IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)

ITA No. 3384/MUM/2018
Assessment Year: 2011-12

Asstt. Commissioner of Income Tax-33(2), R. No. 608, 6th floor, Pratakshyakar Bhavan, BKC, Mumbai-400051.	Vs.	M/s Parmar Build Tech, Parmar Estate, Parekh Nagar, Swami Vevekanand School, Kandivali (W), Mumbai-400067
		PAN No. AAJFP2574F
Appellant		**Respondent**

Revenue by	:	Mr. Uodal Raj Singh, DR
Assessee by	:	None
Date of Hearing	:	26/10/2020
Date of pronouncement	:	27/10/2020

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-45, Mumbai [in short 'CIT(A)'] and arises out of assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). Though the case was fixed for hearing on 23.01.2020 and 26.10.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above dates. In view of the non-compliance by the assessee, we are

proceeding to dispose off this appeal after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. The 1st ground of appeal

Whether the Ld. CIT(A) was right in deleting the addition of Rs.2,76,07,910/-being the value of consideration received by the assessee when it was clear that substantial amounts have been received by the assessee before signing of the agreements of sale during the year.

The 2nd ground of appeal

Whether the Ld. CIT(A) was right in accepting the date of possession letters as date of sales when it was clear from the facts that major amounts have been received upon signing of sale agreements.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 30.09.2011 declaring total income of Rs.82,79,010/-. Subsequently, it revised its return of income at Rs.79,57,590/- on 31.03.2013. The assessee derives income from construction of building and industrial gala.

During the course of assessment proceedings, the Assessing Officer (AO) asked the assessee to provide a reconciliation of transactions reported in AIR information with the books of accounts and other details. In response to it, the assessee submitted various details and also a list of registered agreements for sale of immovable properties as reported in AIR statement and reconciliation of revenue recognized in the books of accounts. The assessee submitted before the AO that project completion method was followed for revenue recognition i.e. when possession is handed over to the purchaser of the properties and that out of total of Rs.4,70,70,210/- reported in AIR

information, sale receipts of Rs.1,76,02,300/- were recognized in financial year (FY) 2010-11, sale of Rs.2,61,06,912/- in FY 2011-12 and sale of Rs.15,01,000/- in FY 2012-13.

However, the AO held that the assessee was following mercantile system of accounting but deferring revenue recognition to the subsequent years and made an addition of Rs.2,76,07,910/- being the total of sales recognized by it in the subsequent two assessment years.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). During the course of hearing before the CIT(A), the assessee filed possession letters. The same being an additional evidence, the CIT(A) remanded it to the AO to verify it and send a report. After receipt of the remand report from the AO, the CIT(A) furnished a copy of it to the assessee to file its reply. The assessee filed a reply to the remand report on 07.02.2018.

Having considered the facts of the case along with the remand report submitted by the AO and reply to it by the assessee, the Ld. CIT(A) held that (i) the gross sale receipts recognized by the assessee in FYs 2011-12 and 2012-13 have been shifted by the AO to FY 2010-11 without shifting the expenditure incurred in connection with completion of the said projects, (ii) the overall effect of the assessment is that the AO has changed the accounting method regularly followed by the assessee over the years, (iii) to protect the interest of buyers, the Government of Maharashtra has passed MOFA (Maharashtra Ownership of Flats Act, 1963) and as per it unless the possession of the premises is handed over to the purchaser, as per the agreed date in the agreement for sale or within further extended period of 3 months

from the agreed date, the promoter/builder is liable for refund of amount collected from the purchaser along with interest @ 9% per annum and till the date it is not refunded, the same remains as a charge on the property of the promoter/builder/developer; therefore, a 'possession letter' is given by the builder after completion of property as per the agreement to make himself/itself clear from the obligations of agreement of sale and the MOFA ; accordingly, effectively risk of builder is transferred only when possession is handed over to the purchaser, (iv) sale is completed only when the possession is handed over to the purchaser, which is done by a 'possession letter' on which the buyer signs as an acknowledgement of receiving the flat/property as per the terms and conditions of the agreement for sale; therefore, the finding of the AO that all risks and rewards are transferred on the date of sale agreement is not correct, (v) the AO has simply gone by the AIR information of registration of agreements of sale made during the year ; the AO has not called for books of accounts and examined the same.

Holding as above, the Ld. CIT(A) further observed that in construction business the gross receipts cannot be net income, the corresponding expenditure is to be reduced to get the gross profit and examination of the accounts reveals that the assessee has carried forward part of expenditure as work-in-progress to later years and spent further the complete those projects. Considering the above facts, the Ld. CIT(A) directed the AO to delete the addition of Rs.2,76,07,910/-.

5. Before us, the Ld. DR relying on the order of the AO submits that as the assessee is following mercantile system of accounting and considering the 'agreement for sale', the AO has rightly made an addition of Rs.2,76,07,910/-.

6. We have heard the Ld. DR and perused the relevant materials on record. There is no dispute that out of total receipts of Rs.4,70,70,210/- reported in AIR information, the assessee has recognized sale receipts of Rs.1,76,02,300/- in FY 2010-11, sale receipts of Rs.2,61,06,910/- in FY 2011-12 and sale receipts of Rs.15,01,000/- in FY 2012-13.

In the instant case, the AO has simply followed the AIR information of registration of agreements of sale made during the year and held that the assessee is not entitled to defer the receipts to later years. This is not the correct way to make an assessment. The AO could have called for the books of accounts maintained by the assessee and examined it. He has not done so. There is no finding by the AO that the books of accounts maintained by the assessee are defective.

Also we find that the AO has shifted the gross sale receipts recognized by the assessee in FYs 2011-12 & 2012-13 back to FY 2010-11 without shifting the expenditure incurred in connection with completion of the said properties. The assessee is following mercantile system of accounting. In exercise of the powers conferred by sub-section (2) of section 145 of the Act, the Central Government has notified Accounting Standard I and II to be followed by all assessees following the mercantile system of accounting. It is operative from 01.04.1997. As per the said Accounting Standard I "accrual" refers to the assumption that revenue and costs are accrued, that is, recognized as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate. In the instant case, the addition made by the AO of Rs.2,76,07,910/- by shifting back the gross sale receipts recognized by the assessee in FYs 2011-

12 & 2012-13 to FY 2010-11, without shifting the expenditure incurred in connection with the completion of the said project violates the Accounting Standard I notified u/s 145(2) of the Act.

There is merit in the finding of the Ld. CIT(A) that :-

> "To protect the interests of the buyer, the Government of Maharashtra has passed MOFA (Maharashtra Ownership of Flats Act, 1963). According to the provisions of MOFA unless the possession of the premises is handed over to the Purchaser, as per the agreed date in the agreement for sale or within further extended period of three months from the agreed date, the Promoter/Builder is liable for refund of amount collected from the Purchaser along with Interest @9% p.a. and till the date it is not refunded the same remains as a charge on the property of the Promoter/Builder/Developer. Therefore, a 'Possession Letter' is given by the builder after completion of property as per agreement to make himself/itself clear from the obligations of agreement of sale and the MOFA. According to the provision of this section until the possession is handed over to the purchaser, there always exists a situation that the Builder/Developer may become liable for refund of amount received from the Purchaser. Accordingly, the effective risk of builder is transferred only when the possession is handed over to the purchaser."

In view of the above factual scenario, we uphold the order of the Ld. CIT(A) in deleting the addition of Rs.2,76,07,910/-. Thus the 1st and 2nd grounds of appeal are dismissed.

7. <u>The 3rd ground of appeal</u>

Whether the Ld. CIT(A) was right in deleting the addition of Rs.29,23,305/-being interest / premium paid on cancellation of gala by admitting fresh evidences in contravention of Rule 46A of IT Rules.

8. The AO made an addition of Rs.29,23,305/- on the reason that in the advance columns in audited accounts, the amount of cancelation of gala does not figure.

In appeal, the Ld. CIT(A) having examined the balance sheet of the assessee as at 31.03.2010 (earlier year), ledger accounts and TDS certificates, has arrived at a definite finding that the amount was repaid to the parties and tax was also deducted on the compensation/premium paid on cancellation.

A perusal of the details filed by the assessee before the AO clearly indicates that there is no contravention of Rule 46A of the Income Tax Rules, 1962 by the Ld. CIT(A).

In view of the above facts, we uphold the order of the Ld. CIT(A) and dismiss the 3rd ground of appeal.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27/10/2020.

Sd/-	Sd/-
(VIKAS AWASTHY) JUDICIAL MEMBER	(N.K. PRADHAN) ACCOUNTANT MEMBER

Mumbai;
Dated: 27/10/2020
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai