

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

BEFORE SHRI ABY T VARKEY, JM

AND

SHRI PRASHANT MAHARISHI, AM

**ITA No. 2470/Mum/2023**

(Assessment Year 2010-11)

Balaji Homes  
C/o, P. N. Subranmanian &  
Co.  
703-704, 7<sup>th</sup> Floor,  
Commodity Exchange  
Building, Plot No. 2,3,4,  
Sector-19, Vashi,  
Maharashtra-400705

Vs.

CIT(A), Mumbai  
3<sup>rd</sup> Floor, 6<sup>th</sup> Tower,  
Vashi Railway Station  
Complex, Vashi,  
Maharashtra-400703

**(Appellant)**

**(Respondent)**

**PAN No. AAHFB3601P**

**Assessee by** : Shri Ramesh Subramanian AR  
**Revenue by** : Shri Ashok Kumar Ambastha  
SR DR

**Date of hearing:** 16.10.2023

**Date of pronouncement** 30.10.2023

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**ORDER**

**PER PRASHANT MAHARISHI, AM:**

01. This appeal is filed by Balaji Homes, Panvel (assessee appellant) against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – A) for assessment year 2010 – 11 passed



- u/s 250 rws 254 of the Income tax Act on 19/05/2023 in pursuance of direction of Income tax Appellate Tribunal [ITAT] wherein the disallowance/ addition made in assessment order passed under section 143 (3) of the act on 6/3/2013 by The Joint Commissioner Of Income Tax – 22 (3), Mumbai (the learned AO) was sustained.
02. Assessee is aggrieved with the same and is in appeal before us wherein the only issue involved is the disallowance of ₹ 50 lakhs towards completion expenses towards project Balaji Galaxy claimed by the assessee.
03. In the case of the assessee for this assessment year, this is the second round of appeal before the coordinate bench.
04. Earlier in ITA number 4490/M/2016 for assessment year 2010 – 11 dated 6/4/2018 when the disallowance of provision for expenses amounting to ₹ 50 lakhs against the project Balaji Galaxy made by the learned assessing officer and confirmed by the Id CIT (A) , on appeal by assessee, the coordinate bench per para number 5 restored the matter back to the file of the learned CIT – A to re-appreciate the claim of the assessee and directed assessee to demonstrate actual /crystallization of these expenses in the impugned assessment year.
05. Brief facts of the case shows that the assessee is a partnership firm carrying on the business as builder and developer, has filed return of income declaring a total income of ₹ 10,866,650 on 14/10/2010.



- i. During the assessment year, it was found that assessee has mainly two projects Balaji residential and Balaji Galaxy. The project Balaji residency is being developed at Panvel while the project Balaji Galaxy is being developed at Kalamboli.
- ii. Both the projects have been completed during the year and therefore the complete income and expenditure is offered for taxation during this year.
- iii. The learned assessing officer on perusal of the details filed by the assessee found that assessee has debited provision for expenses towards Balaji Galaxy project of ₹ 50 lakhs. The assessee was asked to explain why the above provision should not be disallowed.
- iv. The assessee explained that these are the absolutely eligible claims under section 37 (1) as the above provision has been made on the basis of the expert opinion of the architect by letter dated 31/3/2010 wherein it is indicated that the amount of expenditure remaining to be incurred for completion of the above project is ₹ 50 lakhs. These expenses have been provided for in the accounts of the assessee on completion of the project for which the complete revenue has been offered by the assessee. It was further stated that the above expenditure could not have been provided for in the books of account for subsequent years.

- v. The learned assessing officer after examination of the details held that the project Balaji Galaxy has not been completed during the year and therefore the above expenditure of ₹ 50 lakhs cannot be allowed.
- vi. Accordingly the addition was made in the total income of the assessee was determined at ₹ 17,709,235/- by assessment order dated 6/3/2013.
- vii. When the assessee approached the learned CIT – A, he confirmed the action of the learned assessing officer holding that the assessee is trying to debit the estimated expenses of the future years as its provisions and further these provisions have also been made based on the anticipated cost of the project. He further held that the provision was not an unascertained liability and therefore the deduction cannot be granted. Accordingly, the disallowance was confirmed.
06. Assessee approached the coordinate bench wherein in ITA number 4490/M/2016 for assessment year 2010 – 11 the appellate order was passed on 6/4/2018 by the coordinate bench wherein as per paragraph number 5 the issue was restored back to the file of the learned CIT – A to reappraise the claim of the assessee and again adjudicate the same with a direction to the assessee to demonstrate/crystallization of these expenses in the impugned assessment year.



07. Therefore, in consequence of the direction of the coordinate bench, the learned CIT – A passed an order on 19/05/2023 under section 250 read with section 254 of the income tax act. Before him, assessee submitted that in project Balaji Galaxy assessee has sold 15 units out of the total 21 units. The sales summary shows that total sale is ₹ 30,130,500 and the sale value is recognized as project since for the subject year. The balance stock was sold in subsequent years including in financial year 2010 – 11 and that the entire sale has been recognised in the financial year 2010 – 11 and cost thereof set off against after accounting for on sold closing stock. Therefore for the year project cost to the extent of the sales recognized in the books of accounts for the impugned assessment year, relevant cost there on is also required to be debited in the books of account to match the project expenses compared to the completion of the project. For the above estimation of the expenditure, certificate of architect was submitted. Assessee also submitted year wise project expenditure summary as well as project annual profit summary. Assessee has made a provision of ₹ 50 lakhs towards completion of the construction of project. The assessee also reiterated its submissions made before the learned assessing officer and the learned CIT – A in earlier proceedings. Assessee also stated that, alternatively the expenditure in subsequent years would also not be allowable to the assessee because the same has been claimed in this year.
08. The learned CIT – A rejected the explanation of the assessee for the reason that the coordinate bench has

directed the assessee to show the actual incurring of the expenses are crystallization of the expenses during the year. The learned CIT – A noted that the details submitted by the assessee clearly shows that it is merely a provision of ₹ 50 lakhs of the estimated cost to be incurred in subsequent years which has not been crystallized as an expenditure during this year. The learned CIT – A noted that the alternative argument of the assessee also cannot be accepted though it may be revenue neutral, but assessee has already filed the return of income for those years and such claim could have been made by filing the revised return, which would have caused undue hardship to the appellant. Therefore he directed the assessing officer to allow the appellant to file revised computation of the subsequent years and after verification allow the expenditure in the year in which the same is actually incurred.

09. The assessee is aggrieved with appellate order has preferred appeal before us. The learned authorized representative has submitted a detailed paper book containing 60 pages submitting the same information, which was submitted before the lower authorities. He extensively referred to sales summary of the project, details of year wise expenditure incurred in the project, project -wise profitability with the closing stock working, details of expenditure incurred in subsequent period and certificate of architect dated 31<sup>st</sup> of March 2010. He also referred to the completion certificate dated 23 June 2011 of the project. He relied upon the decision of the coordinate bench in Ashiana housing limited ITA number 714//2018 to drive home his argument.

010. The learned departmental representative vehemently supported the order of the learned CIT – A stating that when the assessee has not incurred the expenditure during the year and that was the direction of the coordinate bench, there is no fault in the order of the learned first appellate authority in confirming the disallowance. He further submitted that assessee does not have any grievance now because the learned CIT – A has directed the learned AO to allow the expenditure in the year in which it is incurred. Assessee itself has stated that it is revenue neutral, then, what could be the grievance of the assessee now. He submitted that the order of the learned CIT – A deserves to be confirmed.
011. We have carefully considered the rival contentions, used the orders of the lower authorities, considered the order of ITAT wherein a direction was given to the assessee and the learned CIT – A. The simple issue involved in this year is that assessee is following the project completion method. On the completion of the partial project, assessee has booked the revenue, whether the necessary cost incurred to complete the project should be allowed to the assessee as a deduction or not. Facts show that the project area of 13,808 ft<sup>2</sup> will have the estimated project construction cost of ₹ 22,230,880 on completion of the project. The assessee has shown revenue to the extent of 77.50% of the project team 31/3/2010. Therefore, the estimated expenses until 31/3/2010 should have been incurred/ booked by the assessee is ₹ 17,230,880. /-. On perusal of page number 38 and 39 of the paper book shows that the total project cost is Rs 254,31,953/- out of which the closing stock at the end of



the year is ₹ 7,382,044/-. Thus, the net cost of sales is Rs 180,49,909. Assessee has booked the sales of ₹ 30,136,500/-. Therefore, the projected profits are ₹ 12,086,591. However, we find that total project area is 13,808 square-ft, out of that area sold during the year is 9800 square-foot only. Therefore, only 71% of the project is completed for which the assessee books revenue. If we look at the certificate of the architect placed at page number 41 of the paper book it provides that only 77.50% of the project is completed. There is no doubt that the corresponding revenue shown by the assessee on project completion method, estimated project expenditure to that extent is also allowable to the assessee. Otherwise, the number only may arise that income may be booked in the earlier years and expenditure if incurred and crystallized in the subsequent years, the income of the assessee would be taxed in the earlier years and consequent losses arising on booking of the expenses may not result into any allowance to the assessee. To eliminate such anomaly, the project expenditure to the extent completion of the project at the end of the year would be allowed to the assessee. According to the certificate of architect it has made a provision of ₹ 50 lakhs, which shows that the project is completed to the extent of 77.50%, whereas the details shown by the assessee at page number 38 shows the project is completed only to the extent of 71%. In the certificate of architect, it is specifically mentioned that this was not the basis to indicate actual cost incurred in the project is no bills or payment details for verification was given to the architect. Further, the estimation was



only for the internal working. Therefore, in fact there is a difference between the evidences submitted before us and as well as lower authorities. However, it cannot be said that the expenditure would have been incurred on the revenue of at least 71% of the completion of the project should not be allowed to the assessee. Accordingly, we direct the learned AO to allow the expenditure to that extent. Even otherwise the learned and CIT – A has agreed with the alternative argument of the assessee wherein he has directed the learned assessing officer to allow the assessee to file revised computation of the subsequent years for allowance of the balance expenditure. The learned DR does not oppose this alternative argument. In view of this, we allow the appeal of the assessee giving a direction to the AO to allow the assessee expenditure to the extent of 71% of the completion of the project taking out 71% of the cost of the total project for which revenue has been taxed. For the balance sum if any, the assessee is directed to file revised computation of income before the AO in terms of the direction of the learned CIT – A. Accordingly ground number 1 – 2 of the appeal of the assessee is allowed as above.

012. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30.10.2023.

Sd/-

(ABY T VARKEY)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:30.10.2023



*Dragon*

Copy of the Order forwarded to:

BY ORDER,

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

Sr. Private Secretary/ Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai