

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "E" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Aby T. Varkey (JM)

I.T.A. No. 206/Mum/2023 (A.Y. 2014-15)

Kalindi Estate Developers 2 nd Floor, VasANJI Lalji Road, Kandivali Station West, Maharashtra-67. PAN : AAAAK00052B (Appellant)	Vs.	THE CIT(A)/ National Faceless Appeal Centre Delhi (Respondent)
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Assessee by	Shri Mani Jain & Shri Prateek Jain
Department by	Shri P.D. Chougule
Date of Hearing	30.01.2024
Date of Pronouncement	22.02.2024

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 24.11.2022 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2014-15. The assessee is aggrieved by the decision of the learned CIT(A) in partially confirming the addition made by the Assessing Officer towards estimated profit from real estate project undertaken by the assessee.

2. Facts relating to the case are stated in brief. The assessee is a builder and developer. The assessee has undertaken development of flats under SRA scheme on a plot of land located in Survey No. 6, CTS No. 1A/2 of Village Goregaon Link Road, Goregaon. As per the SRA scheme the assessee can construct two towers for free sale and other towers for the tenants/occupants eligible to get flats under SRA scheme. A survey under section 133A was conducted upon the assessee on 13.2.2009. During the year relevant to A.Y.

2009-10, the assessee had constructed one tower named Wing-B out of the two “free sale towers”. According to the assessee it is following project completion method and profit shall be ascertained and offered for taxation only at the end of the completion of the project. However, during the course of survey, the assessee offered profit @ 10% on agreement value of 27 flats sold in Wing-B and also 10% profit on unsold closing stock value in AY 2009-10.

3. The return of income filed by the assessee for A.Y. 2014-15 was taken up by the Assessing Officer for scrutiny. The Assessing Officer noticed that the assessee had offered income @ 10% on the agreement value of the flats sold and also closing stock value in A.Y. 2009-10. However, during the year under consideration the assessee had constructed wing-A and also handed over the possession. However, the assessee did not offer any income on the reasoning that it is following project completion method. When questioned about the same, the assessee admitted that it had sold 32 flats in wing-A and also agreed to offer 10% of the agreement value of the flat as income in A.Y. 2014-15 which worked out to Rs. 1,90,74,318/-.

4. The Assessing Officer noticed that the assessee has submitted the project report before SRA authority, wherein the profit on sale of building of Tower A was shown at 16.76%. Accordingly, the Assessing Officer took the view that the income should be estimated at 16.76% of the sale value of the building. The Assessing Officer computed profit @ 16.76% at Rs. 3,20,02,077/- and assessed the same.

5. However, the assessee challenged the above said addition by filing appeal before learned CIT(A) contending that the income voluntarily offered by the assessee before the AO was not correct. It was submitted that the SRA authority originally determined the date for determining eligibility of slum dwellers as “1.1.1995”. However, the said cutoff date was subsequently

changed to 1.1.2000, which compelled the assessee to accommodate some more persons. Hence the assessee was constrained to construct more flats to accommodate the new eligible persons. Further the land in which the project was carried out was partially reserved for garden/park in the Draft Development Plan for 2034 published in the month of May 2016. Hence the assessee was constrained to file a petition to the competent authorities to remove the said reservation. Further the plot was also subjected to CRZ regulations. In view of the above complications, the assessee could not complete the project within the time prescribed by SRA authority. Hence the cost of project has escalated and the correct profit could not be determined before completion of project. Accordingly, it was submitted that the profit or loss could be ascertained under "Project completion method" only in the facts narrated above. It was further submitted that the assessee did not declare any profit under proportionate completion method either in the earlier years or in the subsequent years. The returns of income filed for those years have been accepted. Only during the year under consideration, the AO has asked the assessee to declare income. Accordingly, it was prayed that the addition made by the Assessing Officer be deleted.

6. The learned CIT(A), however, was not convinced with the submissions made by the assessee. He took the view that the assessee has completed the construction and has also received the majority portion of sale consideration. Further the assessee has also given possession of the flats. Accordingly, he took the view that the proportionate income is assessable during the year under consideration. However, the learned CIT(A) did not agree with the profit rate 16.76% adopted by the Assessing Officer. Accordingly, he directed the Assessing Officer to compute profit @ 10% of the value of flats sold. Still aggrieved the assessee has filed this appeal.

7. The Ld A.R submitted that the assessee undertaken Slum Redevelopment project approved by SRA authority. As per the scheme, the assessee is

entitled to construct two towers for free sale, viz., Tower A and Tower B and rest of the towers have to be constructed at its own cost for housing the eligible slum dwellers. Hence the cost of project will be construction of all towers, i.e., that towers that can be sold and towers that are required to be constructed for slum developers at free of cost. However, the assessee could generate revenue only on sale of flats constructed in two towers available for free sale. He submitted that the assessee is following project completion method in view of uncertainties attached with the completion of project. He submitted that the project was started by the assessee in the year 1995 and it could not be completed due to various hurdles faced by the assessee. However, due to survey operations, the assessee agreed to offer income @ 10% in respect of "Tower B" in AY 2009-10, even though the same was against its accounting policy. However, the assessee did not offer any income in respect of sale of flats in "Tower A" as per Project completion method, since the project was not completed at all for the reasons submitted before the tax authorities. The AO has accepted the method adopted by the assessee except for the year under consideration and has estimated the profit @ 16.76%, which was reduced to 10% by Ld CIT(A). He submitted that both the tax authorities are under the impression that the possession has been handed over. Inviting our attention to certain documents, the Ld A.R submitted that the assessee has given possession of the flats for the limited purpose of carrying out work of interiors, furniture and fixtures, since the assessee has not received occupation certificate. He submitted that these facts have been clearly stated in the "Declaration cum Undertaking" entered with the prospective buyers. Accordingly, he submitted that the tax authorities are not correct in presuming that the possession of flats has been handed over. He submitted that the assessee has received Occupation certificate only in 2023 only. He submitted that the offer made by the assessee before the AO was in order to buy peace from the department. However, later it was realized that the assessee may end up with losses due to escalation in the project cost. Hence, the assessee has chosen to contest the addition made by

the AO. Accordingly, the Ld A.R prayed that the addition confirmed by Ld CIT(A) should also be deleted.

8. The Ld D.R, on the contrary, submitted that the assessee itself has voluntarily agreed to offer income @ 10% of the sale value of flats before the AO during the course of assessment proceedings. Hence the assessee is precluded from contesting the same in the appellate proceedings. He further submitted that both the AO/CIT(A) has giving a finding that the assessee has handed over possession of flats to the buyers. Hence the income relating to those flats was required to be offered as income. Accordingly, he submitted that the order passed by Ld CIT(A) does not call for any interference.

9. We heard rival contentions and perused the record. We notice that the assessee has undertaken slum development project. As per the scheme, the assessee is entitled to construct certain number of flats, which can be sold by it. However, the assessee is required to construct the flats for the eligible slum dwellers and hand over the same at free of cost. Hence the project cost of the assessee would consist of not only construction cost of flats available for free sale but also the cost of flats that have to be handed over to the eligible slum dwellers at free of cost. However, the revenue stream for the assessee is the consideration received on sale of flats available for free sale. Hence the profit of the assessee would be

Sale consideration received on sale of flats available for free sale

Less

Cost of construction of flats available for free sale and the cost of construction of flats to be given to eligible slum dwellers.

We notice that the tax authorities have not properly appreciated above discussed peculiar features attached to the Slum Redevelopment projects. We notice that the AO as well as Ld CIT(A) has taken into consideration about

the sale of flats available for Free sale. Both the tax authorities have not properly appreciated the costs involved in the completion of project.

10. The assessee has narrated the complications faced by it with regard to the projects, i.e., Change of date for determining eligible slum dwellers, reservation of a portion of plot for garden, CRZ regulation restrictions etc. Due to change in the date, it was stated that more number of people became eligible for free flat and hence the assessee was constrained to construct more number of flats. Accordingly, it is stated that the actual cost of project has escalated not only due to escalation in the cost due to passage of time, but also due to increase in the area to be constructed. Under these facts, we find merit in the contentions of the assessee that the "Project completion method" is best suited for the project undertaken by the assessee.

11. Another fallacy in the observations made by the tax authorities was that both the tax authorities have stated that the possession of the flats has been handed over to the prospective buyers. On the contrary, the assessee has submitted that it has not received occupation certificate for the flats and hence possession could not be legally given. The assessee also submitted that the prospective buyers have been given possession for the limited purpose of carrying out interior works and furniture works, meaning thereby, the legal possession of flats has not been handed over the prospective buyers. It was submitted that the occupancy certificate was obtained only in the year 2023. This aspect also, in our view, supports the case of the assessee that the income could not have been estimated in AY 2014-15, i.e., the year under consideration.

12. It was also submitted that the assessing officer has assessed income for the year under consideration alone, i.e., in the earlier years and in the subsequent years, the income was not declared by the assessee and the said position has not been disturbed by the tax authorities. Since the Project

completion method has been accepted in other years, we are of the view that the AO was not justified in deviating from the method adopted by the assessee and assessing the income on estimated basis in this year alone. With regard to the acceptance of the assessee to offer the income before the AO, we are of the view that the assessee is entitled to challenge its own admission, if such admission was given under erroneous appreciation of facts. In the earlier paragraphs, we have held that the Project completion method would suit to the project undertaken by the assessee for the elaborate discussions made therein. Accordingly, we hold that the admission made by the assessee before the AO would not preclude it from challenging the same.

13. In view of the foregoing discussions, we hold that the assessing officer was not justified in assessing the income on estimated basis under proportionate completion method, when the assessee is following project completion method. Accordingly, we set aside the order passed by the Ld CIT(A) and direct the AO to delete the entire addition made by him by estimating the income from sale of flats in Tower A. We order accordingly.

14. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 22.2.2024.

Sd/-
(Aby T. Varkey)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 22/02/2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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