

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

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 1886/MUM/2020
(Assessment Year: 2014-15)

M/s Fatima Builders & Developers,
Shop No. 7/8, Ibrahim Chunawala
Compound, Opp Bus Depot,
LBS Marg, Kurla (West),
Mumbai - 400070
[PAN: AACFF0998A]

..... Appellant

Vs

The Income-Tax Officer
26(1)(1), Mumbai,
707, 7th Floor, C-11,
Pratyakshakar Bhavan,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400051

..... Respondent

Appearances

For the Appellant/Assessee : Shri Vijay Shah
For the Respondent/Department : Shri Nishant Somaiya

Date of conclusion of hearing : 22.09.2022
Date of pronouncement of order : 28.11.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant has challenged the order, dated 08.04.2019, passed by the Ld. Commissioner of Income Tax (Appeals)-38, Mumbai [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2014-15, whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 29.12.2016, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The appeal is being treated as having been filed within limitation in view of

the order dated 10.01.2022 passed by the Hon'ble Supreme Court in suo moto Writ Petition (C) No. 3 of 2022.

2. The Appellant has raised following grounds of appeal:

- “1.) The learned ITO has erred in treating the incomplete project as Complete Project and wrongly estimated the project as 85% complete up to 31-03-2014 and estimated the taxable profit amounting to Rs. 2,14,71,232/-. All this working is based on his own estimate.*
- 2) The learned CIT (A) has erred in Confirming the project completion method of accounting for which the learned ITO. has objected and as per his view the said method accounting is not under accounting standard prescribed by the law, which is absolutely wrong.*
- 3) The learned CIT(A) erred in rejecting the construction of the building was not completed up to 31-03-2014 and necessary occupation or building completion certificate were also not obtained from the BMC but the occupants were occupying the premises forcefully.*
- 4) It is mentioned by learned ITO in his order that many occupants are occupying the premises after 01/05/2014 which clearly points that nobody was occupying flats before 31/03/2014.*
- 5) It was declared by the appellant that said project is going to complete on 31/03/2017 and is going to declare the profit for assessment year 2017-18 which is completely ignored by ITO.*
- 6) The learned ITO did not accept the contention of the appellant that more than 30% work is incomplete upto 31/03/2014, but by own imagination, even though the appellant is following project completion method of accounting and could not determine the profit of his incompleteness project.*
- 7) The learned ITO has erred in adding the amount of Rs 22,33,725/- under section 43CA of the Income tax Act even though by ignoring there are many reasons for selling the flats lower price comparing to ready reckoner rate.*
- 8) The appellant craves the leave to add, amend and alter the ground or grounds of appeal as and when given.”*

3. The Appellant has also raised the following additions grounds vide letter dated 14.09.2022.

- "1. The Learned A.O has passed the order without sharing the papers with the Appellant which were collected at the back of the Appellant and same were been utilized for the assessment therefore the order passed by the Assessing officer is bad in law and liable to be quashed.*
- 2. On the facts and circumstances the order passed by the Learned A.O are judicial proceedings and principles of natural justice are applicable to such proceedings. The elementary principle of natural justice is that the Appellant should have the knowledge of the material that is going to be used against him so that he may be able to meet it. The Appellant has a right to inspect the records and all relevant documents before he is called upon to lead evidence in rebuttal. Therefore, the order passed by the A.O is liable to be quashed."*

4. When the appeal was taken up for hearing the Learned Authorised Representative for Appellant appearing before us, at the outset, drew out attention to the application for additional grounds and the additions evidence filed by the Appellant. He submitted that the additional evidence have been filed as the Assessing Officer and CIT(A) have incorrectly computed profits of the project called 'Fatima Park' being undertaken by the Appellant. Appellant had preferred appeal before the CIT(A) as the Assessing Officer had, in effect, changed the method of recognizing profits by taking an incomplete project as complete project. Therefore, the primary contention of the Appellant before CIT(A) was that the Assessing Officer had erred in treating the project as completed. The CIT(A) rejected the contention and confirmed the addition without appreciating that the Assessing Officer had computed the stage of completion and as well as the

profits incorrectly. The additional evidence filed by the Appellant pertains to this aspect. He further submitted that the Assessing Officer had collected some evidence by conducting enquiry and the Appellant was not confronted with this material/statements during the assessment proceedings or in the appellate proceedings. This material was considered by the Assessing Officer for arriving at the conclusion that the project was complete and therefore, the Appellant has raised additional legal ground challenging the assessment order on the ground of violation of the principles of natural justice.

5. Per Contra, Learned Departmental Representative submitted that the Appellant has failed to provide necessary documents and details during the assessment proceedings. The inquiries showed that the Appellant had made sale of units in the project which were occupied. Despite sale of units the appellant had not offered any income to tax. The contention taken by the appellant that Project completion method was being followed was an afterthought as the Appellant had not offered any income to tax in subsequent assessment years also. He relied upon the findings of the Assessing Officer and order of the CIT(A) in support of his contentions. He submitted both the additional evidence and additional ground should be rejected.
6. We have perused the material on record. The brief facts emanating from the record are that the Appellant is a partnership firm engaged in the business of real estate development. Appellant undertook a redevelopment project in Mahim known as Fatima Arc in Assessment 2011-2012. For the Assessment Year 2014-15, the Appellant filed return of income declaring 'Nil' income. The case of the Appellant was selected

for limited scrutiny which was converted into complete scrutiny after obtaining necessary approvals. During the assessment proceedings the Appellant took a stand that the project was not complete and since the Appellant was following project completion method no income was liable to be taxed during Assessment Year 2014-15. We note that in the present case the Assessing Officer has taken the care to conduct inquiry in which it was found that units of the project were sold and occupied by purchasers who had water/electricity connections. A perusal of the assessment order does not establish that Appellant was confronted with such information/material gathered by the Assessing Officer. However, a show cause notice was issued to the Appellant on the basis of such inquiry/material. In view of the above facts already on record we admit the Additional Grounds No. 1 and 2 raised by the Appellant regarding violation of principles of natural justice and proceed to examine the same along with Ground No. 1 to 6.

- 6.2. We note that the project was a rehabilitation project. The appellant had contended that some of the occupants of the units were those who were not provided with alternative accommodation. The conclusion drawn by the Assessing Officer that the units in the Project were sold/occupied was based upon the response received from the occupiers/purchasers. The Appellant was never confronted with this material despite the fact that the Appellant had contended that only 65% of the project was complete.
- 6.3. We also note that in paragraph 5.12 of the Assessment Order the Assessing Officer had arrived at the conclusion that 85% of the project was completed observing that the Appellant had

received more than 85% of the advances from the flats purchasers during Assessment Year 2014-15. A perusal of the Balance Sheets for the Financial Year ending 31.03.2013 and 31.03.2014 relevant to Assessment Year 2013-14 and 2014-15, respectively, shows that the aforesaid finding is factually incorrect. 'Advance against Flats' are shown at INR 4,11,69,036/- as on 31.03.2013 (*against the Work-In-Progress of INR 2,27,21,699/-*) and INR 5,17,49,045/- as on 31.03.2014 (*against Work-In-Progress of INR 3,35,92,489/-*). The Appellant has also filed a break-up of the advances received.

- 6.4. On the other hands, we note that the Appellant had also not furnished certificate from showing the stage of completion of project and had merely contended that project was not complete because the occupancy certificate had not been issued. Now the Appellant has filed application for admitting additional evidence in the form of the balance sheets and profit and loss accounts for the subsequent years to support the contention that sales and cost of the project was computed incorrectly by the Assessing Officer and that project was completed much later. It was contended on behalf of the Appellant that the income from the project is to be computed after taking into account all the expenses. To support the aforesaid contention the Appellant has filed additional documents which include balance sheet and Profit & Loss Account pertaining to subsequent assessment years which could not be filed before the Assessing Officer or the CIT(A). In our view, Revenue must be granted opportunity to examining the veracity of the additional documents filed by the Appellant.

- 6.5. Given the overall facts and circumstances of the present case as taken hereinabove, we deem it appropriate to remand the issue back to the file of the Assessing Officer for fresh adjudication. The Appellant is directed to co-operate and furnish all the evidence supporting his case before the Assessing Officer who shall examine the same afresh taking into account the inquiries conducted by the Assessing Officer while passing the assessment order. The Appellant would be confronted with the material/letters/replies received as a result of the aforesaid inquiry so that the Appellant has an opportunity to rebut the evidence. The Appellant would be granted a reasonable opportunity of being heard. In view of the aforesaid, Additional Ground No. 1 and 2 are allowed while Ground No. 1 to 6 stands disposed off with the aforesaid directions.
7. As regards Ground No. 7 pertaining to the additions made by the Assessing Officer by invoking provisions of the Act in respect of difference in stamp value and sale value of Unit/Flat No. 501 and 701 computed at INR 22,33,725/- is concerned, the taxability and computation of income arising from sale of the aforesaid flats would depend upon the year in which income from the project is brought to tax by the Assessing Officer and the method adopted to compute the same. We have remanded this issue for denovo adjudication to the file of the Assessing Officer. Therefore, the issue raised in Ground No. 7 is also remanded back to the file of Assessing Officer for fresh adjudication keeping in view the adjudication on Ground No. 1 to 6 above. In view of the aforesaid directions Ground No. 7 stands disposed off.

8. Thus, all the issues raised in the present appeal are remanded back to the file of Assessing Officer for fresh adjudication.

In result, the appeal is allowed for statistical purposes.

Order pronounced on 28.11.2022.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.11.2022
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