

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No.253/Mum/2024
Assessment Year: 2014-15**

Khushbu Realities Pvt. Ltd. Charkop Shree Gulmohar CHS Ltd., Sai Kripa, Sector No. 9, Charkop, Kandivali (W), Mumbai-400067. PAN: AADCK 0622 Q	Vs.	ITO, Ward-12(3)(2), Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 12.06.2024

Date of Pronouncement : 21.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. ITA 253/Mum/2024 is filed by Khushbu Realities Pvt. Ltd. (‘the Assessee’) for A.Y. 2014-15 against the appellate order passed by the National Faceless Appeal Centre, Delhi (‘ld. CIT(A)’) dated 13.07.2023 wherein the appeal filed by the assessee against the assessment order passed u/s 143(3) of the Income-tax Act, 1961 (‘the Act’) dated 21.12.2016 was allowed for statistical purposes.
2. The assessee aggrieved with that has preferred this appeal raising the ground of appeal that the ld. Assessing Officer has [1] disallowed the cost of goods sold of Rs. 16,37,936/- and [2] has made an addition of provision for purchase expenses of Rs. 11,31,006/- which has been upheld by the ld. CIT(A) and [3] Further, the disallowance of expenses of Rs. 16,61,804/- related to this specific project was also upheld.

3. The brief fact of the case shows that assessee is a company engaged in the business of builder and developer, filed its return of income on 23.11.2014 at a total income of Rs. 2,36,722/-. The case was selected for scrutiny by issue of notice u/s 143(2) of the Act on 28.09.2015. The ld. Assessing Officer found that the assessee company has one project namely Gokul Dham at Pimpri Chinchwad, Pune under construction. Another project in the name of Khushbu Exotica at Pimpri Chinchwad, Pune is already completed but no sales from Khushbu Exotica have been recorded during the year. Assessee submitted that assessee recognizes the sale as soon as it receives more than 50% of sales consideration from the buyer and necessary agreements are executed and registered. It was stated that though Khushbu Exotica Project is completed in earlier year and project Gokul Dham is under construction having 70% of work completed.
4. The ld. AO found that
 - i. assessee has valued closing stock of the flats at Rs. 1772.17/- per sq. feet whereas the project at Gokul Dham is valued at Rs. 3,120/- sq. feet. Thus, according to the AO, the agreement value of the area sold of the project Gokul dham is much higher compared to Khushbu Exotica. The Assessing Officer asked the assessee to furnish the valuation certificate. The assessee submitted valuation certificate of M/s. S.K. Associates, Architect. The Assessing Officer rejected the valuation report because the certificate does not mention as to how the proposed estimated

- cost has been worked out. The assessee was asked to produce the books of accounts.
- ii. assessee has withdrawn cash of Rs. 42,21,500/- and re-deposited Rs. 27,30,000/-. The AO was of the view that assessee has withdrawn such a huge amount when there was no need for such a huge cash expenses. The assessee was also asked to show the details of sale of the flats of the project Gokuldham.
 - iii. assessee has received Rs. 82,42,000/- from one Shri Dilip Parkar but sale accounted is only of Rs. 64,50,000/- therefore the excess amount received of Rs. 16,23,595/- was asked to explain. Assessee did not produce the books of accounts.
 - iv. receipt as per service tax return and as per the return in income tax and found that there is a difference of Rs. 5,55,000/-.
 - v. Accordingly, the Assessing Officer held that the project cost for Gokuldham Project would not be more than Rs. 2116/- per sq. feet and the area sold for Rs. 1630/- sq. feet work out to Rs. 34,49,080/-. The assessee has shown the cost of area sold at Rs. 50,87,016/- therefore difference of Rs. 16,37,936/- was added as expenses for want of verification.
 - vi. The interest expenditure of Rs. 15,11,804/- and salary of employee of Rs. 1,50,000/- was treated as the direct expense for the project and considered as a profit.

- vii. The AO further found that sundry creditors of Rs. 11,31,006/- in respect of Gokuldham Project is also bogus.
 - viii. Accordingly, the addition was made to the total income of the assessee on three counts (i) on account of wrong estimation of cost of Rs. 16,37,936/- (ii) on account of direct expenses of Rs. 16,61,804/- & (iii) Rs. 11,31,006/- on account of provisions of sundry creditors expenses.
 - ix. Thus, the total income of the assessee by assessment order dated 21.12.2016 was determined at Rs. 46,67,470/- against the returned income of Rs. 2,36,722/-.
5. Assessee aggrieved preferred an appeal before the ld. CIT(A). The ld. CIT(A) directed the assessee to furnish the submission, but assessee did not comply with. Based on this, the ld. CIT(A) held that assessee is not interested in pursuing the matter and accordingly he confirmed all the additions made by the ld. AO.
6. Aggrieved by the same, the assessee is in appeal before us. Assessee has placed before us, a paper book containing 159 pages wherein the certificate of the architect certifying the cost, detailed working cost per sq. feet, the details of list of provisions of expenses and details of interest expenditure was furnished. Assessee has also submitted a detailed note containing 8 pages wherein the ground-wise explanation of all the additions is provided. Therefore, on the basis of above, the ld. Authorized Representative submitted that the addition made by the ld.

Assessing Officer with respect to all the three points deserves to be deleted. The ld. Authorized Representative further relied upon the decision of ITA No. 1891/M/2022 dated 21.09.2022 to submit that even otherwise the interest expenditure could not have been disallowed holding them to be capital expenditure.

7. The ld. Departmental Representative vehemently submitted that assessee failed to comply with any of the notices before the ld. CIT(A) therefore all these details placed before Tribunal in the form of paper book as well as the written submission was not filed before the lower authorities. He submitted that the ld. Assessing Officer has specifically asked assessee to produce the books of accounts repeatedly. The assessee failed to produce such books of accounts before the Assessing Officer. The ld. DR further submitted that the assessee could not justify how the cost of the project is arrived at and therefore, the ld. AO has made the addition. He submitted that when assessee does not show the book results by producing the books of account, the plea of the assessee of deleting the above addition by producing the details before Tribunal and relying upon the judicial precedents could not be made.
8. We have carefully considered the rival contentions and perused the orders of the ld. Lower Authorities. It is a fact that the assessee, after filing of the return of the income when the return was selected for scrutiny has failed to produce the books of accounts before the ld. Assessing Officer. The assessee could not justify what is correct cost of area sold of the project. Instead of producing the books of accounts, the assessee produced the valuation certificate of an architect. Even the certificate of

architect also does not show how the proposed estimated cost has been worked out and on what basis therefore, such valuation certificate was rejected. Assessee was asked to produce the books of accounts for valuation of Gokul Dham Project assessee failed to produce the books of accounts. Assessee also failed to give the explanation about the cash withdrawal and subsequently deposited of such cash into the bank account. Assessee also failed to give justification about the excess consideration received as an advance of Rs. 16,23,595/- from Mr. Dilip Parkar. The difference between the service tax return and income tax return was also not reconciled. There was no explanation by producing the books of accounts of allocation of cost between the two projects therefore, the ld. Assessing Officer determined the cost of the project and made certain addition. With respect to the sundry creditors also, the assessee did not explain how the entries of provisions are made in the books of accounts. Therefore, all the additions have been resulted on account of non-production of books of accounts by the assessee. Even before ld. CIT(A), the assessee was granted opportunities of hearing however same were not availed. Before us, ld. Authorized Representative has submitted the detailed paper book and a detailed note along with judicial precedents to delete the above addition. However, we find that unless these details are verified from the books of accounts and examined by the revenue authorities the addition here cannot be looked into the merits. In view of this, we restore the whole issue back to the file of the ld. Assessing Officer with a direction to the assessee to produce the books of accounts within 90 days from the date of receipt of this order along with the necessary details furnished before us and further justification

that why these additions should not have been made. The ld. Assessing Officer may examine the same, carry out any further enquiry or examination of the books of accounts and thereafter decide the issue on the merits of the case after giving the assessee an opportunity of hearing. Accordingly, all the grounds of the appeal of the assessee are restored back to the file of the ld. Assessing Officer.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 21.08.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai