

आयकर अपीलिय अधिकरण “F” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.3693/Mum/2011

(निर्धारण वर्ष / Assessment Year : 2008-2009)

Income Tax Officer – 25(3)(4), R. No. 307, C-10, Pratyaksha Kar Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051.	बनाम/ Vs.	Shree Sidhivinayak Developers, 2/D, Satluj Apartment, Sahakar Gram Complex, Kandivali (East), Mumbai – 400 101.
स्थायी लेखा सं./PAN : AACAS5244H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by	Shri N.V. Nadkarni
Respondent by :	Shri Shashi Tulsian

सुनवाई की तारीख / **Date of Hearing** : 15-04-2015

घोषणा की तारीख / **Date of Pronouncement** : 12-06-2015

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आदेश / ORDER

PER B.R. BASKARAN, A.M.

The Revenue has filed this appeal challenging the order dated 22-02-2011 passed by the Id. CIT(A) – 35, Mumbai in respect of the following issues for A.Y. 2008-09:-

- (a) Deletion of income estimated by the A.O. for the project named “Poonam Garden”.
- (b) Deletion of addition made u/s 69C of the Income Tax Act, 1961.

2. We have heard the parties and perused the record. The assessee firm is a builder and developer and is assessed in the status of AOP. During the year

under consideration, the assessee was developing a residential project by name "Poonam Garden" which involved construction of building No. 6 to 11 comprising of 182 flats and 8 shops in Bhayander, Dist. Thane. The assessee did not disclose any income out of these projects on the plea that it was following 'project completion method' for offering the income under the Income Tax Act. The A.O., however, noticed that the assessee has received major portion of advances and also completed major portion of the construction activity by 31-3-2008, more particularly the A.O. noticed that the work relating to fixing of tiles and marbles, painting, plumbing were under the verge of completion during the year under consideration. The A.O. further noticed that the assessee has realized full sales consideration in respect of 33 units and more than 90% of the sales value in respect of 59 units out of total units of 190. The A.O. took a view that assessee has passed on all the risks and rewards in respect of the above said 92 units (59 + 33). Accordingly the AO took the view that the assessee should have offered the income pertaining to the above said 92 units during the year under consideration. The A.O. noted that the assessee has declared profit in A.Y. 2010-11 @ 52.12% of gross turnover of the above said project. By applying the same rate in respect of 92 units referred above, the A.O. estimated the profit at Rs. 6.48 crores and assessed the same as income of the assessee.

3. The A.O. further noticed that the assessee has not debited various expenditure or has debited minimum expenditure under various heads listed out in the assessment order. Accordingly, the A.O. took the view that the assessee must have incurred expenditure under the various heads without recording the same in the books of account. Accordingly, the A.O. estimated the expenditure that might have been incurred by the assessee at 10% of the total work carried out and the same worked out to Rs. 55 lacs. The A.O. assessed the same u/s 69C of the Act.

4. The Id. CIT(A), however, granted relief to the assessee in respect of both the additions referred above. Aggrieved, the Revenue has filed this appeal before us.

5. The first issue relates to estimation of income in respect of 92 units referred above from which the assessee has already received almost entire consideration. The Id. Counsel for the assessee submitted that the assessee has been following 'project completion method' and hence the income arising out of these units has been offered in A.Y. 2010-11. We have noticed that the A.O. has estimated the income in respect of 92 units by observing that the assessee has passed the risk and rewards attached to the 92 units, since the assessee had already received almost the entire consideration from them. In our view, there is nothing wrong in assessing the income pertaining to the units that have already been sold by the assessee, even if the assessee is following project completion method. This is so because, once the assessee has sold the flats, then the profit from such sale stands realized and it may not be proper to postpone the tax liability thereon. However, we have earlier noticed that the AO has entertained the view that the assessee has transferred the risk and reward attached to the 92 units and we notice that the AO has not brought any material on record to substantiate this view. Hence, it is not clear as to whether 92 units have actually been sold away or whether the risks and rewards attached to these flats has actually been transferred during the year under consideration. Further, the rate of gross profit of 52% adopted by the A.O. needs to be validated in case it is found that the risks and rewards attached to the 92 flats have been transferred during the year under consideration. Under the sets of facts, we are of the view that this issue requires fresh examination at the end of A.O. Accordingly we set aside the order of Id. CIT(A) on this issue and direct the A.O. to consider the same afresh and take appropriate decision in accordance with law, after offering necessary opportunity of being heard to the assessee.

6. The next issue relates to addition of Rs. 55 lacs u/s 69C of the Act. Admittedly, the A.O. has estimated the expenditure of Rs. 55 lacs on presumptions without bringing any material on record. Hence the Id. CIT(A) has deleted this addition by making the following observation:-

“At the time of hearing, the representative submitted that the appellant debited Rs.46,32,453j - in the P&L account during this year as per the details given below:-

- a) Brokerage of Rs.34,38,900/-: The appellant did not do any advertising. It was left to the brokers to make the intending purchasers aware about the project and persuade them to purchase the flats/ shops.
- b) Hire charges of Rs.58,448/-,
- c) Octroi charges of Rs.1,23,551/-,
- d) Office expenses of Rs.9,350/-,
- e) Postage and Courier charges of Rs.7,646/-,
- f) Printing and Stationery charges of Rs.28, 179/-
- g) Rent for machinery of Rs.3,00,000/-,
- h) Salary & Wages of Rs.2,05,489/-,

He submitted that the A.O. remarked that there was no expenditure on hire of machinery whereas in fact the appellant debited Rs.3 lakh towards rent: for machinery as seen from the P&L account. He further submitted that the A.O. remarked that MBMC charges were not incurred by the appellant whereas in fact a sum of Rs.18,50,000/- was claimed as development expenses in A.Y. 2010. He further submitted that the administrative office of the appellant is located at Harsh Plaza, above Reliance Fresh, 1 st floor, Mira Road(East), Dist. Thane-40 1107 and the same premises are used for office purposes by half a dozen other units of the group and in the circumstances there are certain expenses which are incurred jointly and the concerned staff debits it to one of the units. Even if one were to make proportionate allocation of such expenses under the head Conveyance, Telephone Expenses etc. falling to the share of the appellant, the allocated amount falling to the share of the appellant would not be more than a few thousands of rupees. It is therefore obvious that the disallowances resulted on account of lack of appreciation of facts and the disallowance requires to be deleted.”

7. A perusal of the order passed by the ld. CIT(A) on this issue shows that the ld. CIT(A) adjudicated this issue by duly considering the relevant provisions of law and the facts available in the instant case. Hence, we do not find any infirmity in the order of ld. CIT(A) on this issue and accordingly confirm the same.

8. In the result, the appeal filed by the Revenue is treated as partly allowed for statistical purpose.

Order pronounced in the open court on 12th June, 2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 12-06-2015 को की गई ।

Sd/-
(JOGINDER SINGH
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 12-06-2015

sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

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व.नि.स./ RK , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT (A) 35, Mumbai
4. आयकर आयुक्त / CIT -25,Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai F Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai