/- respectively. Therefore, there is a double taxation of Rs.17,84,000/- in the A.Y. 1987-88 and Rs.37,98,000/- in the A.Y. 1988-89 which were contrary to the assessing officer's own findings given at page 5 of the assessment order para 3 vide order u/s 143(3) r.w.s 147 for A.Y. 1988-89. In view of the above facts and after considering the direction of the Hon'ble High Court as referred supra we direct the A.O to assess the income for A.Y. 1987-88 and 1988-89 on the basis of project percentage method by treating on money at Rs.8,16,000/- Rs. 2,02,000/-, respectively. Therefore, ground of appeal

of the assessee is partly allowed and the appeal of the revenue stand dismissed.

7. In the result, the appeals of the assessee are partly allowed and the appeals of the revenue stand dismissed.

Order pronounced in the open court on 31.10.2022

Sd/-  
(Sandeep Singh Karhail)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 31.10.2022

Rohit: 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 DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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