

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA No. 1612/MUM/2023
Assessment Year: 2015-16

M/s Cavalcade Properties Pvt. Ltd.,
Plot No. C-30, Block-G, Raheja
Towers, Oppo. SIDBI, Bandra Kurla
Complex, Bandra (East),
Mumbai-400051.

PAN NO. AACCC 6226 B

Appellant

Vs. Dy.CIT, Circle-4(1)(1),
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Madhur Agarwal
Revenue by : Mr. H.M. Bhatt, CIT-DR

Date of Hearing : 06/12/2023
Date of pronouncement : 10/01/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 24.03.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2015-16, raising following grounds:

Ground No.1:

On the facts and the circumstance of the case and in law, the learned CIT (A) has erred in confirming the action of the learned AO in respect of Percentage of Completion method on the advance amounts received by the Appellant amounting to Rs. 1,66,25,065 pertaining to unexecuted and unregistered



sale of flats- units of buildings and thereby determined additional income of Rs. 38,77,965 to be included in the total income for the year under consideration.

Ground No.2:

On the facts and the circumstance of the case and in law, the learned CIT (A) has erred in confirming the action of the learned AO in respect of initiating penalty proceedings under Section 271(1)(c) of the Act.

2. Briefly stated, facts of the case are that assessee filed its return of income on 30.11.2015 declaring total loss of Rs.27,71,66,306/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices u/s 143(2) of the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessee is engaged in the business of real estate development and related activities. The assessee was constructing a residential project comprising of 11 building situated at 'Mohammedwadi', Pune. During the year under consideration the assessee recognized proportionate income following percentage of completion method (POCM). The assessee is following the POCM since assessment year 2012-13. During the scrutiny proceedings, the Assessing Officer though accepted the POCM method followed by the assessee, however, as far as revenue recognized from the projects is considered, the Assessing Officer considered the advance receipts from booking of the flats also for the purpose of recognizing revenue, whereas the assessee only considered the revenue recognized in cases where the registered sale agreements were



entered into with customers/buyers. The Assessing Officer accordingly added additional revenue for un-registered flats amounting to Rs.38,77,965/-. On further appeal, the Ld. CIT(A) also upheld the addition made by the Assessing Officer. Aggrieved, the assessee in appeal before the Tribunal raising grounds as reproduced above.

3. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 193.

4. We have heard rival submission of the parties and perused the relevant material on record. The assessee is following POCM method for recognition of revenue from the projects of construction of residential flats. The assessee has recognized the revenue at the stage of 40% completion of the project. There is no dispute on this issue as what should be correct stage of construction for recognizing the revenue from the project. The assessee received advance at the time of booking of the flats and thereafter it enter into agreements with the purchaser of the flats/units which are then executed and registered. According to the assessee, it is this stage where all significant risk and reward of ownership gets transferred to buyers and therefore revenue is recognized only in respect of sales where sales agreement are executed and registered and not at the stage of receipt of advance from booking of flats. However, accordingly to the Assessing Officer, the assessee should



have recognized revenue from sale of flats/units at the stage of booking agreement and receipt on advance. This dispute has been raised by the Assessing Officer in the case of the assessee from assessment year 2012-13 onwards. The Tribunal in the case of the assessee in ITA No. 4030/Mum/2017 for assessment year 2012-13 has discussed issue and held that revenue should be recognized following guidelines of the ICAI only when significant risk and rewards are passed on to the intended buyer and intended buyer right's to transfer . The relevant finding of the Tribunal(supra) is reproduced as under:

“34. After perusing the above judicial pronouncements, we are in agreement with the fact that there has to be reasonable certainty of realization of consideration or significant risk must pass to the intended buyer, since these basic terms are missing in the initial stage of provisional booking, we are inclined to agree with the assessee that initial advance cannot be treated as income of the assessee since unless and until there is risk and reward is passed on to the intended buyer and intended buyer has right to re-transfer the right and the assessee has certainty of receipts of sale consideration until then the receipts cannot be considered as Vincome of the assessee. Accordingly, grounds raised by the assessee are allowed.”

4.1 Thus, the only issue in dispute in the instant case whether at the time of booking of the flats substantial risks and rewards have been transferred to the buyer or not. Before us, the assessee has filed a list of certain cancellation of the booking to support that those bookings was temporary in nature and therefore, cancelled.



However, from above agreements, we failed to understand as how those parties agreed for paying advance to the assessee without any certainty of purchase or benefit of escalation in the prices of the flat in case of cancellation. The assessee has not furnished any details of documents signed at the time of provisional booking. The Assessing Officer has also not made any comment in the assessment order in respect of as how the significant risk and reward were transferred to the buyer at the stage of booking. In the circumstances, we feel it appropriate to restore the matter back to the file of the Assessing Officer for examining parties from whom advance was received against booking. The Assessing Officer may carry out inquiries as deemed fit from the buyers from whom advance which were received for verification whether they had entered into any agreement which could establish transfer of substantial risk and reward to the buyer. The Assessing Officer accordingly shall decide the issue as to the quantum of revenue to be recognized from sale of flats in the year under consideration following the principle/ ratio of the decision of the Tribunal in the case of the assessee for assessment year 2012-13. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.

4.2 The ground No. 2 of the appeal of the assessee relates to penalty u/s 271(1)(c) of the Act initiated by the Assessing Officer



which being premature at this stage same is dismissed as infructuous.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 10/01/2024.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 10/01/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai