

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.232/Ind/2023
(Assessment Years: 2014-15)

ACIT (Central)-2, Bhopal	Vs.	M/s.Fortune Soumya Housing, Bhopal
(Revenue /Appellant)		(Assessee / Respondent)
PAN: AACFF1234H		

C.O.No. 8/Ind/2023
(Arising out of I.T.A.No. 232/Ind/2023)
A.Ys. 2014-15

M/s. Fortune Soumya Housing, Bhopal	Vs.	ACIT (Central)-2, Bhopal
(Cross Objector /Appellant)		(Revenue /Respondent)

ITA No.233/Ind/2023
(Assessment Years: 2014-15)

ACIT (Central)-2, Bhopal	Vs.	M/s.Fortune Builders, Bhopal
(Revenue /Appellant)		(Assessee / Respondent)
PAN:AAAFF9122C		

C.O.No. 6/Ind/2023
(Arising out of I.T.A.No.233/Ind/2023)
A.Ys. 2014-15

M/s.Fortune Builders, Bhopal	Vs.	ACIT (Central)-2, Bhopal
(Cross Objector /Appellant)		(Revenue / Respondent)

Revenue by	Shri Ashish Porwal, Sr. DR
Assessee by	Shri Ashish Goyal & Shri N. D. Patwa, ARs
Date of Hearing	25.10.2023
Date of Pronouncement	30.10.2023

ORDER

Per Bench:

These two appeals by the Revenue and equal numbers of cross objections by two assessees are directed against the two separate orders of the Ld. CIT(A) both dated 27th March, 2023 for the assessment years 2014-15.

2. Since the issue involved in these appeals and cross objections are common and arising from the identical facts and circumstances of two groups concerns' case, therefore, these two appeals and cross objections are heard together and disposed of by this composite order.

3. In I.T.A.No. 232/Ind/2023, the Revenue has raised following grounds of appeal :-

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,47,62,168/- made by the AO on account of profit on on-money receipt without appreciating the facts of the case available on record.*
2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the documents found during the course of search did not have any relation to the present year receipts ?*
3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the fact that during the course of assessment proceedings the assessee could not prove that in the subsequent year i.e. A.Y. 2014-15 there was no on-money receipts against units booked up to 31.03.2013 ?*

4. The solitary issue arises in the Revenue's appeal s regarding the addition made by the AO in the reassessment proceedings on account of profit on on-money receipt was deleted by the Ld.CIT(A). Initially, the assessment order was completed u/s 143(3) on 29th December, 2016, wherein the AO has made an addition on account of profit on on-money receipt of Rs. 2,06,93,612/-. The said addition was made by the AO based on the declaration of the assessee before the Settlement Commission in pursuance to the search and seizure action u/s 132 of the Act carried out on 30.11.2012 and consequently initiation of the proceedings u/s 153A for the assessment years 2007-08 to 2013-14. In the proceedings before the Settlement Commission, the assessee admitted profit of 34% on the on-money of 30% of receipts comprising sales and advances. The AO has extrapolated the said percentage of profit and on-

money receipts from the assessment years covered by the search and applied the same to the assessment year 2014-15. Thereafter, the AO reopened the assessment by recording the reasons that the on-money receipt should have been computed on the entire sales declared by the assessee and consequently the profit on the on-money receipts ought to have been Rs. 5,54,55,780/- instead of the addition made in the assessment u/s 143(3) of Rs.2,06,93,612/-. The AO has accordingly completed the re-assessment u/s 143(3) read with section 147 on 21st December, 2019, at the total income of Rs. 12,18,73,254/- after making the addition of Rs. 3,47,62,168/-. The assessee challenged the action of the AO before the Ld. CIT(A). The Ld. CIT(A) has deleted the addition made by the AO in the reassessment order. Aggrieved by the impugned order of the CIT(A), the Revenue has filed the present appeal.

5. We have heard the Learned Departmental Representative as well as Ld. Authorized Representative of the assessee and considered the material placed on record. The Ld. CIT(A) has deleted the addition by following its earlier order in the quantum appeal against the assessment order passed u/s 143(3), whereby the addition made by the AO on account of profit on on-money receipt was deleted. Therefore, the addition made in the original assessment was deleted by the Ld.CIT(A) then the enhancement of the said addition in re-assessment proceedings would not survive and cover by the earlier order of the CIT(A). We further note that the appeal filed by the Department against the order of the CIT(A) arising from the original assessment u/s 143(3) was decided

by this Tribunal vide order dt. 16th May, 2023, whereby the appeal of the Revenue was dismissed and the order of the Ld. CIT(A) was upheld. Thus, it is the matter of record that the addition made by the AO on account of profit on on-money receipt in the re-assessment proceedings is now covered by the order of this Tribunal in assessee's own case in I.T.A.No. 667/Ind/2019 dt. 16th May, 2023, in para 6 to, 6.4 as under :-

"6. We have given our thoughtful consideration and perused the materials available on record as well as Paper Book filed by the assessee. The solitary ground raised by the Revenue namely whether Ld. CIT[A] is correct in deleting the addition of Rs. 2,06,93,612/- made by the Assessing Officer on account of profit on on-money on sale of flats/plots. There was a survey action u/s.133A of the Act on 06-11-2012 at the office premises of the assessee and certain documents were impounded. Soon thereafter there was a Search action u/s.132 of the Act on 30.11.2012 and seized several documents. It was thereafter the assessee, its Associated Firm and its Partners approached the Income Tax Settlement Commission for various assessment years [in assessee's case relating to the

Asst. Yrs. 2011-12 to 2013-14] and offered the receipt of on-money of 30% of its Total receipts as additional income and settled the cases.

6.1. It is further seen from records that during the assessment proceedings for the present assessment year 2014-15 the Ld AO asked for the details of purchasers from whom booking advance is received as on date of search namely 30-11-2012. In reply the assessee provided the list of purchasers who booked before search and the receipts from them amounted to Rs.14,14,23,445/- [which are available at pages 106 to 115 of the Paper Book]. After the Search action the assessee revised the prices of the flats/plots and submitted comparative price changes of various projects of the assessee, wherein there is a difference of 30% increase in price of flats/plots which are ranging from Rs.289 to Rs.1150/- for each projects namely Atlantis Duplexs, Atlantis Flats, Heritage Duplexs, Tulip Green Plots/Flats, Tulip Heights, etc. [which is available at page no.116 of the Paper book]. This revised price is reflected in the Books of accounts and offered for taxation by the assessee. However the Ld AO while passing the assessment order did not accepted the revised/hiked price of the plots, but estimated the receipt of on-money at 30% on the sales and advances for this asst year 2014-15 and determined the additional income as Rs.2,06,93,612/-. In our considered view, the Ld AO has neither justified the above addition nor accepted the increased price made by the assessee pursuant to the search action.

6.2. The Hon'ble Apex Court in the case of Installment Supply Pvt Ltd -Vs- Union of India reported in 1962 AIR 53 SC clearly held that in Tax matters, there is no question of res judicata, because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period by following Privy Council case laws namely House of Lords in Society of Medical Officers of Health -Vs- Hope [valuation officer] and Broken Hill Proprietary Company Ltd –Vs Municipal Council of Broken Hill.

6.3. In the most celebrated case of Radhaswami Satang 193 ITR 321, the Hon'ble Apex Court held that each assessment is a separate unit. Decision in one year may not carry forward and held for a subsequent year. An issue which is significant only for a particular year once decided cannot be held res judicata for a subsequent year. The evidence of one asst. year cannot be utilized for another asst. year without necessary material records or evidences. It is settled law by various Courts that income could not be estimated for the other years on the basis of evidence found for one particular year, especially when there was no incriminating evidence pertained to any other assessment year.

6.4. It was also held that the theory of extrapolation is not logical method for determining the actual total Income and it is established law that the assessment should be made on the basis of only incriminating documents found during the course of survey/search proceedings. Further entire edifice of the addition has been made by the AO only in the realm of extrapolation of the figures of on-money received by the assessee before the date of search to the period of post search. There is no material to indicate, even remotely, that the assessee indulged in receipt of on-money during the post search period as well. In our considered opinion, such an approach cannot be accorded imprimatur. Thus, we do not find any infirmity in the order passed by the Ld CIT[A] deleting the addition made by the AO. Thus the Ground raised by the Revenue is devoid of merits and liable to be dismissed."

6. The Ld. CIT(A) has deleted the addition by following its earlier order against the original assessment order passed u/s 143(3) of the Act. Therefore, in view of the order of this Tribunal confirming the earlier order of the CIT(A) dt. 12th Marfch, 2019, we do not find any error or illegality in the impugned order of the CIT(A) as the issue is now covered by the order of this Tribunal in assessee's own case.

7. In the Cross Objection No.8/Ind/2023, the assessee has raised the following grounds :-

- (i) *That the Ld. CIT(A) was not justified in confirming the reassessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*
- (ii) *The reassessment order is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

8. We have heard the Ld. Authorized Representative of the assessee as well as Learned Departmental Representative and considered the material on record. Since the merits of the addition in the Revenue's appeal has been decided in favour of the assessee and against the Revenue, therefore, the issue raised by the assessee in the cross objection becomes academic in nature and also infructuous. Accordingly, we do not propose to decide this issue as the same has become infructuous and accordingly dismissed.

9. In I.T.A.No. 233/Ind/2023, the Revenue has raised the following grounds of appeal :-

Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition of Rs. 3,09,96,127/- made by the AO on account of profit on on-money receipt without appreciating the facts of the case available on record

?

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in holding that the documents found during the course of search did not have any relation to the present year receipts ?*

3. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in not appreciating the fact that during the course of assessment proceedings the assessee could not prove that in the subsequent year i.e. A.Y. 2014-15 there was no on-money receipts against units booked up to 31.03.2013 ?*

10. In the Cross Objection No.6/Ind/2023, the assessee has raised the following grounds :-

- (i) *That the Ld. CIT(A) was not justified in confirming the reassessment order, which is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*

- (ii) *The reassessment order is bad-in-law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case liable to be annulled.*

11. The grounds raised in Revenue's appeal as well as cross objection of the assessee are identical and common to the grounds raised by the Revenue raised in I.T.A.No. 232/Ind/2023 and Cross Objection No. 8/Ind/2023 of the assessee. Accordingly, in view of our finding on these common issues in I.T.A.No. 232/Ind/2023 and Cross Objection No. 8/Ind/2023, the appeal of the

Revenue stands dismissed being covered by the order of this Tribunal and the cross objection of the assessee is dismissed being infructuous.

12. In the result, both the appeals of the Revenue and cross objections of the assessee are dismissed.

Order pronounced in the open court on 30.10.2023.

Sd/-
(B.M. BIYANI)
Accountant Member

sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 30.10.2023

CPU/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore