

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER

ITA No. 2091/Bang/2024
Assessment year : 2018-19

M/s. MBM Developers, No.474, 4 th Floor, RBI Layout Kothanur Main Road, J.P. Nagar 7 th Phase, Bengaluru – 560 078. PAN: AAXFM 1928Q	Vs.	The Deputy Commissioner of Income Tax, Circle 4(3)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Rajiv C. Nulvi, Advocate
Respondent by	:	Shri V. Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.12.2024
Date of Pronouncement	:	26.12.2024

ORDER

Per Prashant Maharishi, Vice President

1. This appeal is filed by M/s. MBM Developers (the assessee/appellant) for the assessment year 2018-19 against the appellate order passed by the National Faceless Appeal Centre, Delhi (NFAC) [ld. CIT(A)] dated 17.04.2021 wherein appeal filed by assessee against the assessment order passed u/s. 143(3) r.w.s.

144B of the Income-tax Act, 1961 (the Act) dated 17.04.2021 by the National e-Assessment Centre, Delhi (Id. AO) was dismissed.

2. Assessee is aggrieved with the same and has filed this appeal raising the following grounds of appeal:-

“1. The order of the A.O and Honourable CIT(A) against the facts and law and against the accounting procedure.

2. On the facts and circumstances of the case and in the provisions of the law the A.O, as well as the Honourable CIT(A), erred in making the addition of Rs.2,92,12,520/-, under the perception of the fact that income recognised under the percentage completion method is after the claim of cost of construction and deduction u/s 32 to 37 and u/s 40(b)(v) of the Income Tax Act, 1961. Whereas, income is recognised under the percentage completion method only after the cost of construction but before the deduction u/s 32 to 37 and 40(b)(v) of the Income Tax Act, 1961.

3. On the facts and circumstances of the case and in the provisions of the law the A.O erred in deducting the profit determined as per the Profit and Loss account from the income computed under the percentage completion method, on the presumption that said income as per Profit and Loss account is included in the income determined under the percentage completion method, and added the same addition of income to the income assessed u/s 143(1), which is income as per ITR filed by the assessee which amounts to double taxation.

4. On the facts and circumstances of the case and in the provisions of the law the A.O, as well as the Honourable CIT(A), erred in appreciation of the fact that the computation of income under the percentage completion method is sales - cost of construction not inclusive of administration, selling expenses and remuneration to the partners. Whereas, the authorities under the law have the wrong perception about the Accounting Standard that the income recognised under the percentage completion method is itself a taxable income.

5. On the facts and circumstances of the case and in the provisions of the law the A.O, as well as the Honourable CIT(A), erred in not applied their mind to the facts of the case and provisions of the law in the proper prospective manner.
 6. For these and other reasons which may be adduced at the time of hearing the Appellant Firm prays before this Honourable Bench to delete the addition made by the A.O and sustained by the CIT(A), which is made on wrong perception of the accounting procedure and against the provisions of law. Or pass any other order this Honourable Bench may deem think fit to delete the addition made by the A.O and sustained by the CIT(A) considering the fact of the case and wrong perception about the Accounting Standard by the authorities.
 7. The Appellant craves leaves to add, to alter, to amend and to delete any other ground at the time of the hearing.”
3. The brief facts of the case show that assessee is engaged in the business of real estate and has filed return of income as partnership firm on 22.9.2018 declaring total income of Rs.124,12,640. Return was selected for scrutiny for the reason of real estate business with high closing stock. Notice u/s. 143(2) of the Act was issued on 22.9.2019 and notice u/s. 142(1) was also issued on 3.2.2021 asking the assessee to disclose the closing stock and the manner of arriving at the closing stock. The assessee was also asked to explain the method of accrual of income followed by assessee.
 4. The assessee submitted that it is engaged in construction of two projects viz., MBM Rohith Residency & MBM Green Woods. It was also stated that the assessee is following Percentage Completion Method [PCM] for recognising the revenue. The

assessee also disclosed the details with respect to manner of computation of closing stock. The assessee submitted that the total revenue recognised on both the projects is Rs.2,14,32,995 and Rs.11,66,53,179 respectively totalling to Rs.13,80,86,187. The total expenses were stated to be of Rs.12,56,85,536 resulting into revenue recognition of Rs.1,24,00,638.

5. The Id. AO on examination found that as per PCM, expenditure needs to be recognised only to the extent of area sold out. However, assessee has recognised excess expenditure resulting in lower income. The AO accepted the revenue recognised by the assessee, but rejected the appropriation of expenses as same is not in accordance with PCM. The Id. AO took the proportionate cost also and computed the income for each of the project. According to the AO, for MBM Rohit Residency the revenue recognisable is Rs.2,65,60,915 till the year, out of which Rs.2,02,79,929 was already recognised till the previous year, therefore, income for the AY should be Rs.62,80,986. The work-in-progress for that project should be Rs.4,26,57,958. Similarly, for MBM Green Woods the income to be recognised by assessee should be Rs.3,53,32,172 which should have been recognised for this year. The resultant closing stock was also worked out at Rs.13,84,61,762. Accordingly, the income offered by assessee of Rs.1,24,00,638 was determined by the Id. AO at Rs.4,16,13,158 and accordingly addition of Rs.2,92,12,520 was proposed by the AO in the draft assessment order dated 16.3.2021.

6. The assessee submitted that total income of assessee is only Rs.2,02,79,929 as per proportionate completion. The assessee has also claimed certain expenditure as deduction, but has not provided substantial documentation for verification. Accordingly, the Id. AO rejected the contention of assessee and passed an assessment order on 17.4.2021 determining total income of Rs.4,16,25,160 wherein addition of Rs.2,92,12,520 was made on under accrual of income.
7. The assessee, aggrieved with the same, preferred appeal before the Id. CIT(A).
8. The Id AR submits that issue in this appeal is regarding accrual of income in the hands of the assessee of two projects under construction. Undisputedly percentage completion method is adopted by assessee and accepted by the Id AO. Only dispute is with respect to the quantum of income to be taxed based on percentage completion method. The contention of the assessee is that assessee has submitted all the documents. But the Id AO is not satisfied with the details. Ld AO computes the income but does not provide on what basis he has determined the income. The Id. CIT(A) after considering the explanation of assessee held that assessee has not filed any submissions supported by proper evidence along with computation under Rule 46A for admission of additional evidence in the appellate proceedings and findings of the Id. AO have not been controverted by proper evidence. In view

of this, he confirmed the addition of Rs.2,92,12,520 made by the Id. AO. Before the Id. CIT(A), the assessee pointed out certain errors about the total income recognised till the previous year. According to assessee, there is a difference of almost Rs.30 lakhs as computed by the Id. AO. This was also rejected by the Id. CIT(A). Assessee has adopted PCM for recognising the revenue as per past assessment orders which has been accepted by the revenue and this year without any reason the same methodology applied by assessee is rejected. The Id. AR relied on the decision of the Hon'ble Supreme Court in *Radhasaomi Satsang v. CIT, 193 ITR 321 (SC)*. It was further submitted on the PCM that the profit of both the projects taken together would be in the range of Rs.3,55,16,789, out of which assessee has calculated the book profit of Rs.1,93,32,150. Out of that, the remuneration paid to the partners is Rs.1,02,00,000. Based on this, the net profit of the project is only Rs.91,32,150 against the net profit as per P&L account is disclosed at Rs.1.24 crores. Assessee also referred to the fact that there is no difference in the revenue recognised by the assessee as well as the Id. AO to the extent of Rs.30,96,362. In fact, the difference of Gross Profit has been wrongly taken by the AO. It was further submitted that in fact assessee has offered higher income to the extent of Rs.32,68,467. Assessee has also submitted that by making an addition and not granting benefit of deduction of remuneration to the partners, interest income, etc., is not correct. Thus there is no basis for the AO to make an addition of Rs.2.92

crores and similarly the Id. CIT(A) has neither considered the submission of the assessee nor considered the apparent mistake in allowing income already offered in earlier years. Therefore, the order of the Id. lower authorities are not sustainable.

9. The Id. DR vehemently supported the orders of the Id. lower authorities and submitted that assessee has failed to substantiate the adoption of PCM for revenue recognition. Income offered by the assessee is without any basis and further allocation of expenditure is also not substantiated before the lower authorities. Therefore, the orders of the Id. lower authorities be upheld.
10. We have carefully considered the rival contentions and perused the orders of the Id. lower authorities. In this case, assessee has two projects of real estate as a developer. The assessee has adopted PCM for recognising the revenue from these projects. When return of income was filed, the case was selected for scrutiny for verification of high closing stock in the real estate segment. It was stated by the assessee that revenue is to be recognised to the extent of 99.42% in case of project MVM Rohit Residency and 58.68% in another project MVM Green Woods. The Id. AO has rejected the computation of assessee and held that proportionate cost that is to be deducted is total cost incurred till the end of financial year in the proportion of area sold, compared with total saleable area. Based on this, it was found that total income offered by assessee is short by Rs.2,92,12,520. It was pointed out before the AO that there is a

difference between the income already recognised in Project-I at the beginning of the year. The assessee submitted that assessee has already offered the income to the tune of Rs.233 lakhs from the above project. However , it is also facts that assessee could not substantiate the claim of expenditure such as total cost incurred till date of reporting period. Even the audited accounts submitted by the assessee does not show any project-wise profitability. How the assessee has estimated the total construction cost with respect to Project-1 and Project-2 are also not made available. In PCM of recognising revenue of the project, the assessee must show the stage of completion of the project with actual sales for which risk and reward has been passed on to the buyers. The assessee has made a categorical statement that assessee has offered higher income by Rs.32,68,467. In fact, assessee has filed return of income at Rs.1.24 crores and the claim of assessee that it has offered higher income by approx. 30% , This itself shows that, assessee has not offered its income correctly and also neither the Id. CIT(A) nor the Id. AO has computed the income of assessee correctly. In view of this, we restore the whole of the appeal back to the file of the Id. AO with a direction to the assessee to substantiate :-

the total saleable area;

the total sold area where the risk and reward is passed on to the buyer;

total estimated cost of the project;

total sales income recognised;
allocation key of expenditure; &
actual expenditure incurred for each project.

11. Based on this, the assessee is directed to show what is the correct income from both the projects. The annual audited accounts submitted by the assessee are sketchy and are not substantiated with enough evidence. In fact there is no reference of any accounting policy, manner of recognising revenue, area sold, estimated cost. Therefore, assessee is duty bound to substantiate the income recognition and relevant cost with evidence. The claim of assessee of remuneration to partners and interest on loan should be allowed in the year in which it is incurred. The Id. AO may call for such verification and after examination of the details, decide the issue afresh.

12. Accordingly, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on this 26th day of December, 2024.

Sd/-

(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 26th December, 2024.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.