

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.123/Viz/2020

(निर्धारण वर्ष / Assessment Year :2015-16)

Asst. Commissioner of Income
Tax, Circle-3(1), Central Revenues
Building, MG Road,
Vijayawada-520002.

Vs. M/s. Rama Krishna Housing
Pvt. Ltd.,
D.No. 54-15-20, Srinagar
Colony, Vijayawada,
Andhra Pradesh.
PAN: AAGCR 7619 P

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

CO No.24/Viz/2020

(In आयकर अपील सं./ I.T.A. No.123/Viz/2020)

(निर्धारण वर्ष / Assessment Year :2015-16)

M/s. Rama Krishna Housing Pvt.
Ltd., D.No. 54-15-20, Srinagar
Colony, Vijayawada,
Andhra Pradesh.
PAN: AAGCR 7619 P

Vs. Asst. Commissioner of
Income Tax, Circle-3(1),
Central Revenues Building,
MG Road,
Vijayawada-520002.

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Sri MN Murthy Naik, CIT-DR

सुनवाई की तारीख / Date of Hearing

: 28/03/2023

घोषणा की तारीख/Date of

: 04/05/2023

Pronouncement

ORDER

PER S. BALAKRISHNAN, Accountant Member :

1. This appeal filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeals), Vijayawada in appeal No.10129/CIT(A)/VJA/2017-18 and DIN No. ITBA/APL/M/250/2019-20/1023408347(1), dated 30/12/2019 passed arising out of the order passed by the Ld. AO U/s. 143(3) of the Income Tax Act, 1961 [the Act] for the AY 2015-16. Cross Objection is filed by the assessee.

2. Briefly stated the facts of the case are that the assessee being a company is engaged in the business of purchasing and developing land, converting into plots and selling them and also construction of apartments, Villas and selling them to various customers, e-filed its return of income for the AY 2015-16 admitting a total income of Rs. 1,77,28,840/-. The return was summarily processed U/s. 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS for the following issues:

"Large squared up loans during the year (Form 3CD)

"Real estate business with high closing stock (verify whether the assessee has adopted percentage completion method)

“Mismatch in expenditure of personal nature reported in Audit report and ITR.”

“Mismatch in amount paid to related persons U/s. 40A(2)(b) reported in Audit report and ITR. Accordingly, notice U/s. 143(2) was issued and was duly served on the assessee. Further, notice U/s. 142(1) was also issued in this case calling for the books of account and certain other information.”

3. Accordingly, notices U/s. 143(2) and 142(1) of the Act were issued and served on the assessee. In response to the notices, the Authorized Representative of the assessee-company appeared from time to time and submitted the details called for by the Ld. AO. Further, the survey operation U/s. 133A was conducted on the assessee on 30/03/2015 by ADIT (Inv), Vijayawada and thereafter the case was converted into complete scrutiny. During the course of survey it was found that there is a difference between the value of closing stock as shown in the books of accounts of the assessee as on 30/05/2015. The Managing Director of the assessee-company did not have any explanation to the difference in closing stock and agreed to pay taxes on the profit as per the valuation made by the Valuer. Further, the Ld. AO also observed difference in the turnover reported by the assessee and sought explanation from the assessee. In response, the Assessee's Representative submitted that as per the Guidance

Note on Accounting for Real Estate Transactions issued by the Chartered Accountants of India [ICAI], the assessee has adopted percentage of completion method which is mandatory for the companies. In this regard, the assessee was issued a show cause notice on 11/12/2017 seeking explanation for the discrepancies in the turnover to the extent of Rs. 2,05,10,865/- and requested the assessee to show cause why this amount should not be added to the total income of the assessee. In response the assessee made various submissions before the Ld. AO but the Ld. AO not convinced by the replies and made addition of Rs. 2,05,10,865/- and added the same to total income of the assessee. Further, the Ld. AO also made an addition of Rs. 6,60,73,755/- on account of difference in closing stock of land and work-in-progress. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A), Vijayawada.

4. Before the Ld. CIT(A), the assessee made various submissions regarding the adoption of percentage of completion method as mandated by the Guidance Note on Accounting for Real Estate Transactions issued by the ICAI. Before the Ld. CIT (A), the Ld. AR also submitted the details of computing the turnover of the assessee at Rs. 16,91,19,135/-. Considering the

replies furnished by the Assessee's Representative, the Ld. CIT(A) relying on the decision of the ITAT, Jaipur in Vastukar Township Pvt Ltd vs. DCIT in ITA Nos.105, 119, 172, 106 & 120/JP/2017, dated 22/12/2017, allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

5. The Revenue has raised the following grounds of appeal:

"1. The Ld. CIT(A) has not justified in allowing the appeal without taking into account the facts and merits of the case.

2. The Ld. CIT(A) failed to identify that the assessee is supposed to recognize revenue at the percentage of the total consideration as per agreements of sale executed but not the consideration / advance received as per the S.No. 5 of the Guidance Note of ICAI, whereas in the present case, the assessee has recognized 57.52% of the amount as per the sale deed executed and the advances received instead of 57.52% of the total consideration as per the agreements.

3. The CIT(A) failed to recognize that the assessee did not fulfill the criteria mentioned at S.No.4 of the Guidance Note of ICAI as the assessee has transferred the legal title over the plots by way of registered sale deeds and collected an amount of Rs. 18.96 Crs and thereby the assessee has no effective control of the said plots to a degree usually associated with the ownership and there is no uncertainty regarding the amount of consideration and also ultimate collection of the Revenue from the buyers.

4. Any other grounds that may be urged at the time of hearing."

6. The Ld. DR at the outset submitted that the assessee has made a sale undivided share of the land to various customers aggregating to Rs. 18.96 Crs. The Ld. DR further pointed out

that the Ld. AO has rightly considered the sale of land as turnover of the assessee as against the turnover reported based on the percentage of completion method. The Ld. DR supported the order of the Ld. AO and pleaded that the order of the Ld. AO be upheld.

Per contra, the Ld. AR submitted that the assessee being a company has rightly followed the Guidance Note issued by the ICAI and has recognized the Revenue by following the percentage of completion method. The Ld. AR further submitted that when the activity is not fully completed following the percentage of completion method in recognizing the revenue is also accepted by the Department. The Ld. AR further submitted that in the subsequent Assessment Year, the assessee has recognized the revenue based on the completion of the project. The Ld. AR further argued that even though the sale deed was registered in favour of customers for the AY 2016-17 amounted to Rs. 5,13,54,000/- the assessee has recognized revenue in Profit & Loss Account for an amount of Rs. 13,39,94,988/- by following the same percentage of completion method. The Ld. AR further submitted that the Ld. AO has not objected to this in the subsequent assessment year. The Ld. AR therefore pleaded that

the assessee has rightly computed the recognition of revenue as mentioned in the Accounting Standard issued by the ICAI for Real Estate business. The Ld. AR therefore pleaded that the order of the Ld. CIT(A) be upheld.

7. We have heard both the parties and perused the material available on record as well as the orders of the Ld. Revenue Authorities. Admittedly the only dispute by the Revenue is with respect to adoption of percentage of completion method followed by the assessee for recognizing the turnover during the impugned assessment year. We find from the submissions of the Ld. AR that the assessee has followed the Guidance Note on Accounting for Real Estate Transactions issued by the Institute of Chartered Accountants of India. Para 4 of the Guidance Note specifies that *"transfer of legal title is condition precedent to the buyer who takes significant risks and rewards of ownership and accepting significant completion of the seller's obligation, revenue should not be recognized till such time legal title is validly transferred to the buyer"*. Further the Guidance Note also specifies that *"if there is no significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and (d) It is not unreasonable to expect ultimate collection of revenue from buyers"*. The

