

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 Nos.95 & 96/PUN/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

M/s. Sairung Developers & Promoters Pvt. Ltd., Hinjewadi IT Phase-2, Opp. Bharat Petrol Pump, Behind ICICI Bank, Hinjewadi, Pune- 411057. PAN : AACCS9538G	Vs.	DCIT, Circle-6, Pune.
Appellant		Respondent

आयकर अपील सं. / ITA Nos.257 & 258/PUN/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

ACIT, Circle-6, Pune.	Vs.	M/s. Sairung Developers & Promoters Pvt. Ltd., 501, 502, Corporate Plaza, Senapati Bapat Road, Near Chaturshringi Temple, Shivajinagar, Pune- 411016. PAN : AACCS9538G
Appellant		Respondent

Assessee by : Shri Hari Krishan
Revenue by : Shri Ajay Kumar Kesari

Date of hearing : 21.09.2023
Date of pronouncement : 13.10.2023

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross appeals filed by the assessee as well as by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)-4, Pune [‘the CIT(A)’] dated 27.10.2017 for the assessment years 2013-14 and 2014-15 respectively.

2. First, we shall take up the cross appeals in ITA No.95/PUN/2018 and ITA No.257/PUN/2018 for the assessment year 2013-14 filed by the assessee as well as by the Revenue for adjudication.

3. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of development and selling of plots. The Return of Income for the assessment year 2013-14 was filed on 01.10.2013 disclosing total income of Rs.42,05,330/- Subsequently, the survey operations u/s 133A of the Income Tax Act, 1961 (‘the Act’) were conducted in the business premises of the assessee on 30.09.2013. During the course of such survey proceedings, the Assessing Officer found material in the form of diaries and loose

sheets indicating that the assessee was in receipt of on-money consideration on the sale of plots etc. The assessee company submitted a chart giving analysis of the entries found in the impounded material i.e. diaries and loose sheets. The said chart is extracted by the Assessing Officer at page no.2 of the assessment order. As per the said chart, it is submitted by the assessee that during the previous year relevant to the assessment year 2013-14, the assessee had received unaccounted advance of Rs.73,49,981/- and unaccounted receipt in the form of on-money receipt of Rs.1,65,88,375/-. Further, the Assessing Officer found that the assessee company had not included the amounts found in the diaries aggregating to a sum of Rs.12,73,99,819/-. The photocopies of the images of notings in the diaries were reproduced by the Assessing Officer from page no.10 to 51 of the assessment order. The Assessing Officer also made addition of Rs.1,58,32,840/- being the amount received on account of unaccounted unsecured loans received from M/s. Sairung Developers and Realtors, as the assessee had failed to prove the genuineness of the transaction. The

Assessing Officer also made addition of Rs.1,03,72,542/- being the expenditure incurred outside the books of accounts.

4. Being aggrieved by the above additions, an appeal was filed before the Id. CIT(A), who vide impugned order granted partial relief in respect of addition of Rs.12,73,99,819/- by directing the Assessing Officer to delete the addition of Rs.1,77,08,000/- in respect of addition made in the chart no.4 by holding that the Assessing Officer had not recorded the findings and also directed the Assessing Officer to delete the addition of Rs.20,00,000/- in respect of chart no.2, as it amounts to double addition. Similarly, the Id. CIT(A) deleted the addition of Rs.11,00,000/- made in respect of chart no.9 by holding that the amount in question are not related to the assessee company. Similarly, the Id. CIT(A) also deleted the addition of Rs.43,00,000/- out of addition of Rs.53,00,000/- made in respect of chart no.19 accepting the explanation of the assessee and the balance addition was confirmed by the Id. CIT(A).

5. Being aggrieved by that part of the order of the Id. CIT(A), which is against the assessee, the assessee is in appeal before us in

ITA No.95/PUN/2018 and the Revenue is in appeal before us in ITA No.257/PUN/2018 being aggrieved by that part of the order of the ld. CIT(A), which is against the Revenue.

ITA No.95/PUN/2018, A.Y. 2013-14 – By Assessee :

6. Ground of appeal no.1 challenges the addition of Rs.12,62,80,184/- made by the Assessing Officer on the basis of entries found in loose sheets and diaries as confirmed by the ld. CIT(A). It is contended before us that the ld. CIT(A) without accepting the explanation filed by the assessee merely confirmed the addition made by the Assessing Officer. The ld. AR also took us through the submissions made before the ld. CIT(A). After consideration of submissions of the assessee, the ld. CIT(A) held that the addition made by the Assessing Officer is based on the entries found in the loose sheets and diaries which clearly reflected that the assessee had been receiving on-money consideration at the time of sale of plots, which remains unaccounted in the books of accounts and not disclosed in the return of income. The Assessing Officer had given plot-wise details of breakup of on-money receipts in the assessment order, which were accepted by the assessee

company. Therefore, there is no dispute regarding the computation of quantum of addition. The plea of the assessee that the amount received through banking channel cannot be added, which was rightly rejected by the ld. CIT(A) since the assessee company had failed to discharge the onus of proving the consideration received through banking channel, which was shown in the books of accounts was offered to tax. We had carefully gone through the submissions made during the course of proceedings before the ld. CIT(A) and find that the submissions made by the assessee are merely bald submission without leading the evidence in support of the contention, therefore, the ld. CIT(A) rightly rejected the contention of the assessee. Therefore, we are inclined to accept the finding of the ld. CIT(A). Accordingly, we do not find any merit in the ground of appeal no.1 filed by the assessee. Thus, the ground of appeal no.1 stands dismissed.

7. By way of ground of appeal no.2, the assessee seeks the benefit of telescoping of income over the other additions. The question whether the benefit of telescoping of addition can be given over the other addition is a pure question of fact. In the absence of

any material placed before us as to how the assessee is entitled the benefit of telescoping over the other additions, we are unable to agree with the contention of the assessee. Accordingly, this ground of appeal no.2 stands dismissed.

8. Ground of appeal no.3 challenges the addition on account of unaccounted advance of Rs.73,49,981/- made by the Assessing Officer as confirmed by the Id. CIT(A). Before us, the assessee company could not lead any evidence that this unaccounted advance was received in respect of the plots which were not registered. Therefore, the contention of the appellant that the amount was received and offered to tax in the subsequent year in which the plots were registered is rejected. Therefore, we are unable to accept the contention of the assessee that the unaccounted advance of Rs.73,49,981/- cannot be brought to tax. Thus, this ground of appeal no.3 stands dismissed.

9. Ground of appeal nos.4 and 5 challenges the addition of Rs.1,03,72,542/- being the expenditure incurred outside the books of account. Admittedly, the assessee had incurred expenditure of Rs.1,03,72,542/- outside the books of account and the transaction is

squarely hit by the proviso to section 69C of the Act. Therefore, the expenditure incurred cannot be allowed as deduction while computing the income under the head “business” by virtue of proviso to section 69C of the Act. Thus, the ground of appeal nos.4 and 5 stands dismissed.

10. In the result, the appeal filed by the assessee in ITA No.95/PUN/2018 for A.Y. 2013-14 stands dismissed.

ITA No.257/PUN/2018, A.Y. 2013-14 – By Revenue :

11. The Revenue is in appeal being aggrieved by the order of the ld. CIT(A) granting the relief in respect of addition of Rs.1,77,08,000/- out of total income of Rs.12,73,99,819/- made on account of on-money receipt and the deletion of addition of Rs.1,58,32,840/- in respect of loan taken by the assessee from M/s. Sairung Developers and Realtors.

12. We had carefully gone through the decision of the ld. CIT(A) and find that the ld. CIT(A) while granting the relief of Rs.1,77,08,000/- out of total addition of Rs.12,73,99,819/- made on account of receipt of on-money consideration, the ld. CIT(A) had merely accepted the explanation of the assessee without examining

any evidence. Thus, the order of the ld. CIT(A) is bereft of any discussion on evidence led in support of the explanation given by the assessee. Therefore, the order of the ld. CIT(A) cannot be sustained in the eyes of law. Thus, we restore the matter back to the file of the ld. CIT(A) for *de novo* adjudication in accordance with law. Accordingly, this ground of appeal filed by the Revenue stand partly allowed for statistical purposes.

13. As regards to the deletion of addition of Rs.1,58,32,840/- on account of unsecured loan received from M/s. Sairung Developers and Realtors. It is contended that the lender had not filed any return of income and, therefore, the creditworthiness of the lender is doubtful. It is submitted that the lender i.e. M/s. Sairung Developers and Realtors had not filed any audited Balance Sheet, nor filed the return of income, therefore, the creditworthiness of the said lender is in doubt. In the circumstances, the ld. CIT(A) ought not to have deleted the addition.

14. We had carefully gone through the findings of the ld. CIT(A) and find that the ld. CIT(A) had merely swayed by the facts that the said lender, namely, M/s. Sairung Developers and Realtors became

non-operational and the liabilities were transferred to the assessee. Therefore, in our considered opinion, this is not relevant criteria to accept the genuineness of the transaction. The Id. CIT(A) ought to have examined the three relevant parameters of the transactions i.e. identity and creditworthiness of the lenders and genuineness of the transaction. There was no discussion by the Id. CIT(A) on this three aspects. In the circumstances, we are of the considered opinion that the ends of justice would be met if the matter is restored to the file of the Id. CIT(A) to examine the issue afresh keeping in view the three parameters cited supra. Accordingly, this ground of appeal stands partly allowed for statistical purposes.

15. In the result, the appeal filed by the Revenue in ITA No.257/PUN/2018 for A.Y. 2013-14 stands partly allowed.

16. Now, we shall take up the cross appeals in ITA No.96/PUN/2018 and ITA No.258/PUN/2018 for the assessment year 2014-15 filed by the assessee as well as by the Revenue for adjudication.

17. Briefly, the facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956. It is

engaged in the business of development of selling of plots. The Return of Income for the assessment year 2014-15 was filed on 19.11.2004 disclosing total income of Rs.1,99,47,013/-. Against the said return of income, the assessment was completed by the Assessing Officer vide order dated 30.12.2016 passed u/s 143(3) of the Act at total income of Rs.39,53,69,012/-. While doing so, the Assessing Officer made addition on account of receipt of on-money consideration of Rs.29,42,69,007/- based on the entries found in the loose sheets and diaries found during the course of survey proceedings. The Assessing Officer also made addition of Rs.7,11,92,992/- being the difference between the actual rate of sale of plots and peak rate of sale of plots (Rs.6,82,72,992/- being the amount received on account of unaccounted advances received but not accounted in the books of account and Rs.29,20,000/- being the expenditure unaccounted in the books of account). The contention of the assessee company is that the amount of Rs.1,88,87,144/- was already offered to tax in the assessment year 2013-14, which was rejected by the Assessing Officer, as the assessee was failed to prove the same. The Assessing Officer also made addition of

Rs.99,60,000/- being the amount of sale made to one Shri Kisve K. Baburao on 06.12.2013, the same was not offered to tax.

18. Being aggrieved by the above additions, an appeal was filed before the ld. CIT(A), who vide impugned order deleted the addition on account of on-money receipt of Rs.29,42,69,007/- by accepting the explanation of the assessee that this amount in question represents the advance, which cannot be treated as income and also deleted the addition made on account of sale of plots of Rs.99,60,000/- accepting the explanation of the assessee that the sale was recorded in the subsequent assessment year 2015-16, as the possession of the plots was given during the previous year relevant to the assessment year under consideration.

19. As regards to the addition of Rs.7,11,92,992/-, it is submitted that the ld. CIT(A) confirmed the addition taking into consideration the fact by holding that the addition was made by the Assessing Officer based on the entries found in the diaries and loose sheets and no valid explanation was filed.

20. Being aggrieved by that part of the order of the ld. CIT(A), which is against the assessee, the assessee is in appeal before us in

ITA No.96/PUN/2018 for A.Y. 2014-15 and the Revenue is in appeal in ITA No.258/PUN/2018 for A.Y. 2014-15 being aggrieved by that part of the order of the Id. CIT(A), which is against the Revenue.

ITA No.258/PUN/2018, A.Y. 2014-15 – By Revenue :

21. The Revenue challenges the decision of the Id. CIT(A) in deleting the addition of Rs.29,60,000/- as against the addition made by the Assessing Officer on account of unaccounted money on sale of plots of Rs.29,42,69,007/-. The Assessing Officer had given the details of advance received from the parties, where 90% of the consideration was received, which were not offered to tax. He was of the opinion that since most of the consideration was received and even though the plots were not registered, the same should have been offered to tax in terms of the Accounting Standard-9 (AS-9).

On appeal before the Id. CIT(A), the Id. CIT(A) deleted the addition as made by the Assessing Officer accepting the contention of the assessee that these amounts are merely advances received from the purchasers and the advance cannot be treated as income by invoking the provisions of section 28(iv) of the Act.

22. Being aggrieved, the Revenue is in appeal before us in the present appeal.

23. The ld. CIT-DR submits that the ld. CIT(A) without examining whether the income had accrued to the assessee in terms of AS-9 or not merely accepted the explanation of the assessee that the advance cannot be brought to tax. Therefore, the order of the ld. CIT(A) should be reversed.

24. On the other hand, ld. AR submits that no interference is required to call for the order of the ld. CIT(A).

25. We heard the rival submissions and perused the material on record. From the findings of the ld. CIT(A) which are at para 51.3.3., it is clear that the ld. CIT(A) merely given a bald finding that the advance cannot be treated as income by invoking the provisions of section 28(iv) of the Act. The ld. CIT(A) had failed to examine the issue whether the income had accrued to the assessee in terms of the agreement entered with the buyers of the plot and the provisions in terms of AS-9 or not. Therefore, we are of the considered opinion that the order of the ld. CIT(A) is bereft of any discussion on this issue. The ld. CIT(A) passed the order in very

casual manner without giving any reasons. Therefore, the order of the Id. CIT(A) cannot be sustained in the eyes of law. We restore the matter back to the file of the Id. CIT(A) with a direction for disposal of issue in appeal in accordance with law. Accordingly, this ground of appeal filed by the Revenue stand partly allowed for statistical purposes.

26. The grounds of appeal no.2 challenges the decision of the Id. CIT(A) in deleting the addition of Rs.99,60,000/- made by the Assessing Officer on account of sale of plots made to one Shri Kisve K. Baburao. From perusal of the assessment order, it would be clear that the Assessing Officer made addition based on the facts that the sale deed was executed on 06.12.2013 in favour of the buyers of the flats, namely, Shri Kisve K. Baburao. The fact that the sale deed was registered during the year goes to demonstrate that the ownership rights already stood transferred in favour of the buyer. Therefore, there cannot be any doubt as to the year of sale of the property. However, the Id. CIT(A) merely deleted the addition ignoring the fact that the assessee had offered the same to tax in the subsequent assessment year. The basis of deletion of addition

cannot be sustained in the eyes of law in view of the settled principle of law that the income should be offered to tax in the right hand, in the right year. Therefore, this ground of appeal no.2 stands restored to the file of the ld. CIT(A) for *de novo* adjudication in accordance with law.

27. In the result, the appeal filed by the Revenue in ITA No.258/PUN/2018 for A.Y. 2014-15 stands partly allowed.

ITA No.96/PUN/2018, A.Y. 2014-15 – By Assessee :

28. Ground of appeal no.1 challenges the confirmation of addition on account of on-money receipt of Rs.7,11,92,992/-. It is contended before us that the ld. CIT(A) without accepting the explanation filed by the assessee merely confirmed the addition made by the Assessing Officer. The ld. AR also took us through the submissions made before the ld. CIT(A). After consideration of submission of the assessee, the ld. CIT(A) held that the addition made by the Assessing Officer is based on the entries found in the loose sheets and diaries which clearly reflected that the assessee had been receiving on-money consideration at the time of sale of plots, which remains unaccounted in the books of accounts and not disclosed in

the return of income. The Assessing Officer had given plot-wise details of breakup of on-money receipts in the assessment order, which were not accepted by the assessee company. Therefore, there is no dispute regarding the computation of quantum of addition. The plea of the assessee that the amount received through banking channel cannot be added was rightly rejected by the Id. CIT(A) since the assessee company had failed to discharge the onus of proving that the consideration received through banking channel, was shown in the books of accounts and offered to tax. We had carefully gone through the submissions made during the course of proceedings before the Id. CIT(A) and find that the submissions made by the assessee are merely bald submissions without leading any evidence in support of the contentions made, the Id. CIT(A) rightly rejected the contention of the assessee in the absence of any material. Therefore, we are inclined to accept the finding of the Id. CIT(A). Accordingly, we do not find any merit in the ground of appeal no.1 filed by the assessee. Thus, the ground of appeal no.1 stands dismissed.

29. Ground of appeal nos.2 and 3 challenges the benefit of telescoping of income over the other additions. The question whether the benefit of telescoping of addition can be given over the other addition is a pure question of fact. In the absence of any material placed before us as to how the assessee is entitled the benefit of telescoping over the other additions, we are unable to agree with the contention of the assessee. Accordingly, this ground of appeal nos.2 and 3 stands dismissed.

30. Ground of appeal no.4 challenges the decision of the ld. CIT(A) confirming the addition of Rs.99,60,000/- made by the Assessing Officer on account of sale deed from which no revenue was recognized in assessment year 2014-15 and the same was offered to tax in assessment year 2015-16. We had carefully gone through the findings of the ld. CIT(A). From perusal of the order of the ld. CIT(A), it would be clear that the ld CIT(A) granted relief in respect of Rs.99,60,000/- made by the Assessing Officer on account of sale of plot made to one Shri Kisve K. Baburao. Therefore, the assessee is not aggrieved by the decision of the ld. CIT(A). In the circumstances, the ground of appeal nos.4 and 5 filed by the

assessee are dismissed, as the assessee has not aggrieved by the decision of the ld. CIT(A).

31. In the result, the appeal filed by the assessee in ITA No.96/PUN/2018 for A.Y. 2014-15 stands dismissed.

32. To sum up, the appeals filed by the assessee stand dismissed and the cross appeals filed by the Revenue stand partly allowed, in the terms indicated above.

Order pronounced on this 13th day of October, 2023.

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

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 13th October, 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,

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