

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एस.एम.सी', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.3356/Mum/2015

(निर्धारण वर्ष / Assessment Year :2009-2010)

M/s Prime Developers, A-303, Mayur CHS, Sadawala Cross Lane, Borivali (West), Mumbai-92	Vs.	ACIT, Panvel Circle, Panvel
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJFP 5050 A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Bhadresh Doshi
राजस्व की ओर से /Revenue by : Shri Pradeep Kumar Singh
सुनवाई की तारीख / Date of Hearing : 11/08/2016
घोषणा की तारीख/Date of Pronouncement 21/102016

आदेश / O R D E R

This is an appeal filed by the assessee against the order of CIT(A) for assessment year 2009-2010, in the matter of order passed u/s.143(3) of the I.T.Act.

2. The only grievance of the assessee relates to action of CIT(A) in confirming the action of AO of treating the revised return of income filed by the assessee as not valid.

3. Rival contentions have been heard and record perused. In the case of the assessee, the original return of income was filed on 30-9-2009 declaring income of Rs.27,74,550/- and subsequently, a revised return of income u/s.139(5) was filed on 24-09-2010 declaring nil income. The revised return of income was filed because the assessee wanted to change the method of accounting from percentage basis to project completion method.

4. The revised return of income u/s.139(5) of the Act was denied by the AO on the plea that the assessee cannot change the Accounting standard once adopted by the assessee.

5. By the impugned order the CIT(A) confirmed the action of AO.

6. I do not find any merit in the action of lower authorities, insofar as both the original return as well as revised return was filed well within the time prescribed u/s.139(1) and 139(5) respectively. Accordingly, I set aside the orders of lower authorities and matter is restored back to the file of AO for deciding afresh on the revised return filed by the assessee.

7. The issue under consideration is also squarely covered by the decision of Pune Bench in the case of Satish H. Patel, 39 TTJ 458, wherein the bench held as under :-

The issue for consideration is as to whether the assessee having filed his return of income could change the method of accounting. Admittedly, the assessee has filed original return of income and the income was declared on the basis of WIP. However, by filing the revised return, the assessee adopted the method of accounting as project completion method for working out the profit. It is also an admitted position that the accounting period relevant to the assessment year under consideration was the first year of business of the assessee. It is true that the assessee realised his mistake and changed the method of accounting bona fide. Earlier, the income was declared on the basis of WIP and subsequently, the assessee adopted the method of accounting as project completion method for working out profit. It is also true that project completion method of accounting is well recognised method and the assessee was following this system in subsequent years, which was accepted by the Department including the asst. yr. 1996-97. The assessee can change one system of accounting to another system of accounting before the assessment is completed. Where all that the assessee had done was to make a final set of books on one method and before an assessment had been made, corrected that method, the AO did not come into picture at all on the ground of objection to a change of method of accounting. The AO has to consider whether the revised return was based on proper method of accounting. In view of revised return, the income assessable in the hands of the assessee is loss of Rs.

33,363. The AO is directed to compute the income accordingly. -
Kwality Overseas Employment Corporation vs. ITO (1984) 7 ITD
689 (Bom) relied on.”

8. In the result, appeal of the assessee is allowed, in terms indicated hereinabove.

Order pronounced in the open court on this 21/10/2016

**Sd/-
(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 21/10/2016

प्र.कु.मि/pkm, नि.स/ PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY
ORDER,**

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai