

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3288/CHNY/2019
निर्धारण वर्ष /Assessment year : 2016-2017.

M/s. Sree Sankeswara
Foundations and Investments,
No.115, Rajendra Complex,
NSC Bose Road,
Sowcarpet,
Chennai 600 079.

Vs. The Assistant Commissioner of
Income Tax,
Non Corporate Circle 6(1)
Chennai.

[PAN ABTFS 7616L]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. T. Vasudevan, Adv
प्रत्यर्थी की ओर से /Respondent by : Ms. R. Anitha, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 27-02-2020
घोषणा की तारीख /Date of Pronouncement : 09-03-2020

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai ('CIT(A)' for short) dated 01.10.2019 for the Assessment Year (AY) 2016-2017.

2. The Assessee raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax(Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.

2. The CIT(A) erred in confirming the addition of Rs.88,11,291 added back by the assessing officer in the assessment.

3. The CIT(A) erred in adding the difference in the amount of ₹11,31,13,700/- being TDS effected by M/s. Dugar Housing Ltd and the actual receipts of ₹10,43,02,409/- considered by assessee in the return as under-statement of receipts.

4. The CIT(A) failed to appreciate that as per the JDA with M/s. Dugar Housing Ltd, the assessee had recognized income as per percentage of completion basis and offered the same for taxation and hence confirming the addition on me stated pretext that the appellant being a land owner and did not undertake any construction contract was unjustified on the facts of the case.

5. The CIT(A) further failed to appreciate that as per the JV, the assessee and Dugar Housing have equal onus in the development of property and hence rightly offered its share of income from sale of flats for the current year on project completion basis and therefore the addition is unsustainable on the facts of the case.

6. The CIT(A) further failed to appreciate that the income offered on percentage completion basis accords with the Guidance Note on Real Estate Accounting issued by ICAI and also the application of AS-7, and hence was not justified in sustaining the addition.

7. The CIT(A) further failed to appreciate that the difference between Form 26AS and the declared receipts by assessee cannot be considered for addition to the returned income as suppression of receipts.

8. The CIT(A) further failed to appreciate that the entire contract receipts had been offered by assessee over the period of contract and there is no shortfall between the income reflected in 26AS and that offered by assessee before the completion of the project and hence the arbitrary addition made is to be deleted.

9. The CIT(A) further failed to appreciate that the TDS credit taken by assessee is in line with the actual income shown in the financials and the balance of credit had been carried forward to the later years

when the income has been offered and hence the addition is uncalled to, and cannot be sustained

10. The CIT(A) failed to appreciate that the assessee having provided the entire basis of working out the income on project completion basis, was not justified in merely confirming the addition made by officer without pointing out any deficiency in the working of the income by assessee.

11 The CIT(A) in any view of the matter, ought to have considered the contentions of assessee in the proper perspective and deleted the addition made to the returned income of assessee.

3. The brief facts of the case are as under:

The appellant namely M/s. Sree Sankeswara Foundations and Investments is a Partnership firm constituted under the Partnership Act. It is engaged in the business of real estate. The return of income for the AY 2016-17 was filed on 17.10.2016 disclosing total income of Rs.1,32,31,560/-. Against the said return of income, the assessment was completed under limited scrutiny assessment guideline and the assessment was completed by the Assistant Commissioner of Income Tax, Non Corporate Circle 6(1), Chennai (hereinafter called "AO") vide order dated 24.12.2018 passed u/s. 143(3) of the Income Tax Act, 1961 (in short 'the Act') at total income of ₹2,20,42,850/-. While doing so, the AO made addition of ₹88,11,291/- being the difference in amount shown in the Profit and Loss Account and of ₹10,43,02,409/- and amount shown in form 26AS ₹11,31,13,700/-. It was submitted before the Assessing Officer that

assessee had entered into joint development agreement with M/s. Dugar Housing Limited. The Income of the said project was offered to tax following Percentage of Completion Method. However, the Assessing Officer turn downed the submission pointing out that assessee is only land owner. The form 26AS clearly shows sale of immovable property, accordingly tax was deducted u/s.194A of the Income Tax Act,1961 (in short "the Act") ₹11,31,13,700/-.

4. Being aggrieved by the above additions, the assessee preferred an appeal before Id. CIT(A), who vide impugned order confirmed the action of the Assessing Officer (AO).

5. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal. It is submitted that assessee had entered into joint development agreement with M/s. Dugar Housing Limited on 16.03.2012. In terms of joint development agreement, assessee had contributed land towards his share. It is submitted that joint development agreement is entered between assessee, land developer and the land owners. Share of the land was not transferred to the developer. The sale proceeds of the built up area were shared between developer and the land owner in the agreed ratio. Thus, it is submitted that no addition can be made, when assessee has been following Percentage of Completion Method.

6. On the other hand, Id. Departmental Representative opposed the above submission and submitted that assessee is only land owner and he never carried on any business activity with the land developer and therefore the question of following Percentage of Completion Method does not arise.

7. We heard the rival submissions and perused the material on record. Admittedly, joint development agreement was entered to develop property situated at Ayanambakkam Village, Rajankuppam Hamlet, Ambattur Taluk, Thiruvallur Dist. It is the case of the assessee that agreement was entered with an intention of developing above property jointly as business venture and the income from the said activity was offered to tax by following Percentage of Completion Method. However, the Assessing Officer was of the view that assessee cannot adopt Percentage of Completion Method as it is not in the business of developing the property but only was the land owner of the property. Therefore, the difference amount contained in form 26AS and shown in Profit and Loss Account was brought to tax. This is an issue which requires to be decided having regard to terms of joint development agreement and the intention of the parties to the agreement. Thus, the intention of the parties can be gauged from the entries made in the books of accounts. Entries in the books of accounts clearly goes to show that assessee is only partner in the

development of scheduled property of the agreement. In any event, no addition can be made based on mere difference between form 26AS and the amount shown in the profit and loss account and in the absence of any reconciliation and corroborative evidence. In any event, it is not the case of the Revenue that there is leakage of revenue during the period of joint development, it is case of tax neutral. Therefore, we are of the considered opinion that no addition is warranted and the Assessing Officer is directed to delete the addition.

8. In the result, the appeal filed by the assessee in ITA No.3288/CHNY/2019 for assessment year 2016-2017 stands allowed.

Order pronounced on 9th day of March, 2020, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:9th March, 2020.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |