

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.187/PUN/2018
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. SRK Shelters Pvt. Ltd., Hinjewadi IT Phase-2, Opp. Bharat Petrol Pump, Behind ICICI Bank, Hinjewadi, Pune- 411057. PAN : AANCS8018A	Vs.	DCIT, Circle-6, Pune.
Appellant		Respondent

Assessee by : None
Revenue by : Shri M. G. Jasnani

Date of hearing : 08.08.2023
Date of pronouncement : 09.08.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Pune [‘the CIT(A)’] dated 13.11.2017 for the assessment year 2014-15.

2. Briefly, the facts of the case are that the appellant is a Private Limited Company engaged in the business of real estate. The Return of Income for the assessment year 2014-15 was filed on 27.11.2014

declaring a loss of Rs.3,17,94,804/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Circle-6, Pune ('the Assessing Officer') vide order dated 22.12.2016 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.1,91,15,259/-. While doing so, the Assessing Officer made addition of Rs.5,09,10,063/- being the amount of on-money consideration received on sale of flats in the project known as "Skywing". The factual matrix of the addition is as under :-

During the course of assessment proceedings for the assessment year 2013-14 in the case of M/s. Sairang Developers and Promoters Pvt. Ltd., a sister concern of the assessee company, it was found by the Assessing Officer that while verifying the material impounded during the course of survey operations at Sl. No.9, Page No.71, it was found that the assessee had collected the on-money consideration aggregating to Rs.5,09,10,063/- in cash in respect of a project, namely, "Skywing" carried out by the assessee company. During the course of assessment proceedings for the assessment year 2013-14, it appears that the Authorized Representative of the assessee company had stated before the Assessing Officer that this

amount would be offered to tax in the assessment year 2014-15. The details of amount collected in cash towards project, Skywing is found at Page No.71, Sl. No.9, the details of which are set out by the Assessing Officer at page no.2 of the assessment order. However, during the course of assessment proceedings, the appellant had denied having received any on-money consideration and further submitted that this fact can be cross-verified by the buyers by providing details such as, name, address, e-mail, contact nos. etc of the flat purchasers from whom the appellant had alleged to have received the on-money consideration. However, the said contention of the assessee was rejected by the Assessing Officer by holding that the Authorized Representative of the appellant had agreed to offer this amount to tax in the assessment year 2014-15 during the course of assessment proceedings for the assessment year 2013-14. Accordingly, the Assessing Officer brought to tax the entire alleged on-money consideration of Rs.5,09,10,063/-. The Assessing Officer also made same addition on protective basis by spreading over the entire amount of Rs.5,09,10,063/- over a period of six years for the assessment years 2009-10 to 2014-15.

3. Being aggrieved by the above addition, an appeal was filed before the Id. CIT(A), who vide impugned order considering the details of the amount received from the customers as well as considering the statements recorded u/s 133A of the Act, confirmed the addition by rejecting the contention of the appellant that it is only a rough estimate and held that the retraction of the statement recorded u/s 133A of the Act is not valid.

4. Being aggrieved, the appellant is in appeal before us in the present appeal.

5. When the matter was called on, none appeared on behalf of the assessee despite due service of notice of hearing. On perusal of the order sheet, it would be clear that the matter was listed on several occasions, the matter was adjourned at the request of the assessee, therefore, we proceed to dispose of the matter on merits after hearing the Id. Sr. DR.

6. The assessee raised the five grounds of appeal. The ground of appeal no.5 is general in nature, dismissed as such. The ground of appeal no.1 challenges the addition of Rs.5,09,10,063/- made by the Assessing Officer on the ground that the addition was made on the basis of rough estimate and does not reflect the actual sale

consideration. The ground of appeal no.2 was raised seeking the deduction of expenses in relation to the addition made on account of alleged on-money consideration. The ground of appeal no.3 challenges the addition on the ground that the entire amount cannot be supposed to the net profit element embedded in sale consideration. The ground of appeal no.4 was raised seeking the benefit of telescoping unaccounted income expenditure in the group concerned.

7. We heard the ld. Sr. DR and perused the material on record. The issue in the present appeal relates to the addition of Rs.5,09,10,063/- on account of alleged on-money consideration in the project “Skywing” carried out by the assessee company. It is undisputed fact that as per the seized material, it is found that the appellant had received on-money consideration of Rs.5,09,10,063/- in the project “Skywing”, the details of which were set out by the ld. CIT(A) in para 5.2 of the CIT(A)’s order. It is also a matter of record that during the course of survey operations the assessee had admitted the fact of receipt of on-money consideration. It is only during the course of assessment proceedings before the Assessing Officer, the appellant had denied having receipt on-money

consideration, the amount shown in the seized material at Page No.71, Sl. No.9 only indicates the rough estimate not the actual sale consideration. Further, during the course of assessment proceedings for the assessment year 2013-14, the Authorized Representative of the assessee also agreed to offer this amount to tax in the assessment year 2014-15, but in the return of income, no amount was offered to tax. The seized material clearly indicated, which is found at Page No.71, Sl.No.9 that during the previous year relevant to the assessment year under consideration the appellant had received on-money consideration of Rs.5,09,10,063/- in respect of project, “Skywing”. This amount was not shown as a part of sale consideration and offered to tax. Thus, the appellant had concealed the sale consideration of Rs.5,09,10,063/-. Since the material clearly indicates that the amount was received as on 27.07.2013 i.e. during the previous year relevant to the assessment year 2014-15, the Assessing Officer had rightly brought to tax for the year under consideration. The retraction of the statement given u/s 133A is not supported by any cogent material, therefore, the retraction was not valid in law. Therefore, the findings of the lower authorities are justified on both on fact and in law. Thus, we do not find any

reason to interfere with the orders of the lower authorities.
Accordingly, the grounds of appeal filed by the assessee stand dismissed.

8. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced on this 09th day of August, 2023.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 09th August, 2023.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.