

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "C" Bench, Mumbai.

Before Shri Pavan Kumar Gadale (JM) & Shri Omkareshwar Chidara (AM)

I.T.A. No. 1106/Mum/2024 (A.Y. 2017-18)

Pragati Developers Shop No. 01, desai Villa, Jai Bhawani Mata Road, Amboli Andheri West Mumbai-400 058. PAN : AALFP9666N (Appellant)	Vs.	The ITO, Ward 24(3)(1) Pirmal Chamber Lalbaug Parel East Mumbai-400 012. (Respondent)
---	-----	---

Assessee by	Shri Pritesh Mehta
Department by	Shri H.M. Bhatt
Date of Hearing	11.07.2024
Date of Pronouncement	30.07.2024

O R D E R

Per Omkareshwar Chidara (AM) :-

Before proceedings to adjudicate the case, it was noticed that the assessee filed this appeal with a delay of 13 days. The ld AR of the assessee filed an affidavit signed by the assessee in which it was mentioned that the partners were not in position to collect the tax payable and also that the partnership firm was wound up. After taking into consideration the affidavit, the delay is condoned.

2. The above captioned appeal was filed by the appellant on 11.3.2024. The only issue involved in this appeal is against the addition of an amount of Rs. 2,78,07,450/- towards the sale consideration of immovable property and no return of income was filed for the corresponding year of A.Y. 2017-18.

3. The Learned Assessing Officer (Ld. AO for short) recorded reasons for reopening the assessment of assessee, M/s. Pragati Developers, as mentioned in page 1 and 2 of the assessment. The crux is the assessee did not file Return of Income and there is an information in ITBA Portal of Income Tax Department that assessee sold a property for a consideration of Rs. 5,37,47,200/-. After recording the reasons properly and getting approval from Joint Commissioner of Income Tax, the assessment was reopened. The Ld. AO has relied on the decision of Rajesh Jhaveri Stock Brokers (P) Ltd. 291 ITR 500 (SC) for the proposition that prima facie belief of escapement of income is enough to reopen the assessment and proceeded.

4. Notices u/s. 143(2)/142(1) were issued to the assessee calling for information as to why no Return of Income was filed etc. In response to this, the assessee firm has filed a letter stating that Return of Income for A.Y. 2017-18 was not filed as the firm was wound up and entire inventory of flats were sold in earlier assessment year period and no flats were sold during the period in consideration.

5. The Ld. AO issued letter to buyers of flats and the required full details were not received from them. The Ld. AO found the value of same flat was mentioned in the ITBA twice and actually one flat of Rs. 2,68,73,600/- was sold during this year as per Insight Portal Data. As information was not forthcoming from buyer of flat as well as from assessee firm and assessment is getting barred from limitation, an addition of Rs. 2,78,07,450/- (stamp value of property) was made and assessment was completed.

6. Aggrieved by the Ld. AO, the assessee filed an appeal with the Ld. CIT(A). The main ground taken before the Ld. CIT(A) is the same as before Ld. AO i.e., no flats were sold in the impugned A.Y. and data in Insight Portal is incorrect. The Ld. CIT(A) dismissed the appeal of assessee as the Return of Income was not filed for corresponding A.Y. and not paid advance tax

relevant to the income assessed by Ld. AO. The Ld. CIT(A) did not adjudicate the matter on merits and dismissed the appeal on the above ground.

7. Aggrieved by the order of the Ld. CIT(A), the Assessee preferred further appeal to ITAT, with the same ground that all the flats were sold by assessee firm during the period relevant to A.Y. 2016-17 and the assessee was not given proper opportunity to file replies before the lower authorities. As there is no taxable income for the assessee firm and as the entire inventory was sold in earlier A.Y., Return of Income for A.Y. 2017-18 was not filed. The assessee further mentioned that there is no taxable income for the assessee during this year and hence no Return of Income filed.

8. Before the Tribunal, the Ld. AR of assessee has filed a paper book which contains details of profit and loss account of earlier year and tried to demonstrate that all inventory of flats were sold in earlier years and there are no flats to be sold in A.Y. 2017-18. Hence, it was pleaded that the addition made by Ld. AO may be deleted.

9. Per contra, Ld. DR relied on the orders of Ld. AO and the Ld. CIT(A) and pleaded that the addition be confirmed.

10. Heard both the sides. The paper book filed by Ld. AR was purchased and taken on record. The main pleading of Ld. AR of the assessee is that flat mentioned by Ld. AO in assessment order was sold by the assessee firm in earlier A.Y. 2016-17 and the sale consideration was reflected in that year. From the details filed, it is seen that the earlier Return of Income was accepted by Income Tax Department without enquiry and it was only processed u/s. 143(1) of the Act. Nothing can be deduced from the Profit and Loss account as to whether the sale consideration was reflected in the accounts of earlier year. So, it is decided to remit the issue back to the file of

the AO. The AO is directed to get all details and give an effective opportunity to assessee before completing the assessment.

11. The appeal, thus, is set aside to the file of the Ld. AO.

12. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30th July, 2024.

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 30.07.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS