

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A.L. SAINI, AM
आयकर अपील सं./ITA Nos.437 & 441/SRT/2018
(निर्धारणवर्ष / Assessment Year: (2014-15)
(Virtual Court Hearing)

Al Foulek Residency P Ltd. Shop No.7, Chandni Complex, Mouje Dungri, Bharuch-392001	Vs.	Asstt. Commissioner of Income-tax, Circle-1, Hari Kunj, 1 st Floor, Income Tax Office, Station Road, Bharuch-392001
Asstt. Commissioner of Income- tax, Circle-1, Hari Kunj, 1 st Floor, Income Tax Office, Station Road, Bharuch-392001		Al Foulek Residency P Ltd. Shop No.7, Chandni Complex, Mouje Dungri, Bharuch-392001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAKCA 1031 G		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से/Respondent by : Shri Ashok B.Koli- CIT.DR

सुनवाई की तारीख/ **Date of Hearing** : 24/07/2023
घोषणा की तारीख/**Date of Pronouncement** : 27/07/2023

आदेश / ORDER

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned cross appeals filed by the Assessee and Revenue, pertaining to Assessment Year (AY) 2014-15, are directed against the common order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the Id. CIT(A)”], which in turn arise out of an assessment order passed by Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

2. These are the cross-appeals filed by Revenue and assessee. The assessee, through his authorized representative, Shri Krutarth Desai, sought for adjournment. The assessee`s case was adjourned for eight times. However, finally, when these cross-appeals were listed for hearing, Shri Krutarth Desai, Ld. AR for the assessee has informed the Bench that the assessee has not

instructed him to plead his case. Therefore, Shri Krutarth Desai, wanted to withdraw the authority letter. Shri Desai also filed a letter through electronic mode stating his wishes to withdraw the authority letter and informed the Bench that he is not going to argue assessee's appeal. On the last date of hearing none appeared on behalf of assessee nor filed any adjournment application. Therefore, we note that no one was present on behalf of the assessee on the date of hearing. Neither any adjournment petition was filed in respect of the above assessee. It means that assessee is not interested to prosecute the appeal.

3. Since at the time of hearing, none appeared on behalf of the assessee, in spite of issuance of notice for the hearing, on the address given by the assessee in Form No.36 (Column No.10), and Id DR was present for the respondent Revenue. In the absence of any appearance by the assessee, the appeal is being disposed of *ex-parte qua* the appellant, after hearing Id DR on merits in terms of Rule 24 of the Income Tax Appellate Tribunal Rules, 1963.

4. We shall take Revenue's appeal in ITA No.441/SRT/2018, wherein ground of appeal raised by the Revenue are as follows:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition of Rs.13,00,000/- made on account of unexplained expenditure without appreciating the fact that the addition was based on the discrepancies pointed out in books of account impugned during the course of survey and hence deserves to be upheld.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the addition of Rs.1,20,30,000/- made on account of unaccounted on-money received in cash relying on Gujarat High Court's decision in the case of CIT vs. Shivalik Build Well (P) Ltd. [2013] 40 taxmann.com 219 (Guj) wherein it is held that receipt of advance or booking amount in taxable in the hand of the assessee in the year in which title of the property is transferred to the customer. The Ld. CIT(A) erred in appreciating the fact that the receipts were not in the nature of advance but unaccounted on-money which assessee failed to record in its books of account.

3. On the facts and circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting the unexplained expenditure of Rs.18,97,933/- without appreciating that

the addition was made on account of difference in the billed amount as per material impounded during survey from the computer back-up and billed amount as per its ledger.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(Appeals) erred in deleting addition of Rs.10,80,10,333/- made on account of application of percentage completion method to the fact of the case.

5. The appellant craves to add to, amend or alter the above ground as may be deemed necessary”

5. For ground No.1, Learned DR for the Revenue argued that Ld.CIT(A) was erred in deleting the addition of Rs.13,00,000/- made on account of unexplained expenditure without appreciating the fact that the addition was based on the discrepancies pointed out in books of account impugned during the course of survey. We have heard ld DR for the Revenue and noted that this addition comprises of alleged transactions with two parties (i) Rs.10,00,000/- allegedly received in cash from Shri Divyesh Savalia which he denied in statement recorded by ADIT (Inv.), Bharuch and (ii) Rs.3,00,000/- have been added on account of book entry adjustment made with the account of Shri Gulambhai Patel for receipt of Rs.3,00,000/-.The Ld. CIT-DR for the Revenue relied on the order passed by Assessing Officer and submitted written submission, which is reproduced below:

“The first ground is deletion of Rs.13,00,000/- made on account of unexplained expenditure. The CIT(A) deleted the additions as narrated in para-6.4 page no. 8, 9 & 10 of his order dated 23.03.2018 stating that there is no corroborative evidences and expenses are duly recorded in the books of accounts.

Arguments:

The contention of the CIT(A) is not proper and correct. The in the para 4.1page no. 2 & para 4.1.1 age no. 4 & 5 of the assessment order in detail.

Further, the contention of the assessee during the assessment proceeding is that the payments made against the materials supplied by the Shri Divyesh Savaliya actually transferred to booking amounts but the ledger submitted by the assessee (marked as Annexure-1) in response to the show cause notice does not have any such journal entry transferring the payment against materials to bookings.

Further, it is worthwhile to mention here that regarding aforesaid transaction, the assessee neither furnished any confirmation nor filed any documentary evidences and therefore, the same remained unexplained and additions are based on corroborative documents found during the survey action.

6. We find merit in the submission of Ld. CIT-DR for the Revenue and perused the materials available on record including findings of Ld CIT(A). We note that in response to the show cause notice of Assessing Officer, the assessee does not show any such journal entry transferring the payment against materials to bookings, besides regarding aforesaid transaction, the assessee neither furnished any confirmation nor filed any documentary evidences, therefore we are of the view that matter may be remitted back to the file of the assessing officer to examine these documents and evidences, as narrated by Ld DR for the Revenue. The assessee is also directed to produce relevant documents and evidences before the Assessing Officer. For statistical purposes, the ground No.1 raised by the Revenue is allowed.

7. For ground No.2, Learned DR for the Revenue argued that Ld. CIT(A) erred in deleting the addition of Rs.1,20,30,000/- made on account of unaccounted on-money received in cash relying on Gujarat High Court's decision in the case of CIT vs. Shivalik Build Well (P) Ltd. [2013] 40 taxmann.com 219 (Guj) wherein it is held that receipt of advance or booking amount is taxable in the hand of the assessee in the year in which title of the property is transferred to the customer. The Ld. CIT(A) erred in appreciating the fact that the receipts were not in the nature of advance but unaccounted on-money which assessee failed to record in its books of account. The Ld. CIT-DR for the Revenue relied on the order passed by Assessing Officer and filed written submission, which is reproduced below:

“Ground No. 2:

It has been found by the Assessing Officer that on Page No. 18 of loose paper File impounded as Annexure A-7 during the course of survey proceedings, evidences for on money have been gathered and it describes the cash book entries of the booking amount accepted by Al-Foulek Residency Pvt Ltd (the assessee) mentioning name of the customer, cash payment, date of payment, flat/shop number etc. It has been mentioned by the A.O. that there are certain columns in it with one specific column with heading "Account". The narration for the entries in this column is "Yes, No and Cancel". For those with "No" narration, no entry in cash book of the assessee was found. During the course of survey proceedings, Sh. Ibrahim Ahmed Kosia, Director of the assessee company was particularly asked to explain this anomaly where he admitted that the entries with "No" narration were

not accounted for in cash book of Al-Foulek Residency Pvt. Ltd. for the relevant F.Y. by stating reason that this is because of the mistake of his accountant. For e.g. Mohammed Naeem Shaikh, one of the customer who booked residential unit - flat no 604 in Al Safa tower, had paid Rs. 50,000/- in cash (Rs.25,000/- + Rs.25,000/-) but cash book entry of only Rs.25,000/- is made and the other entry of Rs.25000/- relevant to 07/07/2012 (which is having "No" narration in the account column as mentioned above) has been intentionally avoided and not entered into the cash book of the assessee. The same has also been confirmed from the customer Sh Mohammed Naeem Shaikh vide his statement on oath u/s 131(1A) dated 20/03/2014 that he had paid total Rs.50,000/- in cash. Sh. Ibrahim Ahmed Kosia, Director of the assessee company was confronted on the basis of statement of Sh. Mohmed Naeem Shaikh and he again admitted that entries with "No" remarks in account column were not accounted for into the cash book. Sh. Ibrahim Ahmed Kosia, Director of the assessee company, had admitted that such entries totaled to Rs.1,20,00,000/-, whereas, on going through the seized documents impounded during the course of survey, it was found by the A.O. that the actual aggregated total of cash entries with "No" narration comes to Rs.1,65,65,000/-. This amount was added by the A.O. as on-money receipts not accounted for in the regular books of accounts.

It is to be noted that Ld.CIT(A) has not given any finding why the amount of Rs.1,65,65,000/- is deleted however, this amount represents the on-money received to the assessee on account of sale of flats, shops, etc. The Ld.CIT(A) confirmed addition of Rs.45,35,000/- on account of on-money received on sale of flats, shops, etc. stating that appellant could not demonstrate that it was not on-money received by the assessee because the above figures (page no. 31 & 32 of CIT (A) order) are those which were not entered in the books of assessee. However, on similar receipt of on-money, CIT(A) deleted the addition (Rs.1,65,65,000) which is in the nature of on-money on sale of flats. The assessee has not discharged the onus by filing the confirmation from these persons from whom the on-money received (narrated in table incorporated on page no. 8 & 9 para 4.3.1 of the AO's order). It is also evident that assessee maintains the parallel books of accounts. The receipt of on-money from sale of residential property, shops, commercial property, etc. are not recorded in the regular books of account. Hence, it is on-money (unaccounted) taxable in the hands of the assessee. The decision relied by the CIT(A) is not applicable in this case. It differs on facts as in the said decision, there were advances but in the present case, it is on-money."

8. We have heard Ld. CIT-DR for the Revenue and perused the materials available on record including the findings of ld CIT(A). We find merit in the submission of ld DR for the Revenue, to the effect that Ld.CIT(A) has not given any finding why the amount of Rs.1,65,65,000/- is deleted however, this amount represents the on-money received to the assessee on account of sale of flats, shops, etc. Therefore, we remit this issue back to the file of the Assessing Officer with the direction to the assessee to submit relevant documents and evidences before the Assessing Officer to explain the on-money. For statistical purposes, the ground No. 2 raised by the Revenue is allowed.

9. For ground No.3, Learned DR for the Revenue argued that Ld. CIT(A) has erred in deleting the unexplained expenditure of Rs.18,97,933/- without appreciating that the addition was made on account of difference in the billed amount as per material impounded during survey from the computer back-up and billed amount as per its ledger. The Ld. CIT-DR for the Revenue relied on the order passed by Assessing Officer and submitted written submission, which is reproduced below:-

“Ground No.3:

The CIT(A) deleted the additions as narrated in para 10.4 page No.38 of his order stating that the details in respect of Patel Constructions namely copy of ITR, ledger accounts etc. filed.

Arguments:

The contentions of the CIT(A) is not proper and correct. The facts are narrated by the AO in the para 4.5.1 page No.21 of the assessment order in detail. The assessee’s reply has been duly considered by AO. However, the total amount of bills as per the material impounded during the survey proceedings from the computer back-up is of Rs.54,32,192/- whereas ledger account produced by the assessee vide above submission shows total bills raised by Patel Construction is of Rs.35,34,259/- only, which itself shows the expenses were suppressed by the assessee and therefore, difference of Rs.18,97,933/- is hereby disallowed and treating the same as unexplained expenditure.”

Further, addition was made on account of difference in the billed amount as per material impounded during survey from the computer back-up and billed amount as per its ledger.”

10. We have heard Ld. CIT-DR and perused the materials available on record. We find merit in the submission of Ld CIT-DR and remit this issue back to the file of the Assessing Officer with the direction to the assessee to explain the difference in the billed amount as per material impounded during survey from the computer back-up and billed amount as per its ledger. For statistical purposes, the ground No. 3 raised by the Revenue is allowed.

