

(2024) 06 KL CK 0155

In the High Court Of Kerala

Case No : Other Tax Revision Nos.105, 106 & 107 Of 2019 & 3 Of 2020

DLF Home Developers Limited

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 10-06-2024

Acts Referred:

Kerala Value Added Tax Act, 2003 — Section 2(I), 2(li), 2(lv), 2(xliii)
Kerala Value Added Tax Rules, 2005 — Rule 10, 10(2)(b)

Citation : (2024) 06 KL CK 0155

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Syam Kumar V.M., J

Bench : Division Bench

Advocate : G.Sivadass, Syed Peeran, Karthik S. Nair, Prabhakaran P.M,
V.K.Shamsudheen

Final Decision : Disposed Of

Judgement

D r. A.K. Jayasankaran Nambiar, J.

1. As all these revisions involve a common issue, they are taken up for consideration together and disposed by this common judgment. O.T.Rev.No.105 of 2019 pertains to M/s. DLF Home Developers Limited for the assessment year 2009-10 under the Kerala Value Added Tax Act [hereinafter referred to as the 'KVAT Act']. O.T.Rev.Nos.106 of 2019 and 107 of 2019 pertain to M/s. DLF Southern Towns (P) Limited for the assessment year 2008-09 and 2009-10 respectively under the KVAT Act. The aforesaid three O.T.Revisions have been preferred against a common order of the Kerala Value Added Tax Appellate Tribunal dated 10.07.2019. O.T.Rev.No.3 of 2020 pertains the M/s. DLF Home Developers Limited for the assessment year 2007-08 and impugns the order dated 25.09.2019 of the KVAT Appellate Tribunal.

2. The brief facts necessary for disposal of the O.T. Revisions are as follows:

The petitioners are Limited Companies engaged in the activity of developing residential projects and selling fully constructed flats. In the Apartment Buyer's

Agreement that they entered into with various customers, they stipulated a price for the work undertaken by them which included a component representing the value of the undivided share in the land and building. For undertaking the construction activities for the customers, the petitioners engaged the services of independent contractors/sub-contractors. These contractors in turn procured goods/materials on their own and duly discharged the applicable VAT on the payments received by them from the petitioners for the work undertaken by them. The petitioners in turn deducted the applicable tax under the KVAT Act from the payments made to their contractors.

3. To maintain the quality of construction, the petitioners used to supply major components such as steel, cement etc. to the contractors on free of cost basis. The petitioners were therefore under the belief that they were merely engaged in the sale of finished apartments and had not entered into any agreement for construction with the prospective customers, and that therefore, they would not be liable to pay any tax on works contract under the KVAT Act. They therefore did not charge any VAT on the advances received by them from their customers and also filed nil returns with their respective Assessing Authorities under the KVAT Act.

4. Show cause notices were therefore issued to the petitioners proposing to reject their returns and to determine their taxable turnover on best judgment basis and to levy VAT at the applicable rates on the consideration received by the petitioners from their customers by treating the transactions as works contracts. After considering the replies preferred by the petitioners against the proposals in the show cause notice, the Assessing Authority confirmed the demand of tax as applicable to works contract on the petitioners. In the appeals preferred by the petitioners against the said assessment orders, the petitioners did not get any relief, and hence, it is that the petitioners are before this Court through these Revision Petitions, impugning the order of the Appellate Tribunal that confirmed the demand of VAT against them.

5. In the Revision Petitions before us, the petitioners raise the following questions of law:

(A) Whether the Hon'ble Tribunal was right in disregarding the contention of the petitioner, that in absence of machinery to exclude value of land from the 'taxable turnover' under the K-VAT Rules, the levy of tax on the sale of flats remain unenforceable, on the ground that lacunae in the provision or inadequacy of provision has to be redressed by appropriate legal forum ?

(B) Whether the Hon'ble Tribunal was right in disregarding the decision of the Hon'ble Supreme Court in the case of CCE vs. Larsen and Toubro, 2015 (39) STR 913 (SC) and the decision of High Court in case of Suresh Kumar Bansal vs UoI, 2016 (43) STR 3 (Del) which categorically held that in absence of statutory mechanism to ascertain measure of tax, in composite contracts involving sale of land, tax cannot be imposed ?

(C) Whether the Hon'ble Tribunal was right in disregarding the decisions of the Punjab and Haryana High Court in case of CHD Developers vs State of Haryana, 2015 (81) VST 344 (P&H) and Dhingra Jardine Infrastructure Pvt. Ltd vs State of Haryana, 2017 (101) VST 34 (P&H) where it was held in the context of pari materia provisions that in the absence of machinery provisions to provide for manner of taxable turnover, though the levy as such cannot be disputed, it remains unenforceable ?

(D) Whether the mode of valuation of 'works contract' under Rule 10 of the KVAT Rules, insofar as applicable to construction contracts, have to be read in the manner that meets the criteria laid down by the Hon'ble Supreme Court in case of Larsen and Toubro vs State of Karnataka, (2013) 65 VST 1(SC) ?

(E) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in upholding the deduction towards land cost at only 5% of the contract receipt, which is contrary to the material available on record and the deductions allowed by department for earlier years ?

(F) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in holding that the assessing authority was justified in resorting to determining taxable turnover as per Rule 10 (2)(b) of the K-VAT Rules in absence of production of books of accounts ?

G) Whether in the facts and circumstances of the case, the Hon'ble Tribunal was right in upholding the demand of VAT on the works contract beyond the value of the goods transferred therein only on the ground that books and accounts were not produced ?

6. We have heard Sri.G.Sivadass, the learned senior counsel duly assisted by Sri.Syed Peeran, the learned counsel on behalf of the petitioners herein, as also Sri.V.K. Shamsudheen, the learned senior Government Pleader for the respondent State.

7. The contentions advanced on behalf of the petitioners by the learned senior counsel is essentially twofold. It is his submission that in the absence of a machinery provision in the KVAT Rules that provides for the exclusion of the value of land from the total turnover, for the purposes of determining the taxable turnover, the levy of tax on the sale of apartments, by treating the same as a works contract, cannot be enforced. He places reliance on the following decisions namely; Commissioner of C. Ex. & Cus., Kerala v. Larsen & Toubro Ltd. - [2015 (39) S.T.R. 913 (SC)], Suresh Kumar Bansal v. Union of India - [2016 (43) S.T.R. 3 (Del.)], CHD Developers Limited v. The State of Haryana and Others - [(2015) 81 VST 344 (P&H)] and M/s Dhingra Jardine Infrastructure Pvt. Ltd. v. The State of Haryana and Others - [(2017) 101 VST 34 (P&H)]. As an alternate contention, the learned senior counsel would point out that, at any rate, the deduction granted by the Assessing Authority towards value of the land included in the amounts collected from the customers of the apartments, could not be restricted to an amount equivalent to 5% of the contract receipt as was

done by the Assessing Authority in O.T.Rev.Nos.105, 106 and 107 of 2019, especially when, for the assessment year 2007-08, the Assessing Authority had, in O.T.Rev.No.3 of 2020, allowed a deduction of 22.5% of the contract receipt as deduction towards value of land by adopting an entirely different methodology.

8. Per contra, it is the submission of Sri.V.K.Shamsudheen, the learned Government Pleader, that the impugned orders of the Appellate Tribunal do not require any modification. It is, in particular, pointed out that it was solely on account of the fact that the petitioners/assesseees had not produced documents to separately show the value of the undivided share in land in the properties which had been transferred to the purchaser of the apartments, that the Assessing Authority was constrained to determine the value of the land on best judgment basis and grant deduction of the said value while computing the taxable turnover of the works contract. He contends that inasmuch as the value of the undivided share in the land is not contemplated for inclusion in the definition of 'turnover' of the works contract, the Rules providing for deduction for the purposes of computation of taxable turnover do not need to specifically deal with the value of the undivided share in the land. He therefore prays for a dismissal of the O.T.Revisions.

9. On a consideration of the rival submissions, and on a perusal of the pleadings in these cases, we find that it is not in dispute that the petitioner companies were not maintaining trading accounts while undertaking the work of construction of residential apartments for their customers. It was under these circumstances that the Assessing Authority found it difficult to ascertain the actual expenses incurred by the petitioner companies for executing the works contracts. Furthermore, the petitioner companies had a specific case that the amounts received by them from their customers included a portion that represented the value of the undivided share of land, the ownership of which had passed to the customer along with the constructed apartment. The Assessing Authority accordingly allowed a deduction from the total contract receipts towards the value of the undivided share of land and then granted a further deduction of 25% towards labour and establishment charges incurred as contemplated under Rule 10(2)(b) of the KVAT Rules, and thereafter fixed the taxable turnover. A deduction was also allowed in respect of the turnover on which the sub-contractor had paid tax by relying on the Form 20H produced by the petitioner companies.

10. The case of the petitioner companies in these revision petitions is essentially that in the absence of any provision in the KVAT Rules for deduction of the value of the undivided share of land, the charging provision for taxing works contract that had an inbuilt component of land value, had to be seen as inoperable. Persuasive though the said argument may appear at first blush, we find ourselves unable to accept the same. The statutory provisions relating to the levy of tax on works contract, and the computation of taxable turnover for the purposes of the levy under the KVAT Act and Rules are as follows:

Kerala Value Added Tax Act

Section 2 (xliii)

(xliii) "sale" with all its grammatical variations and cognate expressions means any transfer whether in pursuance of a contract or not of the property in goods by one person to another in the course of trade or business for cash or for deferred payment or for other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge;

Explanation IV: A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract shall be deemed to be a sale.

Section 2 (li)

(li)

"total turnover" means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-state trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of goods into the territory of India;

Section 2 (l)

(l) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed;

Section 2 (lv)

(lv)

"works contract" includes any agreement for carrying out for cash or for deferred payment or other valuable consideration the construction, fitting out, improvement, repair, manufacture, processing, fabrication, erection, installation, modification or commissioning of any movable or immovable property;

6. Levy of tax on sale or purchase of goods.-

(1) Every dealer whose total turnover for a year is not less than ten lakhs rupees and every importer or casual trader or agent of a non-resident dealer, or dealer in jewellery of gold, silver and platinum group metals or silver articles or contractor or any State Government, Central Government or Government of any Union Territory or any department thereof or any local authority or any autonomous body [or any multi-level marketing entity, their distributor and / or agent engaged in multi-level marketing] whatever be his total turnover for the year, shall be liable to pay tax on his sales or purchases of goods as provided in this Act. The liability to pay tax shall be on the taxable turnover, -

(a) xxxxxxxx xxxxxxxx

(b) xxxxxxxx xxxxxxxx

(c) xxxxxxxx xxxxxxxx

(d) xxxxxxxx xxxxxxxx

(e) in the case of transfer of goods involved in the execution of works contract where transfer is in the form of goods, at the rates specified for such goods in clause (a) or (d) above, as the case may be;

(f) In the case of transfer of goods involved in execution of works contract, where the transfer is not in the form of goods, but in some other form, at the rate of 14.5 % and when the transfer is in the form of goods at the rates prescribed under the respective Schedules.

Kerala Value Added Tax Rules

10. Determination of taxable turnover

(1) In determining the taxable turnover, the amounts specified in the following clauses shall, subject to the conditions specified therein, be deducted from the total turnover of the dealer: -

xxxxxxx xxxxxxxxxxxx

(2) (a) In relation to a works contract in which transfer

of property takes place not in the form of goods but in some other form, the taxable turnover in respect of the transfer of property involved in the execution of works contract shall be arrived at after deducting the following amount from the total amount received or receivable by the dealer for the execution of the works contract such as;

(i) labour charges for the execution of work,

(ii) charges for planning and designing and the architect's fee

(iii) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract, or where the machinery is owned by the contractor, the interest paid on any loan taken for the purchase of the machinery;

(iv) cost of consumables used;

(v) cost of establishment and overhead charges of the dealer to the extent it is relatable to the supply of labour and service;

(vi) profit earned by the dealer to the extent it is relatable to supply of labour and services:

(vii) all amounts paid to the sub-contractors registered under the Act, as consideration for execution of works contract whether wholly or partly,.

Subjected to the conditions that no such deduction shall be allowed unless the dealer claiming deduction, produces a certificate in Form No.20H, and an authenticated copy of the invoice issued by such sub-contractor.

PROVIDED that notwithstanding anything contained in clause

(a) when the turnover arrived at after deducting the amounts mentioned in clause (a) falls below the cost of goods transferred in the execution of works contract, an amount equal to the cost of the goods transferred in the execution of works contract together with profit, if any, shall be the taxable turnover in respect of such works contract.

Explanation.- For the purpose of the proviso, 'cost of goods' means the price of goods together with all expenses incurred by the contractor in bringing the goods to the work site.

(b) Where the actual turnover in relation to a works contract, in which the transfer of goods takes place not in the form of goods but in some other form, is not ascertainable from the books of accounts of the dealer or where the dealer has not maintained any accounts, the total turnover in respect of such works contract shall be computed after deducting labour and other charges as given in the Table below from the total amount of contract.

TABLE

Sl.

No.

Type of works contract

Labour or other charges as a Percentage of the value of the works contract

(1)

(2)

(3)

1

Electrical contracts

20

2

All structural contracts

30

14

All other contracts

Explanation.- No deduction as per the above Table shall be allowed out of the total contract amount for the supply and installation of any machinery, equipment or any other system, where the goods involved are transferred in the "knocked down" condition (unassembled form) and assembled and installed, and the skill and labour employed for installation is only incidental to the supply of such goods.

11. It can be seen from the statutory provisions referred above that while the charging section [Section 6 of the KVAT Act] specifies the rate of tax applicable to the works contract in question, the determination of the turnover on which the tax is to be levied, at the said rate, is to be in the manner prescribed under the KVAT Act and Rules. The Scheme for determining the taxable turnover under the KVAT Rules is to begin with the total amount received or receivable by the dealer for the execution of the works contract and then deduct therefrom the amounts expressly mentioned in Rule 10(2)(a) of the KVAT Rules. The formula in the Rules is thus for the purposes of determining the taxable turnover pertaining solely to the transfer of goods involved in the execution of the works contract. What is significant, however, is that in the said statutory formula, there is no reference either expressly or by implication to the value of the undivided share in the land, the ownership of which is transferred to the customer separately. In determining the value of the goods transferred during the execution of the work undertaken, the value of the underlying land has simply no relevance under the Scheme of the taxing Statute which seeks to tax only the goods transferred in the course of that work. It is therefore that the Rules do not mention the land value while enumerating the deductions for the purposes of computation of taxable turnover. It would be useful in this context to refer to an analogy. If one had to determine the value of an element 'A' by deriving it from the composite value of a mixture containing four elements 'A', 'B', 'C' and 'D' that is stored in a container, one would start by determining the composite value of the mixture of elements ['A', 'B', 'C' and 'D'] and reduce therefrom the individual value of the other elements namely 'B', 'C' and 'D'. In any event, the value of the container would not enter into the formula either for determining the composite value of the mixture or for reckoning the deductions therefrom. Thus, in a situation where, as under the KVAT Act and Rules, there is no contemplation of inclusion of the land value in the value of the works contract undertaken, the absence of a machinery to exclude such land value from the total turnover so as to arrive at the taxable turnover, cannot be seen as rendering the machinery provision under the KVAT Rules unworkable. We are of the view that it was for the petitioner companies to have provided the turnover relatable to the works contract undertaken by them, by reducing the portion attributable to the undivided share of land from the amounts received by them from the customers, and then arrive at the taxable turnover by applying the formula under Rule 10.

12. While on this issue, we might add that we are not impressed with the

argument of the learned senior counsel, relying on the provisions of the Maharashtra Value Added Tax Rules and the Haryana Value Added Tax Rules. It will be seen from a perusal of those Rules, which are extracted herein below, that they contained specific provisions to deal with situations where the contract value declared contained an inbuilt component of land value which therefore had to be excluded while computing taxable turnover, in the manner provided under those Rules. The aforementioned Rules may now be noticed:

MAHARASHTRA VALUE ADDED TAX RULES, 2005

58. Determination of sale price and of purchase price in respect of sale by transfer of property in goods (whether as good or in some other form) involved in the execution of a works contract.

(1) The value of the goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract may be determined by effecting the following deductions from the value of the entire contract, insofar as the amounts relating to the deduction pertain to the said works contract:-

- (a) labour [service tax collected separately and service charges] for the execution of the works;
- (b) amounts paid by way of price for sub-contract, if any, to sub-contractors;
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;
- (e) cost of consumables such as water, electricity, fuel used in the execution of works contract, the property in which is not transferred in the course of execution of the works contract;
- (f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;
- (g) other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property;
- (h) profit earned by the contractor to the extent it is relatable to the supply of said labour and services:

PROVIDED that where the contractor has not maintained accounts which enable a proper evaluation of the different deductions as above or where the Commissioner finds that the accounts maintained by the contractor are not sufficiently clear or intelligible, the contractor or, as the case may be, the Commissioner may in lieu of the deductions as above provide a lump sum deduction as provided in the Table below and determine accordingly the sale price of the goods at the time of the said transfer of property.

TABLE

Sl.

No.

Type of works contract

Amount to be deducted from the contract price (expressed as a percentage of the contract price)

(1)

(2)

(3)

1

Installation of plant and machinery

Fifteen per cent.

5

Civil works like construction of buildings, bridges, roads, etc.

Thirty per cent.

15

Any other works contract

Twenty five per cent

Note : The percentage is to be applied after first deducting from the total contract price, [the cost of land determined under sub-rule (1A) and then,] the quantum of price on which tax is paid by the sub-contractor, if any, and the quantum of tax separately charged by the contractor if the contract provides for separate charging of tax.

(1A) In case of a construction contract, where along with the immovable property, the land or, as the case may be, interest in the land, underlying the immovable property is to be conveyed, and the property in the goods (whether as goods or in some other form) involved in the execution of the construction contract is also transferred to the purchaser such transfer is liable to tax under this rule. The value of the said goods at the time of the transfer shall be calculated after deduction the cost of the land from the total agreement value.

The cost of the land shall be determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, as applicable on the 1st January of the year in which the agreement to sell the property is registered:

PROVIDED that, deduction towards cost of land under this sub-rule shall not exceed 70% of the agreement value.

PROVIDED that, after payment of tax on the value of goods, determined as per this rule, it shall be open to the dealer to provide before the Department of Town Planning and Valuation that the actual cost of the land is higher than that determined in accordance with the Annual Statement of Rates (including guidelines) prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995. On such actual cost being proved to be higher than the Annual Statement of Rates, the actual cost of the land will be deducted and excess tax paid, if any, shall be refunded.

HARYANA VALUE ADDED TAX RULES, 2003

25. Computation of taxable turnover

(1) A VAT dealer who wishes to make any of the following deductions from his gross turnover shall, when so required by an assessing authority, produce before it the documentary evidence in support thereof as mentioned against each, namely:-

(2) In case of turnover arising from the execution of a works contract or job work, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract and shall exclude-

(i) the charges towards labour, services and other like charges; and

(ii) the charges towards cost of land, other charges relatable to land, if any, paid to the Government or its agency, subject to the dealer maintaining proper records such as invoice, voucher, challan or any other document evidencing payment of above referred charges to the satisfaction of the taxing authority.

(3) For the purpose of clause (i) of sub-rule (2), the charges towards labour, services and other like charges shall include:-

(i) labour charges for execution of works;

(ii) charges for planning and architect's fees;

(iii) cost of consumables such as water, electricity, fuel etc. used in the execution of the works contract in which the property in goods is not transferred in the course of execution of the works contract.

(iv) Cost of establishment of the contractor to the extent it is relatable to supply of labour and services;

(v) other similar expenses relatable to supply of labour and services;

(vi) profit earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites:

PROVIDED that where the amount of charges towards labour, services and other

like charges are not ascertainable from the books of accounts of the dealer or the dealer fails to produce documentary evidence in support of such charges, the amount of such charges shall be calculated at the percentages of valuable consideration specified in the Table given below:

TABLE

PERCENTAGES FOR WORKS CONTRACTORS OR JOB WORKS

Sl.

No.

Type of Contract

Labour, service and other like charges as percentage of valuable consideration

1

Fabrication and installation of plant and machinery

Twenty five percent

6

Civil works like construction of buildings, bridges, roads, dams, barrages, canals and diversions.

Fifteen per cent.

23

All other contracts not specified from serial numbers 1 to 22 above.

Twenty per cent

In case of the works contract mentioned at serial number 6 where land is also transferred alongwith other property in goods, the deduction of twenty-five percent shall be allowed after excluding the cost of transferred land as determined under this rule:

PROVIDED FURTHER that where the dealer claims deduction on account of labour, services and other like charges exceeding the percentages of valuable consideration specified in the above Table, the assessing authority, after examining the claims, may allow the claim of the dealer authority, after examining the claims, may allow the claim of the dealer and shall record reasons in writing for accepting the claim of the dealer.

(4) In case the works contract mentioned in sub-rule (2) is of the nature wherein the agreement executed between the land owner and the contractor or similar other agreement is of the nature of collaboration or joint development where the contractor constructs the building/units, and consideration for the construction is given by the land owner in the form of share in the land with or without

additional money exchange, the value of works contract carried out by the contractor for the land owner shall be the highest of the following amounts,-

(i) Actual value of construction, including profit, transferred by the contractor to the land-owner in accordance with the books of accounts maintained by the contractor.

(ii) Where proportionate land is transferred by the land-owner to the contractor by executing a separate conveyance/sale deed, the value stated in the deed for the purpose of payment of stamp duty as reduced by consideration paid by the contractor to the land owner through any mode of payment.

(iii) On the basis of circle rate of proportionate area of land transferred by the land-owner to the contractor prevailing at the time of execution of agreement between them, as reduced by the consideration paid by contractor to the land-owner through any mode of payment:

PROVIDED that where separate circle rates for land and construction have not been notified in respect of certain buildings or properties, then circle rate for land and construction prevailing in that locality for other buildings or properties, in respect of which separate circle rates have been notified, shall be taken into consideration for the purpose of determination of value under this sub-rule:

PROVIDED FURTHER that the value of works contract under this sub-rule shall not be less than the circle rate of construction applicable on the date on which agreement between the land-owner and the contractor for the construction of property was executed.

Explanation: The taxable turnover in relation to contractor's share of construction for activity carried on by him for the intended purchaser shall be calculated separately as per provisions of this rule.

(5) For the purpose of clause (ii) of sub-rule (2), the cost of land in a works contract carried on by the developer for the intended purchaser shall be the highest of following:-

(i) Where separate conveyance/sale deed of the land has been executed between the developer and the intended purchaser, the consideration amount of land stated in that deed; or

(ii) Where separate conveyance/sale deed of the land has not been executed for transfer of land between the developer and the intended purchaser and transfer of land is mentioned in the conveyance deed of the constructed unit, then the value of land in the value of composite works contract shall be determined on the basis of notified circle rates of land prevailing at the time of execution of agreement between the developer and the intended purchaser:

PROVIDED that where separate circle rates for land and construction have not been notified in respect of certain properties, then circle rate for land and construction prevailing in that locality for other properties in respect of which

separate circle rates have been notified, shall be taken for the purpose of determination of value under this sub-rule:

PROVIDED FURTHER that where land has been valued at circle rate and the value of conveyance/sale deed of the constructed unit with the intended purchaser exceeds the circle rate, then the difference between the two shall be proportionately divided between the value of land and the works contract (comprising material and services).

For example, in case of composite works contract, circle rate of land is Rs. 2 crore and circle rate of construction is Rs. 1 crore, and the consolidated value of sale deed (inclusive of land and cost of construction) is Rs. 3.60 crore. Difference of Rs. 0.60 crore shall be divided in the ratio of 2:1; and thus, value of land for the purpose of this sub-rule shall be Rs. 2.40 crore.

Explanation: (a) The term "intended purchaser" for the purpose of this sub-rule means the person who agrees to buy the property before completion of construction and pays the consideration, in full or part, before such completion.

(b) For the purpose of this sub-rule, construction shall be deemed to be complete at the time of issuance of completion certificate by the competent authority, or at the time and in the manner notified by the State Government for this purpose;

(iii) in the case of works contract where the payment of charges towards the cost of land is not ascertainable in accordance with the preceding clauses of this sub-rule, the amount of such charges shall be calculated @ 25% off the total value of the contract, except in the case of construction of commercial buildings/complexes where it shall be calculated @ 40% of the total value of the contract; or

(iv) in the case of works contract, where only a part of the total area to be constructed is being transferred, the charges towards the cost of land shall be calculated on a pro-rata basis through the following formula:

Proportionate super area multiplied by Value of land as

determined in this sub-rule

divided by

Total plot area multiplied by Floor Area Ratio

Explanations:

(a) Proportionate super area for the purpose of this clause means the covered area booked for transfer and the proportionate common area to be constructed, attributable to it.

(b) Floor Area Ratio = Total constructed area divided by Total Plot Area.

(6) In the case of works contract where only a part of total constructed area is

being transferred, the deduction towards labour, services and other like charges mentioned in sub-rule (3) and input tax credit under section 8 of the Act shall be calculated on a pro-rata basis.

(7) (i) Where an agreement is executed by the developer with the intended purchaser after commencement but before completion of construction, the taxable turnover of sale shall be the total value of agreement, as reduced by cost of land and pro-rata amount of labour, services and like charges determined in accordance with this rule.

(ii) Tax shall be payable at the time of an amount receivable or actually received, whichever is earlier, in whatever form or manner, from the intended purchaser in relation to (i) above.

(iii) The developer shall be eligible to deduct labour, services, other like charges in relation to (i) above in the tax period when output tax becomes payable.

13. Thus, in the absence of a statutory Scheme similar to what obtains in the State of Maharashtra or Haryana referred above, we are of the view that it was incumbent upon the petitioner/assesseees to declare the total turnover [contract receipts] pertaining solely to be works undertaken by them, without including therein the component representing the value of the undivided share in the land. If the petitioner assesseees chose not to do so, they have only themselves to blame for the predicament that they find themselves in. The statutory Scheme for determining the taxable turnover of a works contract under the KVAT Act does not suffer from any defect so as to render it unworkable to effectuate the charge to tax on a works contract. We therefore reject the contentions of the learned senior counsel for the petitioner/assesseees on the said issue.

14. We do, however, find force in the contention of the learned senior counsel as regards the manner in which the land value was computed for the purposes of exclusion from the total turnover by the Assessing Authority in O.T.Rev.Nos.105, 106 and 107 of 2019. We find that the Assessing Authority in those cases had arbitrarily adopted a figure of 5% without giving any reason as to how he arrived at the said figure. In this connection, it is relevant to note that in relation to DLF Home Developers for the assessment year 2007-08 [O.T.Rev.No.3 of 2020], the Assessing Authority found as follows in its order dated 15.01.2015:

"As per the 13A statement in part V gross contract receipt shown is Rs. 10,68,31,896/-, In the p & L A/c the assessee has shown contract receipts to the tune of Rs. 24,76,04,882/-. Out of the above deduction has been claimed by him for Rs. 14,07,72,967/- towards mobilization advance and Rs. 16,63,735/- towards land cost and the taxable turnover reported by the assessee is Rs. 86,10,843, The figures noted in the audited statement and P & L A/c are not in tune with the actual receipt of the assessee and allowances due to be claimed by him. Hence taxable turnover of the assessee is worked out on receipt basis after granting eligible exemption as provided in the KVAT Rules 2005.

13) The further verification of ledger statements reveals that the receipt shown in para 12 supra is from 130 prospective buyers (130 apartment owners) and in respect of 55 apartments constructed, no advance has been received by the assessee. Thus altogether it is noted that there are 185 apartments in the projects from which the consideration received upto 2013-14 is Rs. 1,54,11,45,974/-. As no value of undivided share is mentioned in agreements and no conveyance deeds have been executed between the assessee and the proposed buyers, the apportionment of land value has to be taken on the pro rata basis of consideration received and receivable. In this case the assessee has reported total consideration of Rs. 1541145974 from 130 apartments and average cost of 1 apartment is Rs. 1,18,54,969/-. Hence total consideration to be received from 185 apartments is Rs. $1,18,54,969 \times 185 = 2,19,31,69,265$ The original land value paid by the assessee is Rs. 40,83,95,700/-. The sale consideration has been received by the assessee spreading over for a period of 7 years from 2007-08 to 2013-14. Hence a reasonable appreciation has to be given to the assessee on land value. Considering the facts and circumstances of the case, it deems just that 20% appreciation on land value will be equitable for the purpose. Hence for determining the land value element, by considering value appreciation it is fixed as 49,00,74,840/-(20% of 40,83,95,700/-) The percentage of land value element against total consideration is thus worked out as 22.34% of the contract receipt for each year $(49,00,74,840/2193169296 \times 100)$.

We feel that in the absence of any document produced by the petitioner to show the actual land value included in the contract receipts, the above methodology can be adopted by the Appellate Tribunal to determine the taxable turnover of the petitioner assessee for the assessment years 2008-09 and 2009-10 respectively. For this limited purpose, therefore, we deem it appropriate to remand O.T.Rev.Nos.105, 106 and 107 of 2019 to the Appellate Tribunal for a fresh determination of the taxable turnover of the respective petitioners in those cases for the assessment years in question. We make it clear that for all other purposes, the impugned orders of the Tribunal are upheld, and the questions of law raised in these O.T.Revisions answered against the petitioner companies and in favour of the Revenue. The Appellate Tribunal shall complete the exercise of determining the taxable turnover, afresh, based on the observations in this judgment, within a period of six months from the date of receipt of a copy of this judgment.

The O.T. Revisions are disposed as above.