

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 895/Ahd/2024 &
C.O. No.20/Ahd/2024
Assessment Year 2007-08**

The DCIT, Central Circle-1(1), Ahmedabad	Vs	Navratna Organisers And Developers Pvt. Ltd. Basement Ashokwadi Apartment, Panchwati, Ahmedabad-380006, PAN: AAACN5181E
Navratna Organisers And Developers Pvt. Ltd. Basement Ashokwadi Apartment, Panchwati, Ahmedabad-380006, PAN: AAACN5181E (Appellant)	Vs	The DCIT, Central Circle-1(1), Ahmedabad (Respondent)

**Revenue Represented: Shri Durga Dutt, CIT-DR
Assessee Represented: Ms. Amrin Pathan, A.R.**

Date of hearing : 12-09-2024
Date of pronouncement : 06-12-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Revenue as against the appellate order dated 15.02.2024 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad arising out of the assessment order

passed under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2007-08. Cross Objection is filed by the assessee as against the above Revenue appeal.

2. Brief facts of the case is that assessee engaged in the business of development of various projects from which it earned development fees. The assessee claimed that it is an Advisor and Technical Consultant for the development of the projects. The assessee has claimed that it has recognised income of Rs.5,53,00,000/- in books of account on account of development fees on mercantile basis based on services rendered and Agreements executed between various entities. The Assessing Officer has not accepted the method of assessee and held that the income was not recognised on percentage completion method. The AO considered the assessee as owner of the project and concluded that income of Rs.4,00,00,000/- offered to tax in respect of work carried out in earlier year for Kalhar Project and not pertaining to year under consideration. The A.O. thereafter taxed income of Rs.9,06,83,708/- reported under the head "liabilities" while computing taxable income. Thus the AO also estimated the profit at 8% of WIP of Kings Square and made addition of Rs.35,45,480/-. Thus, total addition of Rs 9,42,29,188/- was made and demanded tax thereon.

2.1. During the course of appellate proceedings, assessee contended that similar additions made by the AO were deleted by ITAT for the subsequent asst. years, hence addition on this account

should be deleted. Ld CIT[A] considered the submissions of the assessee and following the decision of the ITAT in assessee's own case deleted the additions by observing as follows:

"... 5.2. On careful consideration of relevant facts on record, it is observed that identical issue has been adjudicated by the Hon'ble Ahmedabad ITAT in appellant's own case for A.Y.2008-09 and other years in ITA No. 2634 of 2011, dated 23/01/2019 and held as under:

"7. The Id.AO was not satisfied with the explanation of the assessee, and be treated the collection over the expenditure as income of the assessee. In the way, he made addition of Rs.10,54,50,250/-. Dissatisfied with this addition, the assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A) has deleted this addition by observing as under:

"4.5 It is an undisputed fact that the appellant is a developer and therefore, providing its services to various entities for which development agreements are executed and accordingly development fees is charged. Simply for the reason that the appellant is associated with the projects since beginning or it has overall control over the projects, it cannot be treated as owner of the projects.

4.6 The appellant in the paper book has provided complete details and break up of Rs. 10,54,50,250/- which were filed during assessment proceedings also. It is observed that the major liabilities inter alia are consisting of "Kalhar Bunglow booking amount" The other credit balances are in respect of creditors for expenses, creditors for goods and creditors for labour as on 31st March, 2008. The appellant has provided the statements giving names and complete details of booking amounts. names and complete details of creditors for expenses, names and complete details of creditors for goods, names and complete details for creditors for labour which were also placed on the records of the assessing officer. It is contended that each and every individual credit entry has been accepted by the assessing officer as genuine and duly supported by documentary evidences acceptable in the eyes, of law. It is therefore asserted that since each and every individual entry has been accepted as a genuine liability the

balance of Rs. 10,54,50,250/-is also a genuine liability on the part of the appellant company.

4.7 It is submitted by the appellant company that on completion of the construction and on allotment of bungalows, the booking amount and the cost of the construction are being transferred to the respective societies. The appellant has provided a statement showing the details of Kalhar Booking as at 31st March, 2007, 31st March, 2008, 31st March, 2009 and 31st March, 2010. It is observed that Kalhar booking amount which was Rs. 21,87,62,854/- as on 31st March, 2007 had stood substantially reduced to 'Rs. 7,30,81,763/- as on 31st March, 2008 and amount also stands reduced thereafter. The reduction in booking amount is attributable to transfer of booking amounts in favour of the societies on allotment of the bungalows. The project cost also stands reduced on transfer of project cost to the respective societies. The various sundry creditors are reflecting the business liabilities on the part of the appellant company duly supported by documentary evidences viz. invoices, professional bills, debit notes etc. The representative of the appellant company has explained that the appellant is engaged in the business of development and construction and on the basis of the services provided by the appellant debit notes have been raised upon the societies and the fees received by the appellant company have been credited to the Profit and Loss account and have been considered in computation of the total income. In my opinion having regard to all the facts Rs. 10,54,50,250/- is legally existing liability on the part of the appellant company and therefore it is not in nature of income. Addition of Rs 10,54,50,250/-made by the assessing officer is therefore deleted. This ground of appeal is accordingly disposed of.”

8. The Id. DR relied upon the orders of the AO, whereas the id counsel for the assessee put reliance upon the order of the Id CIT(A).

9. With the assistance of Id. representatives, we have gone through the record carefully. A perusal of the assessment order would indicate that the Id AO has treated the assessee as owner of Kalhar Project, whereas the case of the assessee is that it is a developer. It used to develop housing project on behalf of the cooperative societies and charges development fees for carrying

out such development work. According to the assessee, cooperative societies provide material for carrying out development activity. The assessee used to collect booking amount on behalf of the society and its development work is being shown under the head work-in-progress on asset side of the balance sheet. Similarly, collections taken from the members are being shown as liability in the balance sheet. Thus, stand of the assessee before the AO was that being a developer, its rights were limited to receive development fees on completion of project. The society is owner and has right, title and interest on work-in-progress. This stand of the assessee has been accepted by the Id.CIT(A) in both the assessment years. Contrary to this stand, nothing has been brought to our notice. The assessee has demonstrated that it was working only as a developer and alleged collection over expenditure cannot be treated as its business income, rather, it was a liability in the balance sheet. Therefore, we are of the view that the Id CIT(A) has rightly deleted this addition and, no interference is called for. Similarly, in A.Y 2009-10 and addition of Rs. 4,84,35,702/- was made on account of excess of collection over expenses. It was deleted by CIT(A). We do not find any error in the order of (he Id. CIT(A) Thus, this ground is rejected in both years.

10. As far estimation of profit at 8% of the WIP in both these years is concerned, we have gone through the record with the assistance of the Id. representatives. In the Asstt. Year 2008-09, WIP of Rs. 45,98,27,752/- was noticed by the AO. He estimated 8% profit on such WIP and made addition of Rs.3,67,86,220/-. On similar analogy, he noticed WIP of Rs. 54,36,30,173/- in the Asstt. Year 2009-10 and estimated profit at Rs.4.34 crores. These additions have been deleted by the Id. CIT(A). Similar addition was made in the case of the assessment in the Asstt. Year 1997-98 which was deleted by the Id. CIT(A). Dispute travelled upto the Tribunal vide ITA No 1114/Ahd/2005 and the Tribunal has uphold the deletion Copy of the Tribunal's order has been placed on record.

11. On due consideration of all the materials, **we are of the view that the assessee was working as a developer it was not owner of work-in-progress. Moreover, on completion of project, it used to offer receipt received in the shape of development fees and such receipts have been recognized on completion of project. Consistently, this has been**

shown by the assessee. The AO has made an addition on hypothetical basis by treating the WIP belonged to the assessee. It has been contended before us that the AO has invoked Accounting Standard-7 which otherwise applicable on contractor. **The assessee is a developer, and therefore AS-7 is not applicable.** After going through the finding of the Id. CIT(A) and relying upon the order of the ITAT in the assessee's own case for the Asstt. Year 1997-98, **we are of the view that 8% profit on alleged WIP cannot be estimated in the case of the assessee. Hence, the Id. CIT(A) has rightly deleted this addition in both the years.** No other ground has been agitated by the Revenue in the Asstt. Year 2008-09. Hence, its appeal is rejected"

3. Aggrieved against the appellate order the Revenue is in appeal raised the following Grounds of Appeal:

1. "In the facts and on the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition made on account of business income of Rs.9,42,29,188/-."

2. "In the facts and on the circumstances of the case and in law, the Id.CIT(A) has erred in deleting the addition of Short Term Capital Gain on account of transfer of shares of Rs. 6,99,65,000/-."

4. Ld CIT DR appearing for the Revenue could not place on record any contra decisions in favour of the Revenue by any higher appellate authorities.

5. Per contra Ld Counsel appearing for the assessee has relied on the orders passed by the Co-ordinate Bench of this Tribunal in assessee's own case for A.Yrs. 2008-09, 2009-10 and 2012-13 in ITA No.2634/Ahd/2011 & others wherein on similar facts additions made by the AO were deleted.

6. We have heard rival submissions and perused the materials available on record and case laws cited before us. The entire facts of assessee's case under consideration are identical with facts of the other assessment years and there is no change in the modus operation of the business of the assessee. Therefore, respectfully following Co-ordinate Bench decisions in subsequent Assessment Year referred supra, entire addition made by the AO on account of business income of Rs.9,42,29,188/- is deleted. **Thus the Ground no.1 raised by Revenue is devoid of merits and liable to be dismissed.**

7. Regarding Ground No.2 deletion of addition of Short Term Capital Gain on account of transfer of shares of Rs.6,99,65,000/-. Brief facts is the assessee had developed the project named "Kings Square" of Sujan Infrastructure Pvt. Limited (SIPL). The assessee acquired 14,000 equity shares of SIPL which were transferred to Dubey Group at face value of Rs. 10/- each. The assessee has shown NIL capital gain in its Return of Income as purchase value and sale value were the same. Whereas the AO estimated the sale value of project of SIPL at Rs.15,00,00,000/- and estimated cost of project at Rs.8,00,00,000/-. The AO observed that deemed value of share of SIPL is Rs.7,00,00,000/- (15 crs Less 8 crs) and number of shares issued by SIPL was 20,00,000, and thus the AO arrived at deemed value-per share at Rs.35/- The AO has observed that appellant has transferred 19,99,000 shares in the year under consideration to Dubey Group, for deemed value of shares sold at Rs.6,99,65,000/-. The AO has allowed cost of acquisition at Rs. NIL

and computed capital gain liable to tax at Rs 6,99,65,000/- and demanded tax thereon.

7.1. On appeal the assessee objected to the above referred addition on the ground that estimated sale value of project as determined by the AO is incorrect, hence such value cannot be considered. The assessee further submitted that in the relevant year, there was no provision under the Income Tax Act to substitute the sale value of shares for which various judicial decisions were relied upon. Ld CIT[A] considered the above submissions and relying upon the decision of the ITAT in the case of SIPL deleted the addition made by the AO by observing as follows:

“... 6.9 It is observed that while passing the assessment order, the AO has observed that appellant has not submitted transfer agreement executed with purchaser party. Merely by not submitting such agreement, the AO cannot replace the actual sale value with estimated fair market value as same is contrary to provisions of the Act as were existing in A.Y.2007-08. It is observed that the AO has not brought in any other evidence which can prove that appellant has received consideration more than what has been reflected in bank statement. The AO has also observed that no prudent person would sell the project without receiving any consideration. It is observed that appellant has sold shares held in SIPL and not the project itself. The entire addition made by the AO was on presumption which cannot be sustained without bringing on record evidences suggesting actual receipt of consideration over and above face value of shares. Considering the detailed discussion made herein above and relying upon the decision of the Hon'ble ITAT in the case of SIPL referred supra along with other decisions of the Courts, it is held that entire addition made by the AO for Rs 6,99,65,000/- cannot be sustained.

8. Ld CIT DR appearing for the Revenue could not place on record any contra decisions in favour of the Revenue by any higher appellate authorities.

9. Per contra Ld Counsel appearing for the assessee has relied on the orders passed by the Co-ordinate Bench of this Tribunal in the case of SIPL for the A.Yrs. 2004-05 to 2007-08 in IT[ss]A Nos. 585/Ahd/2011 & others wherein on similar facts additions made by the AO were deleted.

10. We have heard rival submissions and perused the materials available on record and case laws cited before us. The entire addition made by the AO was only on presumption which is not sustainable in law and cannot be sustained without bringing on record evidences suggesting actual receipt of consideration over and above face value of shares. Considering the detailed discussion made by the Ld CIT[A] and relying upon the Co-ordinate Bench decision in the case of SIPL cited supra, it is held that entire addition made by the AO for Rs 6,99,65,000/- cannot be sustained. **Thus the Ground no.2 raised by Revenue is devoid of merits and liable to be dismissed.**

11. In the result **the appeal filed by the Revenue is hereby dismissed.**

12. **C.O. No. 20/Ahd/2024** filed by assessee only support the order of Ld. CIT(A) and therefore the same is also dismissed.

Order pronounced in the open court on 06-12-2024
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad :
Dated 06/12/2024

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

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद