

आयकर अपीलीय अधिकरण “ए” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.14/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

ACIT, Circle-1,
Aurangabad

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Bhosale Builders &
Developers Pvt. Ltd.,
3, Varsha Towers,
Jalgaon Road, Harsul,
Aurangabad – 431001

PAN : AACCB4156D

.....प्रत्यर्थी / Respondent

Revenue by	:	Shri S.B. Prasad
Assessee by	:	Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 20.08.2019

घोषणा की तारीख / Date of Pronouncement : 03.09.2019

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal is filed by the Revenue against the order of the CIT(A)-1, Aurangabad, dated 04.10.2016 for the assessment year 2012-13.

2. The grounds raised by Revenue are extracted as under:-

1. *Whether on facts & circumstances of the case, the Ld. CIT(A)-1 was correct in deleting the addition of Rs.6,41,50,000/- made on protective basis when the identity of consenting party has not been proved by assessee nor it could be traced by the AO independently on the basis of records made available by the assessee.*
2. *Whether on facts & circumstances of the case, the Ld. CIT(A)-1 was correct in allowing the written off amounts as business loss without any evidence of the advance being made in the normal course of business.*

3. Briefly stated relevant facts include that, the assessee purchased the lands in assessment year 2005-06 from Shri Arun Keshavrao Narvade & Ors. Subsequently, the said lands were sold to Shreeram Realtors, Nagpur in assessment year 2005-06. There was litigation initiated by the original owners on the said transfer to Shreeram Realtors, Nagpur. There was a suit filed by them asking for declaring the sale agreement void. Finally, the suit landed up entering into a compromise deed. There was a Compromise decree passed by the Hon'ble High Court appending the terms of the Compromise. As per the said Compromise Deed, part of the lands transferred to Shreeram Realtors, Nagpur would go back to the original owners and the balance of land would stay with Shreeram Realtors, Nagpur.

4. On these facts, in the assessment proceedings, Assessing Officer tried to examine the genuineness of transaction between assessee and Shreeram Realtors, Nagpur. The details were discussed in para 6 of the assessment order. It is made out that the absence of relevant details of Shreeram Realtors, Nagpur, forced the Assessing Officer to make protective assessment. Instead of taxing the said concern, for want of details and suspecting the transaction, the Assessing Officer protectively assessed the transaction in the hands of assessee. The Assessing Officer indicated the opinion of invoking the provisions of section 154 of the Act, if details are made available. The details are discussed in the said para and the same are extracted as under:-

"6. Further, on verification of records it is seen that out of the total sales consideration of the properties sold during the year under consideration Rs.6,41,50,000/- was given to Shriram Realtors, Nagpur. In this regard, the assessee was asked to explain this transaction. In response, the assessee has stated that the said transaction was made to Shriram

Realtors, Nagpur as consenting party. Assessee further explained that the said land was originally sold to Shriram Realtors, Nagpur in 2005-06, however, due to certain disputes, the transaction was not materialized. However, his interest was remained in the property. The statement of the Director Mr. Ramdas Bhosale, recorded on 24/03/2015, in which he has explained the nature and details of transactions with Shriram Realtors, Nagpur in detail. Considering the statement and other details, it is established that Shriram Realtors, Nagpur was having interest in the said properties, hence the payment made to Shriram Realtors of Rs.6,41,50,000/- is liable to be taxed in the hands of Shriram Realtors, Nagpur. However, the assessee could not furnish the PAN and copy of return of income, computation and Balance Sheet of Shriram Realtors, Nagpur. Hence, the transaction made to Shriram Realtors Nagpur creates suspicion. Further, a letter dtd. 13/03/2015 was written to the DIT, Unit-II Nagpur to enquire about Shriram Realtors and furnish report in this regard. Vide letter dtd. 24/03/2015, the DIT, Unit-II, Nagpur informed that Shriram Realtors, Nagpur was not available at the given address which is "Mahajan Market, Sitabardi, Nagpur". In view of the facts mentioned above, the undersigned is bound to make addition of Rs.6,41,50,000/- in the hands of the assessee on protective basis. However, assessee has been given one more opportunity to furnish the details of Shriram Realtors such as copy of Return of income, PAN, copy of Audit Report etc. If assessee could furnish these details and from verification it would found that the above mentioned transaction is duly reflected in the profit and loss of Shriram Realtors for A.Y. 2012-13, rectification order u/s 154 will be passed accordingly.

[Addition : Rs.6,41,50,000/-]

5. The above para suggests that an amount of Rs.6,41,50,000/- was made to Shreeram Realtors, Nagpur. For some reasons, Assessing Officer could not tax the same in hands of Shreeram Realtors, Nagpur. Therefore, Assessing Officer assessed the assessee for it on protective basis. It also appears that there was no substantive assessment on any person.

6. During First Appellate proceedings, the assessee contended strongly stating that the assessee is already assessed to tax so far as consideration received by Shreeram Realtors, Nagpur. Therefore, taxing the taxable income in the hands of the assessee protectively is unsustainable in law. It is also made out that the amounts were never taxed substantively in any hands leave alone in Shreeram Realtors,

Nagpur. Considering the PAN number provided by assessee about Shreeram Realtors, Nagpur, CIT(A) noted the said concern i.e. partnership firm / proprietary concern belongs to Mr. Milind Dattatray Mahajan and his complete address was also available along with the Assessing Officer. The fact about the said Shreeram Realtors, Nagpur filing the return of income for the relevant assessment year was also discussed in the part of CIT(A)'s order. Considering all the information available, CIT(A) held taxing protectively the income of Shreeram Realtors, Nagpur in the hands of assessee is not appropriate. The suspicion cannot lead to taxing of certain income of some other entities. Eventually, the CIT(A) granted relief as per discussion given in para 7 of his order.

7. The Revenue is in appeal against the order of CIT(A). The Ld. DR relied heavily on the order of Assessing Officer.

8. On the other hand, the Counsel for assessee established the facts stating that Shreeram Realtors, Nagpur is not a related or sister concern of the assessee. He is only a joint buyer and joint transferor of the land to Shreeram Realtors, Nagpur. Shreeram Realtors, Nagpur is a separate entity, it is assessed to tax and bear the distinct PAN number. Sri M.D. Mahajan is the concern person. Talking about protective assessment made on the assessee, the Counsel for assessee submitted that it is a case where there is no substantive addition at all made in any hands. In such case, the Assessing Officer's attempt to tax protectively in the hands of assessee is absolutely uncalled for, unwarranted and legally unsustainable in law.

9. On hearing both the sides and on perusal of para 6 of assessment order and para 7 of CIT(A)'s order, we find relevant to extract the relevant lines from the order of CIT(A) and the same read as under:-

"7.....

In view of this averment, the AO should not have made the protective addition of Rs.6,41,50,000/- on the ground that the appellant company had failed to provide address, PAN etc. of M/s. Shreeram Realtors. Even if these documents were not furnished then also the AO could not be taxed the amount on protective basis since the registered document bore the name of M/s. Shreeram Realtors and person who represented it, had also furnished PAN, Photo of the person signing the agreement & address which was available from the office of Sub-Registrar, Aurangabad. Thus, no tax liability could be fastened on the assessee company in respect of consideration of Rs.6,41,50,000/- directly received by M/s. Shreeram Realtors....."

10. Considering the above, we are of the opinion that taxing of said income in the hands of assessee protectively, is not proper and not appropriate legally. In our view, the relief granted by CIT(A) is fair and reasonable and the same does not call for any interference. Accordingly, ground No.1 raised by Revenue stands dismissed.

11. The second issue raised vide ground No.2 is against order of CIT(A) in allowing the written off amount as business loss. Brief facts relating to the issue are that during the assessment proceedings, the assessee had made claim for business losses. The Assessing Officer denied the same observing that the same should not be allowed as per the Income Tax Act. However, the CIT(A) relying on various judicial precedents had allowed the claim of assessee. The relevant lines of CIT(A)'s order are extracted as under:-

"9....

Respectfully following the above decision, I hold that the AO was not justified in denying the claim of advances written off of Rs.37,24,230/-. The advances were given during the course of business and had close proximity with the business activity carried on by the appellant company. It is clear that the purchase of lands and other properties could not have been undertaken without making advances prior to execution of sale

deeds. These advances were given in the regular course of business and since these were not recovered, the amount in question constituted business loss. In these facts and circumstances and respectfully following the above decisions, I direct the AO to delete the addition of Rs.37,24,230/- made by him....”

12. From the facts, it is evident that the advances given by the assessee has to be written for commercial reasons and hence, the same constitutes business loss. In view of above discussion, the relief granted by CIT(A) is fair and reasonable and the same does not call for any interference. Accordingly, ground No.2 raised by Revenue stands dismissed.

13. In the result, appeal of the Revenue is dismissed.

Order pronounced on 3rd day of September, 2019.

Sd/- (विकास अवस्थी / VIKAS AWASTHY) न्यायिक सदस्य/ JUDICIAL MEMBER	Sd/- (डी. करुणाकरा राव/ D. KARUNAKARA RAO) लेखा सदस्य/ ACCOUNTANT MEMBER
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पुणे / Pune; दिनांक / Dated : 3rd September, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-I, Aurangabad.
4. The Pr.CIT-I, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

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