आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, सी, मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI

श्री जोगिन्दर सिंह, न्यायिक सदस्य **एवं**
श्री एन. के. बिलैय्या, लेखा सदस्य**,** के समक्ष
Before Shri Joginder Singh, Judicial Member, and
Shri N.K. Billaiya, Accountant Member

ITA NO.4498/Mum/2013
Assessment Year: 2009-10

M/s City Life Developers, 5th Floor, Agarwal Golden Chamber, Plot NO.13/A, fun Republic Road, Off New Link Road, Andheri-West, Mumbai-400053	**बनाम**/ Vs.	CIT-25, C-11, 2nd Floor, Pratyaksh Kar Bhavwan, BKC Bandra-East, Mumbai-400051
(निर्धारिती /Assessee)		(राजस्व /Revenue)
P.A. No.AADFC1252B		

निर्धारिती **की ओर से /** Assessee by	Dr. K. Shivram & Rahul Sarda
राजस्व **की ओर से** / Revenue by	Shri R.R. Prasad-DR

सुनवाई की तारीख / **Date of Hearing :**	**18/05/2015**
आदेश की तारीख /**Date of Order:**	**18/05/2015**

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 25/04/2013, of the ld. Commissioner of Income Tax, Mumbai. The only ground raised in this appeal pertains to invoking the revisional jurisdiction u/s 263 of the Income Tax Act, 1961 (hereinafter the Act). The crux of the argument advanced by Dr. K. Shivaram along with Shri Rahul Sarda, ld. counsel for the assessee is that the assessment order is neither erroneous nor prejudicial to the interest of the Revenue as the necessary details were filed before the Assessing Officer relating to the project Peace Heaven and the same were duly examined and verified by him by passing a assessment order u/s 143(3) of the Act. Thus, invoking the revisional jurisdiction is unjustified. On the other hand, Shri R.R. Prasad, ld. CIT-DR, defended the conclusion arrived at in the impugned order by submitting that the assessment order shows that there is no discussion about the correctness of method of accounting employed by the assessee as there is no whisper about the genuineness and accuracy of the profit declared by the assessee by adopting percentage completion method, consequently, the assessment was framed without examining about the method of accounting employed by the assessee for determining the income of project Agrawal Peace Heaven.

2. We have considered the rival submissions and perused the material available on record. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, we note that the assessee declared income of Rs.47,95,692/- in its return filed on 25/09/2009, which was processed u/s 143(1) of the

Act. Subsequently, the case of the assessee was selected for scrutiny under CASS, therefore, notices u/s 143(2) and 142(1) of the Act along with detailed questionnaires were served upon the assessee. The assessee attended the proceedings from time to time and filed various details called for and the case was discussed with the assessee as is evident from page 1 onwards of the assessment order itself. In the assessment order, we find that the facts have been elaborated as the assessee under took three projects namely (a) Agarwal Trinity Tower at Orlem Church at Malad West, Mumbai, (b) Agarwal Hill View at Vasai East, Thane, and (C) Agarwal Peace Heaven at Vasai East, Thane. The project at Agarwal Trinity Tower was consisting of 27 flours which was completed in assessment year 2008-09 and the stock of unsold flats were sold during the year by claiming deduction u/s 80IB(10) of the Act. The project was Agrawal Hill View was consisting of three wings of four stories, each were also completed during the year and no deduction was claimed u/s 80IB(10) of the Act. The project namely Peace Heaven, consisting of ten wings of seven stories each of which the work was in progress for which the assessee offered income on percentage completion method. The assessee showed loss of Rs.1,02,86,173/- from the project Agrawal Trinity Tower and loss of Rs.36,53,108/- from the project Peace Heaven and a profit of Rs.1,68,39,377/- from project Hill View. The project at Trinity Tower was shown as eligible for deduction u/s 80IB(10). There is a discussion in the assessment order that claim u/s 80IB(10) was disallowed for earlier years i.e.

2004-05 to 2008-09 on the basis of discussion and finding made in the assessment order for assessment year 2005-06, as originally the commencement certificate was issued in the name of M/s Dhruv Construction to develop wings A, B and C, however, in respect of wing C, the assessee entered into a joint venture agreement dated 18/11/2003 and became a joint developer along with M/s Dhruv Construction. We find that the ld. Assessing Officer has made an elaborate discussion of facts by placing reliance upon various decisions of higher authorities. We note that the ld. Assessing Officer has taken one of the possible view, more specifically, when the Tribunal upheld the decision of the ld. Commissioner of Income Tax (Appeals) holding the assessee as a joint developer along with M/s Dhruv Construction. No appeal was filed by the Department against the decision of the Tribunal. Even, no contrary decision has been mentioned more specifically when the assessment was framed, the decision from a higher forum was available before the Assessing Officer. The ld. Assessing Officer has also made discussion about other disallowances in the assessment order along with other details and computation of total income as is evident from page-6 of the assessment order.

2.1. We also note that before the assessment was framed, the facts were duly examined in a detailed manner by the Assessing Officer as scrutiny assessment proceedings were carried out in the present case. Assessment order u/s 143(3) of the Act was passed after detailed enquiry/explanation and discussion by the Assessing Officer.

Due discussion has been made in the assessment order with respect to Peace Heaven Project and the assessee consistently followed the same method which was accepted in earlier years after making a detailed enquiry as is evident from various pages of the paper book like notice u/s 142(1), reply to the notice by the assessee, audit report, note in the audit report, details of inventory in Agarwal Peace heaven project and the Assessing Officer has made specific recording about the construction in progress and percentage completion project method adopted by the assessee. In view of these facts, it is clear that the assessment is neither erroneous nor prejudicial to the interest of the Revenue. The case of the assessee find supports from the decision in CIT vs Escorts Ltd. 338 ITR 435 (Del.), Spectra Shares and Scrips Pvt. Ltd. vs CIT (2013) 354 ITR 35 (AP)(HC), CIT vs Advance Construction Company Pvt. Ltd. 275 ITR 30 (Guj.)

2.2. So far as, the contention of the ld. Commissioner and also of the ld. CIT-DR that no discussion has been made in the assessment order with respect to correctness of method of accounting and assessment was passed without due enquires, we note that rather necessary details called for, due discussion was made and the facts were duly scrutinize, thus, the ratio laid down by Hon'ble jurisdictional High Court in Idea Cellular Ltd. vs DCIT & Ors. (2008) 301 ITR 407 (Bom.) and CIT vs Fine Jewellery (India) ltd. (2015) 372 ITR 303 (Relevant page 307) to the fact that mere non-mention of an issue in assessment order after calling for details does not mean lack of enquiry if the details were called for and examined. We find that before the assessment order was passed the ld. Assessing Officer made a detailed enquiry and on being satisfied with the explanation offered by the assessee and then framed the assessment, therefore, there is no question of alleging that the issue was not examined. One of the possible view, taken by the ld. Assessing Officer, thus, the decision in CIT vs Max India Ltd. 295 ITR 282 from Hon'ble Apex Court, CIT vs Bina Indra Kumar (2015) 370 ITR 552 along with the case in CIT vs Grasim Industries Ltd. (2014) 226 taxman 165 from Hon'ble jurisdictional High Court supports the stand of the assessee. In view of the discussion, we find that the assessment order is neither erroneous nor prejudicial to the interest of revenue, therefore, we allow the appeal of the assessee and reverse the stand of the ld. Commissioner of Income Tax.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 18/05/2015.

Sd/-	***Sd/-***
(N.K. Billaiya)	(Joginder Singh)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य** / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/05/2015

Shekhar, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.

p4. आयकर आयुक्त / CIT(A)- , Mumbai

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**