

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4605/Mum/2023
(Assessment Year :2013-14)**

Platinum Properties Plot No.6, G-20-24 Taloja, MIDC Tal-Panvel Taloja Raigad Maharashtra-410208	Vs.	DCIT, Central Circle 1 Thane
PAN/GIR No.AAJFP4159N		
(Appellant)	..	(Respondent)

Assessee by	Shri Mani Jain & Shri Prateek Jain
Revenue by	Ms. Madhu Malati Ghosh
Date of Hearing	09/05/2024
Date of Pronouncement	30/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 04/10/2023 passed by CIT(A), Pune for the quantum of order passed u/s.143(3) for the A.Y.2013-14.

2. In the grounds of appeal assessee has raised following grounds:-

“1. On the facts and circumstances of the appellant's case and in law, the Ld. CIT(A) erred in confirming the action of the Id. AO in making an addition of Rs.52,85,95,577/- as on account of alleged undisclosed on-money sale proceeds received by the appellant, for reasons mentioned in the impugned order or otherwise.”

3. The brief facts are that the assessee is a partnership firm engaged in the business of real estate development. It had developed two projects at Roadpali, Kalamboli namely Springs-I & Springs-II and a project namely Platinum Springs at Taloja. A survey u/s. 133A was conducted at business premises of the assessee on 16/10/2014 and 17/10/2014. During the survey incriminating records in the form of an excel sheet indicating the receipt of on-money of Rs.60,82,34,643/- was found from the computer of the assessee and the hard copy was impounded. During the survey, statement of the partner, Shri Devji Vaghji Patel was also recorded wherein he admitted that the on-money received in cash on account of sale of flats relating to Springs I project was not recorded in the books of accounts of the assessee. The details of these flats have been incorporated in the assessment order in detailed. It has been stated in the assessment order that partner had disclosed the additional income of Rs. 4,25,00,000/- on account of undisclosed transaction, however, till the date of passing of order no taxes were paid. The assessee's contention in the statement recorded was that if there were cash receipts then there were huge cash expenses also but assessee could not furnish the details of expenses before the ld. AO. Further, it was also brought to the notice of the ld. AO that earlier in the case of the assessee, search was conducted wherein similar material for receipt of on-

money was received in A.Y. 2008-09. From the stage of the Tribunal, it was also held that only the profit element can be added if there are incriminated cash sales and there were corresponding cash expenses also and therefore, at the most 8% on such cash sales should be estimated as net profit. Thus, it was contended that, at the most net profit should be applied. The ld. AO held that if the assessee has incurred cash expenses it should have been found at the time of survey and since no such details or materail were not found, therefore, the entire cash sales on account on-money should be added. Accordingly, he treated the entire undisclosed cash sales / on-money of Rs.52,85,95,577/- as taxable income.

4. The ld. CIT(A) after considering the entire submissions, remand report of the ld. AO, has confirmed the action of the ld. AO in his elaborate order. In so far as relying upon the decision of the Tribunal, ld. CIT(A) held that the ITAT order pertains to A.Y.2008-09 wherein, during the course of search documents were found relating to cash expenses also and on this background, the Tribunal has estimated the net profit rate of 8%. Hence the judgment of the Tribunal will not be applicable in the present year. Thus, he confirmed the addition on the entire cash sales of Rs.52,85,95,577/-.

5. We have heard both the parties and also perused the relevant documents given in the impugned orders as well as material referred to before us. One of the arguments raised by the ld. Counsel before us was that, the project Spring –I had

started way back in the F.Y. 2007-08 i.e. A.Y.2008-09 and therefore, the cash was received over a period of time and not only in A.Y. 2013-14, therefore, entire addition could not have been made in this year. On the other hand, the department's case before us is that assessee has not recognized the sale till A.Y. 2013-14 and the sale from this project has been recognized only in the year under consideration when assessee got the Occupancy Certificate and therefore, assessee has been following the "project completion method" and accordingly, action of the Id. AO in taxing the on-money in A.Y.2013-14 is justified.

