

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
" B" BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER  
And  
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 2180/AHD/2018

निर्धारण वर्ष/Asstt. Year: 2010-2011

M/s. Karan Realty Pvt. Ltd., Nirav Complex, Nr. Navrang High School, Navrangpura, Ahmedabad.  <b>PAN: AAACK6178Q</b>	Vs.	Income Tax Officer, Ward-2(1)(2), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by	:	Shri Mehul K. Patel, A.R
Revenue by	:	Ms. Saumya Pandey Jain, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **24/08/2023**

घोषणा की तारीख /**Date of Pronouncement**: **08/09/2023**

**आदेश/ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income tax (Appeals)-2, Ahmedabad, arising in the matter of assessment order passed under s. 144 r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2010-2011.

2. The assessee has raised the following grounds of appeal:

1. The learned ITO as well as learned CIT(A) has erred in law and on facts while not considering that the appellant company has received none of the notices issued by the learned A.O., the said fact has also been mentioned by the learned A.O. in the assessment order itself wherein it has been stated that the notices were returned as not known. Accordingly, the order passed by the learned A.O. is unjustified and against the principles of natural justice and equity which was not considered by the learned CIT(A).

**II. ADDITION ON ACCOUNT OF CASH DEPOSIT IN BANK ACCOUNT - RS. 16,19,500/-.**

1. The learned ITO as well as learned CIT(A) has erred in law and on facts while not considering that the complete bank statement of Bank of Maharashtra was available with the learned A.O. and from the same it could be very well verified that there are also cash withdrawals from the same bank account and the same are sufficient to mitigate the cash deposited. However, even though the same details were available in record with the learned A.O., the learned A.O. over looked the same and rushed to make the addition.

2. The learned ITO as well as learned CIT(A) has erred in law and on facts while not considering the various case laws submitted in the course of appellant proceedings.

**III. ADDITION ON ACCOUNT OF CAPITAL GAINS - Rs. 1,63,13,039/-.**

1. The learned ITO as well as learned CIT(A) has erred in law and on facts while not considering how the learned A.O. has increased the figures of addition for sale of immovable property from the ITD data base details for Rs. 1,55,79,706/- to Rs.1,63,13,039/- as per the show cause notice and also not noted that the company alongwith other companies has acquired as land in equal share and the appellant company alongwith other co-owner companies have entered into joint development agreement for the development of the **said** property. It is also to be noted that the appellant company along with the other co-owner companies has appointed the project consultant DESAI BUILDERS PVT LTD. and as per the terms of the agreement with the understanding that the co-owner shall execute and implement the project on no profit no loss basis and surplus or deficit if any on completion of the scheme shall belongs to the project consultant Desai Builders Pvt. Ltd. only.

2. The learned (TO as well as learned CIT(A) has erred in law and on facts while not considering the various case laws submitted in the course of appellant proceedings.

The appellant, reserves its right to add, amend, alter, substitute or modify all or any of the grounds stated hereinabove as the facts and circumstances of case may justify.

3. The assessee vide later dated 19-08-2023 has also raised the additional ground of appeal which is reproduced as under:

*That, without prejudice to the main ground that no income is taxable in the hands of the appellant, without prejudice, it ought to have been held that the gross amount of sales proceeds of Rs.1,63,13,039/- is not taxable, but only a reasonable amount of Gross Profit ought to be taxed as business income of the appellant.*

4. The assessee in the first ground of appeal challenged the validity of assessment order passed under section 144 r.w.s. 147 of the Act.

5. At the outset, the learned AR for the assessee before us submitted that he was directed by the assessee not to press the issue raised in the impugned ground of appeal challenging the validity of the assessment. Hence, the ground raised by the assessee is hereby dismissed as not pressed.

6. The next issue raised by the assessee in ground No. 2 is that the learned CIT(A) erred in confirming the order of the AO by sustaining the addition of ₹ 16,19,500/- representing the cash deposit in the bank account as undisclosed income.

7. The AO during the assessment proceedings found that the assessee has deposited cash in its bank account amounting to ₹16.19 lakhs, the source of which was not explained. Therefore, the AO treated the same as undisclosed income and added to the total income of the assessee.

8. Aggrieved assessee preferred an appeal to the learned CIT(A).

9. The assessee before the learned CIT(A) submitted that there was cash withdrawal from the bank which has been utilized for the purpose of the deposits in the bank. As such, there was sufficient cash balance available in the hands of the assessee which was withdrawn from the bank before depositing the same in the bank account. Therefore, it was contended by the assessee that the same cannot be treated as undisclosed/unexplained income of the assessee.

10. However, the learned CIT(A) disagreed with the contention of the assessee on the reasoning that there was no documentary evidence produced by the assessee suggesting that the cash deposited in the bank account was the same which was withdrawn from the bank on the earlier occasion. The learned CIT(A) also observed that the assessee has also not filed the cash book in support of his contention. Thus, the learned CIT(A) confirmed the order of the AO.

11. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

12. The learned AR before us filed a paper book running from pages 1 to 271 and repeated the contentions as made before the learned CIT(A). The learned AR has also filed a chart demonstrating the cash withdrawal from the bank justifying the cash deposited in the bank account of the assessee.

13. On the contrary the learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. Undeniably, the learned CIT(A) in his order has admitted that there was a cash withdrawal from the bank before depositing the same in the bank account of the assessee. None of the authorities below has pointed out that the cash withdrawn from the bank has been utilized by the assessee for any other purpose. In the absence of such finding, an inference can be drawn that the cash withdrawn from the bank was available with the assessee for the deposit in the bank account. Accordingly, we are of the view that the cash deposited by the assessee in the bank account cannot be treated as unexplained /undisclosed income of the assessee. Thus, we set aside the finding of learned CIT(A) and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

15. The next interconnected issue raised by the assessee in ground number 3 and additional ground of appeal is that the learned CIT(A) erred in confirming the addition made by the AO for ₹1,63,13,039/- as income under the head capital gain.

16. The AO during the assessment proceedings found that the assessee has sold an immovable property for an amount of ₹1,63,13,039/- only. However, the assessee during the assessment proceedings has not filed any piece of evidence about the sale of the property. Accordingly, the AO treated the entire amount of ₹1,63,13,039/- as income under the head capital gain and added to the total income of the assessee.

17. Aggrieved assessee preferred an appeal to the learned CIT(A)

18. The assessee before the learned CIT(A) submitted that it has purchased the property along with 2 other co-owners in the earlier years. The assessee along with the co-owners, by entering a joint development agreement with 2 other co-owners, agreed to develop the property under the name "Galleria Tulip". It was also agreed among all the parties that assessee shall be solely responsible to carry out the development activity and it will also record all the cost to be incurred for such development of the project, once the project will be developed then the same will be allocated among all the parties in equal proportion. Likewise, the assessee until the completion of the project will classify development cost as capital work in progress.

19. Subsequently, the assessee along with co-owners entered into an agreement with a project consultant namely Desai Builders Pvt Ltd vide dated 07<sup>th</sup> June 1995 who was responsible for collecting the booking amount from the customers. After collecting the booking amount from the customer, the consultant was to reimburse the actual cost to all the co-owners. Accordingly, it was submitted by the assessee that all the co-owners were working on no profit and no loss basis. Accordingly, it was submitted by the assessee that the question of having any profit out of such development of the project does not arise.

20. The assessee further submitted that in the event of any profit is attributed to the assessee then the gross amount cannot be made subject to the addition in the hands of the assessee. As such it is the only element of profit embedded in such project can only be brought to tax.

21. However, the learned CIT(A) observed that as per the information available on record, the assessee is the actual seller of the immovable property. Likewise, no prudent businessman will develop the project on no profit and no loss basis. The learned CIT(A) further observed that it was the onus upon the assessee to furnish the cost of the property along with the development cost, but the assessee failed to furnish the same with the supporting documents. Therefore, the learned CIT(A) confirmed the order of the AO.

22. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal by before us.

23. The learned AR before us submitted that the entire amount of sale consideration cannot be added to the total income of the assessee. As per the learned AR, the amount received by the assessee for ₹1,63,13,039/- represents the business receipts. Therefore, at the most only the profit embedded in such business receipts can only be added to the total income of the assessee.

24. On the other hand, the learned DR vehemently supported the order of the authorities below.

25. We have heard the rival contentions of both the parties and perused the materials available on record. It is the settled position of law that the gross amount does not represent the income of the assessee. In the present case, there is a sale of the immovable property for ₹1,63,13,039/-crores as evident from the order of the authorities below. It is implied that the assessee before selling such property must have incurred the cost on the acquisition of such property. Even the

assessee doesn't furnish the details of the purchases, that does not mean that the revenue got the authority to make the additions of the gross amount representing the sale consideration. The income tax authorities are empowered under section 131(1)/133(6) of the Act to carry out necessary enquiries. In other words, the revenue could have easily obtained the information from the property office about the cost incurred by the assessee. But the revenue has not done so.

25.1 In addition to the above, we also note that the assessee has developed the project on the impugned land which has also not been disputed by the revenue authorities. Thus, it can be inferred that the assessee to develop such project must have incurred the cost, without which it was not possible to develop the property. The assessee has also shown capital work in progress in its balance sheet consistently which also proves the contention of the assessee. In such facts and circumstances, we are of the view that the gross amount as observed by the authorities below cannot be made subject matter of addition in the hands of the assessee.

26. The next controversy arises whether the income on the sale of property should be made subject to the addition under the head business and profession or capital gain. From the conduct of the assessee, it is noticed that the assessee was in the process of developing the project which is possible to carry out in a systematic manner. Thus, it is not a case that the assessee purchased the property as an investment which was sold in the subsequent year. As such the property was sold by the assessee after carrying out the development activity on such project. For the purpose of booking of the units of the development projects, the assessee has also appointed a consultant namely Desai Builders Pvt Ltd. vide agreement dated 7<sup>th</sup> June 1995. Thus, if all these activities are seen cumulatively, it emerges that the assessee was carrying out the business activities. Thus, the income in the given case has to be calculated under the head business and profession.

26.1 The next controversy arises how to estimate the profit on the sale of the project developed by the assessee. There is no standard formula to estimate the profit in the given case and circumstances. However, some element of guesswork is required to estimate the reasonable profit of the assessee. We have also seen the financial statements of the assessee where he has shown capital work in progress year after year starting from the financial year 2001-02 to 2008-09 and capital work in progress in the balance sheet ending as in 31<sup>st</sup> March 2009 shown at Rs. 2,82,49,407/- only. However, in the given case, the sale price is less than the capital working progress.

26.2 Be that as it may be, we find that in various judicial pronouncements involving similar facts and circumstances, the profit has been estimated around 10% on such issues. In this regard, we find support and guidance from the order this Tribunal in case of M/s Greenfield Reality Pvt Ltd in IT(SS) No. 289/Ahd/2018 wherein the profit was estimated to the tune of 8% of gross receipt. Thus, we are of the view that an estimation of 10% of ₹ 1,63,13,039/- would render justice to the assessee and the revenue. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to make the addition to the income of the assessee for ₹16,31,300/- under the head business and profession. Hence, the ground of appeal filed by the assessee is hereby partly allowed.

27. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the Court on 08/09/2023 at Ahmedabad.**

**Sd/-  
(T.R SENTHIL KUMAR)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated **(True Copy)**  
08/09/2023  
*Manish*