

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH MUMBAI

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 2786/MUM/2024
Assessment Year: 2014-15**

Morparia and Ranka Construction Co. Office No.307, 3 rd Floor, Gundecha Chamber, Nagindas Master Road, Fort, Mumbai 400023 PAN: AABFM0391D	Vs.	ITO 17(2)(3), Mumbai Aaykar Bhavan, Mumbai 400023
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Vimal Punmiya, CA
 Revenue : Shri. Bhangapatil Pushkaraj
 Ramesh, Sr. DR
 Date of Hearing : 25.04.2025
 Date of Pronouncement : 28.05.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of National Faceless Appeal Centre (NFAC), Delhi, vide Appeal No. CIT(A), Mumbai-28/10833/2016-17 dated 15.04.2024 passed against the assessment order by Income Tax Officer 17(2)(3), Mumbai u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the "Act"), dated 28.12.2016 for Assessment Year 2014-15.

2. Grounds taken by the Assessee are reproduced as under:

"1. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming addition made of Rs.56500000/- under section 28(iv) of the Act which represents amount received and now repayable to M/s CRB Capital Market Ltd on account of

cancellation/termination of agreements of ten flats. Provisions of the Act ought to have been properly construed and regard being had to facts of the case said addition of Rs.56500000/- should not have been confirmed. Reasons assigned are wrong and insufficient to justify such addition of Rs.56500000/- under section 28(iv) of the Act.

2. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming cost of ten flats at Rs.4325516/- as against cost determined by the appellant of Rs.61240715/-

3. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming value of stock-in-trade / WIP at Rs.12141795/- instead of as computed by appellant at Rs.68641795/-

4. The order made under section 143 (3) of the Act by the learned Assessing Officer is illegal, bad-in-law, ultra-virus and without allowing reasonable opportunity of the hearing, and without appreciating facts, submission and evidences in their proper perspective and without providing copies of material relied upon and is liable to be set aside and annulled.

5. On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in confirming charging of interest u/s 234B, 234C of the Act.”

3. Brief facts of the case are that assessee filed its return of income on 30.07.2014 reporting total income at Rs. 1,540/-. Assessee is a partnership firm engaged in business of builder and developer. In the course of assessment, Ld.AO noted that assessee in its balance sheet had shown current liability of Rs.6,11,52,124/- which included sum of Rs.5,65,00,000/- payable to C.R.B. Capital Markets Ltd. The details were called for to substantiate the sundry creditors of Rs.5,65,00,000/- claimed by the assessee as payable to C.R.B. Capital Markets Ltd. Assessee claimed that this amount has become payable on account of cancellation of agreement entered into with C.R.B. Capital Markets Ltd. for sale of ten flats. According to the assessee, it constructed building known as “Arihant Towers” at Virsavarkar Road, Mahim, Mumbai. In April, 1996 assessee sold ten flats in the said building to C.R.B. Capital Markets Ltd for total agreement value of Rs.5,91,35,900/- against which assessee had received an amount of Rs.5,65,00,000/- on various

dates from C.R.B. Capital Markets Ltd against the sale of said flats leaving behind Rs.26,35,900/- as outstanding. The details of the flats sold and amount received is tabulated as under:

S. No.	Wing	Flat No.	Agreement Value	Amount Received
1	A	101	7114200	6797094
2	A	301	7114200	6797094
3	A	401	7114200	6797094
4	A	405	4544000	4341457
5	B	301	7071600	6756393
6	B	302	4041500	3832694
7	B	401	7071600	6756393
8	B	402	4011500	3832694
9	B	501	7071600	6756393
10	B	502	4011500	3832694
		TOTAL	59135900	56500000

4. Assessee claims that it follows project completion method and therefore in year 2006, when the project was completed it recorded sales in its profit and loss account which included sale consideration with the agreement value of Rs.5,91,35,900 in respect of these ten flats sold to C.R.B. Capital Markets Ltd in the year 1996. C.R.B. Capital Markets could not make the balance outstanding amount as stipulated in the agreement for which all the efforts were made by the assessee. Assessee terminated and cancelled the agreement with C.R.B. Capital Markets Ltd and agreed to refund the amount of Rs.5,65,00,000/- which was paid by C.R.B. Capital Markets to it, against the sale of ten flats. Later assessee came to know that C.R.B. Capital Markets Ltd had undergone liquidation and Hon'ble High of Delhi had appointed an official liquidator in the matter. Assessee furnished one of the correspondence letter dated 18.04.2013 addressed to C.R.B. Capital Markets Ltd describing several milestones which took place since the year 1996 till the year 2013. Part of this correspondence are reproduced by Ld.AO in his order in para 4.3 from which he observed that assessee has already

terminated the agreement with C.R.B. Capital Markets Ltd and that the assessee is ready and willing to refund the amount received by it from C.R.B. Capital Markets Ltd without any interest thereon.

5. Ld.AO also noted that by taking into account the law of limitation, asking the assessee for specific performance or completion of the said contract or handing over the ten flats to C.R.B. Capital Markets does not arise since rights and claims of C.R.B. Capital Markets including for specific performance of agreement have come to an end. Assessee has declined to complete the said transaction. Ld.AO also took note of the fact that C.R.B. Capital Markets was liquidated as noted from the official website of Register of Company (ROC). He also extracted the details from the website of the Hon'ble High Court of Delhi to take note of the fact that date of winding of C.R.B. Capital Markets Ltd is 22.05.1997 and the status reflected on the website is "Liquidated". In view of these facts, Ld.AO observed that liability brought in to the books of accounts in the year under consideration does not exist.

6. According to him, this amount of liability of Rs.5.65 crores bears the colour of income. According to him, this is nothing but the value of benefit received by the assessee in the course of its business, chargeable to tax u/s. 28(iv) of the Act, as business income. Thus, an addition of Rs. 5.65 crores was made to the return of income of the assessee. Further, Ld. AO took note of effect of this transaction on the closing balance of stock in trade/WIP for the year, in the hands of the assessee. Ld.AO took value of ten flats by taking their cost of Rs.43,25,516/- which was arrived at by reducing the amount received from C.R.B. Capital Markets of Rs.5.65 crores from the amount by which stock in trade/WIP was increased during the year i.e. Rs.6,08,52,516/- (Rs.6,08,52,516/- – Rs.5,65,00,000/- = Rs.43,25,516/-).

7. Ld. AO thus, recomputed the closing balance of stock in trade/WIP as on 31.03.2014. For this, from the closing balance reported by the assessee in its balance sheet as on 31.03.2014 at Rs.6,86,41,795/-, he reduced the cost already received by the assessee and deducted in earlier year for arriving at profit in respect of ten flats by Rs.5,65,00,000/-. Thus, he arrived at the closing balance of stock in trade as on 31.03.2014 at Rs.1,21,41,795/-. Assessee contested before the Ld. CIT(A) who confirmed the addition and adjustment made by the Ld. AO.

8. We have heard both the parties and perused the material on record. We have given our thoughtful consideration to the submissions made and material placed before us including written submission, paper book containing 14 pages and case law paper book with 4 citations. The factual observations narrated above are not repeated for the sake of brevity. The controversy to be addressed in the present appeal is, whether the liability accounted for by the assessee in its balance sheet correspondingly increasing the stock in trade/WIP, is a benefit derived by the assessee in the course of its business as alleged by Ld.AO in terms of Section 28(iv) to be treated it as business income.

9. Assessee submitted that the sale transaction took place in the year 1996, by way of an agreement at an agreed value of Rs.5,91,35,900/-. According to the assessee, sales consideration for these ten flats sold to C.R.B. Capital Markets was also reported in its profit and loss account for the year 2006, which has been subjected to scrutiny assessment u/s.143(3) wherein income offered by the assessee was accepted, after considering the fact that ten flats were sold to C.R.B. Capital Markets Ltd. Copy of the said assessment order dated 20.11.2008 passed by Additional CIT, range 20(2), Mumbai is placed on

record at page 6 of the paper book. From the perusal of the said assessment order for AY 2006-07, it is discernible that department had carried out a survey u/s.133(A) on the business premise of the assessee on 27.02.2006. It was noted that assessee was developing one project in the name and style of "Arihant Tower" at Mahim, Mumbai which got completed during the assessment year 2006-07. In the course of survey proceedings, one of the partners of the assessee firm namely, Shri Mulchand Ranka when examined on oath, declared and under took that the assessee firm had made profit on Rs.5.10 crores taxable in AY 2006-7. Pursuant to this declaration, in the return of income filed for AY 2006-07, assessee had shown a net profit of Rs.5,09,27,870/- under the head profits and gains of business.

10. For the reassurance that the amount declared by the partner of the assessee in his statement in the course of survey proceedings has been *honoured* in the return of income filed, it was submitted by the assessee that it was indeed *honoured*, fact of which was also noted by Ld.AO. Though there was a miniscule shortfall of Rs.72,135/-, the same was added to the total taxable income of the assessee so as to bring to tax net profit at Rs.5.10 crores, against the net profit declared by the assessee in the return. Important is to note that the declaration made by the assessee for giving an assurance that what was offered to tax in the statement was *honoured* whereby it was stated that amount as declared by assessee firm includes unit sold to C.R.B. Capital Markets and unsold stock of the units as on 31.03.2005. contents of para 3 and 4 of the assessment order for AY 2006-07 relevant to the issue in hand for AY 2014-15 are reproduced below for ready reference:

"3. It is pertinent to note that the Department had carried out survey proceedings u/s 133A on the business premises of the assessee firm on 27.02.2006. The assessee was developing one project in the name and style of 'Arihant Towers' at Mahim. Mumbai and the said

project was completed during the year. One of the partners of the firm viz. Shri Mulchand Ranka, when examined on oath categorically declared and undertook that the firm had made profit of Rs.5.10 Crs and which was taxable in Asst. Year 2006-07 i.e. the year under consideration. During the course of these proceedings, it was sought to be verified as to whether or not the assessee firm in pursuance of the above said statement did indeed declare a profit of Rs.5.10 Crs as stated. This aspect of the matter, therefore, was required to be clarified by the Counsel.

4. Perusal of the return of income reveals that in the computation of income under the head profit and gains of business, assessee has indeed shown a net profit of Rs.5,09,27,870/- Further, when the counsel for the assessee was asked as to how the declaration given has been honored, he stated as under:

"In this connection we have to state that the survey action u/s 133A of the Income-tax Act, 1961 was carried out at the business premises on 27.02.2006. it is to confirm the project undertaken by the assessee firm named and styled as 'Arihant Towers' at Mahim was completed and amount of Rs.5.10 Crs was agreed to be offered for taxation in the Asst. Year 2006-2007. Accordingly, to the promise given at the time of Survey, the assessee offered the amount of Rs.5.10 Crs as income for the said project in the Asst. Year 2006-2007 since it is following project completion method. The amount as declared by the assessee firm includes Units sold to CRB Capital Market Ltd. and unsold stock of the units as on 31.03.2005.

Perusal of return of income and the submission on the point makes it clear that the undertaking given has more or less been fulfilled. However, the fact remains that although the undertaking was that profit of Rs.5.10 Crs was to be shown, in the return of income the profit of Rs.5,09,27,865/- has been shown. In the result it is considered fit to add Rs. 72,135/- to the total taxable income of the assessee firm so that the net taxable profit is brought to Rs.5.10 Crs.

11. From the above, it is noted that what the assessee has offered to tax in AY 2006-07 is by way of declaration made in the statement recorded during the course of survey, that is profit of Rs.5.10 crores which according to the assessee includes units sold to C.R.B. Capital Markets. Another fact which is noted from the correspondence between the assessee and C.R.B. Capital Markets vide letter dated 18.04.2013 is that assessee had not handed over the possession to C.R.B. Capital Markets Ltd on account of outstanding amount of receivable from C.R.B. Capital Markets Ltd. Impugned ten flats claimed to have been sold to C.R.B. Capital Markets Ltd remained in the possession of the assessee. In the said letter, it is depicted that C.R.B. Capital Markets is

in the process of liquidation for which an official liquidator has been appointed.

12. Against this, Ld.AO in the impugned assessment order by extracting a screenshot from the website of Hon'ble High Court of Delhi has pointed out that C.R.B. Capital Markets has been wound up with effect from 22.05.1997 and its status is shown as "liquidated". In the context of declaration made by the assessee in the course of survey and submission that the amount declared of Rs.5.10 crores includes the sale consideration for ten flats sold to C.R.B. Capital Markets with a corresponding effect on 31.03.2005, in the written submissions, it is submitted that assessee has recorded the sales in its profit and loss account for AY 2006-07 which includes sales consideration for the flats sold in the year 1996. It is not discernible in clear and specific terms as to how the effect was given in the books of accounts for the sale claimed to have been made by the assessee to C.R.B. Capital Markets by including the sale consideration of the agreement value in the profit and loss account against the amount declared as net profit in the statement recorded in the course of survey which was *honoured* by reporting a net profit of Rs.5.09,27,870/-. No such documentary evidences are placed in the paper book to establish the correct factual position for the accounting treatment given by the assessee in its books of accounts to claim that amount in respect of transaction with CRB had been already been subjected to tax in the earlier year and the same is now reversed by accounting for a liability as payable to CRB owing to cancellation of the agreement and making a corresponding adjustment in the stock in trade/WIP.

12.1 To our mind, following factual position needs to be established with proper documentary evidences-

- I. Sale consideration forming part of the turnover of the assessee for AY 2006-07 in its profit and loss account and corresponding effect on the closing balance of stock in trade in respect of ten flats sold to CRB.
- II. Cost of ten flats sold to CRB accounted for in AY 2006-07 for which adjustment were made to stock in trade.
- III. Treatment of declaration made in the statement in the course of survey of net profit of Rs.5.10 cores in the books of account for AY 2006-07 along with demonstrating the effect of sale made to C.R.B. Capital Markets which is stated to be forming part of the amount declared by the assessee in the statement recorded in the course of survey.
- IV. Correct factual position and status of C.R.B. Capital Markets in respect of its liquidation so as to establish who would receive the liability accounted for by the assessee in its balance sheet in the year under consideration, in case, a situation arises when the said liability is to be discharged by making payment.
- V. Status of ten flats which are included in the stock in trade for year under consideration in view of the fact that possession of these ten flats was never handed over to C.R.B. Capital Markets on account of pending balance to be received.

12.2. On account of above requirements to effectively decide on the issue of whether any benefit accrues to the assessee u/s.28(iv) of the Act, as alleged by Ld.AO in the year under consideration, we find it appropriate to remit the matter back to the file of the Ld.AO to revisit the entire issue by examining the relevant records and documents to establish the correct facts as stated above and give appropriate treatment in accordance with the provisions of law. Needless to say that assessee be given reasonable opportunity of being heard to make its

submissions and reconcile correct factual position in terms of our above observation. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

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

Order is pronounced in the open court on 28th May, 2025

Sd/-
(Saktijit Dey)
Vice President

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28th May, 2025

Divya R. Nandgaonkar
Stenographer

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai