

आयकर अपीलीय अधिकरण, मुंबई "सी" खंडपीठ

Income-tax Appellate Tribunal "C" Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member

आयकर अपील सं./I.T.A./228/Mum/2014, निर्धारण वर्ष /Assessment Year:2010-11

ACIT-25(3) 308, C-11, Bandra-Kurla Complex Bandra (E), Mumbai-400 051. PAN:AAAFP 1231 E	Vs.	M/s. Punit Construction Co. Agarwal Residency, Shankar Lane, Kandivali (W), Mumbai-67.
---------------------------------------------------------------------------------------------------------	-----	----------------------------------------------------------------------------------------------

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri M. Dayasagar-DR

Assessee by: Dr. K.Shivram-AR

सुनवाई की तारीख / Date of Hearing: 29.06.2016

घोषणा की तारीख / Date of Pronouncement:27.07.2016

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 11.10. 2013 of CIT(A)-35, Mumbai the Assessing Officer (AO) has filed the present appeal. Assessee-firm is engaged in business as builder and developer. It filed its return of income on 19.9.2010, declaring total income at Rs.33.91 lakhs. The AO completed the assessment on 7.3.2013, u/s. 143(3) of the Act, determining the income of the assessee at Rs.19.21 crores.

2.The effective Ground of appeal is about deleting the addition of Rs.18.87 crores. During the assessment proceedings, the AO found that the assessee had undertaken a project known as Agarwal Residency in Kandivli Mumbai, that the project consisted of four Wings C, D, E and F and was started in the AY 2002-03, that the assessee had not shown any sales during the year under appeal except for a very nominal amount of Rs.5.07 lakhs, that the P&L account of the assessee had shown opening of WIP of Rs.77.44 crores and closing WIP of 85.82 crores, that the closing WIP included estimated GP of 3.46 crores, that the addition to WIP for the year under appeal was only Rs.4.96 crores, that the addition to WIP included two major heads of expenditure namely building material (Rs.3.04 crores) and labour charges (Rs.1.28 crores), that the assessee had incurred expenditure (8.94% approximately) of opening WIP on the core and vital aspects of building construction. He referred to the thumb nail sketch for the period AY 2008-09 to 2011-12 and same read as under :

AY.	Opening WIP (in Rs.)	Addition WIP during the year	Gross profit (in Rs.)	Closing work-in-progress (in Rs.)	advance outstanding on	Income of which taxes
-----	----------------------	------------------------------	-----------------------	-----------------------------------	------------------------	-----------------------

		(in Rs.)			the last day of the previous year relevant to A.Y.(in Rs.)	have been paid (in Rs.)
2008-09	60,63,76,488.6	7,62,58,239.06	4,57,30,655.45	72,83,65,382.87	76,18,05,376	(-)1,48,84,863
2009-10	72,83,65,382.87	2,88,30,115.98	1,72,98,069.59	77,44,93,568.44	79,10,93,291	Nil
2010-11	77,44,93,568.44	4,92,74,499.42	3,44,92,149.59	85,82,60,217.45	102,02,60,657	33,91,820
2011-12	85,82,60,217.45	3,93,61,841.00	21,94,38,160.00			6,61,19,027

2.1 Referring to the sketch, the AO observed that assessee had offered handsome amounts as GP, that the income on which tax had been paid was either negative or nil or negligible for the Ay.s 2008-09 to 2010-11, that the assessee had received advances from the customers amounting to Rs.1.02 crores that was shown as liabilities in the balance sheet as on 31.3.2010, that it had not shown sale of any flat/shops during the year under appeal. Vide his show cause notice dated 9.1.2013 the AO asked the assessee as to why the project should not be treated to have been completed in the year under consideration and the sale of Rs.99.94 crores shown for the AY 2011-12 should not be treated as sale for the year. The AO also prepared a chart showing the amount of work in progress added in each AY w.e.f. AY 2002-03.

AY.	Addition to WIP	Cumulative % of WIP completed as on last day of previous year relevant to A.Y.
2002-03	3,06,291	0.05%
2003-04	47,42,130	0.88%
2004-05	5,14,31,499	9.86%
2005-06	10,39,62,897	28.02%
2006-07	8,62,62,385	43.09%
2007-08	13,21,01,117	66.16%
2008-09	7,62,43,060	79.48%
2009-10	2,88,30,116	84.51%
2010-11	4,92,74,499	93.12%
2011-12	3,93,61,841	100
Total Cost	57,25,15,835/-	

2.2 Vide its letter, dated 24.1.2013, the assessee filed its explanation and contended that in construction industry completion of projects depended on various factors and formalities, that the advances received had nothing to do with the completion of the same, that the sales were completed when the possession of the flats was given to the prospective buyers and the occupation certificate was received, that all the above events of the completion of the projects took place in AY.2011-12, that there was no reason to defer with the recognized system of accounting which was consistently followed and was accepted by the department. The assessee also enclosed occupation certificate dated 02.4.2012. The AO did not accept the arguments advanced by the assessee and held that the assessee had registered and received full value of consideration in a vast majority of flats sold by it on or before 31.3.2010, that it

had received Rs.101.91 crores ,that the Balance sheet as on 31.3.2010 showed an amount of Rs.102.02 crores as a liability under the head advance received from customers, that it had received nearly 96% of the total agreement value, that the project was complete in all aspects, that the profit should have been booked for the year under appeal,that it should have shown 93.12% of the total agreement value in the current year, Finally, he made addition of Rs.18, 87,21,445/- to the total income of the assessee.

3.Aggrieved by the order of the AO the assessee preferred an appeal before the First Appellate Authority (FAA).Before him,it was stated that the addition made by the AO was completely unjustified, that he had committed certain mistakes while working out the profit for the year under appeal, that he had considered the WIP at Rs.53.31crores instead of Rs.58.41 crores that he had left out the cost of land and TDR amounting to Rs.5.10 crores, that if the said amount was included in the cumulative work in progress then the profit determined by him would change substantially, that non consideration of the above amount resulted in determining of excess income by Rs.6.38 crores, that if the said mistake was rectified the addition would be of Rs.12.48 crores instead of 18.87crores, that the action of the AO in reworking of the profit of the project was completely unjustified for the year under appeal, that the assessee itself had considered the completion of the project in the subsequent year and had worked out the profit on the basis of percentage completion method, that there was no dispute for the profit determined up to AY 2009-10 ,W-I-P , overall expenses and even the overall profit determined on completion of the project, the dispute arose only in respect of the AY.in which final income was to be computed on completion of the project i.e. AY.2010-11 or 2011-12,that the assessee had given complete details of project expenses and the advances received against agreement of sale of flats, that all the advance received were shown in the balance sheet as liabilities,that the expense incurred were shown under the head WIP,that the AO himself had accepted that only 93.7% work was complete,that he had mentioned that project was over in AY 2011-12, that sale of flat could not be co-related with completion of the project, that the assessee was following consistently PCM in working out the profit in each year, that the method adopted by it was as per mandate of AS-7, that the profit had been accepted in earlier years from the date when the project started i.e. AY 2002-03 onwards, that the AO had not pointed out any defect in the method of accounting, that project was not complete during the year under appeal, that the architect certified that project was complete in the year ended 31.3.2011,that the assessee had shown the project as

complete in that year and profit was taken into account for that year, that 71 flats were not booked as on 31.3.2010.

3.1.After considering the submission of the assessee and the assessment order the FAA held that while determining the profit for every year the assessee followed the PCM that the method was accepted by the AO for all the earlier years. He referred to the AS-7 and stated that the assessee had selected the PCM as prescribe in para-9 of AS-7 to follow the principle of accounting, that the same principle had been followed in earlier years also, that there was no infirmity in the system followed by the assessee, that the WIP should have been calculated by including the cost of land and value of TDR amounting to Rs.5.10 crores. He directed the AO to carryout necessary rectification with regard to inadvertent mistake in not considering the amount of Rs.5.10 crores while calculating the figure of WIP. He further mentioned that 136 flats were registered in the AY 2006-07 as against 76 flats registered in the year under appeal, that on the basis of sale of flats the profit could not be determined, that it was not the case of the AO that the assessee had no intention to complete the project, that it had claimed that the project was over in the next AY.The FAA referred to the cases of MKV Asia P.Ltd (294 ITR 655),Realest Builders and Services Ltd. (307 ITR 202)and Sanjeev Woolen Mills (274 ITR 434)and held that there were no different facts in the current year as compared to earlier years,that there was no justification to disturb the accepted principles of accounting followed by assessee since AY.2002-03 for the same project, that the system of accounting was in line with the prescribed accounting standards.Finally the FAA deleted the addition made by the AO.

4.During the course of hearing before us the Departmental Representative (DR) supported the order of the AO and stated that about 94% of the work was complete by 31.3.2010, that there was no justification in postponing of taxation of the income.The Authorised Representative (AR) stated that the assessee was consistently following a particular method of accounting, that the method followed by it was as per the mandate of AS-7, that the AO had not rejected the books of account, that the assessment for the AY.s 2006-07 to 2009-10 were completed u/s.143(3) of the Act, that the method adopted by the assessee was accepted by the AO who had completed the assessment for the AY.s

5.We find that the project started in AY.2002-03,that the income of the said project was taken on the basis of WIP by applying the percentage of gross profit, that the AO had accepted the

system of accounting for earlier years, that the system followed by the assessee was as per the mandate of AS-7, that advances were received as per agreement of sale in various years, that the overall income of the project was same on completion of the project, that the assessee had been following same system of accounting, that the receipt against the flats as advance received from customers was being shown in the earlier years and the year under appeal, that there was no different of facts or circumstances as compared to earlier years to deal with the advances, that the completion certificate was given by the architect on 23.2.2011, that it was only after that the OC from Municipal Authorities could be applied for.

In our opinion an assessee is entitled to choose a system of accounting that represents its financial affairs. The only rider in that regard is that the method used by it should represent a true picture of its business affairs and should be within the prescribed Accounting Standards.

In the matter of Bilahari Investment P.Ltd.the Hon'ble Apex court has held under:

Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits that the Department can insist on substitution of the existing method."

Similarly, in the case of Realest Builders and Services Ltd.(supra)the Hon'ble Supreme Court has held as follow:

"In cases where the Department wants to tax an assessee on the ground of liability arising in a particular year, it should always ascertain the method of accounting followed by the assessee in the past and whether the change in the method of accounting was warranted on the ground that profit is being under-estimated under the impugned method of accounting. If the Assessing Officer comes to the conclusion that there is under-estimation of profits, he must give facts and figures in that regard to demonstrate that the impugned method of accounting adopted by the assessee results in under-estimation of profits and is therefore rejected. Otherwise the presumption would be that the entire exercise is revenue neutral.

In the case under consideration there are no 'facts and figures' to demonstrate that 'the method adopted by the assessee in earlier years resulting in under-estimation of income'. Therefore, we are not inclined to interfere with the order of the FAA. Effective Ground of appeal is decide against the AO, considering the peculiar facts and circumstances of the case.

As a result appeal filed by the AO stand dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 27th July, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 27 जुलाई, 2016 को की गई।

Sd/-

Sd/-

(पवन सिंह /Pawan Singh)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27.07.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “G ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**