

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. /ITA No.508/PUN/2023

निर्धारण वर्ष / Assessment Year : 2018-19

Jayant Hari Mulay, Bellevista S.No.40-9, Bhonde Colony, Erandwane, Pune 411 004 Maharashtra PAN : AAXPM1901D	Vs.	DCIT, Circle-2, Pune
Appellant		Respondent

Assessee by Shri Sharad A. Shah
Revenue by Shri Gurmel Singh

Date of hearing 07-06-2023
Date of pronouncement 07-06-2023

आदेश / ORDER

PER R.S. SYAL, VP:

This appeal by the assessee is directed against the order dated 01-03-2023 passed by the CIT(A) in National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2018-19.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.12.00 lakh towards the amount paid to the landlord as compensation.

3. Pithily put, the facts of the case are that the assessee is a Promoter and Builder who had purchased certain piece of land for

construction of flats. Pursuant to the agreement, the assessee was to hand over certain constructed flats to the seller of the land. A sum of Rs.12.00 lakh was claimed as deduction in respect of 'Compensation paid to the Tenant'. The Assessing Officer (AO) called upon the assessee to explain the reasons for such deduction. The assessee explained that the project was supposed to be completed by 2013-14, however, it was actually completed on 28-07-2017. After negotiating with the landlord, the assessee agreed to pay a sum of Rs.37.00 lakh as compensation towards non-completion and handing over the possession. Out of such Rs.37.00 lakh, a sum of Rs.25.00 lakh was paid in earlier years and capitalised as work-in-progress. The remaining amount of compensation was paid during the year under consideration. The AO did not agree with the assessee's submission on noticing section 18 of Real Estate Regulatory Authority (RERA), 2016, which talks for providing compensation to the flat owners and not to the seller of the land. He, therefore, did not accept the assessee's claim, which came to be affirmed in the first appeal.

4. I have heard the rival submissions and perusing the relevant material on record. The case of the assessee is that compensation of Rs.37.00 lakh was paid to the seller of the land not towards purchase of the land but towards the delay in handing over the possession of the

built up area, as was stipulated to be. The Id. AR further submitted that a sum of Rs.25.00 lakh was claimed as part of work-in-progress in earlier years, which was not disturbed by the AO. In order to justify the payment made during the year, the assessee relied on an agreement with Mrs. Shobha Srikrushna Sawant, to whom such compensation was paid. It can be seen that there is some conflict between the stand taken by the assessee at the time of filing the return and that before the AO during the course of assessment proceedings. At the initial stage, the assessee claimed such compensation to have been paid to Tenant, whereas, during the course of assessment proceedings, the assessee claimed it as compensation to the seller. In support of the contention, the Id. AR relied on the above referred agreement of Sale cum Development made on 05-12-2008, which has been placed on record to support the contention that the payment so made was compensation to the owner of the flats for delay in handing over of the possession. Since this is an additional evidence which was not there before the authorities below, I am of the considered opinion that it would be just and fair if the impugned order is set aside and the matter is remitted to the AO for verifying the relevant clauses of the agreement. If the payment is found to be compensation to the owner of the flats for delay in handing over of the possession, such amount should be

treated as a part of work-in-progress. In the otherwise scenario, the AO will decide the nature of payment as per law after affording reasonable opportunity of hearing to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 07th June, 2023.

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th June, 2023
सतीश

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The Pr.CIT concerned
4. DR, ITAT, 'SMC' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	07-06-2023	Sr.PS
2.	Draft placed before author	07-06-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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