

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.202/PUN./2024 [E-APPEAL]

Assessment Year 2013-2014

The Income Tax Officer, 2 <sup>nd</sup> Floor, Aayakar Bhavan, Sector-17, NEW PANVEL. Maharashtra. PIN-410 206.	vs.	Shree Balaji Home Makers, Unit No.1 & 2, Pushp Kalash, Gate No.45/1, Village- Shilttar, Raichur, Panvel. Maharashtra. PIN – 410 206. <b>PAN ABVFS0499M</b>
(Appellant)		(Respondent)

For Revenue :	Shri Manish Mehta
For Assessee :	-None-

Date of Hearing :	19.03.2024
Date of Pronouncement :	06.05.2024

**ORDER**

**PER SATBEER SINGH GODARA, J.M. :**

This Revenue's appeal for assessment year 2013-14, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No.ITBA/NFAC/S/250/2023-24/1057227166(1), dated 19.10.2023, involving proceedings u/s.144 of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest.

It is accordingly proceeded ex-parte.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. On the facts and in circumstances of the case and in law, the CIT(A) erred in deciding the appeal only on the basis that the turnover constitutes advances received against bookings and it constitutes taxable service under Service Tax legislation and such advances do not partake the character of income for the concept of income under Income Tax Act and Service Tax legislation (Section 64 of Chapter V of the Finance Act 1994).
2. On the facts and in circumstances of the case and in law, the CIT(A) erred in deciding the appeal without conducting fact check with regard to advances as to whether the assessee has complied with the accounting standard fixed in respect of Real Estate transactions to arrive at such advances i.e. Total saleable area, Estimated project costs, cost incurred till end of reporting period, Total area sold till the date of reporting period, Total sale consideration as per agreements of sale executed, Amount realised till the end of the reporting period & Percentage of completion of work.
3. On the facts and in circumstances of the case and in law, the CIT(A) erred in allowing the appeal of the assessee without obtaining documentary evidences from the assessee in respect of details of expenditure incurred, party wise details of such advances received etc.
4. On the facts and in circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that during the relevant year, apart from the advances received, the assessee has also earned interest income of Rs. 3,17,348/- on the Fixed Deposit, however, the assessee has failed to file the return of income disclosing such interest income.
5. It is humbly requested that present appeal may be filed in accordance with the CBDT's Circular No.3/2018 dated 11.07.2018 amended vide letter dated 20.08.2018 as per para 10(f) of the said circular. Therefore, the order of the CIT(A) may kindly be vacated and that of the AO may be restored.
6. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.

3. Mr. Mehta next invited my attention to the NFAC's detailed discussion deleting the impugned addition as under :

**Decision:**

The reopened assessment has been completed exparte for reasons of non-compliance to the notices, which the appellant claimed not to have received any notices at all.

Appellant submitted the reasons for non-filing of the return for the impugned assessment year. The addition disputed in appeal relates to the estimated addition @8% on the turnover admitted by the appellant in the service tax return. It is the contention of the appellant that the said turnover constitutes advances received against bookings and it constitutes taxable service under Service Tax legislation. Such advances do not partake the character of income for the concept of income under income tax Act and Service Tax legislation (Section 64 of Chapter V of the Finance Act 1994.

On careful consideration of the averments of the appellant and the basis of addition and taking into account the appellant's contention that it had filed returns for the AY 2011-12 and 2012-13 and the assessment has been completed for AY 11-12 and the stand of the appellant has been the same and no income accrued to the appellant for any of the assessment years and whatever project expenses incurred has been accumulated under CWIP and reflected in the financial statements appear to be acceptable.

Therefore, there is no income under the Income- tax Act for the impugned assessment year on the basis of the reported taxable services by way of advances received against the project and therefore the income estimated @8% on the quantum of advances received reported as taxable services under Service Tax is not called for.

**The AO is directed to delete the addition made.**

4. Mr. Mehta vehemently argued in light of the Revenue's pleadings that the Assessing Officer had rightly made the impugned estimated addition going by the assessee's sales tax return. He highlighted the fact that the Assessing Officer had granted much a relief to the assessee in applying 8% profit rate on it's turnover in real estate development business. I find no merit in the Revenue's instant arguments once it has come on record that no income had actually accrued to the assessee in the relevant previous year. Faced

with this situation, I hereby quote Chainrup Sampatram vs. CIT 1954 SCR 211 (SC) settling the law long back that only an instance of reasonable certainty give rise to accrual of taxable income in an assessee's case, which is completely missing herein. It is made clear that there is no material at the Revenue's behest indicating accrual income in assessee's hands. I thus see no reason to interfere with the learned NFAC's order. Rejected accordingly.

5. This assessee's appeal is dismissed in above terms.

Order pronounced in the open Court on 06.05.2024.

[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 06<sup>th</sup> May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.