

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

**BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER &  
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकरअपीलसं./I.T.A. No. 1370/Ahd/2024  
(निर्धारणवर्ष / Assessment Years: 2018-19)

<b>Income Tax Officer,</b> Ward-3(3)(1), Ahmedabad	<b>बनाम</b> / Vs.	<b>Aman Enterprise</b> 54, Sardar Patel Colony, Stadium Road, Naranpura, Ahmedabad, Gujarat 380013
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : ABBFA2101L</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

अपीलार्थीओरसे/Appellant by :	Shri A P Singh, CIT. DR
प्रत्यर्थीकीओरसे/Respondentby:	Shri Deepak Shah, A.R.

<b>Date of Hearing</b>	15/10/2024
<b>Date of Pronouncement</b>	08/11/2024

**ORDER**

**PER SHRI NARENDRA PRASAD SINHA, AM:**

This appeal is filed by the Revenue against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 14.05.2024 for the Assessment Year 2018-19.

2. The brief facts of the case are that the assessee is a builder engaged in construction activity. The return of income for A.Y. 2018-19 was filed by the assessee on 30.08.2018 declaring Nil income. The case was selected for scrutiny under CASS for the reason “Real estate business with high closing stock (verify whether assessee has done correct accounting of income)”. The assessment was completed u/s.143(3) of the Income Tax Act,

1961 (in short ‘the Act’) on 04.02.2021 at total income of Rs.10,22,11,440/-. In the course of assessment, the AO had made the following additions:

i.	<i>Under statement of receipt from service -</i>	Rs.8,77,60,800/-
ii.	<i>Over statement of purchase</i>	- Rs.39,52,298/-
iii.	<i>Expenditure from unaccounted source</i>	- Rs.1,04,98,344/-

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the appeal of the assessee was allowed.

4. Now, the Revenue is in appeal before us. The Revenue has taken the following grounds in this appeal:

- (a) *The Ld. CIT(A) has erred in law and on facts in deleting the Addition of Rs.8,77,60,800/- on account of understatement of Revenue.*
- (b) *The Ld CIT(A) has erred in law and on facts in deleting the Addition of Rs. 39,52,298/ on account overstatement of purchase*
- (c) *The Ld. CIT(A) has erred in law and on facts in deleting the Addition a Rs. 1,04,98,344/ on account of unexplained expenditure*
- (d) *The appellant craves leave to add, alter and/or to amend all or any the ground before the final hearing of the appeal.”*

5. The first ground pertains to addition of Rs.8,77,60,800/- on account of understatement of revenue. Shri A P Singh, Ld. CIT.DR submitted that as per GST return, the assessee had disclosed receipt of Rs.8,77,60,800/- from service whereas no receipt was disclosed by the assessee in the P&L account. The

assessee had merely submitted that it was following project completion method but the reason for not disclosing service receipt in the P&L account was not properly explained. Therefore, the same was added to income by the AO.

6. Per contra, Shri Deepak Shah, the Ld. AR for the assessee submitted that the receipt of Rs.8,77,60,800/- was not in respect of any services provided by the assessee. He explained that this amount was received on account of booking of flats on which GST was applicable and accordingly, it was reported in the GST return. The AO had wrongly assumed that this receipt was in respect of services rendered by the assessee, which was not correct. The Ld. AR submitted that the Ld. CIT(A) had correctly appreciated the facts of the case and allowed the relief to the assessee.

7. We have considered the rival submissions. It is found that the AO had mechanically and erroneously concluded that the receipt of Rs.8,77,60,800/- was in respect of consultancy services rendered by the assessee in respect of construction business. It was explained by the assessee before the AO that this amount was advance received from prospective buyers, which was appearing as current liabilities in the balance sheet. Further that since the assessee was following project completion method, the advance was not booked as revenue in the current year. The Ld. CIT(A) had correctly appreciated the facts of the case and given the following findings in this regard:

*“5.1. I have carefully considered the written submissions of the appellant and the grounds of appeal and also the relevant*

*assessment order of the Assessing Officer. Before proceeding further, let's first discuss the issue of the selection of this case. The primary concern for selecting this case is to verify whether the appellant has correctly accounted for income or not. In this instance, the appellant is engaged in construction activities and also acts as a builder and developer. During the year under consideration, the appellant firm was carried out construction activity of one of its residential project named "Ishan Luxuria" which was commenced in the year 2015. During the assessment proceeding, it was noticed by the AO that the appellant has not offered any sale or revenue in said project until the A.Y. 2018-19. The AO further noted that the appellant had declared an amount of Rs. 2,04,23,200/- as service tax in the GST return for the period from July 2017 to March 2018 but did not shown any income in the P&L Account. Further, it is noticed by the AO that the appellant has received services charges totaling Rs. 6,99,90,800/- during that period Apr-17 to June-17 with a service tax component of Rs. 2,09,97,240/-, The AO was of the view that the net amount of Rs.8,77,60,800/- which excludes service tax and GST is nothing but service charges which were rendered by the appellant as consultancy fees for construction-related work. However, during the assessment proceeding. the appellant has made elaborate submission stating that these amounts was basically pertain to advance received from customer for booking of flats. It is further stated by the appellant that the AO misunderstood the nature of the appellant firm's business activities, erroneously concluding that it provides consultancy services for construction work. It is also assumed by the AO that the total collection during the year amounted to Rs. 8,77,60,800/- represents as servicecharges for consultancy related to construction, which is inaccurate as stated by the appellant During the appellate proceeding, the appellant has vehemently submitted that the amount of Rs.8,77,60,800/- was received in the form of advance bookings for flats. I have gone through the submission along with documents submitted by the appellant. Undoubtedly, the appellant is engaged in the business of construction activity. It could be seen that the appellant firm was carried out construction activity of one of its residential project named "Ishan Luxuria" in 2015 II is noticed that during the year under consideration, the appellant has received advance money from customers/members for booking of flats in said project. The advance so received from customers/members was shown under current liabilities in audited Balance sheet which is evident from record. The AO has wrongly anticipated that the total amount of Rs. 8,77,60,800/- was received from consultation services by the appellant. It is pertinent to note that if the appellant has provided any consultation services, TDS must be deducted by the respective parties before making huge payment to appellant. However, in the present case, the amount so received by the appellant was advance payment for booking of flats by members/customers. It could be seen that the advance so received*

*were accounted for in audited book of account as current liabilities. The appellant emphasises that the advance fund are returnable to the some extent if the booking is cancelled by members/customers. The appellant stated that the amount received from members/customers in return for service tax and GST is offered for taxation under the respective laws. As per the Service Tax and GST Act, tax is payable on the amount received as an advance from customers/members and the appellant has been duly offered the appropriate amount for taxation under the respective laws with due taxes paid. With regards to taxation of this advance amount, the appellant stated that it had followed percentage completion method and accounted for this amount as liability in the balance sheet. Once the sales of flats were executed, the income was accounted for and offered for taxation as stated by the appellant. The appellant has stated that it has received building use permission for its residential scheme "Ishan Luxuria" in April 2018 Le, in AY 2019-20. On verification of the same, it is observed that the appellant has offered income aroused from sale of flats of said project in the subsequent years i.e. A.Y. 2019-20 and A.Y. 2020-21, In view of the above since the booking advance amount of Rs. 8,77,60,800/- does not represent the amount received from consultancy services as assumed by the AO, the question of taxing this amount is not correct in the eyes of the law. Considering the fact and circumstances of the case, the addition of Rs. 8,77,60,800/- on account of understatement of revenue made by the AO is hereby deleted. Therefore, the same is deleted and ground raised by the appellant on this issue is hereby allowed."*

8. It is found that the Ld. CIT(A) has correctly appreciated the facts of the case and allowed relief to the assessee. The AO had no evidence of any consultancy services rendered by the assessee so as to treat the receipt of Rs.8,77,60,800/- as income of the assessee. As no TDS was deducted on this amount there was no reason to conclude that this amount was consultancy receipt. The Ld. CIT(A) has correctly held that this amount was in respect of booking advance and there was no understatement of revenue. As GST was applicable on booking amounts the assessee had reported this amount in the GST return. A mere reporting in the GST return doesn't make the amount taxable as per the provisions of the Income Tax Act. The AO, rather than examining whether the income was correctly reported in

accordance with percentage completion method, had erroneously held the entire booking advance receipt as income of the assessee, which can't be held as correct. The Revenue has not controverted the findings as given by the Ld. CIT(A) in this regard. Therefore, the order of the Ld. CIT(A) on this issue is upheld. The ground taken by the Revenue is dismissed.

9. The next ground pertains to addition of Rs.39,52,298/- on account of over-statement of purchase. The Ld. CIT-DR explained that the AO had found that there was difference in sundry creditor balance as appearing in the balance sheet and as disclosed in the GST return. The balances as per audited accounts in respect of 4 parties was found to be excess by total amount of Rs.39,52,298/-. The AO, therefore, had concluded that the assessee had inflated its purchases and accordingly treated this difference as overstatement of purchase and made the addition. The Ld. CIT-DR submitted that this addition was made for the reason that the difference in the sundry creditor balance was not explained by the assessee before the AO.

10. Per contra, Shri Deepak Shah, the Ld. AR explained that the difference in the sundry creditor balance was for the reason that the GST was implemented w.e.f. 01.07.2017 and the balance as appearing in the GST return for this year was for the period of 9 months only from 01.07.2017 to 31.03.2018. On the other hand, the balance as appearing in the accounts of the assessee was for the period of entire financial year. The Ld. AR submitted that the Ld. CIT(A) had correctly appreciated this fact and allowed relief to the assessee.

11. We have considered the rival submissions. The AO had made the addition for the reason that the difference in the sundry creditor balance was not explained. However, he did not consider that the figure appearing in GST return for this year was for a period of 9 months only, whereas the figures in the books of accounts were for 12 months. The Ld. CIT(A) has correctly allowed relief after considering the explanation of the assessee. He has also given a finding that there was no disparity between the data from the books of account and the details as presented regarding these sundry creditors. Since, the Ld. CIT(A) has allowed the relief after correctly appreciating the facts of the case, the ground taken by the revenue is dismissed.

12. Ground No.3 pertains to addition of Rs.1,04,98,344/- on account of unexplained expenditure. The Ld. CIT-DR explained that in the course of assessment, the AO had called for details of squared up unsecured loans during the year. On verification of the details as furnished, the AO found that the re-payments of loan were not matching with the bank statement. He found that the assessee had refunded loan of Rs.1,48,98,334/- during the year. However, the payment of Rs.44,56,543/- only was appearing in the bank statement. The AO, therefore, held that the differential amount of Rs.1,04,98,344/- was repaid from unexplained source and accordingly this difference was treated as deemed income u/s.69C of the Act. The Ld. CIT-DR submitted that the addition was made by the AO for the reason that the assessee could not co-relate the re-payment of loans

with entries in the bank statement and, therefore, the source of repayment for the difference amount had remained unexplained. He further submitted that the Ld. CIT(A) had allowed relief by admitting additional evidences without allowing any opportunity to the AO.

13. Per contra, the Ld. AR submitted that the entire repayment of loan of Rs.1,04,98,344/- was made through the banking channel and, therefore, the Ld. CIT(A) had rightly allowed relief to the assessee.

14. We have considered the rival submissions. The AO had made this addition for the reason that the assessee was unable to co-relate the entire re-payment of loan of Rs.1,48,98,334/- with the bank statement. On the other hand, the Ld. CIT(A) has given a finding that the entire repayment of loan was reflected in the bank statement. The assessee had explained that all the loan repayments were made through bank accounts only and in this respect the bank statements of Vijay Bank & Central Bank of India was filed before the Ld. CIT(A). The assessee had further submitted that these statements were also provided to the AO highlighting all unsecured loan transactions, still the addition was made by the AO without verification. The Ld. CIT(A) has given a categorical finding that *“Upon reviewing the information, it is evident that the appellant made payments to parties through the banking channel which is also evidenced from the chart submitted by the appellant”*. The chart for repayment of loans is also found reproduced in the order of the Ld. CIT(A). The Revenue has not controverted this finding of

fact as given by the Ld. CIT(A). It is not that this finding was given on the basis of any additional evidence. The chart for repayment of loans was prepared only on the basis of bank statements which were also filed before the AO in the course of assessment proceeding. We don't appreciate the ground taken by the Revenue challenging the finding of fact recorded by the Ld. CIT(A), without controverting his findings. When the Ld. CIT(A) had given a categorical finding that all the repayments of loans were reflected in the bank statement, the Revenue shouldn't have challenged this finding without bringing any material to show that the finding of the Ld. CIT(A) was incorrect. Since the Revenue has not brought anything on record to controvert the findings of Ld. CIT(A), we don't find any reason to interfere with his order. The ground taken by the Revenue is dismissed.

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

**This Order pronounced on 08/11/2024**

Sd/-  
(T.R. SENTHIL KUMAR)  
**JUDICIAL MEMBER**

Ahmedabad: Dated 08/11/2024

Sd/-  
(NARENDRA PRASAD SINHA)  
**ACCOUNTANT MEMBER**

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)-
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, अहमदाबाद/ DR, ITAT, Ahmedabad
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)  
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad