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

INCOME TAX APPEAL(IT) NO. 166 OF 2017
WITH
INCOME TAX APPEAL(IT) NO. 226 OF 2017
WITH
INCOME TAX APPEAL(IT) NO. 240 OF 2017
WITH
INCOME TAX APPEAL(IT) NO. 244 OF 2017
WITH
INCOME TAX APPEAL(IT) NO. 245 OF 2017
WITH
INCOME TAX APPEAL(IT) NO. 346 OF 2017

Pr. Commissioner Of Income Tax, Central – 2 ...Appellants
V/S
M/s Arth Housing Development Pvt. Ltd. ....Respondent

…....

- Mr.Suresh Kumar, Advocate for Appellant.
- Ms.Aatifa Khan i/b. Niraj Punmiya, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 15th APRIL, 2019.

P.C. :

1. In these Appeals following common question arises;

"Whether on the facts and in the circumstances of the case and in Law the Hon'ble ITAT was justified in holding

that the year of taxability of the undisclosed receipts is not the year of receipt but as per returns filed by the assessee u/s 153A of the I T Act, 1961?"

2. The Respondent-Assessee was engaged in development of real estate. Assessee was subjected to search in seizure action. During search assessee admitted certain undisclosed income and also filed the return of income pursuant to the search. In the returns the assessee also disclosed the same amount of income, but shifted the year of earning such income as per its method of accounting and also claimed expenditure in relation to such additional receipts. The Assessing Officer and CIT (Appeals) objected to such method, upon which the issue eventually reached the tribunal. The tribunal in the impugned judgment ruled in favour of the assessee making following observations;

"7. We have carefully considered the rival submissions. The short point involved before us relates to the year of taxability of the undisclosed receipts of business found during the course of search. Section-4 of the Act prescribes charge of income tax on the total income of the previous year of an assessee and section-5 of the Act

postulates the scope of such total income. Notably, the income chargeable under the head 'profits and gains of business or profession' is liable to be computed in accordance with method of accounting prescribed under section 145 of the Act. Therefore, the income chargeable to tax for any particular assessment year under the head 'profits and gains of business or profession' is computed as per the methodology of accounting prescribed in section 145 of the Act. In the present case assessee company is engaged in the business of development of real estate properties and is declaring income from such business on the basis of a particular methodology, which has been accepted in the course of regular assessments. The assessee company declares profit based on certain percentage (6 or 7%) of the expenses incurred on a project during the year plus balance profit of the project which is completed during year, which is computed by matching the sales/revenues with the costs incurred. Thus, the profit declared by the assessee under the head 'profits and gains of business or profession' is a combination of a percentage of expenses incurred on the on-going projects plus the balance of the profit of projects completed during particular year. The methodology of accounting is not disputed by the Revenue. So however, the dispute relates to assessing of income in relation to *such undisclosed receipts of business, which were found in the course of search and were not declared in the regular books of account. Notably, in so far as the nature of such unrecorded receipts is concerned, there is no dispute between the assessee and the Revenue. Both sides agree that the undisclosed receipts found during the course of search are a part and parcel of the business of the assessee of developing real estate properties. In this factual background, in our view, the same methodology ought to be adopted to assess income embedded in such undisclosed receipts, as has been accepted by the Revenue in the regular assessments. No doubt, at the time of search assessee offered income from such undisclosed receipts in the respective years of receipt, which was a departure from the regular methodology of computing, income accepted by the Revenue. Notwithstanding the aforesaid, in the returns of income filed in response to the notices issued under section 153A of the Act for the captioned assessment years, the assessee-company declared income from such undisclosed receipts as per the regular methodology accepted by the Revenue in the regular assessments. The stand of the Assessing Officer, in our view, leads to an inherent contradiction in the final assessment because the resultant income would be a mix of two methodologies. Firstly, the resultant income* *contains income from business computed on the basis of regular methodology and secondly, income in relation to undisclosed receipts of the same business, which is assessed on receipt basis. To obviate such inherent contradiction, in our view, assessee-company had rightly asserted at the time of filing of returns of income under section 153A of the Act that the income from undisclosed receipts be also computed as per the regular methodology accepted by the Revenue in the past. Therefore, on this aspect we uphold the plea of the assessee. "*

3. According to tribunal's observations, thus it can be seen that the view of Assessing Officer would lead to contradictions, since the assessee's income would be based on two different methodologies. First would be income arising out of computation on the basis of regular methodology and the second would be in relation to the income on receipt basis. The tribunal therefore accepted that the declaration of the assessee in the returns filed post search, to avoid such contradictions the income had to be recognized as per the assessee's regular methodology. No question of law therefore arises.

4. We notice that in some of the Appeals, two additional questions arise which are with respect to the deletion of the protective assessment since substantive assessment was confirmed and the benefit of telescoping granted by the CIT Appeals which was confirmed by the tribunal. Both issues are based entirely on facts. No question of law arises.

5. In the result the Income Tax Appeals are dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**