11. For ground No.4, Ld. CIT-DR for the Revenue argued that Ld. CIT(A) erred in deleting addition of Rs.10,80,10,333/- made on account of application of percentage completion method. The Ld. CIT-DR for the Revenue relied on the order of Assessing Officer and filed written submission, which is reproduced below:

“Ground No.4:

Arguments:

The decision of CIT(A) is not proper and correct. The AO has discussed in detail the ground of addition of Rs.10.80 crores in his order started from para-4.6 page no. 21 onwards and finally concluded in the para-4.6.7 page no.33 & 34 of his order. The AO adopted the percentage completion method and determined profit based on percentage completion method which is proper and correct. Further, assessee is following the mercantile method of accounting wherein the risk and rewards as well as rights are transferred to the buyer as soon as the booking and payment made for purchase of flats, shops etc.”

12. We have heard Ld. CIT-DR for the Revenue and perused the materials available on record. We note that Id CIT(A) has not considered the findings of the Assessing Officer in proper prospective. The assessee is following the mercantile method of accounting wherein the risk and rewards as well as rights are transferred to the buyer as soon as the booking and payment made for purchase of flats, shops etc, therefore, assessee is directed to explain before the Assessing Officer whether he is following completed contract method or percentage of completion method and as per his business model which method is suitable, whereas as per Accounting Standard-7 completed contract method is not allowed only percentage of completion method is allowed. Therefore, we remit this issue back to the file of the Assessing Officer for fresh adjudication. For statistical purposes, the ground No. 4 raised by the Revenue is allowed.

13. In the result, Revenue’s appeal is allowed for statistical purposes.

14. Now we shall take assessee’s appeal in ITA No.437/SRT/2018, wherein grounds of appeal raised by the assessee are as follows:

“1. The ld. CIT(A) has erred on facts and in law in not adjudicating ground relating to additions made by Assessing Officer by taking cognizance of loose papers / rough notings impounded in the course of survey solely on the strength of statement of director recorded in the course of survey without corroborating the same with necessary cross inquiries and ignoring the explanations & submissions of appellant.

2. The ld. CIT(A) has erred on facts and in law in confirming addition of Rs.14,28,000/- by invoking provisions of section 40A(3) without appreciating that no expenditure was incurred in cash and was claimed in the return of income.

3. The Ld. CIT(A) erred on facts and in law in confirming addition of Rs.45,35,000/- for alleged receipt of ‘on money’ by appellant on the strength of unreliable and unauthentic piece of documents.

4. The Ld. CIT(A) erred on facts and in law in not deleting addition of Rs.3,29,525/- in spite of agreeing with the contention of appellant.

The appellant craves permission to add, alter, amend or withdraw any ground or grounds of appeal either before or during the course of hearing of the appeal.”

15. We note that assessee has not appeared before this Tribunal to argue these grounds of appeal nor they submitted before the Bench any written submission. Without assistance of the assessee, these above grounds can not be adjudicated by the us. Therefore, we are of the view that since we have remitted the entire issue of Revenue's appeal back to the file of the Assessing Officer, therefore, these above grounds raised by the assessee in its appeal No.437/SRT/2018, are also remitted back to the file of the Assessing Officer for fresh adjudication. The grounds of Revenue appeal as well as assessee's grounds of appeal are interconnected in some cases, therefore, entire grounds raised by the assessee in ITA No. 437/SRT/2018, are remitted back to the file of the Assessing Officer for fresh adjudication along with Revenue's grounds. Therefore statistical purposes assessee's appeal is allowed.

16. In combined result, appeal filed by the Revenue as well as assessee's appeal are allowed for statistical purposes.

Registry is directed to place one copy of this order in all appeals folder / case files.

Order pronounced in the open court on 27/07/2023 by placing the result on the notice board.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

सूरत / Surat दिनांक/ Date: 27/07/2023
Dkp Outsourcing Sr.P.S.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

// True Copy //

By

Sr. Private Secretary/Private Secretary/
Assistant Registrar, ITAT, Surat