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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 853 OF 2015

Commissioner of Income Tax – 2. … Appellant
Versus
Millennium Estates Private Ltd. …Respondent

Mr. Suresh Kumar, for the Appellant.
Mr. S. Sriram, with Mr. B.M. Jhaveri, for the Respondent.

CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.
DATED: 30TH JANUARY 2018

PC:-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 16 May 2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 16 May 2012 is in respect of Assessment Year 2007-08.

2 The Revenue urges the following question of law for our consideration:

> *"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was correct in holding that income in respect of sale of flats accrued when possession of the flat was given and not when allotment letter was issued?"*

3. The Respondent carries on business as a contractor and developer. During the scrutiny proceedings for the subject Assessment Year, the Assessing Officer found that an amount of Rs.2.43 Crores was shown under the head current liabilities i.e. as advances received from it buyers as under:-

Sr.No.	Name of Buyer	Advance Received
1	M/s.Siddhi Vinayak Securities Pvt. Ltd.	Rs.1.23 Crores
2	M/s. Radhika S.Gaekad	Rs. 10 lakhs
3	M/s. Manomay Estates Pvt. Ltd	Rs.90.75 lakhs

The Assessing Officer did not accept the contention of the Respondent – Assessee that the aforesaid amounts from M/s. Siddhi Vinayak Securities Pvt. Ltd. and M/s. Manomay Estates Pvt. Ltd. were received as advance at the time of allotment on 14 & 15 March 2007 and that further consideration was received on 1 April 2007, when the possession of the flats was given, thus chargeable to tax in the next Assessment Year. The Assessing Officer by assessment order dated 16 December 2003 passed under Section 143 (3) of the Act added the aggregate amount of Rs.2.14 received from M/s. Siddhi Vinayak Securities Pvt. Ltd and M/s. Manomay Estates Pvt. Ltd. as accrued income in the subject Assessment Year.

4. Being aggrieved, the Respondent carried the issue in appeal to the Commissioner of Income Tax (CIT (Appeals). The CIT (Appeals) by an order dated 18 October 2010 dismissed the Respondent's Appeal.

5. On further Appeal, the Tribunal by the impugned order allowed the Respondent's appeal. This after being examined all the clauses of the allotment letter as well as the clauses of the possession letter concluding that the sale of the flats took place only in the subject Assessment Year i.e. on 1 April 2007 i.e. when the possession of the flats was given and the balance amount was paid. The accrual of income took place in the next year. Till then, the amount of Rs.2.15 Crores was only in the nature of advances. The Tribunal also records the fact that it was not the case of the Revenue that the possession letter dated 1 April 2007 was not genuine. Nor has the Revenue brought on record any evidence to show that the possession was given to M/s. Siddhi Vinayak Securities (P.) Ltd. and M/s. Manomay Estates (P.) Ltd. prior to 1 April 2007. In the above view the addition of Rs.2.14 Crores made by the Assessing Officer and upheld by the CIT (Appeals) was deleted. Moreover the impugned order of the Tribunal also records the fact that in the next Assessment Year, the Respondent

has offered the income of Rs.2.14 Crores on the sale of the flats to M/s. Siddhi Vinayak Securities Pvt. Ltd. and M/s. Manomay Estates Pvt. Ltd. to tax. The same has also been accepted by the Revenue as taxable income for the next Assessment Year.

6. The grievance of the Revenue as submitted by Mr. Suresh Kumar is that the sale of the flats under consideration had in fact taken place on 14 and 15 March 2007 when they were allotted under an allotment letters to M/s. Siddhi Vinayak Securities Pvt. Ltd. and M/s. Manomay Estates Pvt. Ltd. In support he invites our attention to clause 8 of the allotment letters which read as under:-

> "*Clause 8 : We hereby confirm that upon us handing over the possession of the said premises to you, all charges in connection with the electricity water and gas etc consumed by you in the said premises shall be borne by you directly as per meter reading.*

Therefore, it is submitted that deletion of Rs.2.14 Crores from the income for the subject Assessment Year is not warranted.

7. We find that the impugned order of the Tribunal has reproduced the relevant clauses of the allotment letter dated 15 March 2007 which is similar to the allotment letter dated 14 March 2007 and the relevant clause referred to therein as under:-

> *"Clause 5:- The said premises has one living room, one dining room, kitchen and 3 bed rooms with attached bathrooms as per building plan produced before you. One parking place in the basement of building will be provided for the use of occupant of said premises. The premises will be handed over to you in all respect before 31 March 2008.*
>
> *Clause 10:- You shall be required to make the said payment of the total consideration of Rs.1,23,75,000/- (One crore twenty three lac seventy five thousand only) to us as under:*
> *i) Rs.1,19,75,000/- (Rs. One Crore Nineteen lacks Seventy Five Thousand only) as earnest money on or before issue of this Letter of Allotment.*
> *ii) Rs.4,00,000/- (Rs. Four lakhs only) or or before handing over of the possession.*
> *Total : Rs.1,23,75,000/-.*
>
> *We further confirm and acknowledge the receipt of Earnest Money of Rs.1,19,75,000/- (Rupees Nineteen Lacs Seventy Five Thousand Only) paid to us on 15 March 2007.*
>
> *Clause 11: Subject to your making the said balance payment of Rs.4,00,000/- (Rupees Four lacs only) to us, as aforesaid, a deed of sale / conveyance document for transferring all our rights in context of the said premises in your favour will be prepared and the same shall be registered with the appropriate Sub register of Assurance for effective transfer of title in your favour."*

Further the impugned order of the Tribunal also reproduces the letter of possession dated 1 April 2007 given by the Respondent to buyer, which reads as under:-

> *Clause 9:- We hereby also confirm, that as of date, we have received total consideration amount of Rs.1,23,75,000/- payable by you to us towards allotment of the said residential premises in your favour. You are*

> *requested to append your signature on a copy of this letter in confirmation of all the above recited facts."*

8. On the basis of the above clauses, the truth / correctness of which was not disputed before the Tribunal, it was held that the amount of Rs.2.14 Crores was an advance during the subject Assessment Year. It thus held that part of the above amount had accrued as income during the Assessment Year 2007-08.

9. From the above clauses of the allotment letter and clause 9 of the possession letter referred to by the Tribunal it is very evident that the possession of the flats was given on receipt of total consideration only on 1 April 2007. Clause 8 of the allotment letter which is been relied upon by the Revenue does not in any manner indicate that possession was given on 15 March 2007. It only states that the electricity and other charges in respect of the flat being sold to two buyers would be borne by the buyers after the possession of the two flats are handed over to buyers. It does not even remotely suggest that the responsibilities for payment of charges in respect of the said flat was on the buyer from the date of the allotment. This coupled with the fact that the Tribunal records as a matter of fact that there is no dispute about the genuineness of the letter of possession dated 1 April 2007. Moreover, no statement of the buyers or other evidence, even

circumstantial in nature, was brought on record to indicate that the facts are different from what has been recorded in the possession letter dated 1 April 2007. In the aforesaid facts, the view taken by the Tribunal on the self evident terms of allotment and possession letter does not give rise to any substantial question of law.

10. It must also be borne in mind that the aforesaid amount which is being sought to be brought to tax in the subject Assessment Year 2007-08 has been offered to tax as income by the Respondent in the next Assessment Year. It is not the case of the Revenue that there are circumstances to indicate that by bringing the said transactions to tax in the next Assessment Year instead of this, there is likely to be a loss to the Revenue. In fact the impugned order of the Tribunal has relied upon the decision of this Court in ***CIT Vs. Nagri Mills Co. Ltd*[1]*.*** and in that context reproduced the decision of Delhi High Court in ***CIT Vs. M/s. Vishnu Industrial Gases P. Ltd.*[2]** as under:-

> *"In this reference relevant for the Assessment Year 1982-83 under Section 256(1) of the Income Tax Act, 1961, the following question of law has been referred for our opinion:-*

1 33 ITR 681.

2 ITR No.229/1988 dated 6th May 2008, (Delhi).

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee had correctly charged to its Profit and Loss Account for the assessment year 1982-83, the expenditure on account enhanced rate of purchase of gas for the period 1.7.79 to 15.9.80?"

2. A perusal of the question referred indicates that the dispute is only about the year of taxability and not the amount which is to be taxed.

3. In a decision rendered about 50 years ago, the Bombay High Court, speaking through Chief Justice Tendolkar in Commissioner of Income Tax, Delhi, Ajmer, Rajasthan and Madhya Pradesh Vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681 observed as follows:-

"We have often wondered why the Income tax authorities, in a manner such as this where the deduction is obviously a permissible deduction under the Income tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have

> *thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the reference that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."*
>
> *4. The situation does not seem to have changed over the last fifty years and the Revenue continues to agitate the question whether tax is leviable in a particular year or in some other year. This is hardly a question that should require us to exercise our minds particularly since there is no doubt that the tax has been paid and the rate of tax remains the same for both the assessment years."*

11. The above observation apply will equal force to the present facts. In view of the above, the question as framed does not give rise to any substantial question of law. Thus not entertained.

12. Accordingly, ***Appeal dismissed***. No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**