

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 243/Hyd/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s. Sushee Realty LLP, Vs. Deputy Commissioner of
Hyderabad Income Tax ,
[PAN No. ACFFS0515F] Central Circle-2(2),
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Ms. TH Vijaya Lakshmi, CIT-DR

सुनवाई की तारीख/Date of hearing: 08/02/2024
घोषणा की तारीख/Pronouncement on: 26/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

This appeal filed by the assessee is directed against the order dated 13/04/2022 of the learned CIT(A)-12, Hyderabad, relating to assessment year (AY) 2016-17.

2. Facts of the case, in brief, are that the assessee is a Limited Liability Partnership (LLP), deriving income from real estate business. It filed its return of income 17/10/2016, declaring income of Rs. 3,40,010/-. A search and seizure operation u/s. 132 of the Income Tax Act, 1961 (for short "the

Act”) was conducted on M/s. Sushee Infra & Mining Ltd., and sister concerns and individuals relating to the Sushee Group. During the search, certain information pertaining to the assessee was found. Accordingly, a notice u/s. 153C was issued on 16/11/2018. The assessee in response to the same, filed its return of income on 08/01/2019, declaring an income of Rs. 3,40,010/-, which was filed in the original return of income. Statutory notices u/s. 143(2) and 142(1) of the Act were also issued and served on the assessee in response to which the learned AR of the assessee appeared before the learned Assessing Officer and filed the requisite details.

2.1. During the course of assessment proceedings, the Learned Assessing Officer noticed that the assessee has debited the following expenditure under the head ‘other expenses’ :

S.No.	Details	Amount in Rs.
1.	Site Expenses	13,38,912
2.	Site Development Expenses	10,00,000
3.	Water Tanker	29,19,300
4.	Morrum Water Expenses	35,23,700
5.	Hire Charges	13,96,500
6.	Labour Charges	16,37,751
7.	Garden Maintenance	16,86,450
8.	Repair & Maintenance	10,77,381
	Total	1,45,79,994

3. In absence of any supporting evidences such as bills and vouchers other than the ledger extracts, the Learned Assessing Officer disallowed the above expenditure of Rs. 1,45,79,994/- and added the same to the total income of the assessee.

3.1. The Learned Assessing Officer on verification of Page Nos. 1 to 10 of the seized material found in Annexure A/MLKR/R/01 at the residence of

Shri Lakshmikant Reddy, the MD of M/s. Sushee Infra & Mining Ltd., noted that these loose sheets contained consolidated statement of expenditure and income pertaining to the Eden Garden project, constructed by M/s. Sushee Realty LLP, who sold total 19 villa plots and received an amount of Rs. 11.54 crores in cash, over and above the registered sale consideration. He further noticed that in response to statement recorded u/s. 132(4) of the Act, Shri Lakshmikanth Reddy, Director of the assessee-company stated as under:

"I am voluntarily admitting the above cash receipts of Rs. 11.54 crores received over and above the registered sale consideration as unaccounted income in the hands of M/s. Sushee Realty LLP."

4. Since the assessee had not admitted the above income in the return of income filed in response to notice u/s. 153C of the Act, the Learned Assessing Officer asked the assessee to explain as to why the amount of Rs. 11.54 crores should not be treated as 'un-explained income' for the impugned assessment year and subjected to tax. The assessee stated that all the receipts are accounted for in the regular books of accounts and there is no receipt of cash. However, the Learned Assessing Officer was not satisfied with the above explanation given by the assessee. He noted that it is clearly mentioned in the last column of the seized material that such cash of Rs. 11.54 crores received as on date. The designated partner in the LLP Shri Lakshmikant Reddy has filed an affidavit dated 17/08/2016 which was received in the office of the Pr. DIT (Inv.), Hyderabad on 01/09/2016, stating that the firm in all collected Rs. 11.54 crores as additional receipts from the purchasers of the villas and the said amount was not recorded in the books of accounts of the assessee. He had also stated that the said additional amount of Rs. 11.54 crores would be offered

in the return of income for the AY. 2016-17. In view of the above and relying on various decisions, the Learned Assessing Officer made an addition of Rs. 11.54 crores, treating the same as 'un-accounted income of the assessee' to be taxed @ 30%. The Learned Assessing Officer also made addition of Rs. 21 lakhs as unexplained cash deposit, Rs. 2,93,610/- as non-deduction of TDS and disallowance of Rs. 10,77,381/- u/s. 40A(3) of the Act. He accordingly determined the total income of the assessee at Rs. 13,37,90,995/-.

5. In appeal, learned CIT(A) deleted the addition of Rs. 21 lakhs as unexplained cash depositing, Rs. 2,93,610/- towards non-deduction of TDS and Rs. 10,77,381/- disallowed u/s. 40A(3) of the Act. So far as the addition of Rs. 1,45,79,994/- towards other expenses is concerned, the learned CIT(A) restricted the same to 25%, thereby sustaining an addition of Rs. 36,44,998/- and deleting the balance amount of Rs. 1,09,34,996/- by observing as under:

"6.3 I have carefully considered the submissions of the appellant, the order of the Learned Assessing Officer thereon. The appellant contended that the AO erroneously made an addition of Rs.1,45,79,994/- under the head expenses when all the necessary evidences were furnished. The AO held that the expenses under the head "other expenses" in the nature of Site expenses, Site development expenses, water tanker, Morrums water expenses, hire charges, labour charges, Garden maintenance and repair and maintenance totaling to Rs.1,45,75,994/- could not be substantiated by furnishing relevant bills and vouchers. The AO did not consider the ledger extracts of these expenses and disallowed the entire amount for want of supporting evidences.

During the course of appellate proceedings, the AR submitted the detailed written submissions and ledger accounts. It was contended that the site expenses of Rs.13,38,912/- contain expenses like cleaning, petrol expenses, labour conveyance, tea and coffee etc

which are small expenses which are incurred on the site by the site incharge. The amounts were initially paid to the person incharge and they have incurred the expenditure at site and the same was recorded in the books. Similarly, it was contended that the other expenses in the nature of site development expenses of Rs.10 lakhs, water tanker expenses of Rs.29,19,300/-, Manum expense of Rs.35,23,700/-, Hire charges of Rs.13,96,500/-, labour charges of Rs.16,37,751/-, Garden maintenance of Rs.16,86,450/- and Repair and maintenance of Rs.10,77,381/- are also incurred at the site and these were small expenses that are essential for its business. I have perused the ledger accounts of these expenses and the submission of the AR. It is seen that these expenses are expenses incurred each day and are in the nature of printing and stationery, petrol, staff welfare, transportation etc. Other expenses incurred at the site are on account of water tanker, morrum expenses, hire charges, labour charges, Garden maintenance and repair and maintenance of the machinery. These site expenses are in the nature of business expenses but the same are not fully vouched through pucca bills and vouchers. Hence, these expenses cannot be fully verified. Hence, the AO is right in disallowing these expenses. However, though there were no proper vouchers it is not correct to disallow 100% of these expenses. Therefore, in my considered view an adhoc disallowance of 25% of these expenses would meet the ends of justice. Accordingly, an amount of Rs.36,44,998/- (25% of Rs.1,45,79,994/-) is confirmed and the balance amount of Rs.1,09,34,996/- is directed to be deleted."

6. So far as the addition of Rs. 11.54 crores is concerned, learned CIT(A) sustained the addition by observing as under:

10.3 I have carefully considered the submissions of the appellant, the order of the Assessing Officer thereon. Ground Nos.7, 8 and 9 pertain to the addition of Rs.11,54,00,000/- on account of cash receipts on sale of villas by the assessee. During the course of search at the residence of Shri M.Lakshmikanth Reddy, Managing Director of M/s.Sushee Infra and Mining Limited, certain material was found and seized. On verification of pages from 1 to 10 of the seized material found in Annexure

A/MLKR/R/01, it is seen that the loose sheet contains consolidated statement of expenditure and income pertain to 'Eden Garden' project constructed by M/s.Sushee Realty LLP. As per the seized document M/s.Sushee Realty LLP has sold 19 villa flats to various customers and received an amount of Rs.11.54 crores in cash over and above the registered consideration. On being questioned, Shri M.Lakshmikanth Reddy voluntarily admitted the above cash receipts of Rs.11.54 crores as unaccounted income in the hands of M/s.Sushee Realty LLP in his deposition u/s.132(4) of the Act on 23-07-2016. Subsequently, the designated partner of M/s.Sushee Realty LLP Shri M.Lakshmikanth Reddy has also filed an affidavit dated 01-09-2016 stating that the firm has collected Rs.11.54 crores as additional receipts for the purchase of villas and the said amount was not recorded in the books of account. It was further stated that the said additional income will be offered for tax in AY 2016-17. However, Shri M.Lakshmikanth Reddy has retracted the disclosure made at the time of search by subsequently filing an affidavit on 25-10-2019 which is more than three years from the date of search. The AO did not accept the retraction and held that it was an afterthought and the documentary evidences seized during search indicate the extent of cash received by the assessee. The AO has also relied on various case laws including the ratio of Supreme Court in Sri B.Kishore Kumar vs DCIT (62 taxmann.com 215) 2015. The appellant is aggrieved and is in appeal.

10.3.1 During the course of appellate proceedings, the AR stated that the incriminating document was found at the residence of the Director Shri M.Lakshmikanth Reddy and not at the premises of the appellant. It was also stated that the search party did not find any agreements between the appellant and the purchasers of the villas and also did not find any receipts for the cash receipts. There was no excess cash available nor found at the premises nor was there any acquisition of the property not supported by the availability of sources. Therefore, it was argued that there was no such cash receipt. However, it was stated that the purchasers of the villas had disposed through

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affidavits that they have not paid any cash in addition to the payments through cheques issued by them. It was also stated that the retraction was filed on 25-10-2019 before the AO and the AO had time till 03-12-2019 to conduct enquiries about the correctness of the retraction. Lastly, it was stated that the seized document also mentions that the two agreements entered into with Smt. G. Divya and Sri Vijayender Reddy aggregating to Rs.2,20,00,000/- was cancelled. The document also mentioned that there was excess cash received in the case of (1) Varun Reddy Eddula-Rs.50 lakhs; (2) Shri Jala Chari - Rs.30 lakhs; (3) Sri Singi Reddy-Rs.50 lakhs; (4) Sri A.G.Ravindranath Reddy – Rs.47.92 lakhs. It was stated that including the cancelled agreement of sale of Rs.2,20,00,000/-, the cash amount that was received in excess totaled to Rs.3,97,92,000/-. It was contended that cash amount that was received in excess of Rs.3,97,92,000/- should be reduced from the cash received of Rs.11.54 crores. It was therefore prayed that the entire cash addition of Rs.11.54 crores should be deleted and if not, the amount of excess cash received of Rs.3,97,92,000/- should be reduced from the cash received of Rs.11.54 crores.

10.3.1 The contentions of the AO and the AR were perused. It is not in dispute that there was a seized document giving the details of villa nos, customer name, total sale consideration, sale consideration as per agreement, mode of receipt of agreed sale consideration (cash and cheque), received as on date (cash and cheque), receivable as on date (cash and cheque), total receivable (cash and cheque) with a remarks column. The AO has reproduced the seized document in the assessment order. It is evident that the seized document clearly mentions the customer names, the villa numbers, the total sale consideration for each villa, cash and cheque received for each villa and the balance cash & cheque receivable for each villa. The details in the seized document identically matches with the final customer list with some variation in the final sale consideration. Since there was direct corroborative evidence of the customer name, villa number, total sale consideration, sale consideration as per agreement and mode of receipt by cheque

and cash, the authenticity of the seized document is established. Now the question arises as to the treatment of the cash received of Rs.11.54 crores which is over and above the registered value of the villas. It is a fact that the cash received over and above the cheque component is not reflected in the books of account of the appellant. Since this is a consideration received over and above the books of the appellant, the AO rightly brought to tax as unexplained income. Accordingly, the addition of Rs.11.54 crores by the AO is confirmed.

10.3.2 The contention of the AR that the seized document contains a remarks column wherein several notings were mentioned which shows that two of the villas sold to Smt. G. Divya and Sri Vijayender Reddy are cancelled and hence it should be presumed that the cash component was returned for the two villas. Also it was stated that there was excess collection of cash against various persons listed in the seized document and the same should be reduced. It was averred that since the AO has treated the cash receipts as unexplained income, the AO should give credit to the remarks of excess cash received and villa cancellation mentioned in the seized document and reduce this from the total cash received. Accordingly, it was contended that the excess cash received of Rs.3,97,92,000/- should be given set off against the total cash received.

10.3.3 The above contentions of the appellant were considered. To analyse this, it is necessary to examine each of the remarks in the seized document, which is as follows:

(a) It is seen from the seized document, that against villa no.1 the remarks 'Rs.47.92 lakhs cash paid excess so we can adjust in final amount' was mentioned. The appellant claims that since the cash paid was in excess the same should be reduced from the amount of total cash receipt of Rs.11.54 crores. In this regard, the details of seized document pertaining to villa no.1 is reproduced below:

Villa No.	Customer Name	Total Sale consideration	Sale consideration as per agreement	Mode of receipt of sale consideration		Received as on date		Receivable as on date		Total receivable amount	Remarks
				Cheque	Cash	Cheque	Cash	Cheque	Cash		
01	A.G.Ravindranath Reddy	44,608,000	31,500,000	31,500,000	13,108,000	19,000,000	17,900,000	12,500,000	4,792,000	7,708,000	47.92 cash paid excess so we can adjust in final amount

As can be seen from the details above the total sale consideration for villa no.1 was fixed at Rs.4,46,08,000/- out of which cheque amount was Rs.3,15,00,000/- and cash amount of Rs.1,31,08,000/-. The appellant has received Rs.1,90,00,000/- by way of cheque and Rs.1,79,00,000/- by way of cash which is in excess of Rs.47.92 lakhs. The remarks column mentions that excess cash of Rs.47.92 lakhs can be adjusted against the final amount. The final amount for which the registration was done vide sale deed no.3910/2017 dated 28-06-2017 was Rs.2,53,60,000/-. In other words, inspite of the agreed sale consideration of Rs.3,15,00,000/- the appellant has registered the villa at Rs.2,53,60,000/- which is Rs.61,40,000/- less than the agreed sale consideration. In other words, as mentioned in the remarks column, the appellant has adjusted the excess cash paid by the customer towards the cheque consideration and the cash was not returned. The excess amount adjusted of Rs.13,48,000/- (Rs.61,40,000 – Rs.47,92,000) may be on account of interest on the excess cash paid. This reasoning is based on the remarks provided against another villa i.e., villa no.15. Therefore, the argument of the appellant that the excess cash received was returned to the customer and should be reduced from the total cash received is rejected as the same was adjusted against the cheque component.

(b): Against villa no.15, the following details were mentioned in the seized documents:

Villa No.	Customer Name	Total Sale consideration	Sale consideration as per agreement	Mode of receipt of sale consideration		Received as on date		Receivable as on date		Total receivable amount	Remarks
				Cheque	Cash	Cheque	Cash	Cheque	Cash		
	Singl Reddy Srinela	39000000	34000000	34000000	5000000	19500000	5000000	14500000	0	14500000	Additional 50 L paid as loan last

final sale consideration, the appellant has registered the sale document to the same customer vide sale deed no.985/2019 dated 25-01-2019 at a total sale consideration of Rs.2,15,30,538/-. In other words, the appellant has not registered the villa as per the agreed cheque amount of Rs.3 crores but has finally registered it at Rs.2,15,30,538/-. In other words, the excess cash received was adjusted against the sale consideration and therefore the appellant's argument that the same needs to be reduced from the total cash received of Rs.11.54 crores is without any basis and is rejected.

(d). Against villa no.41 the details as per seized document are as below:

Villa No.	Customer Name	Total Sale consideration	Sale consideration as per agreement	Mode of receipt of agreed sale consideration		Received as on date		Receivable as on date		Total receivable amount Cheque+cash	Remarks
				Cheque	Cash	Cheque	Cash	Cheque	Cash		
41	Sai Varun Reddy Yeddula	40000000	30000000	30000000	10000000	24500000	5000000	5500000	5000000	10500000	SOL returned to owner on 25 th & 26 th Mar'15 20 and 30 respectively cheque bearing no 070317 and 070320

The remarks shows that 'Rs.50 lakhs was returned to the owner on 25th & 26th March'15, 20 and 30 respectively vide cheque bearing no.070317 and 070320'. In other words the amount of Rs.50 lakhs was returned through cheque vide cheque numbers and it does not mention that the excess cash received was returned to the customer. Therefore, the argument of the appellant that the excess cash received of Rs.50 lakhs should be reduced from the total cash receipt of Rs.11,54,00,000/- is without any basis and is rejected.

(e). Against Villa No.42, the details in the seized document are reproduced below:

Villa No.	Customer Name	Total Sale consideration	Sale consideration as per agreement	Mode of receipt of agreed sale consideration		Received as on date		Receivable as on date		Total receivable amount Cheque+cash	Remarks
				Cheque	Cash	Cheque	Cash	Cheque	Cash		
42	G.Divya	40000000	30000000	30000000	10000000	6000000	7000000	--	--	--	Villa cancelled amount to be return

In the remarks column it was mentioned that the villa cancelled amount to be return. However, it is seen that the customer G.Divya has purchased another villa i.e.,

Villa No.6 and has got it registered vide sale deed no.1572/2020 dated 05/02/2020 for a



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total consideration of Rs.2,35,00,000/-. Although villa no.42 was cancelled by M/s.G.Divya, the said customer has purchased another villa i.e., Villa No.6. Therefore, the appellants argument that the cash received from the customer needs to be reduced from the total cash received as the villa was cancelled is not acceptable and is rejected.

(f). Against Villa No.21, the details as per the seized document are mentioned below:

Villa No.	Customer Name	Total Sale consideration	Sale consideration as per agreement	Mode of receipt of sale		Received as on date		Receivable as on date		Total receivable amount	Remarks
				Cheque	Cash	Cheque	Cash	Cheque	Cash		
21	Vijayender Reddy	40000000	30000000	30000000	10000000	4000000	15000000	0	0	0	Villa cancelled amount to be return

In the remarks column it was mentioned that the villa cancelled amount to be return. As per the seized document, the appellant has received an amount of Rs.1,50,00,000/- as cash and Rs.40 lakhs by way of cheque. The AR has not produced any document pertaining to the cancelled of villa and the return of cash and cheque amount to the customer. No bank details were filed nor any cancellation deed was furnished. Therefore, this argument of the appellant is not substantiated with evidences and is hereby rejected.

10.3.4 The AR of the appellant has taken an alternative plea that the appellant is following percentage completion method and that as per the books, it has completed 51.36% of the work. In other words out of total estimated cost of Rs.69,32,84,800/-, the appellant has incurred Rs.35,60,71,912/- which is 51.36%. The appellant has adopted sale consideration of 14 villas where it has received more than 10% of the agreement value and has returned profit from operations in the ITR of Rs.2,57,071/-. It is the claim of the AR that the cost estimate was modified to Rs.84,12,84,800/- as on 31-03-2021. If this revised cost estimate is substituted, the percentage completed would reduce from 51.36% to 43.36%. After including the net cash received of Rs.7,56,08,000/- (Rs.11,54,00,000 - Rs.3,97,92,000) in the total sales received and taking the percentage

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completion at 43.36%, the appellant has worked out a loss of Rs.41,36,371/- in the current year. The appellant contends that this loss to be given effect after including the net cash received of Rs. 7,56,08,000/- towards sales consideration. This argument of the appellant is preposterous and is not acceptable at various levels. First of all when the cost of the project was estimated at Rs.69,32,84,800/- for the year, how can the cost estimated as on 31-03-2021 can be substituted in the current year to rework the percentage completed? Once the books are closed, it is not open to the appellant to revise its percentage completed based on revised estimate of a later year. It is a fact that the cash received of Rs.11.54 crores was outside the books of appellant and would not have come to the notice of the department except for the search action. This unaccounted cash received is sought to be brought into the books of appellant by revising the percentage completed and showing a loss of Rs.41,36,371/-. The books of the appellant cannot be allowed to be tampered with to suit the needs of the appellant. As per the computation, the appellant has incurred the cost of Rs.35,60,71,912/- out of estimated cost of the project of Rs.69,32,84,800/- which amounts to 51.36% of the work completed. This cannot be allowed to be changed now. The cash received of Rs.11.54 crores is over and above the sale consideration shown in the books of account. As stated earlier, this cash sale consideration would not have been discovered but for the search action. Therefore, the appellant's argument to rework the percentage completed to book a loss is not correct and is rejected.

10.3.5 As regards the retraction after three years by the director of the company Shri M.Laxmikanth Reddy, it is not in question that he has admitted cash received of Rs.11.54 crores as unexplained income in the statement recorded u/s.132(4) on 23-07-2016 which was subsequently affirmed by way of an affidavit dated 01-09-2016. It is a settled law that the retraction should be at the earliest opportunity or atleast within a reasonable time. The search was conducted on 21-07-2016 and the director Shri M.Lakshmi



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affidavit dated 01.09.2016 admitting the cash received as its unexplained income. The affidavit was filed more than a month after the search action. Therefore, one cannot say that the director was under pressure as he has sufficient time before filing the affidavit admitting the cash receipt as his unexplained income. The Hon'ble Supreme Court in the case of **Sri B.Kishore Kumar vs DCIT (62 taxmann.com 215) 2015** has held that since the assessee himself has stated in his sworn statement during search and seizure that the cash received is its undisclosed income, tax was to be levied on basis of admission without scrutinizing documents.

The retraction cannot be relied upon as the retraction affidavit dated 25-10-2019 was filed after more than three years from the date of search and he had ample time to consult of the books of account during these three years and could have filed a retraction at the earliest opportunity. Therefore, the retraction is only an afterthought and cannot be accepted. Reliance is placed on **ACIT vs Expresso Investments, 2006, Tax Publication (DT) 1299 (Mumbai)**. Moreover, since the director has admitted the cash receipt as unexplained income during search action it has precluded the department from carrying out further investigation on this issue. As discussed in earlier paras, the remarks column of the seized documents further corroborates the factum of cash received and its adjustment against sale consideration which is further confirmed by the final sale agreement. Therefore, the retraction made after three years is an afterthought and rejected.

10.3.6 The AR has now filed few affidavits from the customers of the villas stating that no cash was paid by them during the purchase of villa. On perusal of these affidavits, it is seen that all the affidavits are identically drafted which shows that they were subsequently made to somehow explain the cash component. These affidavits are self serving and have no evidentiary value. The detailed discussion of the narration of the 'remarks' column in earlier paragraphs show how the excess cash was adjusted against the sale consideration. This demolishes the case of these affidavits that no cash

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was received on sale of villas. Besides, the affidavits contain date wise cheque payment details which identically matches with the cheque amount mentioned in the seized document. For instance villa no:1 was purchased by Shri A.G.Ravindranath Reddy and the cheque amount received on various dates upto 18/03/2015 mentioned in the affidavit total to Rs.1,90,00,000/- which directly matches with the seized document. Hence it is proved beyond doubt that the affidavits were self serving and an afterthought and have little evidentiary value. Therefore, these affidavits cannot be relied upon and are rejected. //

10.3.7 In view of the above detailed discussion, the addition of Rs. 11.54 crores on account of unaccounted cash received is confirmed and Ground Nos. 7, 8 & 9 are DISMISSED.”

7. Aggrieved by such an order of the learned CIT(A), assessee preferred appeal, by raising the following grounds:

“1. The Hon'ble Commissioner of Income Tax (Appeals) has erred both on facts of the case and in law involved in so far as it is prejudicial to the interest of the Appellant.

2. The Hon'ble CIT(A) without taking into consideration the information filed before him proceeded to complete the appeal u/s.250 of the IT Act and the same is not sustainable.

3. The Hon'ble CIT(A) ignored the explanations given by the appellant and proceeded to confirm the income & Expenses arbitrarily and such action of the Hon'ble CIT(A) has no basis and therefore the same is liable to be deleted.

4. The Hon'ble CIT(A) ought to have observed that the AO erroneously made an addition of Rs.1,45,79,994/- under the head other expenses without considering the submission of the appellant. However, the CIT(A) partly allowed the same and allowed 75% of expense and disallowed 25% of the expenditure incurred by the appellant.

5. The Hon'ble CIT(A) ought to have observed that the AO erroneously brought to tax amount of Rs.11,54,00,000/- during the year without establishing that the said document belongs to the appellant, the said so called cash receipts were during the year and entire amount was income of the appellant during the year.

6. The Hon'ble CIT(A) ought to have observed that the AO erred in bringing to tax entire amount as income without considering the profit involved.

7. The Hon'ble CIT(A) ought to have observed that the AO failed to notice the undated documents pertains to AY 2017-18 and not to this assessment year 2016-17 .

8. Any other ground will be raised at the time of hearing.”

Ground Nos. 1, 2 and 8 are general nature and dismissed.

8. Ground Nos. 3 & 4 relates to the order of the learned CIT(A) in partly allowing the expenditure at Rs. 1,45,79,994/-.

9. Learned counsel for the assessee submitted that the assessment has been made u/s. 153C of the Act and there is no seized material, based on which disallowance of expense has been made. In his alternate contention, learned AR contended that even the amount is to be confirmed the entire amount cannot be added. He submitted that the assessee recognizes the revenue on the basis of percentage of completion of work and if the disallowance @25% are to be confirmed, then the Learned Assessing Officer may be directed to modify the amount of revenue recognized, based on the system followed. In yet another alternate contention, the Learned counsel for the assessee submitted that a direction may be given to the Learned Assessing Officer to reduce the same from the cost incurred for the purpose of recognizing the revenue for the impugned assessment year.

10. The learned DR on the other hand, submitted that the learned CIT(A) is very generous in granting 75% relief to the assessee, despite non-submissions of bills and vouchers and, therefore, the same should be upheld and relief should not granted.

11. We have heard the rival arguments made by both the sides and perused the record. It is an admitted fact that due to non-submissions of the bills and vouchers towards other expenses debited in the profit and loss account, the Learned Assessing Officer made an addition of Rs. 1,45,79,994/-. We find that the learned CIT(A) after considering the peculiarity of the case, restricted such disallowance to 25% of the expenses. It is the submission of the learned counsel for the assessee that disallowance of the expenses will increase the cost incurred for the project and accordingly suitable direction may be given. It is also his submission that disallowance of 25% of the expenses by the learned CIT(A) is also in the higher side. It is an admitted fact that the assessee did not produce any bills and vouchers before the Learned Assessing Officer towards the various expenses claimed under the head 'other expenses'. Although the assessee had produced the ledger extracts, however, bills and vouchers to the satisfaction of the Learned Assessing Officer were never produced before the Learned Assessing Officer for which the Learned Assessing Officer disallowed the entire expenditure under the head 'other expenses'. We find learned CIT(A) restricted such disallowances to 25% on the ground that the earlier expenditure cannot be disallowed merely because the bills/vouchers were not produced since all fresh expenses are expenses incurred each day and are business expenses. In our opinion, the adhoc disallowance of 25% by the learned CIT(A) appears to be on higher side. Considering the totality of the facts of the case, we restrict the same to 20% of such expenses. The Learned Assessing Officer shall compute the disallowance accordingly. Ground raised by the assessee is partly allowed.

12. Ground No. 5 relates to the order of the learned CIT(A) in sustaining the addition of Rs. 11,54,00,000/-. In this connection, learned counsel for the assessee filed the following submissions:

“4. Ground No.5 is with regard to addition of Rs.11,54,00,000/-. The appellant submits that there is no signature on the said paper and it is a dumb document without any evidence. The Learned Assessing Officer is of the view that it is an addition to the sale price recorded. In fact, nobody examined the purchasers of the flats to know whether any additional amount was paid by them or not. There is also no examination of other person. The Income Tax authorities did not find any seized document such as agreement of sale or receipt showing additional receipt. Therefore, the amounts cannot be added.

5. As an alternate, the appellant submits that out of the flats only one flat was sold during the year under consideration. The date of registration is provided in the table itself. Further, out of the total amount of Rs.11,54,00,000/- the following amounts are to be excluded as per submissions made.

<i>Villa/Flat No.</i>	<i>Name of the purchaser</i>	<i>Amount in Rs.</i>	<i>Remarks</i>
<i>Villa No. 01</i>	<i>Sri Ravindranath Reddy</i>	<i>47,92,000</i>	<i>It is paid in excess and cannot be considered as receipt.</i>
<i>Villa No. 15</i>	<i>Singireddy Sheela</i>	<i>50,00,000</i>	<i>Additional Rs. 50 lakhs was paid as loan and, therefore, this is to be excluded.</i>
<i>Flat No. 20</i>	<i>--</i>	<i>39,00,000</i>	<i>Cash paid extra, It is also to be excluded.</i>
<i>Flat No. 41</i>	<i>Sai Varun Reddy</i>	<i>90,00,000</i>	<i>Rs. 90 lakhs returned to owner.</i>
<i>Flat No. 42</i>	<i>Smt. Divya</i>	<i>70,00,000</i>	<i>Cancelled the transaction.</i>
<i>Flat No. 21</i>	<i>Sri Vijayender Reddy</i>	<i>1,50,00,000</i>	<i>Cancelled the transaction.</i>
<i>Total</i>		<i>4,46,92,000</i>	

6. The above amounts are to be excluded from Rs.11,54,00,000 as they cannot be considered as a part of sale. The balance of Rs.7,07,08,000/- only can be considered as the receipt.

7. Further, this amount also is to be considered only for the purpose of recognizing the revenue in accordance with the method of accounting adopted by the assessee.

8. Based on the revised cost and the increase in consideration, the revised revenue would work out as under:

9. The estimation so made was modified year after year and as on 31.3.2021, the expenditure incurred by the appellant worked out to Rs.84,12,84,800/-. The said amount has to be substituted for the cost estimated.

Cost: Rs.84,12,84,800

The construction cost incurred upto 31.3.2016 of Rs.35,60,71,912/- would not change as the said amount represents the cost incurred till 31.3.2016 i.e. end of the financial year Rs.38,60,71,912

10. The flats sold also remain the same. The percentage of completion of the work will get modified to 43.36% as against 51.36% adopted in the computation.

11. The total sale consideration of 14 villas where more than 10% of the agreement value was received would become Rs.46,15,00,000/- and Rs.7,56,08,000/- (being the so called receipt in cash) the total being Rs.53, 71,08,000/-.

12. From the above said amount, the percentage of the revenue to be recognized is 43.36%. It works out to Rs.23,28,90,029/-. This will get substituted for the revenue recognized of Rs.23,70,26,400/-."

13. Assessee prayed to direct the Learned Assessing Officer to compute the revenue to be recognized duly considering the method of accounting and the cash receipts to the extent mentioned above.

14. Learned DR on the other hand, heavily relied on the orders of the learned CIT(A).

15. We have heard the rival arguments made by both the sides, perused the orders of the Learned Assessing Officer and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered various decisions cited before us. We find that the Learned Assessing Officer in the instant case made addition of Rs. 11.54 crores in the hands of the assessee on the ground that seized document (pgs. 1 to 10 of the seized material) vide Annexure A/MLKR/R/01 seized from the residence of Shri Lakshmikant Reddy, the MD of M/s. Sushee Infra & Mining Ltd., shows receipt of Rs. 11.5 crores in cash over and above the registered sale consideration of 19 villa flats. Further in response to statement recorded under section 132(4) of the Act, Shri Lakshmikant Reddy, Director of the assessee-company has also admitted to have received cash of Rs. 11.54 crores over and above the registered sale consideration. We find the learned CIT(A) upheld the action of the learned Assessing Officer, the reasoning of which has already been given in the preceding paragraphs.

16. It is the submission of the learned AR that there is no signature on the seized paper, it is a dumb document and has no evidentiary value. Further, nobody has examined the purchasers of the flats to know as to whether any additional amount was paid by them or not? It is his argument that the Revenue did not find any seized document such as agreement of sale or receipt showing additional receipt and, therefore, the said amount cannot be added. It is his alternate argument that out of the 19 flats, only one flat was sold during the year under consideration and in certain other cases, the purchasers have paid certain amount as loan and in certain other cases the transactions were cancelled and the amounts were refunded to the prospective buyers.

17. We find some force in the alternative argument of the learned counsel for the assessee that when certain amounts were received by the assessee as loans which were refunded subsequently and in certain cases, where the transactions were cancelled the amounts cannot be added as income of the assessee. Considering the totality of the case, in the interest of justice, we deem it proper to restore the issue to the file of the Learned Assessing Officer with a direction to examine the argument of the assessee that certain amounts were received as loan and in certain cases, the transactions did not materialize and the amounts were refunded to the prospective buyers. The Learned Assessing Officer shall decide the issue as per fact and law, after giving due opportunity of being heard to the assessee. We hold and direct accordingly. The grounds raised on this issue are accordingly treated as allowed for statistical purposes.

18. In the result, appeal of the assessee is treated as partly allowed for statistical purposes.

Order pronounced in the open court on this the 26th day of March, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 26/03/2024

TNMM

Copy forwarded to:

1. M/s. Sushee Realty LLP, H.No. 8-2-293/82/L/246/A/2, Plot No. 246/A/2, MLA Colony, Banjara Hills, S.O., Khairatabad, Hyderabad.
2. The Dy. Commissioner of Income Tax, Central Circle-2(2), Hyderabad.
3. The Pr.CIT(Central)-Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE.

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