percentage of completion method should be followed based on the agreement of sale or any other legally enforceable document. In the instant case, we find that the assessee has registered sale deeds in favour of various buyers of plots. It has recognized the revenue based on the amounts received from the sale of undivided share of the land and on the basis of a percentage computed in accordance with the Guidance Note issued by the ICAI. Similarly, we find that the assessee has recognized the revenue with respect to advances received from customers for sale of plots, at the same rate adopted for recognition of the revenue from registered sale deeds. We also find merit in the argument of the Ld. AR that the balance revenue has been recognized in the subsequent Financial Year by consistently following the percentage of completion method. We therefore find that the Ld. CIT(A) has rightly examined the issue in detail and has recorded his findings as below:

"21. The development expenses debited to the P & L account amounted to Rs. 29,57,44,304/-. The said expenses included the land purchases, the material purchases and direct expenses incurred for development. As the aid expenses were incurred towards the development of plots as well as construction of villas, the development expenses incurred in respect of the project for development of plots upto 31/3/2015 was worked out by the assessee Rs. 20,26,78,056/- after excluding the work in progress of villas of Rs. 9,61,35,000/- from the total development expenses of Rs. 29,57,44,304/- debited to the P & L account during the year and after including the opening work in progress of plots of Rs. 30,68,752/-. As the total estimated project cost in respect of the project of development of plots amounted to Rs. 35,23,57,562/- as against the cost of Rs. 20,26,78,056/-

incurred in respect of the said project upto 31/3/2015, the percentage of completion of the project was worked out at Rs. 57.52%

22. *The said percentage was applied on the aggregate of the receipts from the sale of plots of Rs. 18,96,30,000/- and advances received towards sale of plots of Rs. 10,43,85,086/- amounting to Rs. 29,40,15,086/- and the revenue has accordingly recognized at Rs. 16,91,19,135/- in accordance with the percentage of completion method. The balance amount of Rs. 12,48,95,951/- out of the said aggregate of sale of plots and advances was accordingly shown in the balance sheet as a liability under the head "advances from customers plots" under other current liabilities. As the plot area in respect of which sales were made or advances were received amounted to 49,605 sq. yds as against the total saleable plot area of the project of 76,000 sq yds, the ratio of the area sold to the total saleable area was worked out at Rs. 65.27% and the cost to be claimed against the revenue worked out at Rs. 13,22,87,434/- by applying the said percentage on the total cost of the project of development of plots of Rs. 20,26,78,056/- incurred upto 31/3/2015. The said cost is accordingly reflected in the P & L A/c as the aggregate of the changes in inventories and development expenses.*
23. *Thus, it is seen that the revenue credited to the P & L Account of Rs. 16,91,19,135/- was worked out by the assessee in accordance with the percentage of completion method prescribed in the Guidance Note issued by ICAI for accounting the real estate transactions. The Adoption of percentage of completion method for accounting the revenue, expenses and profits by the real estate developers is considered to be the most appropriate method by the CBDT also by prescribing the verification of whether percentage completion has been followed for recognition of income as a reason for selection of cases for scrutiny under CASS in the case of real estate developers."*

8. We therefore are not inclined to interfere in the order of the Ld. CIT(A) thereby dismissing the grounds raised by the Revenue.

9. In the result, appeal of the Revenue is dismissed.

10. With respect to the Cross Objection raised by the assessee (C.O. No. 24/Viz/2020) since it is supportive in nature, considering the outcome of the Revenue's appeal, no separate adjudication is needed. Accordingly, the CO raised by the assessee is dismissed as infructuous.

Pronounced in the open Court on the 04th May, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :04.05.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s. Rama Krishna Housing Pvt Ltd., D.No.54-15-20, Srinagar Colony, Vijayawada, Andhra Pradesh – 520008.
2. राजस्व/The Revenue – Asst. Commissioner of Income Tax, Circle-3(1), 2nd Floor, Annexe, Central Revenue Building, MG Road, Vijayawada – 520002.
3. The Principal Commissioner of Income Tax, Vijayawada.
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam