

Vikas Developers Vs. Asstt. Cit

Vikas Developers Vs. Asstt. Cit

SooperKanoon Citation : sooperkanoon.com/70625

Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Aug-10-1999

Reported in : (2004)86TTJ(Mum.)273

Appellant : Vikas Developers

Respondent : Asstt. Cit

Judgement :

The assessee is a partnership firm, engaged in the business of construction and developers. In this appeal, we are concerned with the block period relevant to the assessment years 1986-87 to 1996-97.

On 8-2-1996, there was a search of the business premises of the assessee as well as the residence of the partners. On the basis of the documents and the materials collected during the search, a notice under section 158BD was served on the assessee calling upon it to file a block return. In response thereto, the assessee filed a return declaring Nil income for the block period. Thereafter the assessment proceedings were set in motion and the income for the block period up to the date of the search was determined at Rs. 21,19,883. This was considered as the undisclosed income of the assessee and charged at the rate of 60 per cent.

In ground Nos. 4 to 6 the assessee challenges the entire addition of Rs. 21,19,883. The addition has been made on the basis of the following facts. The assessing officer noticed that the assessee had booked residential flats as well as shops in its project known as Brindavan Apartments, Kalyan West. The

agreements for sale entered into between the assessee and the purchasers were seized during the search. These agreements disclosed sale rates which varied between Rs. 397 and Rs. 612 per sq. ft. for residential flats and Rs. 520 and Rs. 1,012 per sq.

ft. for commercial shops. The assessing officer was of the view that considering the market rate, it would be appropriate to adopt a rate of Rs. 600 per sq. ft. in respect of residential flats and Rs. 1,000 per sq. ft. in respect of commercial flats. He, therefore, called upon the assessee to furnish why such rates should not be adopted in the assessment. The assessee pointed out that the sales are supported by agreements which were seized during the search and, therefore, they must be taken to depict the true state of affairs and, therefore, there was no scope for any addition. It was also pointed out that the rates fixed by the State Government for purposes of stamp duty was Rs. 300 per sq. ft. for residential buildings and Rs. 375 per sq. ft. for commercial shops and considering this the rates at which the assessee booked space were very reasonable. It was also submitted that there was no material unearthed in the course of the search to show that the assessee received anything more than what was stated in the agreements with the purchasers.

The assessing officer did not accept the assessee's explanation.

Commenting that there was a steep variation in the rates charged even amongst the various customers of the assessee for which there was no explanation, he made an addition of Rs. 21,19,883, taking Rs. 600 per sq. ft. in respect of residential flats and Rs. 1,000 in respect of commercial shops. The difference between these rates and those mentioned in the agreements was treated as undisclosed income of the assessee for the block period.

We have heard the rival contentions. It is not the case of the revenue that there was some material or document unearthed during the search which disclosed any on money transactions between the assessee and its customers. In fact no such material has been found during the search.

The agreements which were seized during the search disclosed varying rates no doubt, but there is no material to show that the assessee received anything more than what was shown in the agreements. The assessing officer, in such circumstances, was not justified in arbitrarily adopting Rs. 600 per sq. ft. in respect of residential flats and Rs. 1,000 per sq. ft. for commercial shops and arriving at the undisclosed income on that basis. The assessing officer had summoned the purchasers and recorded statements from them which are placed at pp. 171 to 176 of the paper book. They have confirmed that they did not pay anything more than the price shown in the agreements.

The assessing officer also recorded the statements of buyers of an adjacent project constructed by M/s J.K. Builders but these rates were also found to be comparable to the rates at which the assessee sold the flats and shops. These statements are placed at pp. 177 to 181 of the paper book. In the absence of any evidence or material to show understatement of the sale consideration, applying the judgment of the Supreme Court in the case of K.P. Varghese v. Income Tax Officer (1981) 131 ITR 597 (SC), we delete the addition.

The learned Departmental Representative drew our attention to pp. 67 and 70 of the paper book to show that even amongst the assessee's customers, the assessee had charged differing rates in the same project. This may be due to various reasons. For example, Pradip Poddar has booked a flat at Rs. 513 per sq. ft., whereas Ashok Karpe has booked at the rate of Rs. 405 per sq. ft. The bookings were done within a month of each other. But we find that in the case of Karpe the amount was to be paid immediately whereas in the case of Pradip Poddar, he was allowed to pay the amount over a period of time. This possibly accounts for the difference in the rates. Mangala Patil who took a flat on 21-11-1991, about six months earlier to Pradip Poddar, has had to pay Rs. 497 per sq. ft. In both the cases the flats are in the second floor back side. This strengthens our view that if the payment is to be made in one lump sum immediately on booking, the assessee gave a substantial reduction in the rate. Similarly, in the case of shops also though the assessee charged different rates, the difference was due to certain features such as the location of the shop, etc. For example, in the case of Urvi Construction it has booked a shop in the front side of the building, in the

corner with an extra door at the back. The rate was Rs. 701 per sq. ft., whereas in the case of Shakarkar who booked a shop around the same time, the same was booked at the rate of Rs. 521 per sq. ft. because the shop was in the back side and there was a RCC pillar right in the middle of the shop and the shop was also of lesser height due to drainage. Thus, the assessee charged different rates even amongst its customers for certain valid reasons. Further, the rates to some extent also depend on the bargaining power of the customers and the gravity of their need for housing. These are all the factors which go into the fixation of the rate.

The learned Departmental Representative then pointed out that the assessee did not explain the difference in the rates cogently before the assessing officer. But at p. 49 of the paper book we find a letter dated 6-2-1998 written by the assessee to the assessing officer in response to the assessing officer's letter dated 19-1-1998, wherein he proposed to adopt the rate of Rs. 600 per sq. ft. for residential flats and Rs. 1,000 per sq. ft. for commercial shops. Apart from that, the assessee has also submitted another explanation vide letter dated 10-2-1998, which is at p. 52 of the paper book. Further, the assessee has addressed a detailed letter with necessary enclosures to the CIT, Thane,. containing representations against the draft assessment order.

Thus, it is not factually correct to say that the assessee has not furnished any explanation in the course of the assessment proceedings.

8. The learned Departmental Representative further pointed out that the assessee has not maintained proper books of account and, therefore, the profits have to be estimated as held by the Supreme Court in the case of CIT v. British Paints India Ltd, (1991) 188 ITR 44 (SC) and, therefore, the assessing officer was right in adopting estimated rates of sale. This is a case where a search has been carried out and the assessment is sought to be made under Chapter XIV-B which makes special provisions for search cases. The idea is to make an assessment of the true profits on the basis of the materials found during the search. If no materials are available, then the assessee's case has to be accepted. In the present case, as already noted, there is no evidence unearthed during the search showing any on money payments or understatement of consideration. Even in such a case it

cannot be contended that an addition on estimated basis can be made. We are, therefore, unable to accept the contention of the learned Departmental Representative.

For the aforesaid reasons, we delete the addition of Rs. 21,19,883 and allow the grounds.

Ground Nos. 1 to 3 are to the effect that the order passed under section 158BD is bad in law. Certain legal contentions were also raised in support of the grounds but in the view we are taking on the merits of the addition, there is no need to examine the correctness of the same.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com