

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.784/M/2019
Assessment Year: 2008-09**

M/s. Dinshaw Trapinex Builders Pvt. Ltd., 9/02, Dheeraj Arma, Anant Kanekar Marg, Bandra East, Mumbai – 400 051 PAN: AAACD1897R	Vs.	Asst. Commissioner of Income Tax, Central Circle 5(4), Room No.1927, 19 th Floor, Air India Building, Nariman Point, Mumbai – 400 021
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Smt. Mahita Nair, D.R.

Date of Hearing : 13 . 02 . 2023
Date of Pronouncement : 23 . 02 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Dinshaw Trapinex Builders Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 26.11.2018 passed by Commissioner of Income Tax (Appeals), Mumbai [hereinafter referred to as the CIT(A)] qua the assessment year 2008-09 on the grounds inter-alia that :-

- "1. a. The Learned CIT (A) has erred in law & on facts in upholding the Learned AO's action of taxing the receipt for relinquishment of development right and reimbursement Rs.2,50,00,000/- under the head "Income from Business & Profession".

b) The Learned CIT (A) has further erred in law & on facts in upholding the Learned AO's action of not allowing to reducing of the corresponding cost of WIP as per the balance sheet as on 31-03-2008.

2 The Appellant craves leave to add to and/ or amend and/ or delete and/ or modify and/ or alter the aforesaid grounds of appeal as and when the occasion demands.

3. All the aforesaid grounds of appeal are independent, in the alternative and without prejudice to one another.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee company is into the business of builder and land developer during the year under consideration. The return filed by the assessee company for the year under consideration declaring Nil income was subjected to scrutiny and thereafter assessment was completed under section 143(3) of the Income Tax Act, 1961 (for short 'the Act') by making addition of Rs.9,04,329/- on account of disallowance under section 14A read with rule 8D.

3. Thereafter, the case was reopened by initiating the proceedings under section 147/148 of the Act after recording reasons. Notice under section 148 of the Act was served upon the assessee to which he has filed reply by opting that return filed on 27.09.2009 may be treated as return filed in response to notice under section 148 of the Act. Notices under section 143(2) & 142(1) were issued and in response thereto the assessee was duly represented, filed details/information/explanations. The Assessing Officer (AO) during the reopening proceedings noticed that the assessee company has received Rs.2,50,00,000/- for relinquishing the development rights for immovable property as per deed of cancellation dated 07.12.2007. Declining the contentions raised by the assessee the amount of Rs.2,50,00,000/- received by the

assessee company on account of cancellation of development agreement is nothing but the income of the assessee company for the year under consideration. Consequently made addition thereof to the total income of the assessee by framing assessment under section 147 read with section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

5. Present appeal was instituted on 13.02.2019, thereafter numerous notices through Registered Post with Acknowledgment Due (RPAD) were issued but none appeared on behalf of the assessee on the initial dates. On 14.03.2022 the assessee sent letters for adjournment which was allowed and case was adjourned to 25.04.2022, 06.07.2022, 17.08.2022, 15.09.2022, 29.12.2022. Today i.e. on 13.12.2023 none appeared on behalf of the assessee. It appears that the assessee is not interested in prosecuting the present appeal. So the Bench has decided to dispose of the present appeal on the basis of material available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. D.R. for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. We have perused the impugned order passed by the Ld. CIT(A) who has decided the sole issue as to receiving an amount of Rs.2,50,00,000/- by the assessee on account of cancellation of development agreement, which was treated as income of the assessee for the year under consideration, on the basis of facts and law applicable thereto by returning following findings:

“5.4. have considered the submissions carefully. Despite being aware of the contention of the AO as stated in the assessment order, the appellant has not filed details of the expenses incurred in FY 2003-04 and the copy of balance sheet showing this payment in FY 2003-04. Further, the details of expenses over the years in respect of Kole Kalyan project has also not been filed to substantiate the claim that the expenditure effected under WIP should be considered towards the amount received of Rs.250 lacs. Whether the amount of Rs.250 lacs is shown as advance to Mr. Nitin Desai is not relevant. A copy of MOU dated 24-09-2003 between Mr. Nitin Desai and the appellant company has been filed. This has not been registered. As per this MOU, it is stated that Mrs. Lucy A. Jacinto referred to as "KUL" is in occupation and possession of land at Village Kole Kalyan, Kalina, Vakola, Santacruz East. Under an oral agreement, Shri Nitin Desai agreed to purchase from KUL all her right, title and interest and paid an amount of Rs.50 lacs as earnest money. No documentation was completed nor any agreement was executed between Nitin Desai and KUL. Shri Nitin Desai agreed to procure the transfer of all the rights in this property as well as cause the owners A.H. Wadia Trust to sell, convey and transfer the said property to the appellant company for a consideration of Rs.850 lacs. Shri Nitin Desai agreed to pay KUL out of this amount as well as to transfer the property from the owners. An amount of Rs.50 lacs was paid by the appellant company to Nitin Desai before the execution of this MOU. A sum of Rs. 175 lacs was to be paid directly to KUL for and on behalf of Nitin Desai upon the execution by Mrs. Lucy A. Jacinto of the agreements to sell, transfer and assign all the rights in favour of the appellant company. A further amount of Rs. 175 lacs was to be paid directly by the appellant company to KUL for and on behalf of Nitin Desai. The balance amount was to be paid within eighteen months from the date of MOU. Shri Nitin Desai had procured the execution and registration of the agreement by Mrs. Lucy A. Jacinto in favour of the appellant company and paid an amount of Rs. 175 lacs to KUL.

5.5. It is noted that the computation of income and the audited accounts do not make any disclosure in respect of this transaction. The appellant has not filed any details from which its contentions could be verified. No details of WIP and its composition over the years has been filed. No bank statement has been filed to show the deployment of funds. The

item wise break up of advances is not filed. No explanation has been filed giving details of Kole Kalyan Project, year wise expenditure. The claim that this amount was reflected as advance to Nitin Desai is not verifiable. If the development agreement is cancelled how amounts are shown as WIP. The appellant has stated that the amount is not received from M/s.Nexus Properties and Developers Pvt.Ltd. but bank statement to show actual movement of money is not filed. It is therefore held that the appellant has failed to substantiate its grounds of appeal. Ground of appeal no 3 is therefore dismissed.”

8. The Ld. CIT(A) has given comprehensive findings on the basis of facts brought on record by the assessee who has failed to substantiate its claim that the expenditure affected under WIP should be considered towards the amount received of Rs.2,50,00,000/-. The Ld. CIT(A) has also examined the Memorandum of Understanding (MOU) dated 24.09.2003 between Mr. Nitin Desai and the assessee company. Moreover, computation of income and audited accounts brought on record by the assessee company itself are not disclosing any such transactions on the part of the assessee company nor any detail has been filed by the assessee to verify its contention nor any detail of WIP and its composition over the year has been filed. Even bank record has not been brought on record to show deployment of any such funds, so virtually it was a case of no evidence on the part of the assessee. The AO and the Ld. CIT(A) passed the orders on the basis of material available on record. Finding no illegality or perversity in the impugned findings returned by the Ld. CIT(A), the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 23.02.2023.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER
Mumbai, Dated: 23.02.2023.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.