

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.823/Ahd/2023
Assessment Year: 2019-20**

Parkland Avenue Co. Op. Housing Society Limited, 4, Abhishree Residency-2, B/h. Kantam Party Plot, Ambali-Bopal, Ahmedabad – 380 058. [PAN – AAGAP 4311 C] (Appellant)	Vs.	Income Tax Officer, Ward – 3(3)(1), Ahmedabad. (Respondent)
Assessee by	Shri Tushar Hemani, Sr. Advocate	
Revenue by	Shri Ramesh Kumar, Sr. DR	
Date of Hearing	14.08.2024	
Date of Pronouncement	27.08.2024	

ORDER

This appeal is filed by the assessee against order dated 07.09.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2019-20.

2. The assessee has raised the following grounds of appeal :-

- “1. *The Ld. CIT(A) has erred in law and on facts in confirming the application of percentage of completion method prescribed for real estate transactions without appreciating that appellant is neither a real estate developer nor a contractor.*
2. *The Ld. CIT(A) has erred in law and on facts in confirming addition of Rs.47,85,920/- without appreciating that no income shall be taxable in the hands of appellant, being a cooperative society working on the principles of mutuality and without any intention of earning profit.*
3. *The Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. AO in rejecting the books of accounts of the appellant u/s.145(3) of the Act.*

4. *The Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. AO in estimating profit on advances received from third parties, not being advances from members for purchase of plots.*
 5. *The Ld. CIT(A) has erred in law and on facts in upholding the action of Ld. AO in estimating profit on advances received, despite such advances being repaid in subsequent years through proper banking channels.*
 6. *The Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making an addition of Rs.47,85,920/- by estimating the net profit at the rate of 8%. In the facts and circumstances of the case, such estimation is highly excessive and do not reflect the real income earned by the appellant.*
 7. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
 8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id. AO in levying interest u/s. 234A/B/C/D of the Act.*
 9. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying penalty u/s. 270A of the Act.”*
3. The assessee e-filed return of income on 21.03.2020 declaring total income of Rs. Nil. The return was processed under Section 143(1)(a) of the Income Tax Act, 1961 by CPC on 13.07.2020 accepting the returned income. Notice under Section 143(2) of the Act dated 28.10.2020 was issued. Notices under Section 142(1) of the Act were issued on 19.02.2021, 01.03.2021, 19.08.2021, 26.08.2021 & 31.08.2021. The details of explanations were submitted by the assessee and the same was verified by the Assessing Officer. The assessee's case was selected under compulsory scrutiny. The assessee is a Co. Op. Housing Society registered under Registration Act. During the year the assessee has not shown any income from activities but the Assessing Officer observed that there are certain plot development activities and the same was asked to be submitted. After taking cognisance of the assessee's reply and submissions, the Assessing Officer observed that the assessee received the advance of Rs.5,98,24,000/- during the year from Khyati Finance, Khyati Realities Limited and

Nipur Ratanlal Shah. The Assessing Officer assumed 8% to be the net profit of the assessee and made addition of Rs.47,85,920/-

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is a Co-operative Housing Society and the sum aggregating to Rs.5,98,24,000/- represents unsecured loans received from non-members. These unsecured loans were obtained for the purpose of meeting with immediate financial requirement of the assessee and there was no corresponding obligation to effect sale or even allot any plot against such funds. The Ld. AR further submitted that underlying amount represents unsecured loans received from non-members for meeting with immediate financial requirement of the assessee and, therefore, the Assessing Officer as well as the CIT(A) were not at all justified in assuming that 8% of unsecured loans obtained from non-members represents net profit of the assessee for the year under consideration. The assessee has categorically submitted before the Authorities that the assessee is not engaged in Real Estate Business and hence accounting for real estate transactions and these guidelines will not be applicable in assessee's case. The Ld. AR further submitted that the assessee has not stated anything about nature and purpose of underlying sum as the observation by the CIT(A) is factually incorrect since the said unsecured loans were obtained to meet with immediate financial requirement of the assessee. The Ld. AR further submitted that subsequently the said loans were repaid in the immediate Assessment Year.

6. The Ld. DR submitted that the assessee has taken advance for developing plot and, therefore, the Assessing Officer has rightly quantified 8% of the net profit regarding the plot development. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee has received advances/loans from the non-members and this fact was not denied or disputed by the Revenue. The assessee is

a Housing Society registered under Co-operative Societies Act having valid registration number and in no capacity is in the business of development of plots. The assessee has given all the valid details before the Assessing Officer and the same was totally ignored by the Assessing Officer as well as by the CIT(A). Thus, 8% of such advance for taxation without giving any valid reason, the Assessing Officer has made the said addition which is not sustainable. The CIT(A) has also overlooked the fact that subsequently in the immediate subsequent year the said unsecured loans were repaid and the same is reflected in the records. Thus, the Assessing Officer as well as the CIT(A) was not justified in making the said addition. Appeal of the assessee is thus allowed.

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

Order pronounced in the open Court on this 27th August, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 27th day of August, 2024

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad