

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4606/MUM/2023  
Assessment Year: 2016-17**

ACIT 32(1),  
202, Kuatilya Bhavan,  
BKC, Bandra East,  
Mumbai-400051.

**Appellant**

**Vs.** Shubham Dynamic Real Estate  
Developers LLP,  
A-501, Gladdiola, Old Hanuman  
Road, Vile Parle East,  
Mumbai-400057.  
**PAN NO. ABTFS 6658 L**  
**Respondent**

Assessee by : Mr. Rahul Hakkani  
Revenue by : Mr. Ashish Kumar, Sr. DR

Date of Hearing : 27/06/2024  
Date of pronouncement : 19/08/2024

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal by the Revenue is directed against order dated 30.10.2023 passed by the Ld. Commissioner of Income-tax (Appeals)-51, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:



G1. "Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition of Rs. 67700000/- which was accepted in the statement recorded during the survey proceedings and disclosed the same as undisclosed income."

2. "Whether on the fact and in the circumstances of the case, the Ld. CIT(A) failed to appreciate the fact that the assessee earned income of Rs. 6,26,00,000/- on account of receipts from sale of car parking and Rs. 51,00,000/- on account of subscription fees, disclosed by the assessee in his statement on oath recorded during the course of survey proceedings us 133A of the Income tax Act.

3. "Whether on the fact and in the circumstances of the case, the Ld. CIT(A) erred in ignoring the judgment of the Hon'ble ITAT Bench D, Mumbai in the case of Hiralal Maganlal & Company Vs. DCIT, SR-52 and delete the addition which was disclosed by the assessee during the course of survey proceedings u/s 133A of the Income Tax Act."

2. Briefly stated, facts of the case are that the assessee is engaged in the business of construction and development of real estate projects. The assessee commenced construction of residential project at Jogeshwari, Mumbai and for declaring profit from the real estate project followed 'project completion method'. The cost of construction incurred was carried forward from year to year as work in progress (WIP) and sale proceeds received were shown as 'current liability' but the profit from the project was to be declared in the year of the completion of project on receipt of occupation certificate.

2.1 A survey u/s 133A of the Income-tax Act, 1961 ( in short 'the Act') was carried out on 10.09.2015, wherein Shri Manish Shah, Director of M/s Amal Realtors Pvt. Ltd., who is 50% partner in the assessee, declared Rs.6.26 crores over and above the regular income of the firm from the sale of entire car parking spaces during the current year. Further, Rs.51 lakhs was also declared as



undisclosed income , which was received from subscription fees to be used for recreation facilities. The assessee filed revised return of income on 26.03.2017 declaring total income at Rs.3,04,30,000/-. The assessee offered Rs.3,00,00,000/- during the year as additional income out under work in progress, out of Rs.6,77,00,000/-, which was declared during survey. In the note forming part of the computation income, the assessee stated that it was following project completion method and offered Rs.6,77,00,000/- to buy peace and avoid litigation in different assessment years as under:

<b>Sr. No.</b>	<b>Assessment year</b>	<b>Declaration</b>	<b>Assessment Order</b>
1.	2016-17	Rs.3 crores	Order u/s 143(3)
2.	2017-18	Rs.60 lakhs	Order u/s 143(3)
3.	2018-19	Rs.40 lakhs	Order u/s 143(3)
4.	2019-2020	Rs.2,77,00,000/-	Order u/s 143(1)

2.2 In the course of scrutiny proceedings, the assessee explained that rather than entire addition in the year under consideration, the assessee declared the additional income in various years for the reason that at the time of making statement, the assessee was under the presumption that entire car parking would be sold in current year but same could not be sold. But the Assessing Officer rejected the contention of the assessee and made addition for the entire amount of Rs.6.77 crores, ignoring the amount of Rs.3 crores declared by the assessee in the year under consideration.

3. Before the Ld. CIT(A), the assessee explained its stand by way of journal entries passed in books of account and its effect on profitability and WIP and explained that there was no tax impact in



both the scenario of amount added to WIP and without adding to WIP. The assessee also submitted certificate by a Chartered Accountant stating that survey declared amount was offered to tax by the assessee. Considering the submission of the assessee, the Ld. CIT(A) deleted the addition observing as under:

*“7.9 In the present case, while during the course of the survey it was envisaged that the said project would get completed by December 2015 i.e during the assessment year under consideration itself and the entire receipts declared during the course of the survey shall be offered during the assessment year under contention itself, in reality the project got delayed and got completed only in AY 2019-20. While as per the Project Completion Method, the income from the project ought to have been offered in the year of completion of the project i.e AY 2019-20, to honour the Survey declaration, the declaration amount was offered for taxation in a staggered manner in AYs 2016-17 to 2019-20 for the purpose of payment of advance tax and advance tax was duly paid accordingly. The net profit from the project was calculated on the completion of the project in AY 2019-20 after including the survey declaration made towards sale of the entire car parking spaces and subscription money to be collected from flat owners on handing over of possession of the flats. The survey declaration amount of Rs. 3,00,00,000/- was indeed offered to tax in the assessment year under consideration i.e AY 2016-17 which can be seen from the audited profit and loss account. Similarly, the balance amount of declaration was offered in AYs 2017-18, AY 2018-19 and 2019-20 which can also be seen from the respective audited profit and loss accounts for the respective years. As already pointed out above, the AO has accepted the books of accounts and has not rejected them. Therefore, the audited book results also need to be accepted and cannot be rejected and no adhoc addition can be allowed to be made.*

*7.10 It is also seen that the AO was in agreement with the accounting treatment of survey declaration adopted by the appellant in AY 2017-18 and AY 2018-19 where the appellant has offered Rs. 60,00,000/- and Rs. 40,00,000/- respectively out of the total survey declaration of Rs. 6,77,00,000/-. The same AO has accepted the declaration so made in AY 2017-18 vide assessment order dated 15.12.2019 passed u/s 143(3) of the Act. Similarly, in AY 2018-19 also the AO has accepted the declaration made by the assessee vide assessment order dated 10.03.2021 passed u/s*



*143(3) of the Act. Ironically, during the AY under consideration i.e AY 2016-17 the AO did not accept the declaration amount of Rs. 3,00,00,00/- made by the assessee and instead added the entire declaration amount of Rs, 6,77,00,000/- in AY 2016-17. This has been done without rejecting the books of accounts of the appellant. The AO cannot adopt different stands on the same issue in different assessment years and so the action of the AO in AY 2016-17 cannot be sustained. The appellant has also illustrated that the accounting treatment of offering the declaration amount by debiting the WIP account and crediting the profit & loss account has no impact on taxable income calculated at the time of the completion of the project as alleged by the AO.*

*7.11 Therefore, keeping in view the above facts and the judicial pronouncements, addition of Rs. 6,77,00,000/- made by the AO in AY 2016-17 cannot be sustained and is hereby deleted. Ground No.1(a) of the appeal is accordingly allowed.”*

4. We have considered rival submission of the parties and perused the relevant material on record. Shri Manish Shah director of one of the partner of the assessee firm offered undisclosed income of Rs.6.77 crores for taxation which included Rs.6.26 crores from sale of entire car parking spaces and Rs.51 lakhs as subscription fees toward use of recreation facilities. According to the assessee it offered the entire survey declaration amount in four years, *interalia*, Rs.3 crores in assessment year 2016-17; Rs.60 lakhs in assessment year 2017-18; Rs.40 lakhs in assessment year 2018-19 and Rs.2,77,00,000/- in assessment year 2019-20. But, the Ld. Assessing Officer rejected the contention and ignored the undisclosed income of Rs.3 crores offered in the year under consideration and made addition for the amount of Rs.6.77 crores to the total income declared by the assessee in the return of income. Thus the issue in dispute in the case is whether the



assessee has honored the declaration made during the course of survey proceedings. We have verified the claim of the assessee of undisclosed income from sale of car parking and subscription fee offered in assessment years from 2016-17 to 2019-20. In assessment years 2017-18 and 2018-19 assessments have been completed u/s 143(3) of the Act by the Assessing Officer and he has duly accepted the declaration made by the assessee. In assessment year 2019-20 also the declaration of Rs.2,77,00,000/- has been accepted by the Revenue under intimation issued u/s 143(1) of the Act. The income of Rs.3 crores declared in the year under consideration has also not been reduced by the Assessing Officer and therefore, the entire income of Rs.6.77 crores offered by the assessee stands declared in the returns of income filed. The action of the Assessing Officer is revenue neutral unless there is significant change in tax rates favorable to assessee in other years. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The grounds of appeal raised by the Revenue are accordingly dismissed.

5. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 19/08/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**



Mumbai;  
Dated: 19/08/2024  
Rahul Sharma, Sr. P.S.

**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,  
(Assistant Registrar)  
**ITAT, Mumbai**