IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "J"

Before S/Shri R.S. Syal (AM) & N.V. Vasudevan (JM)

I.T.A.No. 5121/Mum/08 (Assessment year : 2003-04)
I.T.A.No. 5122/Mum/08 (Assessment year : 2004-05)
I.T.A.No. 5123/Mum/08 (Assessment year : 2005-06)

Jalaram Jagruti Developers Pvt. Ltd. C/o. Arvind Ravji Shah 404, Hind Rajasthan Building 95, Dadasaheb Phalke Road Dadar (East) Mumbai-400 014.	Vs.	DCIT Central Circle-32 4A/15B, Aayakar Bhavan M.K. Road Mumbai-400 020.
APPELLANT		RESPONDENT

PAN/GIR No. : AABCJ3979M

Assessee by : Shri K. Shivaram
Department by : Shri S.S. Rana

ORDER

PER N.V. VASUDEVAN, JM :-

These are three appeals by the assessee against three orders, all dated 13.6.2008 of learned CIT(A)-Central VIII, Mumbai relating to A.Y. 2003-04, 2004-05 & 2005-06. Issue that rise for consideration in all these three appeals are identical and arise out of the same facts and circumstances.

2. The assessee is a company engaged in the business of development of land and building. There was search and seizure action u/s. 132 of the Act at the residence of the Director of the assessee Mr. Arvind Shah on 5.5.2005. In course of search, note book containing 1 to 31 pages marked as Annexure A-1 and the loose paper file containing pages 126 to 149 marked as Annexure A-3 were found and seized. It is not in dispute that seized paper contained record of unaccounted cash receipts. As already stated that the assessee was engaged in the business

of development of lands and buildings. The assessee was constructing residential housing project called "Jalaram Park" on a plot of land at L.B.S. Market, Bhandup West, Mumbai-400 078. Unaccounted cash receipt as found in the seized papers related to the flats and shops that were sold in the project Jalaram Park. In course of search, statement of Shri Arvind Shah was record and he admitted in such statement that documents seized contain record of unaccounted cash receipts in respect of project Jalaram Park. Since, the documents seized in course of search of Shri Arvind Shah related to the assessee, the Assessing Officer having jurisdiction over the assessee proceeded to issue notice u/s. 153-C of the Act to the assessee. In response to the notice u/s. 153C, issued for the aforesaid three assessment years, the assessee filed return of income. The assessee did not offer unaccounted cash receipts as found recorded in the seized documents. In course of assessment proceedings, the assessee admitted that cash receipts which were not recorded in the books of account in respect of the project Jalaram Park comprised of the following :-

The details of unaccounted cash receipts from the sale of shops/flats in Jalaram Park were as under :-

Acct. Year	Asst. Year	Cash receipt from sale of		Total
		Shops	Flats	
2002-03	2003-04	10,62,511	-	10,62,511
2003-04	2004-05	59,11,443	1,08,900	60,20,343
2004-05	2005-06	-	3,46,250	3,46,250
	Total	69,73,954	4,55,150	74,29,104

The assessee also explained that in respect of the aforesaid unaccounted cash, the assessee passed necessary entries in the books of account on 5.5.2005 incorporating those receipts. The assessee took a stand that it was following project completion method of recognizing income in respect of project Jalaram Park. The assessee also submitted that cash receipts had direct nexus with the business of the assessee and the project Jalaram Park and were part of the cash receipts against sale of shops and flats in the said project. According to the assessee, these cash receipts have to be taxed as income from business of the assessee and in respect of the project Jalaram Park. Since, the assessee is following project completion method, cash receipts can be recognized as income and brought to tax only on completion of project. The assessee also submitted that the aforesaid project was not complete during the previous year relevant to A.Ys. 2003-04 to 2005-06; and therefore question of taxing these receipts can be considered only in the year when the project is completed and income from the said project is offered to tax. The Assessing Officer, however, rejected the plea of the assessee on the ground that these receipts were from the undisclosed sources and were detected only as a result of search and therefore they have to be brought to tax in the relevant assessment year to which, they relate. Thus, the Assessing Officer brought to tax the sum of Rs. 10,62,511/-; Rs. 60,20,343/- and Rs. 3,46,250/- for A.Ys. 2003-04 to 2005-06 respectively as income from undisclosed sourced.

3. Aggrieved by the aforesaid additions, the assessee preferred the appeal before learned CIT(A) reiterating the stand as was put forth before the Assessing Officer. Learned CIT(A), however, agreed with the conclusion of the Assessing Officer. His conclusion on the above were as follows :-

> "I have considered the submission of the appellant. It is true that appellant is following project completion method and this method has not been disturbed by the Assessing Officer. However, only income from disclosed receipts is to be computed as per method of accounting followed by the appellant. The appellant has admitted that during the year under consideration, it has received on-money of Rs. 10,62,511/- on the sale of flats and shops and this income was not accounted for in the books of

accounts prior to the date of search. The necessary entries were passed by the appellant in the books of account after the date of search. The appellant never intended to disclose the receipts to the department. Had search and seizure operation not carried out at the residence of the director of the appellant, Shri Arvind Shah, appellant could not have disclosed these receipts. The method of accounting followed by the appellant cannot be applied to undisclosed receipts. The income from such undisclosed receipts is therefore, required to be taxed in the hands of the appellant on receipt basis. In view of these facts, the Assessing Officer is justified in making addition of Rs. 10,62,511/-. The action of the Assessing Officer is upheld. This ground of the appellant is not allowed.

4. Aggrieved by the aforesaid order of learned CIT(A), the assessee has raised Ground No. 2 before the Tribunal which reads as follows :-

> The learned CIT(A) erred in confirming the addition of Rs. 10,62,510/- as income from undisclosed sources being 'on money' received against the sale of shops and flats, without appreciating the fact that the assessee followed project completion method and the same will income disclosed in the year of completion of the project i.e. A.Y. 2008-09.

5. Grounds of appeal in other 2 assessment years i.e. A.Ys. 2004-05 & 2005-06 are identical except for the change in the quantum of additions that is challenged in those grounds.

6. We have heard the submissions of learned counsel for the assessee, who submitted that the assessee followed project completion method of accounting for its income from the project Jalaram Park. In this regard, our attention was drawn to the fact that project Jalaram Park commenced in April, 2003 and was completed on 29.3.2008. Our attention was drawn to the fact that in A.Y. 2008-09 the Assessee completed the aforesaid project and in the said assessment year, the assessee has declared income from the said project and has also claimed

deduction u/s. 80IB(10) of the Act. Our attention was also drawn to computation of income and certificate in Form No. 10CCB claiming deduction u/s. 80IB(10) of the Act; and the completion certificate in respect of the project Jalaram Park. Our attention was drawn to the fact that right from the commencement of the project till completion of the project, the assessee has been filing its return of income clearly mentioning that it is following project completion method of accounting for income from the project Jalaram Park. Our attention was also drawn to the fact that in the books of account, cash receipts have been accounted as advance received against sale of flats/shops. These entries were passed in F.Y. 2005-06 relevant to A.Y. 2006-07. Relevant documents in this regard have been placed by the assessee in its paper book. Learned counsel for the assessee further submitted that even in assessment made after search and seizure, the Assessing Officer has to compute income on the basis of method accounting followed by the assessee. In this regard, reliance was placed by learned counsel for the assessee on the decision of Pune Bench of the ITAT in the case of Dhanvarsha Builders and Developers Pvt. Ltd. Vs. DCIT, 289 ITR 50 (Pune)(AT). Further reliance was placed on the decision of Bangalore ITAT in the case of S.G.R. Enterprises Vs. ACIT, 112 TTJ (Bang) 377; wherein it has been held that computation of undisclosed income on the basis of documents found in course of search and seizure have to be compute in accordance with the completed contract method of accounting followed by the assessee. Further reliance was placed on the decision of Bangalore ITAT in the case of T.S. Chandrashekar Vs. ACIT, 66 TTJ 360 ; wherein it has been held that where the assessee is following completed contract method of accounting and where the project is not complete, a part of the project cannot be sliced off and its income be included in the block assessment as undisclosed income. , Learned Departmental Representative, however relied on the orders of the revenue authorities.

7. We have considered the rival submissions. It is not in dispute that receipts in question have direct nexus with the business of the

assessee and represent cash receipts against sale of shops and flats. It is also not in dispute that the assessee follows project completion method of revenue recognition and that project was complete only in A.Y. 2008-09. Since, cash receipts have a direct nexus with the project of Jalaram Park, they have to be taxed only as income from the said project. The assessee has already recognized these receipts in its books of account while passing the necessary entries on 5.5.2005 in its books of accounts. In such circumstances, we are of the view that receipts in question cannot be brought to tax in A.Y. 2003-04 to 2005-06. These receipts have already been accounted for in the books of account can be taxed only in the year in which project is complete and income from the project is offered for tax. Decision of Bangalore Bench of ITAT in the case of T.S. Chandrashekar (supra) supports the plea of the assessee in this regard. In other words, method of accounting cannot be ignored by the Assessing Officer and the amounts in question cannot be brought to tax in A.Ys. 2003-04 to 2005-06. We therefore direct that the additions made in this regard be deleted.

8. The assessee has also raised other alternative grounds of appeal with regard to considering expenses while brining the cash receipts to tax and also claim of deduction u/s. 80IB(10) of the Act. In view of the decision that cash receipts cannot be brought to tax in A.Ys. 2003-04 to 2005-06, those grounds do not require any adjudication at this stage.

9. In the result, appeals by the assessee are partly allowed.

Order has been pronounced on 28th Day of April, 2009.

Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

Sd/-
(N.V. VASUDEVAN)
JUDICIAL MEMBER

Dated : 28th April, 2009

Copy to : 1. The Assessee
2. The Respondent

3. The CIT(A)-concerned.
4. The CIT, concerned.
5. The DR concerned, Mumbai
6. Guard File

BY ORDER

True copy

ASSTT. REGISTRAR, ITAT, MUMBAI

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