

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

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 3809/MUM/2023
(Assessment Year: 2011-2012)**

Heritage Sagar Enterprises,

Building No. 30, Tilak Nagar,
Chembur, Mumbai - 400089
[PAN: AAEFH3399B]

.....

Appellant

**Joint Commissioner of Income Tax,
Range 22(1), Mumbai,**

IT-Office, Vasi Railway Station,
Building, Navi Mumbai - 400703

Vs

.....

Respondent

Appearance

For the Appellant/Assessee : Shri Bharat Kanabar
For the Respondent/Department : Shri P.D. Chougule

Date

Conclusion of hearing : 04.03.2024
Pronouncement of order : 28.03.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 21/08/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment Year 2011-12, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 26/03/2014, passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Assessee has raised the following grounds of appeal:

Ground No. 1

"On the facts and circumstances of the law, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi erred in law in confirming the addition of Rs.127,79,998 made on account of unaccounted money in respect of booking of flat/s done in earlier years on presumptions and assumptions, conjectures, surmises and suspicious without any corroborative evidence whatsoever by rejecting books of account under section 145 of the Income-tax Act and without appreciating the fact that appellant followed percentage completion method for project of construction of building.

GROUND NO 2

"On the facts and circumstances of the law, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi, erred in law and in facts in confirming the addition of Rs. 20,00,000 under section 43B of the Income-tax Act for amount payable to MHADA for FSI charges as on 31 March 2011.

GROUND No. 3.

On the facts and circumstances of the law, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi, erred in law and in facts in confirming the addition of Rs. 64,44,022 under section 43B of the Income-tax Act for amount payable as on 31 March 2011 to Municipal Corporation of Greater Mumbai (MCGM) for obtaining occupation certificate from MCGM."

GROUND No. 4.

On the facts and circumstances of the law, the learned Commissioner of Income-tax (Appeals) -NFAC, Delhi, erred in law and in facts in confirming the addition of Rs. 3,00,000 under section 69C of the Income-tax Act for purchases done form M/s. Mahavir Enterprises."

Each of the Ground of Appeal is independent of one another. Your appellant craves leave to add, delete, substitute, withdraw or modify any of the above grounds of appeal before or at the time of hearing."

3. The relevant facts in brief are that the Appellant is a partnership firm which was formed to carry out the business of building and developing residential project with effect from 01/04/2006. The Appellant has undertaken only one project since its formation pertaining to redevelopment of a building in Chembur, Mumbai. For the Assessment Year 2011-12, the Appellant filed return of income declaring income of INR 83,04,930/-. In the return of income, the Appellant declared income on the basis of the percentage completion method followed by the Appellant. During the course of the assessment proceedings, the Appellant submitted details of the flat/shop units booked in the project including those booked in the preceding years. The Assessing Officer observed that there was large variation in the Rate of Sale (in INR per Square Ft.) of units booked. The Assessing Officer also noted that there was loss in sale of some units. Therefore, the Assessing Officer rejected the books of the Appellant observing that the varied rate of sale showed that the Appellant had indulged in on-money transactions; taken cash receipts and thus, earned unaccounted cash income. The Assessing Officer identified units in which there was variation of rate of sale was more than 10% of the rate of sale determined by the Assessing Officer and computed the unaccounted income of the Appellant by taking difference between the rate at which units were sold by the Appellant and the rate determined by the Assessing Officer at which the units should have been sold by the Appellant as per the Assessing Officer. Thus, the Assessing Officer made addition of INR 1,27,79,998/- in the hands of the Appellant. Further, the Assessing Officer also made disallowance of INR 84,88,022/- under Section 43B of the Act in respect of FSI Charges and NOC Fee and INR 3,00,000/- under Section 69C of the Act in respect of purchases

made from Mahavir Enterprises. Thus, assessment was completed on the Appellant vide order, dated 26/03/2014, passed under Section 143(3) of the Act at assessed income of INR 2,99,03,230/- after making the above additions/disallowance and allowing benefit of brought forward loss of INR 22,70,042/-.

4. The appeal preferred against the above assessment order, dated 26/03/2014, was dismissed by the CIT(A) vide order dated 21/08/2023.
5. Now the Appellant/Assessee is before the Tribunal in appeal against the above order of dismissal of appeal passed by the CIT(A) on the grounds reproduced in paragraph 2 above.
6. The Authorised Representative for the Appellant submitted that this was the first and the only project undertaken by the Appellant. The Appellant did not have the requisite expertise to deal with a redevelopment project. In response to query raised by the Assessing Officer vide order sheet entry dated 07/03/2014, the Appellant had provided reasons for variation in rates of sale. It was explained that the variation in the rate of sale was on account of financial pressure as this was the first and only project handled by the Appellant and due to external factors beyond the control of the Appellant. However, the Assessing Officer failed to appreciate the same and rejected the books of accounts. Without there being any material, the Assessing Officer concluded that the Appellant has indulged in on-money transactions in cash. The Assessing Officer arbitrarily determined actual rate of sale and took difference between the sale price charged by the Appellant and the sale price as per the aforesaid actual sale as the amount of unaccounted money and

made addition of the aggregate amount in the hands of the Appellant. The Assessing Officer did not take into account the fact the profits disclosed by the Appellant in the preceding assessment years by following the percentage completion method of accounting. This resulted in a high pitched demand. The disallowance of INR 84,88,022/- made under Section 43B of the Act in respect of FSI Charges and NOC Fee and the addition of INR 3,00,000/- under Section 69C of the Act in respect of purchases were also disputed by the Learned Authorised Representative by reiterating the stand taken before the Assessing Officer. It was submitted that high tax demand raised on the Appellant resulted in disarray of the operations of the Appellant. Further, the chartered accountant engaged to prosecute the appeal before CIT(A) could not follow up with the Appellant/CIT(A) on account of old age. Therefore, in the Appellant proceedings before the CIT(A), the Appellant could not be represented properly leading to the dismissal of the Appeal. The Learned Authorised Representative further submitted that the CIT(A) had dismissed all the grounds raised in appeal by merely quoting the order passed by the Assessing Officer.

7. Per contra, the Learned Departmental Representative supported the order passed by the CIT(A) and submitted that the Appellant had failed to furnish document/details/submissions before the CIT(A) and therefore, the CIT(A) was correct in confirming the order passed by the Assessing Officer. The CIT(A) had, in the order impugned, returned a clear finding to this effect and expressed his concurrence with the order passed by the Assessing Officer on the issues raised in appeal before CIT(A). According to the Learned Departmental Representative there was no infirmity in the order passed by the CIT(A).

8. We have considered the rival submission and perused the material on record. In view of the submission made by both the sides, all the grounds are taken up for consideration together.
9. On perusal of the order impugned we find that the CIT(A) has dismissed each of the grounds raised in appeal before CIT(A) by placing reliance on the findings returned by the Assessing Officer. We note that the specific submission made by the Appellant have not been dealt by the CIT(A) observing that the Appellant has failed to submit documents in support of the submissions. In our view, no independent findings have been recorded in respect of the merits of the submission made by the Appellant.
10. Ground No. 1 raised by the Appellant pertains to the addition of INR 1,27,79,998/- made by the Assessing Officer in the hands of the Appellant holding the same to be unaccounted on-money income earned in cash by the Appellant. On perusal of the Assessment Order we find that the addition of INR 1,27,79,998/- has been made after rejecting books of accounts of the Appellant and thereafter, adopting 'actual rate of sale'. The basis on which the aforesaid 'actual rate of sale' has been determined by the Assessing Officer is not clear on the perusal of the assessment order. Further, it also not disputed that the Appellant had been following percentage completion method and had recognized some revenues in the preceding assessment years and therefore, we find some merit in contention advanced on behalf of the Appellant that the entire amount of difference in the rate at which sale was recorded by the Appellant and the 'actual rate of sale' determined by the Assessing Officer could not be brought to tax during the relevant previous

year. The material on record is not sufficient to verify the factual averments made by the Appellant and to determine the quantum of income which could be brought to tax in the relevant previous year. During the course of hearing the Learned Authorised Representative for Appellant had also admitted that the proper representation could not be made in appellate proceedings before the CIT(A) on account of disarray in the operation of the Appellant due to high pitch demand raised on the Appellant, and due to the old age of the tax professional engaged to pursue the appeal. In view of the aforesaid, we deem it appropriate to remand this issue back to the file of the CIT(A) for adjudication after granting Appellant reasonable opportunity of being heard. The Appellant is directed to be diligent and file all documents/details before the CIT(A) in support of its contentions/submission. It is clarified that we have not expressed any view on the merits and all the rights and contention of the parties are left open. In terms of the aforesaid, Ground No.1 raised by the Assessee is allowed for statistical purposes.

11. Ground No. 2, 3 and 4 raised by the Appellant are directed against the order of CIT(A) confirming the disallowance of INR 84,88,022/- made by the Assessing Officer under Section 43B of the Act in respect of FSI Charges & NOC Fee; and the addition of INR 3,00,000/- made by the Assessing Officer under Section 69C of the Act in respect of alleged bogus purchases. We note that the CIT(A) had confirmed the addition/disallowance on the basis of the findings returned by the Assessing Officer without examining the submission made on behalf of the Appellant on merits observing that supporting documents were not furnished by the Appellant. The case of the Appellant before us is that the proper representation could not be made in appellate proceedings before the CIT(A) on account of

disarray in the operation of the Appellant due to high pitch demand raised on the Appellant, and due to the old age of the tax professional engaged to pursue the appeal. While restoring the issue raised in Ground No.1 above, we have granted another opportunity to the Appellant to present his case. Therefore, we deem it appropriate to remand the issues raised in Ground No. 2, 3, & 4 back to the file of the CIT(A) for adjudication after granting appellant reasonable opportunity of being heard. The Appellant is directed to be diligent and file all documents/details before the CIT(A) in support of its contentions/submission. In terms of the aforesaid, Ground No.2, 3 & 4 raised by the Assessee/Appellant are also allowed for statistical purposes.

12. In result, the present appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 28.03.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 28.03.2024
Alindra, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai