

**IN THE INCOME TAX APPELLATE TRIBUNAL "G", BENCH
MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.3042/Mum/2019
(Assessment Year :2015-16)**

Mohammed Salim Yusuf 4 th Floor, Piramal Chambers, Parel, Mumbai – 400 012	Vs.	Pr. Commissioner of Income Tax -20 Mumbai
PAN/GIR No. AAKPY9942K		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashok Mehta
Revenue by	Shri B Jaya Kumar
Date of Hearing	16/09/2019
Date of Pronouncement	06/12/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3042/Mum/2019 for A.Y.2015-16 preferred by the order against the revision order of the Id. Principal Commissioner of Income Tax-20, Mumbai u/s.263 of the Act dated 15/03/2019 for the A.Y.2015-16

2. The only issue to be decided in this appeal is as to whether the Id. Pr. CIT was justified in invoking revisionary jurisdiction u/s.263 of the Act in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is an individual and he is a builder and developer. The return of income for the A.Y.2015-16 was electronically filed by the assessee on 01/10/2015 declaring total income of Rs.1,54,96,400/-. The assessment was completed by the Id. AO u/s.143(3) of the Act on 30/06/2017 determining the total income of the assessment at Rs.1,59,20,900/-. Later this assessment was sought to be revised by the Id. Pr. CIT u/s.263 of the Act on the ground that the learned Assessing Officer failed to conduct appropriate enquiries and had not examined the valuation of closing stock of properties with respect to the cost incurred by the assessee thereon. Accordingly, the Id. CIT issued show-cause notice to the assessee. In response thereto, the assessee replied that he had submitted the closing stock valuation during the course of assessment proceedings vide letter dated 27/06/2017 before the Id. AO. The assessee also pointed out before the Id. AO that it is following percentage completion method in respect of its real estate projects which has been consistently followed year after year. The details of closing stock valued as on 31/03/2015 submitted by the assessee before the Id. AO are as under:-

Particulars	Sq. Fit.	Rate	Amount
Stock of Vrindavan & Vrindavan Srishti 17800sq fit @ 1500 per sq. ft = 26700000/- 50% completed	17800	1500	13350000
Varindavan Residency (Constructed in 2008-09) Stock of unsold Properties 7000 sq. ft. @ 1000 per sq. ft.	7000	1000	7000000
Use as Site Office { Vrindavan Valley) Constructed in 2011-12 4000 Sq.ft. @ 1000 per sq.ft.	4000	1000	4000000
Vrindavan Shrishti Road usage charges			10650000
Total stock value as on 31/03/2015			35000000

3.1. The assessee submitted before the Id. Pr. CIT that the valuation of closing stock as on 31/03/2015 as tabulated supra has been the subject matter of verification by the Id. AO and hence, it cannot be said that there was a failure on the part of the Id. AO to make enquiry regarding the same.

3.2. The assessee also brought to the notice of the Id. Pr. CIT that in respect of projects in Vrindavan Residency and Vrindavan Valley, the value reflected above were the same values as were considered in the opening balance and hence, there cannot be any further costs that could be attributed to the said projects thereon.

3.3. In respect of Vrindavan Shristi Project, the sum of Rs.1,06,50,000/- was incurred towards road usage charges during the A.Y. 2015-16 and since this project is yet to be started, the actual amount spent is reflected in work in progress i.e in closing stock as on 31/03/2015.

3.4. In respect of Vrindavan Palms Project, the assessee submitted before the Id. Pr.CIT that construction was carried out in Kalyan catering to the needs of low income group population. Since the standard of living of people in that area is very low, the assessee cannot get sale price as is available in Metro cities or in main Mumbai area. The assessee submitted that the selling price of these residential properties during the F.Y.2015-16 in Kalyan area was around Rs.3000-Rs.3500/- per sq.ft. The assessee's closing stock of the project was valued by taking direct cost of construction at Rs.1500 per sq. ft considering the quality of construction and past experience of the assessee. The assessee also stated before the Id. Pr.CIT that since the said project at Kalyan had been completed at the time of 263 proceedings, the detailed cost calculation giving complete break-up of head wise expenses was submitted which cost almost matched the estimated cost of construction estimated at the time of valuation of closing stock as on 31/03/2015. Accordingly, the assessee pleaded that there cannot be any prejudice that could be caused to the interests of the revenue in the estimated valuation of closing stock by the assessee as on 31.3.2015 in respect of Kalyan Project.

4. The Id. Pr.CIT did not adhere to the aforesaid contentions of the assessee and observed as under:-

a. The claim of the assessee that project is 50% completed in respect of Vrindavan Palms at Kalyan is only self-serving and not supported by any Architect's Certificate either during the course of assessment proceedings or during the course of revision proceedings u/s.263 of the Act. The assessee has not maintained separate books of accounts for each project.

b. The assessee has considered only the direct cost for valuing the closing stock. Since the assessee being the builder, there is no concept of any direct and indirect cost and that all the costs incurred would fall under direct cost except some administrative and general expenses. The project wise bifurcation of expenses by the assessee were also not produced by the assessee.

c. Certain general and administrative expenses incurred by the assessee would be common across all the projects and hence, it takes the character of direct cost and accordingly need to be included in the valuation of closing stock thereon.

4.1. With these observations, the Id. Pr.CIT held that the Id. AO did not conduct necessary enquiry with regard to the verification of value of

closing stock with respect to cost incurred for each project and accordingly set aside the assessment by treating the same as erroneous and prejudicial to the interest of the revenue within the meaning of Section 263 of the IT Act.

5. Aggrieved, the assessee is in appeal before us.

6. We have heard rival submissions and perused the materials available on record. We find that the details of valuation of closing stock of each project has indeed been furnished by the assessee before the Id. AO during the course of assessment proceedings vide letter dated 27/06/2017, on which fact there is no dispute. We find that Id. AO had merely sought to bring to tax the notional rental income from the closing stock of un-sold flats in terms of Section 23 of the Act.

6.1. We find that in respect of Vrindavan Palms Project, which is only project which is operational as on 31/03/2015, the cost requires to be allocated. The assessee has valued this project at an estimated cost of construction at Rs.1500/- per sq. ft. This according to the assessee covers all the costs involved / incurred for this particular project as on 31.3.2015. Hence, there is no question of allocation of further costs be it direct or indirect or general / administrative expenses to the said project, while valuing the closing stock thereon. We also find from the scrutiny assessment order framed in assessee's own case for the A.Y.2014-15 u/s.143(3) of the Act dated 30/11/2016, similar valuation method adopted

by the assessee had been accepted by the Id. AO and no addition thereon was made. Revenue was not able to bring on record any evidences that the assessment for A.Y.2014-15 were subsequently subjected to any reopening u/s 147 of the Act or revision proceedings u/s.263 of the Act. Hence, it could be safely concluded that the Id. AO while framing the assessment for the A.Y.2015-16 had merely adopted the same valuation method accepted by his predecessor for A.Y.2014-15 in assessee's own case. Hence, there cannot be any error on the part of the Id. AO in framing a possible view thereon. In any case, we would like to hold that the assessee had furnished the actual cost incurred in respect of this project which had been subsequently completed, before the Id. CIT during the revision proceedings wherein, the assessee was able to prove that the estimate made as on 31/03/2015 matched closer to the actual costs incurred in the project subsequently. Hence, there cannot be any prejudice that could be caused to the interests of the revenue also as it is merely a timing difference. Hence, it could be safely concluded that the Id. AO had duly applied his mind by accepting the valuation method adopted by the assessee in respect of Vrindavan Palms at Rs.1500/- per sq.ft on an estimated basis as on 31/03/2015 on which there cannot be any interference and there cannot be any attribution of error on the part of the Id. AO. Hence, revision proceedings u/s.263 of the Act in respect of this project deserves to be quashed.

6.2. In respect of projects at Vrindavan Residency and Vrindavan Valley, the values reflected as on 31/03/2015 were carried over from the earlier years as they were completed projects and the values reflected thereon represent unsold stocks in the subject mentioned project. There need not be any further attribution of costs in respect of such project. Hence, no error could be attributed on the part of the Id. AO accepting to the said valuation made by the assessee. Hence, 263 proceedings initiated for disturbing the said valuation deserves to be quashed.

6.3. In respect of Vrindavan Shrishti Project, it is undisputed that as on 31/03/2015, the assessee had only spent on road usage charges to the tune of Rs.1,06,50,000/- and since the said project is not completed, the same value is reflected in the closing stock as on 31/03/2015. There cannot be any attribution of further costs thereon. Hence section 263 proceedings initiated for disturbing the valuation deserves to be quashed.

6.4. In view of the aforesaid detailed observations, we hold that there is no error in the order passed by the Id. AO in accepting the valuation of the assessee in respect of projects as on 31/03/2015. Accordingly, the Id. CIT had erred in exercising revision jurisdiction u/s.263 of the Act in the

facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 06/12/2019

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

**Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER**

Mumbai; Dated 06/12/2019
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