

**IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT**

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

I.T.A. No. 1096/SRT/2024
(Assessment Year: 2014-15)

B M Developers, Patel Street, Bhestan, Surat, Gujarat	Vs.	Income Tax Officer, Ward-2(3)(1), Surat
[PAN No. AAJFB9976H]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tinish Mody, C.A.
Respondent by:	Shri Mukesh Jain, Sr. DR

Date of Hearing	24.03.2025
Date of Pronouncement	25.03.2025

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. Commissioner of Income Tax(Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 27.08.2024 passed for A.Y. 2014-15.

2. The brief facts of the case are that the assessee firm, B M Developers was incorporated in 2010-11 for carrying out the business of construction and sale of residential flats. During the course of assessment, the Assessing Officer observed that assessee had shown sundry creditors of Rs. 60,40,982/-. The Assessing Officer noticed that the impugned land in question was acquired by Railway Authorities and therefore, there was no question of construction of flats by the assessee on the said piece of land. The assessee submitted that this amount of Rs. 60,40,982/- pertained to

booking amount received by the assessee firm from its prospective buyers, in earlier years and therefore, the same were reflecting as sundry creditors in its books of accounts. However, the Assessing Officer noted that once the impugned land in question, on which the residential flats were to be constructed by the assessee was itself acquired by the Railway Authorities, it was not possible for the assessee firm to develop and give possession of flats to its buyers from whom the booking amounts had been received towards sale of flats and therefore, then this amount should have been treated as income of the assessee. The Assessing Officer was of the view that, as per facts on record the sundry creditors of Rs. 60,40,982/- remained unexplained and the assessee failed to furnish complete details such as PAN, Address, Bank Statement, confirmation etc. and therefore, the aforesaid amount of Rs. 60,40,982/- was treated as unexplained income of the assessee.

3. In appeal, the assessee submitted that the aforesaid amount was received as advance from its prospective customers and during the remand proceedings initiated by CIT(A), the assessee gave complete details of persons from whom the booking amount had been received and also it was submitted before Ld. CIT(A) that the aforesaid booking amount had also been refunded back to the prospective customers, in subsequent years through banking channels. Accordingly, it was submitted that since the amount in question had been returned back by the assessee to its prospective customers, then the aforesaid amount cannot be treated as

unexplained income of the assessee. However, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

*“5.8 Ground No.2 deals with addition of Rs. 60,40,982/- pertaining to sundry creditors shown by appellant. The conclusions drawn during the assessment proceedings is at Para no.5 of the assessment order dated 30.11.2016. On perusal of this para it is noted the appellant has failed to provide explanation as to why the creditors are pending in the balance sheet in view of the fact that once the land is handed over to the railways authorities then there is no question of construction on that land and also when the appellant in assessment year 2015-16 has shown NIL income and paid no taxes with showing outstanding creditors at Rs. 59,55,982/-. Based on these facts the A.O concluded that the sundry creditors of Rs.60,40,982/- remains unexplained. During the appellate proceeding, it was noted that for this issue to be examined the evidences submitted during appellate proceeding, the A.O was asked by a remand report with specific requirement as noted in letter dated 17.02.2020, i.e. vide point 2 of the remand letter issued by CIT(A) which reads as "(ii). Details Such as PAN card, affidavits, voter ID, balance sheet of earlier years. Ledger accounts etc. regarding sundry creditors. You are directed to give findings regarding years of receipt genuineness of the booking amounts." On this specific requirement made by the appellate authority the A.O examined the issue to the extent of ledger account and the submission filed by the appellant before this office. During the remand report the appellant has only furnished the copy of ledger account and the entries in his books of account to show the transaction. But it is noted that the appellant has not produced any evidences any regard to identity and credit worthiness of the creditor before the A.O during the original assessment order as well as during the remand report, even after providing so many opportunities by the A.O in fact the conclusion drawn by the A.O during the remand report dated 05.06.2024 is worth noting, "However, it is pertinent to mention here that the appellant has claimed to have received net booking consideration totaling to Rs. 11,25,500/- from different bookers in A.Y. 2011-12 however, on perusal of return of income for A. Y 2011-12, it is noticed that the appellant has disclosed closing balance of sundry creditors as on 31.03.2011 of Rs. 2,38,000/- only. **The appellant has not substantiated the above discrepancy in its submission. In view of the above, the contention of the assessee may be rejected and addition made by the A.O may be confirmed.**" Thus, from the remark it is noted that **the appellant has failed to explain and substantiate the identity and credit worthiness of the sundry creditors before the A.O. Further the onus is on the appellant to prove the identity and credit worthiness of the creditors as shown by him.**”*

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) confirming the addition made by the Assessing Officer.

5. In appeal before us, the Counsel for the assessee submitted that the aforesaid amount of Rs. 60.40 lakhs were the booking advances received by the assessee, in earlier years. The assessee submitted that the aforesaid booking amount was received by the assessee during F.Y. 2011-12 to 2014-15. The Counsel for the assessee drew our attention to letter dated 25.06.2020 submitted by the assessee before the Assessing Officer during the course of remand proceedings, in which it had been specifically stated that the assessee had repaid the aforesaid amounts to the customers in subsequent years. To substantiate the same, the assessee also furnished complete details of person who had booked their flats, their addresses, PAN, amounts received from customers with dates and amounts repaid back to customers alongwith dates and flat numbers. The Counsel for the assessee drew our attention to Pages 118 to 123 of the Paper book in which complete details of receipt of booking amounts and the repayment of such booking amount to it's customers were furnished. Accordingly, the Counsel for the assessee submitted that in light of the aforesaid facts, the aforesaid amount cannot be treated as unexplained income in the hands of the assessee.

6. In response, Ld. D.R. placed reliance on the observation made by the Assessing Officer and Ld. CIT(A) in their respective orders.

7. We have heard the rival contentions and perused the material on record.

8. On going through the facts of the instant case, we observe that during the course of proceedings before CIT(A) as well as during remand proceedings, the assessee had submitted that the amount of Rs. 60,40,982/- was towards booking amount received by the assessee from its prospective customers / buyers, which was reflecting as sundry creditors in its books of accounts. However, when the land in question was acquired by the Railway Authorities, the assessee firm refunded / returned back the booking amount to its customers in the subsequent years through banking channels. Complete details of customers alongwith flat numbers, PAN, address, booking amount received and refund issued to each of the customers were submitted before the Assessing Officer during remand proceedings. However, while passing the order, Ld. CIT(A) made the following observations:

“Thus, from the remark it is noted that the appellant has failed to explain and substantiate the identity and credit worthiness of the sundry creditors before the A.O. Further the onus is on the appellant to prove the identity and credit worthiness of the creditors as shown by him.”

9. On going through the facts of the assessee's case, we are of the considered view the Ld. CIT(A) has erred in facts and in law in completely ignoring the details submitted by the assessee giving details of amounts received towards booking of flats and the subsequent refunds issued to these customers in subsequent years. Accordingly, in the interest of justice, the matter is restored to the file of Ld. CIT(A) to take into consideration the evidences filed by the assessee and pass appropriate orders, in accordance with law. The assessee is also directed to present a simplified chart giving breakup of each of the persons from whom the

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booking amount of Rs. 60,40,982/- was received, giving details of their names, addresses and flat numbers etc. and also to specify when the refund was issued to these customers, giving details / particulars of such refunds to various customers. In case, the assessee is able to substantiate that the entire booking amount has been repaid / refunded back to the customers, then in our considered view, such booking amount cannot be treated as unexplained income of the assessee. Accordingly, the Ld. CIT(A) is directed to carry out the verification as directed above and thereafter, pass appropriate orders, in accordance with law, after giving due opportunity of hearing to the assessee.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced under proviso to Rule 34 of ITAT Rules, 1963 on 25/03/2025

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

Ahmedabad; Dated 25/03/2025

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत / DR, ITAT, Surat
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, सूरत/ ITAT, Surat