

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

**BEFORE: SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.3955/Mum/2023
(Assessment Year :2015-16)**

M/s. Sagar Realtors D-14, Shop No.6 Yogi Nagar Eksar Road Borivli (W) Maharashtra- 400 091	Vs.	ITO, Mumbai Kautilya Bhavan 7 th Floor, BKC Mumbai- 400 051 Maharashtra
PAN/GIR No.ABVFS7240Q		
(Appellant)	..	(Respondent)

Assessee by	Shri Mahesh Saboo
Revenue by	Shri Nagnath Pasale
Date of Hearing	28/05/2024
Date of Pronouncement	29/07/2024

आदेश / O R D E R

PER RENU JAUHRI (AM):

The assessee has filed this appeal challenging the order dated 18.9.2023 passed by the learned CIT(A), National Faceless Appeal Centre, Delhi and it relates to A.Y. 2015-16.

2. The grounds of appeal raised by the assessee read as under:-

“1) On the facts and circumstances of the case and in law the authorities below have erred in sustaining the addition amounting to Rs. 34,17,306/- as un-earned income and reasons assigned by them were wholly wrong, irrelevant and

not in accordance with the provisions of the Income Tax Act, 1961 and rules made there under.

2) On the facts and circumstances of the case and in law, the authorities below have erred in confirming/levying/not adjudicating the interest u/s 234B and 234C of the IT which was wholly wrong, and against the provisions of Income Tax Act, 1961 and rules made thereunder.

3) On the facts and circumstances of the case and in law, the authorities below have erred in confirming/initiating the penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 which were wholly wrong, irrelevant, and not in accordance with the facts and circumstances of the case as no income is concealed nor any inaccurate particulars were furnished.

2. The brief facts of the case are as under:-

i) The return declaring income of Rs.3,82,609/- was filed by the assessee on 30/09/2015. The case was selected for limited scrutiny and notices were issued. The assessee firm is engaged in the business of real estate and has undertaken a project at Virar, Mumbai during the year under consideration.

ii) The Assessing Officer proposed to adopt percentage completion method to calculate the income during the year for which a show-cause notice was issued. However, no reply to the notice was filed by the assessee. After taking into account the material on record, the AO computed the profit during the year at Rs.38,00,000/- and made an addition of Rs.34,17,306 (Rs.38,00,000 - 3,82,694) to the returned income. The assessee filed appeal against this order and Id. CIT(A) vide order dated 18/09/2023 upheld the order of the AO after observing that 87% of the project has been completed as

certified by appellant himself and therefore, AS9 was required to be applied for recognition of revenue on percentage completion method.

3. Before us, ld. AR submitted that in case the percentage completion method was properly applied, there loss would be in this case because instead of 87% of the value of flat sold, the assessee had booked 100% of the value of flats sold. He therefore, contended that the addition of Rs.34,17,306/- is not justified in his case.

4. We have considered rival submissions. It is seen that the assessee did not file any reply before the AO in response to show-cause notice issued on 08/12/2017. As such we deem it proper to restore the matter to the file of AO who is directed to re-calculate the profit during the year after applying percentage completion method and taking into account the submissions of the assessee for which due opportunity should be given. Assessee is also directed to furnish all the requisite details before the Assessing Officer for re-computing the profit.

5. In the result, appeal is allowed for statistical purposes.

Order pronounced on 29th July, 2024

Sd/-
(NARENDER KUMAR CHAUDHRY)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai; Dated 29/07/2024

KARUNA, *sr.ps*

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