

THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai  
Shri B.R. Baskaran (AM) & Ms. Kavitha Rajagopal (JM)

I.T.A. No. 592/Mum/2020 (A.Y. 2015-16)

Aim Realtors Private Ltd. 1302/04, Malkani Towers S.V. Road, Bandivali Hill Road, Mumbai-400 102.  PAN : AAJCA1340B (Appellant)	Vs.	ITO-9(1)(2) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri R.S. Khandelwal
Department by	Shri Manoj Sinha
Date of Hearing	17.10.2022
Date of Pronouncement	04.01.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 29.11.2019 passed by the learned CIT(A)-16, Mumbai and it relates to A.Y. 2015-16. The assessee is aggrieved by the decision of the learned CIT(A) in confirming the income from project estimated by the Assessing Officer.

2. Facts relating to the issue are stated in brief. The assessee is a builder. It has redeveloped a building owned by Ujamba CHSL, which consisted of forty new flats. As per the agreement, the assessee was entitled to sell twenty flats. The assessee followed percentage completion method for disclosing income. The assessee disclosed loss of Rs. 15,903/- in A.Y. 2014-15, profit of Rs. 14.14 lakh in the current A.Y. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has applied for a building completion certificate on 6.2.2015 itself. He further noticed that the assessee has declared profit from this project in the succeeding assessment year i.e. A.Y. 2016-17 also. Since the assessee has applied for a building completion certificate, the Assessing Officer took the view that the assessee

has completed all the flats during the year under consideration itself. Accordingly he took the view that the entire profit from the project is fully assessable during the year under consideration. Accordingly the Assessing Officer computed profit from the project at Rs. 57,29,100/- and assessed the same. The learned CIT(A) also confirmed it and hence the assessee has filed this appeal before us.

3. We have heard the parties and perused the record. We noticed earlier that the AO has placed full reliance on the application filed by the assessee for "building completion certificate" for coming to the conclusion that the assessee has completed the project during the current year itself. However, we notice that that the assessee has incurred expenses on construction in the succeeding A.Y. i.e. A.Y. 2016-17 also. Further the Assessing Officer himself noted at page No.9 of the assessment order that the maximum sale of the flats have taken place in the succeeding assessment year. There should not be any dispute that the income could be declared on the flats actually sold by the assessee and the income would be offered on those sold flats on the basis of percentage of completion. Further, in our view, the books of accounts should be the basis to determine the income, as the books of accounts only depicts the income earned and expenses incurred by the assessee. The application filed for building completion certificate is an external document and in our view, the AO was not justified in placing reliance on it by totally disregarding the books of account. In this view of the matter, we are of the view there is no requirement to disturb the workings made by the assessee. Further, the fact that the Assessing Officer has not rejected the books of accounts would support our above said view. Without rejecting the books, the AO could not have estimated the profits of the assessee. Further, under percentage completion method, income is required to be estimated and hence any increase or decrease made in the said estimated income would have corresponding effect in the succeeding year. Hence the exercise undertaken by the AO is a revenue neutral exercise only

in the facts of the present case. Accordingly, we are of the view that the learned CIT(A) was not justified in confirming the workings made by the AO. Accordingly we set aside the order passed by the learned CIT(A) on this issue and direct the Assessing Officer to accept the profits disclosed by the assessee

4. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 04.01.2023.

Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 04/01/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

PS