

आयकर अपीलिय अधिकरण
मुंबई पीठ "ए", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बाल गणेश, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
आअसं. 2455/मुं/ 2022 (नि.व. 2014-15)
ITA NO. 2455/MUM/2022(A.Y.2014-15)

ITO-12(1)(1) Mumbai,
Room No.129, Ground Floor,
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Alvess Developers Pvt. Ltd.
Plot No.11 Jtn Of 29th & 16th Road,
Opp Gurunanak Garden,
Bandra(West),Mumbai 400 050.
PAN: AACCP-0964-F

..... प्रतिवादी/Respondent

C.O. NO.132/MUM/2022
[Arising out of ITA NO. 2455/MUM/2022 (A.Y.2014-15)]

M/s. Alvess Developers Pvt. Ltd.
Plot No.11 Jtn Of 29th & 16th Road,
Opp Gurunanak Garden,
Bandra(West),Mumbai 400 050.
PAN: AACCP-0964-F

..... Cross Objector

बनाम Vs.

ITO-12(1)(1)
Mumbai.

..... प्रतिवादी/Respondent

Assessee by : Shri Prakash Jhunjunwala
Revenue by : Shri Manoj Kumar Sinha

सुनवाई की तिथि/ Date of hearing : 31/01/2023

घोषणा की तिथि/ Date of pronouncement : 24/04/2023

आदेश/ ORDER**PER VIKAS AWASTHY, JM:**

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 28/07/2022, for the Assessment Year 2014-15. The assessee has filed Cross Objections in the aforesaid appeal by the Revenue supporting the order of CIT(A).

2. The solitary issue raised by the Revenue in appeal assailing the order of CIT(A) deleting addition of Rs.2,36,68,878/- made on account of sundry creditors u/s. 68 of the Income Tax Act, 1961 [in short 'the Act'].

3. The assessee is a builder and developer. The assessee filed its return of income for the impugned assessment year on 30/09/2014 declaring total income of Rs.4,56,911/-. In scrutiny assessment proceedings the Assessing Officer inter-alia made addition of Rs.2,36,68,878/- in respect of sundry creditors. While making aforesaid addition the Assessing Officer observed that assessee has failed to prove identity, genuineness and creditworthiness of sundry creditors. Against the assessment order dated 28/12/2016 passed u/s. 143(3) of the Act, the assessee carried the issue in appeal before CIT(A). Before the First Appellate Authority, the assessee submitted that the sundry creditors represent credit on trade account and furnished the ledger extracts. The CIT(A) after verifying the submissions of the assessee found the same to be in order and deleted the addition. Hence, the present appeal by the Revenue.

4. Shri Manoj Kumar Sinha representing the Department submits that the CIT(A) deleted the addition after accepting additional evidence and without

affording reasonable opportunity to the Assessing Officer to examine the additional documents filed by the assessee. Thus, there is violation of Rule 46A.

5. On the other hand, Shri Prakash Jhunjhunwala appearing on behalf of the assessee submits that the books of the assessee are audited and were furnished before the Assessing Officer. The trade creditors are duly reflected in the books of the assessee. The only document that was filed during first appellate proceedings was registered agreement in respect of Kavita Kalani for purchase of flat from the assessee. The sale price as per said agreement is Rs.4.25 crores, out of which Rs.2.00 crores was paid by her towards part consideration. The balance amount of Rs.2.25 crores was to be paid at the time of execution of sale deed. The copy of the registered agreement was filed to supplement the audited account which were already furnished to the Assessing Officer. The trade creditors are duly reflected in the books of account. The Id. Authorized Representative for the assessee prayed for dismissing the appeal of Revenue. The Id. Authorized Representative for the assessee further submits that if the appeal of the Revenue is dismissed, the Cross Objections would become infructuous. The Id. Authorized Representative for the assessee further pointed that the Assessing Officer has already given effect to the order of CIT(A) on 22/08/2022.

6. Both sides heard, orders of authorities below examined. The short prayer made on behalf of the Revenue is violation of Rule 46A. The assessee is in the business of sale and purchase of flats. It is not disputed by the Revenue that assessee had furnished audited accounts before the Assessing Officer. The trade creditors are duly reflected therein. The Assessing Officer has

accepted the books of the assessee. During the first appellate proceedings the assessee filed copy of registered agreement pertaining to the transaction of sale of flat to one Kavita Kalani. Part consideration of Rs.2.00 crores was made against the total consideration Rs.4.25 crores. The remaining amount was shown under the head 'trade creditors'. These very amounts are emanating from the books of the assessee. We find no infirmity in the order of CIT(A), hence, the impugned order warrants no interference. Appeal of Revenue is dismissed being devoid of any merit. Consequently, Cross Objections by the assessee are dismissed as infructuous.

7. In the result, appeal by the Revenue and Cross Objections by the assessee are dismissed.

Order pronounced in the open court on 24-04-2023.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 24/04/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy 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.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT Mumbai

//True Copy//