

Date: 21-12-2018

From:

Silver oak Realty
5-4-187/3 & 4, 2nd floor,
Soham Mansion, M.G Road,
Secunderabad – 500003.

To:

Income tax Officer,
Ward 10(3)/Hyd
IT Towers, A.C Guards
Hyderabad.

Sir/Madam,

Sub: Income tax assessment proceedings-own case-PAN ACXFS3783R – Asst. year 2016-17.

Ref:(i) Your Show Cause Notice (SCN) dated 18-12-2018.

(ii) Your Show Cause Notice (SCN) dated 20-12-2018.

We invite your attention to the above SCN's. The above SCN's have been issued in connection with the I.T assessment proceedings. The scrutiny assessment proceedings are initiated vide Notice u/s 143(2) dated 25/07/2017.

Vide SCN dated 18-12-2018 -you have asked us to furnish certain information and also our observations to and replies to a detailed SCN. The same was to be furnished by 20-12-2018. In reply, we have submitted part of the information on 20-12-2018 itself and we have sought a very short time of 3 days (upto 24-12-2018) to furnish the balance information and replies/objections to your SCN. We have given the reasons as to why the time is sought and we feel that the request for time is made on reasonable and genuine grounds.

Our this request for time is restricted to one day time vide your SCN dated 20-12-2018. It has been stated that the time is granted for submission of information up to 21-12-2018 by 5:30pm and failing which the assessment shall be completed basing on the merits of the case. We are of the view that this goes against the principles of natural justice.

We understand from the first notice u/s 143(2) dated 25-07-2017 that the ROI filed by us on 14-10-2016 has been selected for Scrutiny under Limited Scrutiny (Computer Aided Scrutiny Selections).



The said notice have identified following issues for examination:

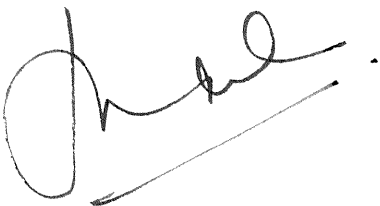
- (i) Whether the share capital is genuine and from disclosed sources.
- (ii) Whether value of consideration for computation of capital gains has been correctly shown in the return of income.

During the Asst. Year 2016-17 there is a sale of land for a consideration of Rs.1,20,00,000/- .We understand that due to this transaction the Computer Aided Scrutiny Selections (CASS) has identified the issue for examination.

In this regard you have sought information from time to time vide notices u/s 142(1). In response we have also furnished the required information. In brief, the following has been submitted:

- i. The sale of land (16.5 Gts) is under a Registered Agreement of sale dated 31-03-2016(.
- ii. The sale consideration agreed is Rs.1,20,00,000/-
- iii. The land purchased was under a Registered Sale Deed document no.1759/2006 dated 27-01-2006.
- iv. The brief description of the land sold is Survey No. 34, Cherlapally Village, Ghatkesar Mandal, RR District and is admeasuring 16.5 Gts.
- v. The cost of the land based on the above documentary evidence works out to Rs.8,16,100/- as follows. The total cost is Rs.25,71,850/- (Basic amount-23,50,000 + Registration cost-2,21,850) and is for Ac 1.12 Gts (which is equal to 52 Gts). The proportionate cost for 16.5 Gts is Rs.8,16,067/- (Rs.25,71,850/52*16.5 Gts). The same is rounded off to Rs.8,16,100/-.
- vi. The land sold, was held as inventory since the date of its purchase i.e., F.Y. 2005-06 till the date of sale.
- vii. The firm is engaged in the business of real estate developers.
- viii. The land is sold to one of the firm's partner MPPL in the normal course of its business.
- ix. The sale proceeds of Rs.1,20,00,000/- has been credited to Construction Account and the cost of sales of Rs.8,16,100/- has been deducted from the carrying value of the inventories. Thus the value of consideration and consequent profits thereon got correctly computed and disclosed.
- x. Since we are engaged in the business of real estate developers and the land sold was held as inventory, the resultant income got correctly declared as Business Income.

With our above submissions, which are facts and supported by verifiable documentary evidences proves beyond any iota of doubt that the value of consideration of sale of land has been correctly shown in the return of income. Thus, it fully satisfies the basic issue which was identified for taking up Limited scrutiny under CASS that whether the value of consideration has been correctly shown.



Certain issues/information as given hereunder which has been asked for and raised in SCN's and notices u/s 142(1) in the course of Limited Scrutiny assessment, in our view, is beyond the scope of and jurisdiction under Limited Scrutiny Proceedings.

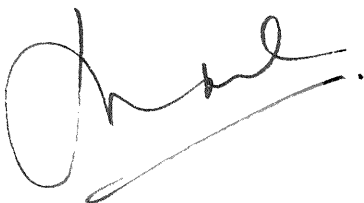
- i. To furnish the reasons / purposes for which the agricultural land admeasuring 16.5 Gts was sold to M/s. Modi Properties & Investments Pvt Ltd.
- ii. Bifurcation of Gross Profit between sale of land and sale of Homes.
- iii. Raising an issue with regards to low GP on sale of houses.
- iv. Proposing to reject the Books of accounts u/s 145(3).
- v. Proposing to make assessment u/s 144 adopting GP rate of 15.65% as against the audited results.
- vi. Seeking justification for administration and other overhead expenditure of Rs.1,23,11,643/- which are debited to Profit and Loss account.
- vii. Seeking details and method of computing value of inventories.
- viii. Despite submission of all the relevant information and documents to take a view that profit on sale of land were not fully disclosed and it is an afterthought submission. It has been further stated in SCN that the assessee has diverted its profits earned on sale of houses towards the profit on sale of land and is not acceptable.
- ix. To furnish ledger copy of Religare loan CC-1 and CC-2.

In the back drop of above issues being raised and asked to reply and justify on such issues, it is our submission that the scope of Limited Scrutiny is being expanded. We feel aggrieved by the 'fishing and roving enquires' being made under a Limited Scrutiny Selection. This is not in line with the CBDT instructions issued from time to time on the scope and guidelines to be followed under a limited scrutiny proceedings. We have not received any letter/ notice extending the scope of scrutiny from 'Limited Scrutiny' to a 'Complete Scrutiny' in terms of the guidelines issued by CBDT.

It may be noted that our case is being selected for scrutiny year upon year in the past few years and we have never ever not co-operated in furnishing all the information that were required and asked for while making assessments u/s 143(3).

This time also we have been furnishing the information and replies time to time. Due to hard pressed for time due to other cases that came up for final hearings and taking out details of old years of F.Y 2005-06 onwards we have requested for a very short time of three (3) days. This request got rejected and restricted for only for one day time. Further, Shri. Soham Modi, the key person in the Modi group of entities has planned to travel abroad from 22-12-2018 and therefore is required to attend other pressing and urgent day to day business activities and plans before his departure. For reference his travel tickets and visa is attached **Annexure-1**.

Nevertheless, it will be our endeavor to submit the balance information and objections/ replies to your SCN dated 18-12-2018 at the earliest and in any case before 24-12-2018.



Without prejudice to our objections with regard to scope and jurisdiction, under Limited Scrutiny assessments, further information to the extent which could be compiled today is furnished hereunder.

1. Details in respect of 16.5 Gts :

We would like to give our submissions broadly dividing the issue on two aspects namely, whether the land sold during the year formed part of inventory from the date of its acquisition or not and the year wise value of land inventories.

1.1. Submissions with regard to inclusion in inventory :

- a) During the previous year relevant to AY 2006-07 there was a purchase of land at Cherlapally which is grouped as Phase III.
- b) The purchase of land is under 4 registered documents. The details of the same giving brief description of the property and its cost is given in **Annexure-2 to 2.4.**
- c) The total cost as can be gathered from Annexures above aggregated to Rs.1,23,60,055/-. This amount is declared as inventory in the Balance Sheet and Construction Account as on 31-03-2006. The details whereof have been submitted earlier vide our letter dated 11-10-2018 as Annexure-2.
- d) Thus land of 16.5 Gts is beyond doubt that it formed part of inventory since its purchase.
- e) The brief details of Phase IV land in Sy. Nos. 44 & 45 is as under.

The total extent of land in Phase IV is admeasuring Ac. 2-18 Gts. This land was originally purchased by Bhatt family by Sale Deed no. 7875/2006 dated 25-05-2006 (**Annexure-3**) and Parekh family by sale deed no. 7876/2006 dated 25-05-2006 (**Annexure-4**). Mehta & Modi Homes had exhausted their resources and invited investors for purchasing additional land with a view to take it on joint development from such investors. However, for personal reasons the Bhatt family was not interested in continuing with the said proposal and agreed to sell Ac. 1-09 Gts., to the firm. The firm had purchased vide document no. 9268/2007 (**Annexure-5**). The Parekh family continued with the earlier arrangement and have received 4 villas (354, 355, 358 & 359) as their share of villas in lieu of Ac. 1-09 Gts owned by them. Phase IV was merged with Phase III in books of accounts as building permit for Phase III and Phase IV was combined for a total of 103 villas. For your kind perusal, the building sanction plan is attached as **Annexure-6**. It will be evident that the sanction is for lands in Sy.No's 31,40(P),41(P),42,44,45 and 55 of Cherlapally Village. Thus, land in Sy. No's 44 and 45 which was part of an inventory as a separate line item in the books of account has also formed part of Phase III project only.



- f) Accordingly, in the AY 2015-16, the above fact was realized that Phase IV land is also part of Phase III project and necessary transfer of land from Phase IV to Phase III has been effected in the land inventory list. At the same time a parcel of land of 16.5 Gts which was forming part of Phase III group was taken out and shown separately as land 16.5 Gts in the inventory list as there was no possibility of developing of such a small piece of land and further acquisition was ruled out. All these accounting rectification exercise is only a regrouping from one group to another and is on the basis of factual matrix. The fact remains that the said land was always a part of inventory since FY 2005-06 i.e., the year in which the same got purchased.
- g) The layout plan of Phase III projects is attached herewith which clearly comprises of the land in Sy.No 44 & 45, which was grouped as Phase IV land in inventory list. **Annexure-6 as above.** The schematic plan for land of 16.5 Gts has already been submitted to you earlier.
- h) In support of our above fact, we are attaching herewith one sample Sale Deed copy (**Annexure-7**). wherein, in the description of the property, Sy. No 44 and 45 is also included.

1.2. Submissions with regard to Year wise value of land inventory :

- a) Land of 16.5 Gts is purchased under Doc No.1759/2006. The total cost for this document is Rs.25,71,850/- and is for Ac 1.12 Gts (which is equal to 52 Gts). The proportionate cost for 16.5 Gts is Rs.8,16,067/- (Rs.25,71,850/52*16.5 Gts). The same is rounded off to Rs.8,16,100/-.
- b) Further in FY 2007-08, there is a purchase of land in the same vicinity in Sy. No 44 and 45 under Doc No.9268/2007 dated 31-07-2007. The extent of land purchased is Ac-1.09 Gts. The total cost is Rs. 3,023,685 (25,00,000+5,23,685). This land is grouped as Phase IV. There was further land cost incurred of Rs. 5,93,900/- in the FY year 2008-09. Thus the aggregate value of Rs. 36,17,585/- has been carried as inventories as Phase IV land.
- c) In SCN, the following inventory value has been tabulated :

Opening Balance as on 01-04-2014	Rs.41,31,848/-
(Less): Land Value of sales declared flats tr. To construction account	(Rs.37,74,218/-)
Balance Land available	Rs.3,57,630/-



Transfer from Phase-IV <i>on account of land 16.5 guntas</i>	Rs.36,17,585/-
Closing value as on 31-03-2015	Rs.39,75,215/-
(Less): Land value of 16.5 Guntassy.No 44 & 45	Rs.8,16,100/-
Balance land	Rs.31,59,115/-

The text above in italics bold is emphasized by us for the reason that the same is not our submission that the transfer from Phase IV is on account of land 16.5 Gts . Thus to this extent the same is factually incorrect. However for the deletion of Rs.8,16,100/-, there has been a typographical error in our submissions that it is for Sy. No 44 & 45 instead of 34, 40 & 41. The land of 16.5 Gts is purchased under Doc.No 1759/2006.

- d) As submitted above, the land grouped as Phase IV and distinctively considered as one of the items of inventory was actually a part of Phase III project and hence was required to be added to the opening value of the inventory of Phase III. In your above tabulation, you have attempted to deduct first the land value of sales declared flats and formed a view that there is a discrepancy in stocks for the reason that the balance land available is Rs.3,57,630/-. Further, in your tabulation, an addition of Rs.36,17,585/- has been made stating as transfer from Phase IV on account of land 16.5 Gts. In fact, the addition is only for transfer from Phase IV and not on account of land 16.5 Gts as stated by you.
- e) Your view that the land in Phase III got exhausted and in order to cover up the discrepancy in the stock of land the firm has transferred the land held in Phase IV to Phase III during the year 2014-15 is not correct keeping in view the above factual submissions.

1.3. Other Submissions :

- a) It is pertinent to note that it is not the case that the said land was never shown in inventories up to AY 2015-16 as stated by you. Further, there is no discrepancy in the stock of land and therefore just the regrouping done cannot be stated to be an exercise to cover up the discrepancy as viewed by you.

2. Submissions on Gross Profit (GP) :

- a) The firm has been estimating gross profit margin of 15%/10% till the project is completed/houses are delivered or ready to be delivered. For this year the combined gross profit is 15.65%.In SCN, you have bifurcated the GP and sales



turnover into sale of land and sale of houses. The turnover for sale of house is arrived by you at Rs.7,23,87,210/- and the GP thereon is arrived at Rs.20,08,580/- which constitutes about GP of 2.77%.

- b) The gross profit appears to be low on sale of houses is mainly due to the reason that in Phase VII, there is a loss for the year on account of the estimated gross profit declared in earlier years is higher than the actual profits. The Phase wise GP has been for FY 2015-16 has been submitted vide our letter dated 10-12-2018 as Annexure-1 referred therein. For Phase II the GP is 10%, for Phase III it is 10.14% and for Phase VII GP is loss is (2.37%). The net effect is low GP of 2.77%.
- c) We have already submitted that the GP is to be looked on a total of all the sales including the sale of land which is part of a inventory sales. Keeping this in view, the GP is 15.65% which we submit is reasonable.
- d) The year wise gross profits on the above phases i.e., Phase II,III& VII is being compiled and we request time to submit the same by 24-12-2018.

3. Justification of expenditure of Rs.1,23,11,643/- :

- a) In this regard we have furnished the reason and justification for the indirect expenditure incurred vide our letter dated 03-11-2018 and we reiterate our submissions. Further, segmenting and bifurcating the gross profit so as to say that against gross profit of Rs.20,08,580/- the firm has claimed indirect expenditure of Rs.1,23,11,643/- is not correct. The gross profit actually is Rs.1,31,92,480/- and not only Rs.20,08,580/-. Further every expenditure incurred may not directly result into profit making activity but nevertheless the expenditure are wholly and exclusively incurred for the purposes of the business.
- b) Due to certain resource constraints and market conditions, the firm could not explore the full potential to develop an undertake construction activities in other phases of land. Nevertheless, the firm was required to maintain its office and other administrative staff and incur other overheads to remain in the business.
- c) At present, the firm now has adequate resources to develop the balance portion of Phase IX land and is therefore maintaining a full-fledged office for expanding its business. The turnover expected from phase IX sales is upward of Rs. 50 crores. In the firm's judgement maintaining a full-fledged office is necessary and justified to fulfil its long term plans. It hopes to substantially increase the scale of its business as the market conditions at the moment are very conducive.



4. Disclosure of profits on sale of land :

- a) It has been stated in SCN that the profit on sale of land were not disclosed fully. This is factually incorrect as the sale proceeds of Rs.1,20,00,000/- towards sale of land is fully credited to construction account and profits are determined accordingly. There is no afterthought or any diversion of profits earned as stated in SCN. The profits earned are properly and adequately declared without any diversion or an afterthought submission. All our previous records properly reveals the inventory position.

5. Submissions on rejection of books of accounts :

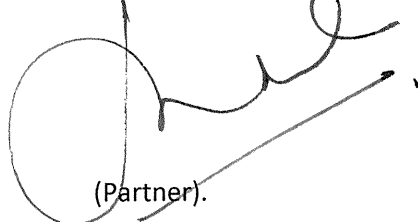
- a) It is proposed in the SCN to rework the profits rejecting the book results invoking the provisions of section 145(3) of IT Act. The only ground for rejection of book results appears to be that of low gross profit on sale of houses. The low GP is arrived based on bifurcating and segmenting the GP on sale of land and houses. As submitted earlier, we are into the business of real estate developers and for us, the profit derived on sale of land and on sale of houses is a combined profit and hence we look at the combined profits. The book results in totality reflects a gross profit @ 15.65% which is reasonable and hence do not call for rejection of audited book results.

We once again request you to grant us time till 24-12-2018 to submit the remaining information such as year wise and Phase wise GP, certain Sale Deeds and JDA copies for Phase IV land details, to give further reply/objections if any, to your SCN dated 18-12-2018.

We will appreciate your reply to our view and objections to various issues raised by you and the scope and jurisdiction for proceedings under Limited Scrutiny.

Yours faithfully,

For Silver Oak Reality



(Partner).