

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

1. आयकर अपीलस ITA No.2976/Chny/2018  
(निर्धारणवर्ष / Assessment Year: 2011-12)
- &
2. आयकर अपीलस ITA No.2977/Chny/2018  
(निर्धारणवर्ष / Assessment Year: 2012-13)
- &
3. आयकर अपीलस ITA No.2978/Chny/2018  
(निर्धारणवर्ष / Assessment Year: 2014-15)

ITO Corporate Ward-6(1), Chennai.	<b>बनम/</b> Vs.	M/s Saaksha Developers Private Ltd. No.1, Subbraya Avenue, C.P.Ramaswamy Road, Alwarpet, Chennai-600 018.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAMCS-2275-E</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी/ <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Assessee by</b>	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओर से/ <b>Revenue by</b>	:	Shri AR V Sreenivasan (Addl.CIT)-Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	27-05-2024
घोषणा की तारीख/ <b>Date of Pronouncement</b>	:	03-07-2024

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by revenue for captioned years arise out of separate orders of first appellate authority. However, the facts as well as issues are quite identical and our adjudication in any one year would

apply to the other years also. For the purpose of adjudication, facts from AY 2011-12 have been culled out in this order. The sole grievance of the revenue is deletion of addition of Rs.330.26 Lacs by treating the same as advance amount. The revenue is also aggrieved by allowance of professional charges of R.32.41 Lacs. Having heard rival submissions and upon perusal of case records, our adjudication would be as under. The assessee being resident corporate assessee is stated to be engaged in the business of real estate.

### **Assessment Proceedings : AY 2011-12**

2.1 It transpired that the assessee received contractual receipts from M/s Appaswamy Real Estates Ltd. (AREL) but did not offer any revenue. Accordingly, the case was reopened. It transpired that the assessee purchased 4.44 acres of land at Pallikarani and entered into a Joint Development Agreement (JDA) with AERL on 21-06-2009. A project called Mapleton Apartments consisting of 465 residential apartments in 6 blocks was conceived under the agreement. The assessee executed a GPA in favor of nominee of AERL on 24-01-2011. The power agents were authorized to execute documents, sell or otherwise dispose-off the property in favor of the prospective purchasers. The supplementary agreement was also executed subsequently modifying the terms of the agreement.

2.2 The Ld. AO noted that as per the terms, the assessee's role was limited to that as of a land owner for transfer of undivided share (UDS) of land. The entire responsibility and time of construction rest with AERL. The assessee submitted that it has adopted completed contract method to recognize the revenue from the project. The approvals were received only during FY 2012-13 and the money received earlier from prospective

buyers was treated as advance. The project attained a reasonable level of development during AY 2013-14 and therefore, revenue was recognized during that year and offered to tax. In this year, the assessee received amount of Rs.330 Lacs from AERL which was shown as liability in the books of accounts.

2.3 However, rejecting the same, Ld. AO held that the only obligation of the assessee was to physically hand over the land and execute Power of Attorney which was already performed by the assessee. Therefore, the amount of Rs.330.26 Lacs was treated as business receipts and brought to tax.

2.4 The assessee claimed professional charges of Rs.32.41 Lacs. The same was paid to M/s Srinivasa Real Estates for identifying prospective buyers for sale of land retained by the assessee company. The bill was raised by that entity and the payment was made after deduction of tax at source. The revenue from sale of land was stated to be recognized in the year of registration of documents. However Ld. AO computed pro-rata disallowance of Rs.26.95 Lacs and disallowed the same u/s 37(1).

### **Appellate proceedings**

3.1 The Ld. CIT(A), after considering details submissions of the assessee, concurred with assessee's submissions that money received by the assessee was mere advance in nature and there was no transfer of title to prospective buyers. The money was received in escrow account. The money was mere advances for initial booking of the flats and not for performance of the contract. Even the plan was not approved and therefore, no construction had commenced in this year. It was also evident that the assessee recognized revenue and offered income in subsequent years based on completed contract method. Taxing the

same prematurely would amount to double taxation. The Ld. AO failed to demonstrate as to how the income had accrued to the assessee in this year. The assessee had the obligation to transfer the land to the ultimate flat purchasers. Nothing was on record that the land was transferred in this year. Therefore, it was held that the income would be recognized only when the assessee's title of ownership over land was passed on to flat buyers. Accordingly, impugned addition was deleted.

3.2 On the issue of professional charges, Ld. CIT(A) held that the same was on incorrect assumption of facts. It was clear the expenditure had nothing to do with JDA but it was for finding buyers for land as retained by the assessee. The payment was through banking channel after compliance of provision of Sec.194H. Therefore, the disallowance was deleted. Aggrieved, the revenue is in further appeal before us.

### **Our findings and Adjudication**

4. From the fact it emerges that in terms of JDA, the assessee's role was limited as a land owner and except for transfer of UDS by way of title deeds, the assessee had no further role under JDA. The Ld. CIT(A) has rendered factual findings that the approvals were granted to the project in subsequent years. It is also an undisputed fact that revenue from this project has been offered by the assessee from FYs 2013-14 to 2016-17. The same has also been tabulated by Ld. AR before us. In such a scenario, taxing the advances prematurely would amount to double taxation which could not be held to be justified. The project has attained a reasonable level of development only during subsequent years. In this year, there is no transfer of title deeds by the assessee. The money was received in escrow account and the same represent mere advances for initial booking of the flats and not for performance of

the contract. Therefore, the adjudication of Ld. CIT(A) could not be faulted with. We order so.

5. The issue of professional charges also has been clinched in correct perspective by Ld. CIT(A). It is evident that Ld. AO fell in error in assumption of correct facts. The impugned charges were not connected with JDA but related with finding buyers for land as retained by the assessee. The payment was through banking channel after compliance of provision of Sec.194H. Therefore, the disallowance has rightly been deleted. The appeal of the revenue stand dismissed.

**Assessment Year: 2012-13**

6. During the course of assessment proceedings, it transpired that land admeasuring 4.44 acres was registered in the name of the assessee pursuant to compromise agreement between M/s Rakindo Developers Private Ltd. (Rakindo) and one Shri S.P. Velayutham (SPV). The assessee was a special purpose vehicle to take over certain land at Pallikaranai at agreed value of Rs.55 Crores though the guideline value of the same was Rs.46.46 Crores. In the books, the assessee recorded value of Rs.59.19 Crores with corresponding liability of Rs.55 Crores against Rakindo. This land was subjected to Joint Development Agreement (JDA) with AERL on 21-06-2009 for construction of a residential project. Similar to view taken in AY 2011-12, Ld. AO held that advances received by the assessee during this year for Rs.20.51 Crores would be taxable in this year only considering the terms of JDA. The Ld. AO also estimated the corresponding cost and computed gains of Rs.10.04 Crores.

7. The Ld. CIT(A) noted that the assessee transferred UDS of 30472 square feet. Based on the given particulars, Ld. CIT(A) reworked

estimated profit of Rs.279.67 Lacs. Upon perusal of computations, it could be seen that UDS as sold by the assessee during this year has generated net revenue of Rs.1080.83 Lacs. After deducting corresponding cost of sales and admin expenses, the revised profit has been worked out to be Rs.279.67 Lacs. The assessee's plea to allow profit of 98% as belonging to Rakindo was rejected and Ld. AO was directed to adopt profit figures of Rs.279.67 Lacs. Aggrieved, the revenue is in further appeal before us.

8. We find that the working of Ld. CIT(A) is based on actual UDS sold by the assessee during this year. The same is also in consonance with our adjudication for AY 2011-12. We concur that the revenue was to be computed on the basis of UDS transferred by the assessee in respective years. Therefore, the working of Ld. CIT(A) could not be faulted with. The appeal stand dismissed.

**Assessment Year: 2014-15**

9. In this year, Ld. AO has disturbed the cost of land. Though the cost of land was claimed to be Rs.59.19 Crores on the basis of compromise agreement, the guideline value including registration charges was Rs.50.66 Crores only. By adopting cost of Rs.50.66 Crores, Ld. AO denied cost of Rs.8.53 Crores.

10. The Ld. CIT(A) concurred that the property was acquired at agreed value of Rs.55 Crores which was evidenced by compromise agreement between Rakindo and SPV. The assessee was consistently showing the value of Rs.59.19 Crores in its books since earlier years. The same could not be disturbed in this year. Therefore, the disallowance of Rs.8.53 Crores was deleted. Aggrieved, the revenue is in further appeal before us.

### **Our findings and Adjudication**

11. It is quite evident that the cost recorded by the assessee is as per compromise between Rakindo and SPV. The value, to that extent, has been foregone by the assessee group while acquiring the land. The said value would, therefore, become cost in the hands of the assessee company. We also concur that this value is coming from earlier years and there is no allegation of inflation of the same. Therefore, no case of disallowance could be made out against the assessee. We concur with the finding given in the impugned order. The appeal stand dismissed.

12. All the appeals stand dismissed.

*Order pronounced on 3<sup>rd</sup> July, 2024*

Sd/- (MANU KUMAR GIRI) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (MANOJ KUMAR AGGARWAL) लेखासदस्य / ACCOUNTANT MEMBER
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चेन्नई Chennai; दिनांक Dated : 03-07-2024  
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#### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT., Chennai / Madurai / Coimbatore / Salem
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF