

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

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)

ITA 1319/Mum/2022
(Assessment year 2011-12)

Sadanand Kashinath Jethe (Through legal Heir Rahul Sadanand Jethe), B/001, Jethe Tower, Ambewadi, S.V. Road, Dahisar (E), Mumbai-400 068 PAN : AAJPJ6496Q	vs	ITO, Ward-32(3)(3), Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Shri Rahul Hakani
Department represented by	Shri J Saravanan – Sr AR

Date of hearing	02/11/2022
Date of pronouncement	16/11/2022

ORDER

PER : Shri Amarjit Singh (Accountant Member):

This is an appeal filed by the assessee against the order passed by the National Faceless Appeal Centre (NFAC) Delhi [hereinafter Ld.CIT(A)] dated 29/11/2021 against the assessment order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short, 'the Act) for the Assessment Year 2011-12.

2. There was a delay in filing the appeal by 117 days. The assessee pleaded that because of prevailing covid pandemic, there was a delay in filing this appeal. In this regard, the assessee has referred the decision of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.3 of 2020 judgement dated January 10, 2022 . After referring the decision of Hon'ble Supreme Court, the assessee submitted that the last date for filing the appeal was 31/05/2022 because of extension granted for filing the appeal. However, the assessee has filed it on 24/05/2022. Therefore, requested that the delay may be condoned due to Covid Pandemic.

3. Heard both the sides and perused the material on record. Following the decision of Hon'ble Supreme Court as referred above, the delay in filing this appeal of 117 days because of covid pandemic is condoned.

4. The grounds of appeal raised by the assessee are as under:-

"1) The learned National Faceless Appeal Centre (NFAC) erred in confirming the order of Assessing Officer taxing income from the project "Jethe Tower" in A.Y. 2011-2012 without appreciating that the income from the said project do not accrue in A.Y. 2011-2012 and hence, the addition of the income from "Jethe Tower" may be deleted.

1.1) Without prejudice to above the learned NFAC failed to appreciate that the profit from "Jethe Tower" determined by the Assessing Officer is on a higher side and hence, the same may be reduced.

2) Without prejudice to ground No 1, the learned NFAC erred in confirming disallowance of construction expenses of Rs 34,89,200/- being 25% of construction expenses attributable to Assessee without appreciating that the construction expenses incurred by the Assessee were incurred wholly and exclusively for business and were reasonable and hence the addition of Rs 34,89,200/- may be deleted.

2.1) Without prejudice to ground No 2, the Learned NFAC failed to appreciate that disallowance of construction expenses of Rs 34,89,200/- is on a higher side and hence the disallowance of Rs 34,89,200/- may be reduced."

5. All the grounds of appeal are inter-connected, therefore, for the sake of convenience, these grounds of appeal are adjudicated together. The fact in brief is that return of income declaring total income of Rs.1,14,632/- was filed

on 20/07/2011. The Assessing Officer received information that assessee alongwith his brother carried out joint venture for the development of Jethe Tower project and earned total profit of Rs.1,84,38,947/-. Since the project was completed during FY 2010-11 and assessee has not offered the share of profit in the return of income for the assessment year 2011-12, therefore, the case of the assessee was reopened by issuing notice under section 148 of the Act on 29/03/2014. During the course of assessment, the assessee was asked to explain why income from the project, 'Jethe Tower' should not be added to his total income as income from undisclosed sources. The assessee submitted that he has offered income from this project during assessment year 2012-13; however, Assessing Officer stated that assessee has not filed any copy of income-tax acknowledgement and computation of income for A.Y. 2012-13. The assessee has filed details of sale consideration received and consolidated P&L Account of the entire project from 1994 to 2012. On verification of the same, Assessing Officer noticed that total sale of the project was calculated at Rs.2,86,55,368/- and also offered rent in respect of installation of mobile tower to the amount of Rs.34,09,494/-. The Assessing Officer further noticed that assessee claimed expenses of Rs.2,79,13,606/-, however, the assessee has not filed any documentary evidence in support of the expenses claimed. Therefore, 25% of the expenses amounting to Rs.69,78,401/- was disallowed. Accordingly, the Assessing Officer has computed net profit from the project at Rs. 1,11,29,657/- and out of this 50% share of profit pertaining to the assessee, i.e. Rs.55,64,828/- was added to the total income of the assessee. Aggrieved, assessee filed appeal before Ld.CIT(A). The Ld.CIT(A) has dismissed the appeal of the assessee.

6. Heard both sides and perused the materials on record. Assessee, alongwith his brother, Shri Vishwanath K Jethe has carried out joint venture for the development of 'Jethe Tower Project'. During the course of assessment in the case of Shri Vishwanath K Jethe, the Assessing Officer found that the above referred project was completed during F Y 2010-11. However, their respective shares of profit of Rs.92,19,473/- was not offered in the return of income for A.Y. 2011-12. Vide order under section 143(3) of the Act dated 28/03/2014, 50% of the share of profit was added to the total income of Shri Vishwanath K Jethe. Therefore, the case of the assessee was reopened and the Assessing Officer has computed 50% of the shares pertaining to the assessee of Rs.55,64,828/- as per paras 6.2 to 6.9 of the assessment order, which are as below:-

"6.2 On verification of details of flat wise sales filed by the assessee, it is noticed that the assessee has shown total sale of Rs.2,75,00,000/-, however, the assessee has offered sales of Rs.2,54,79,266/- in the profit & loss account, the assessee has not given any documentary evidence in respect of **expenses** claimed. The profit offered by the assessee is very low and the profit offered by him in the return of income for A.Y. 2012-13, this return was also filed only after the receipt of notice u/s. 143(2) of the I.T Act in the case of Shri Vtshwanath Jethe brother and co-owner of this project, for A.Y.2011-12 which was sewed on the him on 15.09.2012.

6.3 On verification of assessment order passed in the case of Shri Vishwanath Jethe brother and co-developers of the project, and details filed by the assessee during the course of assessment proceedings sales are calculated as under:

Sr. No.	Wing	Flat No.	Sq. ft.	Purchased by	Amount (Rs.)	Entered on
1	A Shop	1	144	Jethe Family	-	-
2	A Shop	2	105	Hasmukh M Shah	4,00,000	23.11.2003
3	A Shop	3	120	Dr. Mukund Thakkar	4,00,000	
4	A Shop	4	125	Surendra Srivastav	4,00,000	

5	A Shop	5	135	Nahulal Mistry	4,00,000	
6	A Shop	6 3	115	Surve	4,00,000	
7	A Shop	7	149	Jethe Family	-	
8	A Flat	101	580	Sandeep S. Sukhija	34,00,000	09.02.2011
9	A Flat	102	765	Sandeep S. Sukhija	51,00,000	08.02.2011
10	A Flat	201	558	Jethe Family	-	
11	A Flat	202	765	Jethe Family	-	
12	B Flat	1	265	Jethe Family	-	
13	B Flat	2	504	Jethe Family	-	
14	B	101	750	Kala Omprakash Rai	12,00,000	13.04.2005
15	B	102	750	Dilipkumar Premchandji Patel	23,00,000	17.12.2009
16	B Flat	201	750	Mr. Hatkar	12,00,000	
17	B Plat	202	750	Mr. Pandya	12,00,000	
18	B	301	750	Aparna V. Dastane	12,00,000	25.05.2001
19	B	302	750	Nandkishore H. Kolte	12,00,000	29.04.2002
20	B	401	750	Sujit S. Chakravarty	6,00,000	07.05.2004J
21	B	402	750	Vimalkumar	23,00,000	27.12.2001

				Mohanlal Jain		
22	B	501	750	Gajanan Murkar	12,00,000	25.04.2004
23	B Flat	502	750	Mr. Tawakkal	9,00,000	-
24	B Flat	601	750	Mr Kurulekar	12,00,000	-
25	B	602	750	Madhuben J Trivedi	12,00,000	28.04.2004
26	B	701	750	Madhuben J. Trivedi	12,00,000	

6.4 Further, it was observed that no proper agreement for sale or any other documentary evidences were produced for the flat No. 402 in 'B' Wing, so sale value of this flat is considered at maximum sale price of Rs.23 lacs which is highlighted in the table above. The assessee has also offered sale of old structure which was part of this project hence total sales of this project is calculated at Rs.2,86,55,368/-

6.5 Further, the assessee has also offered rent received in respect of installation of mobile tower at the project amounting to Rs.34,09,494/-which is related prior to" year 2010. Hence this income is also included as income from the project since no such income has been offered by the assessee in any earlier year.

6.6 The assessee has claimed expenses of Rs.2,79,13,606/- crore, however the assessee has not filed any documentary evidence in support of its claim of expenses of Rs.2,79,13,606/- except some bills of BMC charges \and electric work. In absence of proper details the expenses claimed by the assessee is not fully acceptable for the following reason;

The assessee do not have any documentary evidences in support of its claim of expenses, nor does he have details of year wise expenses incurred.

No details of closing stock of unsold flats/shops or WIP were shown in the Balance Sheet of the assessee in any Assessment Year during the period of project.

On verification of the details of B.M.C charges and electricity charges submitted by the assessee, it is noticed that the bills produced by the assessee is not matched with the expenses claimed.

Further, the assessee is not able to correlate the expenses with bills submitted by him.

- Since the assessee has not able to prove the expenses claimed nor be has given any proof that all the statutory obligation such an TDS deduction has been complied at the time of incurring the expenses,
- That the assessee books of account was not audited during any period of the project. Even at the time of offering income' from the project, the assessee has not get its account audited.
- The assessee has not disclosed profit from development of Jethe Tower Project voluntarily in his return of income, and when the ITS (AIR) details

regarding sale of immovable property has been shown to the co-developer Shri Vishwanath Jethe, the assessee decided to offered the profit and claimed the expenses on higher side just to : reduce the profit.

6.7 Hence 25% of the expenses claimed by the assessee amounting to Rs.69,78,401/- was disallowed. Since the assessee has sold out all its immovable property in the financial year under consideration relevant to A.Y. 2011-12. Therefore, considering the assessee's contention to follow the Project Completion Method, all the profits is taxed in the A.Y: 2011-12 wherein la* | sale agreement was entered i.e. on 09.02.2011 (A.Y. 2011-12). Accordingly, profit of this project has been brought to tax in the A.Y.2011-12.

6.8 Taking into consideration of the above findings the profit of the project is calculated as tunder

Total sale (as discussed in Para 6.3)	Rs. 2,86,55,368/-
Add: Rent Income (as discussed in Para 6.5)	Rs. 34,09,494/-
Total	Rs.3,20,64,862/-
Less : Expenses claimed	Rs. 2,79,13,606/-
Add: disallowance	Rs.69,78,401/-
-Net profit	Rs.1,11,29,657/-

6.9 Out of the above net profit, 50% of share is pertaining to the assessee i.e. Rs.55,64,828/- and hence, the same is added to the total income of the assessee for the year under consideration.”

7. However, during the course of appellate proceedings before the Ld.CIT(A), the assessee submitted that documentary evidence of sale of Flat No.402 was not available at the time of assessment. Therefore, maximum sale value was considered at Rs.23 lakhs by the Assessing Officer. Before the Ld.CIT(A), the assessee produced the copy of sale agreement showing that said flat was actually sold for Rs.12 lakhs, therefore, the Ld.CIT(A) has taken the sale value at Rs.12 lakhs as against Rs.23 lakhs taken by the Assessing Officer. Accordingly assessee has been given a relief of Rs.23 lakhs (-) Rs.12 lakhs and 50% of the share of the assessee comes to Rs.5.5 lakhs. Assessee had sold all the flats in the assessment year 2011-12 and failed to provide any documentary evidence in respect of expenses claimed. The assessee in the

grounds of appeals pleaded that the profit determined by the Assessing Officer from the Jethe Tower was on higher side and also submitted that disallowance of construction expenses being the share of the assessee of Rs.34,89,200/- was also on higher side. After taking into consideration the facts and circumstances as discussed in the order of the Assessing Officer and material on record, in addition to the relief granted by the Ld.CIT(A), we further direct the Assessing Officer to reduce the profit of Rs.5,31,550/- out of the profit from the project already assessed in the hands of the assessee. We have also perused the working given by the assessee demonstrating that due to disallowance of construction expenses @25% resulting in estimating unrealistic high net profit at 24%. In the light of the above facts and circumstances, we consider it would be appropriate to restrict the disallowance of construction expenses to 15% as against 25% disallowed by the Assessing Officer. We direct the Assessing Officer accordingly. Therefore, grounds of appeal of the assessee are partly allowed.

8.. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 16/11/2022.

Sd/-	sd/-
(VIKAS AWASTHY)	(AMARJIT SINGH)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 16 November, 2022

pavanan

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,

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