

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सटस्य के समक्ष
[Before Shri Sanjay Garg, Judicial Member & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 554/Kol/2024
Assessment Year: 2012-13

M/s Shree Balasaria Construction Pvt. Ltd. (PAN: AADCS 6467 M)	Vs.	ITO, Ward-9(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / प्रत्यर्थी

Date of Hearing / सुनवाई की तिथि	10.06.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	11.07.2024
For the Appellant/ निर्धारिती की ओर से	Shri Sunil Surana, A.R
For the Respondent/ राजस्व की ओर से	Shri P.P. Barman, Addl. CIT

ORDER / आदेश

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi dated 24.01.2024 for the AY 2012-13.

2. The assessee has raised following grounds of appeal:

1. *For that the notice issued by the AO, Ward-9(4), Kolkata was without jurisdiction and therefore the entire assessment is liable to be quashed.*
 2. *For that the Ld. CIT(A) erred in confirming the order of the AO in adding back sale proceeds of land of Rs. 48,48,800/- as undisclosed income when the transaction of sale, its corresponding receipt and corresponding income was duly recorded in the books of account as well as the disclosed bank account of the assessee.*
 3. *For that the Ld. CIT(A) erred in confirming the order of the AO in disallowing Rs. 62,138/- being the audit fees u/s 40a(ia) for non-deduction of tax at source u/s 194J when only 30% of the expenses could only have been disallowed.*
 4. *For that the Ld. CIT(A) erred in confirming the order of the AO in treating the brokerage expenses of Rs.9,66,980/- as relating to CWIP of the project thereby treating the same as capital expenditure when the expenses were incurred for putting the space on rent the income of which was shown under the business and assessed as such.*
3. Issue raised in ground no. 1 is not pressed at the time of hearing and therefore the same is dismissed as not pressed.
 4. Issue raised in ground no. 2 is against the confirmation of addition of Rs. 48,48,800/- by the Ld. CIT(A) as made by the AO on account of undisclosed income.
 5. Facts in brief are that the assessee is engaged in the business of construction of real estate development. The assessee is also engaged in dealings in land/plots in the ordinary course of business. The assessee filed return of income on 12.09.2012 declaring total income of Rs. 66,37,355/- which was processed u/s 143(1) of the Act. Thereafter the case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served upon the assessee. The AO issued notice u/s 142(1) dated 15.12.2014 along with detailed questionnaire requiring the assessee

to file detailed information/details. The AO observed that AIR module showed that during the year under consideration, the assessee sold land on 13.01.2012 at Rs. 2,02,68,000/- and according to the information available, the assessee was part owner of the said land along with five other parties and accordingly called upon the assessee to furnish comprehensive details of sale of land along with cost of purchase of the said land. The assessee replied the said query of the AO on 9.1.2015. The assessee was asked to file the detailed reconciliation of transaction specifying the details of land which was sold at Rs. 2,02,68,000/- as appearing the statement at serial no. 1 of AIR TXN Code 007. The assessee denied the said transaction vide written submission dated 23.02.2015 clarifying the said transaction but emphatically denying the land transaction on 09.03.2015. The assessee submitted a letter stating that they had sold land and received consideration of Rs. 48,48,800/- as its share out of the sale proceeds and credited the same in the bank account maintained with Howrah Branch of ICICI bank Ltd. According to the AO, the assessee did not furnish the break up and finally the entire proceeds falling to the assessee of Rs. 48,48,800/- was treated as income from undisclosed source and added to the income of the assessee.

6. In the appellate proceedings, the assessee filed detailed submissions by uploading the same vide email on 31.12.2021 and 25.12.2023 which are extracted by the Ld. CIT(A) in para 4.2 at page 6 of the appellate order which states that all the documents and details of sale consideration were filed before the AO. It was also stated that all these information were also filed before the appellate authority. The assessee stated that income from sale of land of Rs. 4,36,941/- was correctly shown in schedule 10A of the profit and loss account as well as in the annexure. The assessee also filed a copy of bank statement and other related documents before the appellate authority. The Ld. CIT(A) dismissed the appeal of the assessee on this ground by noting in para 7.1, the assessee has not filed new evidences to controvert the findings of AO based on the facts of the case. The Ld. CIT(A) has noted that the assessee has not substantiated as to how the transaction of sale is reflected in the books of account and finally shown in the return.

7. After hearing the rival contentions and perusing the material on record, we find that during the year, the assessee has shown revenue from operation of Rs. 67,58,169.54/- and other income of Rs. 359,101.00/- in the profit and loss account for the year ended on 31.03.2012. The break up of this revenue from operation as well as other income has been given in the annexure. We observe from the annexure in the schedule to the audited accounts that revenue from operation comprised of two figures namely income from sale of land of Rs. 4,36,941.54/- and rental receipt of Rs. 63,21,228/-. A copy of the audited account is available at PB page 8-23. We have also observed that the details of land sold during the year which comprised of 12 transactions showing the details of sale deeds during the year in decimal and cost of lands along with incidental expenses. The said details contained the land cost of Rs. 2,46,28,135/- whereas the total sales of consideration was Rs. 2,40,83,055/- thereby showing the net profit of Rs. 4,36,941.54/- which has been shown in the schedule of revenue from operation. We observe that the break up of lands sold as available at page 25 that the assessee has sold land for Rs. 48,48,800/- vide sale deed no. 00129 Dag No. 251 khatian No. 779 and area in decimal is 20. We have also examined the copy of sale deed available at page 28 to 46 which showed the sale consideration of Rs. 48,48,800/- issued in two cheques and the same were received and credited under the head advances received against the sale of land, a copy of which is available at page 27. The assessee has received total advances against the sale of lands of Rs. 86,28,514/- a copy of which is filed at page 27 which were deposited in ICICI Bank on 5.1.2012 and was duly credited in the bank account. Considering these facts, we are of the view that both the authorities below have failed to appreciate the facts in correct perspective and made the addition on wrong understanding of facts. The assessee has duly shown the impugned sale of land in the books of account though the receipt of sale of land was clubbed with other payments and the aggregate sum was deposited in the bank account of the assessee. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the addition. The ground is allowed.

8. Issue raised in ground no. 3 is against the confirmation of addition of Rs. 62,138/- by the Ld. CIT(A) as made by the AO on account of audit fee u/s 40a(ia) for non-deduction of tax at source u/s 194J. The same was not pressed at the time of hearing and is accordingly dismissed.

9. Issue raised in ground no. 4 is against the confirmation of addition of Rs. 9,66,980/- by the Ld. CIT(A) as made by the AO on account of project expenses relating to CWIP projects.

10. Facts in brief are that the assessee paid a sum of RS. 9,66,980/- to Aperan Realty Solution and Home Plus Associates as brokerage in respect of property at 27, Dobson Road, Howrah. The assessee company has not furnished specific details as well as the nature of services provided by the aforesaid broker before the AO. The AO noted that the said property was under development in the course of financial year and the disbursements and the payments were related to CWIP project and were pre-construction expenses required to be capitalized. Accordingly the same was disallowed and added back to the total income of the assessee.

11. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee though noting that the assessee has claimed brokerage paid for earning of rental income. However the Ld. CIT(A) relied on the observations of the AO that the said expenses related to property under development and held that it was rightly disallowed by the Ld. AO on the ground that the assessee has not furnished any new evidences to controvert the findings of the AO.

12. After hearing the rival contentions and perusing the material on record, we note that the assessee has paid brokerage to the aforesaid party for letting out the said property. The assessee has shown rental income of Rs. 63,21,228/- as have been stated hereinabove which included the rental for the impugned property. We have examined the details of payment to Aperan Realty Solution and Home plus Associates vide their invoices dated 23.05.2011 addressed to assessee which contained description as professional fee towards providing Ambika Point, Howrath to Vasan Healthcare Pvt.

Ltd. for Rs. 86,980/- which was duly shown in the income of the assessee. Therefore the finding of the authorities below are contrary to the facts on record and cannot be sustained. Consequently we set aside the order of Ld. CIT(A) and direct the AO to delete the disallowance. The ground is accordingly allowed.

13. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 11th July, 2024

Sd/-

Sd/-

(Sanjay Garg/संजय गर्ग)

(Rajesh Kumar/राजेश कुमार)

Judicial Member/न्यायिक सदस्य

Accountant Member/लेखा सदस्य

Dated: 11th July, 2024

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Shree Balasaria Construction Pvt. Ltd., 12A, Lord Sinha Road, Shyamkunj Building, Annapurna Apartment, Ground Floor, Kolkata-700071
2. Respondent – ITO, Ward-9(1), Kolkata
3. Ld. CIT(A)-NFAC, Delhi
4. Ld. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata