

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

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 207/MUM/2024
(Assessment Year : 2014-15)**

M/s. Dhanlaxmi Builders & Developers 201, Vasundhra Building, S.V. Road, Irla, Vile Parle (West), Mumbai-400056	Vs.	Assistant Commissioner of Income-tax-25(2), Presently-Dy. Commissioner of Income Tax-32(1), Room no. 702, Kautilya Bhavan, Bandra Mumbai-400051
PAN/GIR No. AAGFD0339R		
(Appellant)	..	(Respondent)

Assessee by	Shri. B.V.Jhaveri
Revenue by	Smt. Mahita nair (SR.DR)
Date of Hearing	29/05/2024
Date of Pronouncement	18/06/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 11.07.2023 passed in Appeal no. CIT(A) 37, Mumbai-11322/2016-17 by the Ld. Commissioner of Income-tax(Appeals), National Faceless Appeal Centre(NFAC) [hereinafter referred to as the "CIT(A)"] u/s.

250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2014-15, wherein learned CIT(A) has dismissed the assessee's appeal against the assessment order dated 28.12.2016.

2. The brief facts related to the appeal state that the assessee firm is engaged in the business of development, redevelopment and construction of residential and commercial buildings. The assessee firm filed original return of income on 13.02.2015 declaring total income of Rs. Nil with no claim of any prepaid taxes. Subsequently assessee filed revised return of income on 12.09.2015, declaring total income at Rs. Nil, with a claim of TDS amounting to Rs. 6,01,427/- . As the original return was not filed within the specified due date u/s.139(1) of the Act. The revised return was treated ab-initio void as if it was never filed. Notice u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. Shri Umesh P Gosar (CA) from M/s. Umesh P Gosar & Associates, CA's, attended assessment proceedings and furnished required details. During the year under consideration, assessee's firm was found to be engaged in three projects at (i) Bajaj Road (ii) Iria Development Corporation (iii) Lonavala. Survey u/s. 133A was carried out on 20.09.2013. one of the partners Shri Sunil Sanghoi in the statement dated 01.10.2012 under section. 131 of the Act committed the cash receipts of Rs. 5,10,96,000/- . The assessee firm has neither disclosed any income nor paid any Advance Tax. Assessee explained that the advance cash of Rs. 5,10,96,000/- was received from the customers for the

property located at Lonavala which was still under construction. Assessing Officer further detected the income from house property as Rs. 16,33,376/- and interest not credited in P&L A/c of Rs. 36,80,816/-, assessing total income at Rs. 5,64,10,192/-. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A) who dismissed the appeal for non prosecution.

3. The appellant assessee has approached this tribunal on the following grounds:

"I. Addition of Rs.5,10,96,000/- u/s. 68 of the I.T.Act

1. The Assistant Commissioner of Income-tax 25 (2), Mumbai ("the A.O.") erred in adding Rs.5,10,96,000/- to the income of the assessee firm u/s. 68 of the I. T. Act, 1961.

2. The A.O. failed to appreciate that the sum of Rs.5,10,96,000/- was offered as the receipt of sales proceeds in cash on sale of various units in the Lonavala Square project by the partner of the assessee firm on the basis of a loose paper found in the course of the survey from the premises of the assessee firm at Lonavala. In the said statement names of the parties, unit numbers, area of each of the units, rate per sq.ft, total amount, consideration in cash, receipt of cash consideration, balance cash receivable, amount in cheque, amount received in cheque, balance amount receivable in cheque, etc. were given.

3. The A.O. erred in adding Rs. Rs.5,10,96,000/- to the income of the assessee firm u/s. 68 of the Act because the said addition is made only on account of loose paper found in the course of the survey which recorded both the cash consideration and cheque consideration received by the assessee firm on booking of various units in the project under construction at LOnavala and therefore, the said amount was inextricably connected with the business of the assessee firm of constructing a building at Lonavala and hence the said amount was part and parcel of the consideration received on booking of the units which could not be treated as unexplained cash credits.

4. The A.O. failed to appreciate that Lonavala Square Project was commenced by the assessee firm in the previous year relevant to A. Y. 2011-12 and in the returns of income for A.Ys. 2011-12, 2012-13 and 2013-14 the assessee firm had recorded in its audited books of account amounts received on booking of various units and not computed income as the assessee firm was following "Project completion method" and the returns of income for A.Ys. 2011-12 & 2013-14 were scrutinized and the Project completion method followed by the assessee was accepted by the A.O.

5. The A.O. failed to appreciate that following "Project completion method" receipt of the further consideration from the parties who booked the units in the earlier years cannot be treated as income of the year in which the amount is received but income from the said amount is computed and offered for taxation in the year in which the project is completed.

6. The A.O. failed to appreciate that as the project of Lonavala Square was not completed in the year under consideration and/or in the earlier years, the receipt of Rs. 5,10,96,000/- cannot be taxed as income of the year under consideration.

7. The A.O. accepted the confessional statement of the partner of the assessee firm to the extent of Rs.5, 10,96,000/- and did not accept the statement wherein the assessee firm had stated that it had received advances from customers for the property located at Lonavala which was under construction. In other words, the A.O. broke the statement in two parts and accepted one part recording the figure of Rs.5,10,96,000/- and rejected the second part of the very same statement without assigning any reasons.

8. The A.O. has erred in making the addition on the ground that the assessee firm has failed to satisfy the conditions of sec. 68 of the Act.

II. Addition under the head " Income from House Property"

9. The A.O erred in adding Rs.16,33,376/- as income under the head "Income from house property".

10. The A.O. failed to appreciate that the rent income of Rs.23,33,376/- is accounted and recorded in the audited books of account of the assessee firm for the year under consideration as a part of the Lonavala Square project and accordingly reduced it from the work-in-progress as on 31.03.2014 by the amount of rent income.

III. Addition on account of Interest of Rs.36,80,816/-

11. The A.O erred in adding Rs.36,80,816/- as interest under the head "business income."

12. The A.O. failed to appreciate that the said interest income of Rs.36,80,816/- is accounted and recorded in the audited books of account of the assessee firm for the year under consideration as a part of the Lonavala Square project and accordingly reduced the work-in-progress as on 31.03.2014 by the amount of interest income.

13. The order of the A.O. passed u/s. 143(3) of the Act computing total income of the assessee firm at Rs.5,64,10,192/- is bad in law and without jurisdiction.....”

4. In response to the notice issued by the tribunal, learned DR

appeared and participated in the proceedings.

5. We have perused the records and heard learned representative for both the parties.

6. Learned representative for the assessee has submitted that the appeal was filed on 15.01.2024 against the impugned order dated 11.07.2023 by 128 days delay and has drawn the attention of the bench towards the affidavits filed by the Managing Partner of the assessee firm, Shri Sunil Vasanji

Sangoi, and Mr. Neeraj Chaturvedi Accountant, stating that due to lack of communication between Mr. Neeraj Chaturvedi accountant of the assessee and the Chartered Accountants looking after the taxation work of the assessee, the appeal could not be filed in time and prayed to condone the said delay caused in filing the appeal. Further requested to remand the case to the learned CIT(A) with a direction to decide the appeal on merits after affording an opportunity to the assessee.

7. Learned DR has opposed the application for condonation of delay and supported the impugned order.
8. We have perused the affidavits filed on behalf of Mr. Neeraj Chaturvedi accountant and Mr. Sunil Vasanji Sangoi, Managing Partner of the firm, submitted in support of application for the condonation of delay. The grounds taken in respect of the lack of communication amongst assessee's employees interse in both affidavits are un rebutted. There seems sufficient cause for the condonation of said delay. In the interest of justice, we deem it just and proper to condone the aforesaid delay. The delay of 128 days in filing the appeal is accordingly condoned.

9. It transpires from the perusal of the impugned order that learned CIT(A) issued notices to the assessee for hearing on 10.04.2023, 26.04.2023, 08.05.2023, 19.05.2023, 07.06.2023 and 03.07.2023 but for no avail. When the learned representative of the assessee was questioned by the bench for such an irresponsible conduct of the assessee before the first appellate authority, assessee's learned representative came out with an offer for the payment of costs of Rs. 10,000/- to provide opportunity of hearing before learned CIT(A). In the interest of justice and fair play, we find it just and proper to conditionally remit the matter back to the file of learned CIT(A) provided that the assessee makes payment of cost of Rs. 10,000/- in the Account of Prime Minister's National Relief Fund. We further direct the assessee to be more diligent and cooperative in attending the hearings and making submissions before the first appellate authority for the expeditious and effective disposal of the appeal. Assessee should refrain from seeking any adjournment except in emergent situation which may be examined by the first appellate authority. It is made clear that we have not made any observation on the merits of the case. The assessee shall file the copy of the receipt of payment of

aforesaid costs on record within one month from the date of this order. The appeal is liable to be allowed accordingly.

10. In the result, the appeal is allowed in above terms. The impugned order dated 11.07.2023 is set aside. The appeal is restored back to the file of the learned CIT(A) for statistical purposes.

Order pronounced on 18.06.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai; Dated 18/06/2024
Anandi Nambi, *Steno*

Sd/-
(SUNIL KUMAR SINGH)
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