

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.3128/Mum/2018
(Assessment Year :2013-14)**

&

**ITA No.3243/Mum/2018
(Assessment Year :2014-15)**

M/s. Rashmi Infrastructure Developers Ltd., 10 th Floor, Regent Chambers 208, Nariman Point Mumbai-400 021	Vs.	Deputy Commissioner of Income Tax-3(3)(1) Aaykar Bhavan Mumbai
PAN/GIR No.AACCR2499B		
(Appellant)	..	(Respondent)

Assessee by	Dr. K. Shivaram
Revenue by	Shri Ajay Chandra & Shri T. Shankar
Date of Hearing	11/05/2022
Date of Pronouncement	22/06/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.3128/Mum/2018 & 3243/Mum/2018 for A.Y.2013-14 & 2014-15 respectively arise out of the order by the Id. Commissioner of Income Tax (Appeals)-8, Mumbai in appeal No.CIT(A)-8/IT-01/17-18 & CIT(A)-8/IT-02/17-18 dated 16/03/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 07/08/2017 by the Id.

Dy. Commissioner of Income Tax-3(3)(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals, they are taken up together and disposed of by this common order.

2. Though the assessee has raised several grounds of appeal for both the assessment years, we find that it had raised a preliminary ground for both the years that the orders have been passed by the lower authorities in gross violation of principles of natural justice and without following the due process of law. Since this is a preliminary issue, we deem it fit and appropriate to address this issue first. With the consent of both the parties, the facts prevailing in Asst Year 2013-14 are taken as the lead case and both the parties agreed that the decision rendered thereon would apply with equal force for Asst Year 2014-15 also in view of identical facts, except with variance in figures.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee company is engaged in the business as a Builder / Developer. The return of income for the Asst Year 2013-14 was filed by the assessee company on 27.9.2013 declaring total income of Rs 60,12,040/-, which was later revised on 8.7.2014 declaring total income at Rs Nil. In the revised return, the assessee claimed deduction u/s 80IB(10) of the Act for Rs 60,12,044/-. This revised return was filed within the time prescribed u/s 139(5) of the Act which fact is also conceded by the Id. AO in page 1 para 1 of his order.

3.1. A survey action u/s 133A of the Act was conducted on 18.10.2013 in the business premises of the assessee. During the course of survey proceedings, certain materials relating to unaccounted receipts from sale

of residential flats in the project 'Rashmi Heights' were impounded. In the survey, the assessee company admitted unaccounted income of Rs 7,64,20,047/- on the basis of documents found at the time of survey, which included declaration on account of unaccounted cash receipts amounting to Rs 7,49,69,700/- and excess claim of provision of expenditure made in final accounts for the Asst Year 2013-14 amounting to Rs 14,50,347/-.

3.2. During the course of survey action u/s 133A of the Act, it was found that the assessee company was following project completion method for recognizing the income for the construction project. A statement on oath u/s 131 of the Act of the Director was recorded wherein he voluntarily disclosed a sum of Rs 7,64,20,047/- (74969700+1450347) for the Asst Year 2013-14 in respect of Rashmi Heights project. The assessee filed an application before the Hon'ble Income Tax Settlement Commission (ITSC) on 2.2.2015. The ITSC vide its order u/s 245D(1) of the Act dated 11.2.2015 allowed the application to be proceeded with. The ITSC vide its order u/s 245D(4) of the Act dated 9.8.2016 rejected the settlement application of the assessee company. Aggrieved by the order of the ITSC, the assessee filed a writ petition before the Hon'ble Jurisdictional High Court in W.P. No. 2814 of 2016. The Hon'ble Bombay High Court vide its order dated 20.1.2017 dismissed the petition of the assessee company. Accordingly, the assessment proceedings which were earlier abated, got resumed and the Id. AO proceeded with the same.

3.3. The Id. AO observed that assessee company constructed a building named 'Rashmi Heights' under Slum Redevelopment Scheme in Malad East, Mumbai and the construction was completed in Asst Year 2013-14. The assessee stated that two other entities involved viz Reliance

Construction Company , which was into construction activities and another entity by the name was R.C.Developers. The Building has 130 flats out of which 64 flats were to be sold by the assessee, 53 by Reliance Construction Company and 13 flats by R.C.Developers. In terms of square feet, the total saleable area was 176790 sq.ft. and was to be divided among the three partners as under:-

Name of the Entity	Saleable area	Saleable area
Rashmi Infrastructure Developers Ltd	83427	64
Reliance Construction Company	72045	53
R C Developers	21318	12
Total	176790	130

3.4. During the course of assessment proceedings, the assessee company submitted the details of 64 units sold by it in Asst Year 2013-14 with complete details. The Id. AO observed that impounded documents during survey revealed that the assessee company had received certain on money in respect of flats sold in the building i.e 'Rashmi Heights', which were also confirmed by the Director of the assessee company in the statement taken on oath u/s 131 of the Act.

3.5. Before the ITSC, the assessee company additional income of Rs 1,76,58,235/- for Asst Year 2013-14 and Rs 32,96,539/- for Asst Year 2014-15. For the Asst Year 2013-14, in the Settlement application, the assessee company estimated the on money receipts of Rs 13.25 crores and claimed deduction for estimated expenditure of Rs 11.59 crores out of the same. Effectively estimated net on money receipts was shown at Rs 1.66 crores and claimed deduction of Rs 1.04 crores u/s 80IB(10) of the Act and taxable income was shown at Rs 60 lakhs. The ITSC

observed that deduction u/s 80IB(10) of the Act was a contrived afterthought on the part of the assessee as it was not claimed in the original return filed u/s 139(1) of the Act and hence in view of the provisions of section 80AC of the Act, the deduction u/s 80IB(10) of the Act is not eligible. The claim made in the revised return is not tenable as audit report in Form 10CCB had to be filed along with the return filed u/s 139(1) of the Act. The ITSC observed pursuant to this claim of deduction, it had resulted in assessee not making full and true disclosure of undisclosed income. Moreover, the requirement of limiting the built up area to an extent of 1000 sq.ft has not been complied with by the assessee. The ITSC observed that since the assessee was given an opportunity to withdraw the flawed claim and come clean before the ITSC, since the same was not done by the assessee, it concluded that assessee had not come clean before the ITSC by making full and true disclosure of its income to settle the dispute. Accordingly, ITSC rejected the application of the assessee in the order passed u/s 245D(4) of the Act dated 9.8.2016.

3.6. During the course of assessment proceedings, the assessee submitted that Slum Redevelopment Project is eligible for deduction u/s 80IB(10) of the Act. It was submitted that the Central Government had relaxed two very important pre-conditions for availing the deduction u/s 80IB(10) of the Act viz area of plot and time limit for completion of housing project in respect of slum redevelopment. The assessee also placed on record the point wise submissions and explanations given to the objections raised by the Principal Commissioner of Income Tax before the ITSC in his report u/s 245D(3) of the Act. **The main crux of the submissions of the assessee before the Id. AO is that once the ITSC rejects the application of the assessee u/s 245D(4) of the**

Act, the Id. AO is duty bound to adjudicate the issues independently uninfluenced by the order of ITSC as the entire jurisdiction now lies only with the Id. AO. However, the Id. AO simply relied on the order of ITSC and denied the claim of deduction u/s 80IB(10) o the Act.

3.7. With regard to on money receipts from the project, the assessee furnished the entire details of on money receipts flat wise from the project 'Rashmi Heights' which are tabulated in pages 15 to 17 of the assessment order. The assessee also submitted that the project was completed in Asst Year 2013-14 and it would be incorrect to tax the cheque amount in the year when sale of the flats are recognized and tax the on money in one in another assessment year i.e the year of receipt thereon. The assessee submitted that the on monies were also received only for the very same project 'Rashmi Heights' and hence the same takes the same character of receipt of project receipts. The assessee submitted that the on money in the year of receipt should be considered only as 'Advances received against the project' and the same would get transferred to income account in the year of project completion. The assessee pleaded that since the cheque portion is entitled for deduction u/s 80IB(10) of the Act, the on money portion also would be eligible for the said deduction. The assessee also placed reliance on various decisions in support of its contentions in this regard. The assessee also claimed certain expenses against the on money receipts and also placed reliance on certain decisions stating that the gross on money receipts cannot be brought to tax and only the profit element embedded in the said on money receipts could be brought to tax.

3.8. The Id. AO however completely ignored all the submissions of the assessee and merely relied on the rejection order of the ITSC and proceeded to tax the on money receipts independently without granting any deduction for expenses incurred against those on money receipts.

4. This action of the Id. AO was upheld by the Id. CIT(A).

5. We find that the Id. AR before us had filed a chart containing filing of various details before the Id. AO and Id. CIT(A) in respect of each of the allegations leveled by the lower authorities. We find that none of these submissions were considered by the lower authorities. Infact the Director of the assessee company Mr Umashankar had even filed a retraction statement which is enclosed in pages 34 to 36 of the Paper Book 1. There is absolutely no whisper in the orders of the lower authorities in this regard. The details of unit wise eligibility u/s 80IB(10) of the Act are enclosed in pages 71 to 72 of the Paper Book. Architect Certificate is enclosed in Page 129 of the Paper Book. There is absolutely no discussion about these documents and workings in the orders of the lower authorities. The assessee had furnished the details of unaccounted expenses together with the supporting evidences in pages 151 to 580 of the Paper Book. There is absolutely no discussion about these documents in the orders of the lower authorities.

5.1. In view of the aforesaid facts and the manner in which the orders of the lower authorities had been passed, we deem it fit and appropriate, in the interest of justice and fairplay, to remand these appeals to the file of Id. AO for denovo adjudication in accordance with law. The Id. AO is directed to consider all the submissions and objections of the assessee and pass the orders in accordance with law. Needless to mention that the

assessee be given proper opportunity of being heard. The assessee is also given liberty to furnish fresh evidences, if any, in support of its contentions. Accordingly, all the grounds raised by the assessee for both the years are set aside to the file of Id. AO and hence allowed for statistical purposes.

6. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 22/06/2022 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 22/06/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	Directly Typed on PC		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			