6. Another contention raised by the Id. Counsel was that if undisclosed income on account of on-money receipts has to be considered, then cash expenses on the project should be reduced even if there was no cash expenses found during the survey. If all the cash sales are added then net profit will go more than 80% which could never be the profit in construction of housing project. He further submitted that in A.Y. 2008-09, the Tribunal has considered part of the on-money out of the total on-money recorded for the project and if the Tribunal had applied 8% on the part of the on-money on the total project not only the expenses should be reduced but also for the balance 8% profit should be applied. Whereas the case of the Revenue is that in this year, once no cash expenses have been found in the survey, no benefit of cash expenses should be given. However, in so far as total on-money received on the project which has already been considered by the Tribunal, Id. DR submitted benefit can be given subject to verification.

7. From the perusal of the material, it is seen that assessee had offered net profit of 4.76% on sales of Springs-I & Springs-II project from A.Y.2010-11 to A.Y.2018-19. In the case of the assessee, a search was carried out earlier on 17/01/2008 and by that time project Springs-I had started in the year 2007. During the course of search, on-money for various flats in the said project was found during the course of search which was taxed by the ld. AO in A.Y. 2008-09. The Tribunal had estimated net profit of 8% on the said on-money/ cash sales which would telescope the cash expenses for the project. Subsequently, during the course of survey action carried out on 17/10/2014, the entire recorded data of on-money was found pertaining to the same project Springs-I which has been reproduced in the assessment order from page 3 onwards. AO has incorporated the details of all the flats of Springs-I project containing the details of entire sales consideration received for each flat which has been further divided into cash and cheque receipts. The total cash on account of on-money on the entire project to Springs-I which started from F.Y. 2007-08 to F.Y. 2012-13 was Rs. 52,85,95,577/- which has been added by the ld. AO in A.Y. 2013-14. In A.Y. 2008-09, on-money recorded for the same project upto year ending 31st March 2008 was Rs.10,91,35,439/- on which 8% has been applied. Therefore, we agree with the contention of the ld. Counsel that, if on the entire project, on-money on the sale of all the flats right from A.Y. 2008-09 to 2013-14 comes to Rs. 52,85,95,577/-, then, on-money already

considered by the Tribunal for A.Y.2008-09 of Rs. 10,91,35,439/- should be excluded from Rs. 52,85,95,577/-.

8. In so far as whether the entire on-money should be added or only any profit element and whether earlier Tribunal order of A.Y. 2008-09 should be followed. Admittedly, during the course of survey on 17/10/2014, no such material was found with regard to cash expenses. However, for the same project during the course of search of 17/01/2008, there were materials and notings found that there were substantial unaccounted cash expenses also from such on-money receipts. If on the same project, cash expenses were found earlier and for this year assessee has not maintained systematically the cash expenses as maintained for cash sales on-money, then it cannot be said that no cash expenses would have been incurred. Such a presumption is based on two premise, firstly, for the same project Tribunal has held that only net profit can be applied looking to the cash expenses found; and secondly, if the entire cash sales is added then net profit on the said project will go astronomically high which is not possible in construction of housing project. Thus, it cannot be denied that there are no cash expenses pertaining to the project. If the Tribunal on the same project had applied 8% net profit on account of cash sales, then we do not find any reason to deviate from such precedence for applying the same net profit rate of 8% on cash sales/ on-money. Thus, we direct the ld. AO to apply net profit of 8% on Rs.41,94,60,138/- (i.e., Rs.52,85,95,577 - 10,91,35,439) as undisclosed income from the project. Accordingly, the addition is reduced to applying

net profit rate on 8% on the on-money amount. Accordingly, the appeal of the assessee is partly allowed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced on 30th May, 2024.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai; Dated 30/05/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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,

(Asstt. Registrar)
ITAT, Mumbai