

आयकर अपीलीय अधिकरण “जी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, A.M. AND SHRI SAKTIJIT DEY, JM

आयकर अपील सं./I.T.A. No. 3575/Mum/2017

(निर्धारण वर्ष / Assessment Year: 2013-14)

Gahlot Construction G-Square Business Park, Plot No. 25/26, Sector-30, Vashi, Navi Mumbai, Mumbai-400 703	बनाम/ Vs.	Pr. CIT-28, 3 rd Floor, 6 th Tower, Vashi Railways Station Complex, Vashi, Navi Mumbai-400 703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAOFM 5698 J		
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri Vimal Punmiya, Shri Bharatkumar Darshan B. Gandhi
प्रत्यर्थी की ओर से/Respondent by	:	Shri Abhijit Patankar
सुनवाई की तारीख / Date of Hearing	:	24.08.2017
घोषणा की तारीख / Date of Pronouncement	:	05.10.2017

आदेश / ORDER

Per Shamim Yahya, A. M.:

This is an Appeal by the Assessee directed against the Order passed u/s. 263 of the Income Tax Act, 1961 ('the Act' hereinafter) by the Commissioner of Income Tax-28, Mumbai ('CIT' for short) dated 30.03.2017 and pertains to the assessment year (A.Y.) 2013-14. The ground of appeal read as under:

- 1. The Ld. CIT erred in passing the order under section 263 of the Act, inspite of the fact that the assessment order was neither erroneous nor prejudicial to the interest of the revenue.*
- 2. The Ld. CIT erred in ignoring all the relevant facts and legal precedents cited by the appellant in support of its claim that in the facts and circumstances*

prevailing in the case of the appellant, no action under section 263, was called for because the two views are possible and the Ld. AO had adopted the view in favour of assessee.

3. On the facts and circumstance of the case and law, the Ld. CIT erred in passing order u/s 263 stating that assessee not offer income of project complete completed in February 2013 . Assessee have completed project and showed whole Income in A Y 2013-14.

4. On the facts and circumstance of the case and law, the Ld. CIT erred in passing order u/s 263 stating that service tax provision not looked by AO whereas assessee did not claimed any service tax in profit & Loss Account.

5. On the facts and circumstance of the case and law, the Ld. CIT erred in passing order u/s 263 stating that VAT provision is not looked by AO whereas assessee did not received any amount of Vat from customer.

6. On the facts and circumstance of the case and law, the Ld. CIT erred in passing order u/s 263 stating that TDS provision u/s 194IA is not looked by AO whereas this provision was not applicable in respective years and it is applicable on buyer of property not to seller

2. In this case, the ld. CIT noted in the assessment order that the project was completed in February, 2013. That even if the assessee were allowed to follow the project completion method as against the percentage completion method applicable on the facts of the case, the entire income ought to have been offered in the A.Y. 2013-14. That, however, the assessee has not offered any income for this project in any year and has in fact claimed a loss of Rs.5.03 crs. in this year. That the correctness or otherwise of the loss arising in this year does not appear to have been examined by the A.O. during the assessment proceedings even though the assessee admitted 100% completion of project requiring adoption of AS-9 for recognizing income. That the service tax provisions on property transaction become effective w.e.f. 01.06.2010. That this issue has not been looked into and examined by the A.O. during the course of assessment in the year in question. That if this data were procured and examined, the applicability of AS-9 would have been realized and the assessment could have been done accordingly so as to recognize income in the relevant assessment year. That also VAT payable/collectible on sale of property during the year and its implication on the determination and recognition of income has not verified by the A.O. during

the assessment proceedings and the same could have also led to the adoption of AS-9 for recognition of income.

3. In view of the above, after giving the assessee a show cause notice and after receiving the reply thereon the ld. CIT held as under:

4.1 The resultant figure of profit or loss is Loss of Rs.5,03,37,806/-. Accordingly, the assessee has not recognized any income of the project for any earlier assessment years and succeeding assessment years applying AS-9 of the significant accounting method. The claim of expenses in so far as allowability of the same vis-a-vis the status of the project does not appear to have been examined. It appears from the P&L Account and balance sheet that the extent of expenses claimed do not justify the situation as to why the project has resulted in loss. The assessee did not offer any valid explanation in this regard for not offering any income and not adopting AS-9 for recognition of income. The AO is required to verify the entire expenses including purchases debited in the P & L Account with specific reference to the need to incur the same is concerned. The Assessing Officer is, therefore, directed to verify the details of all expenses debited in the P&L Account, the sales realized during the year, closing stock and the applicability of AS-9.

5. Regarding service tax, the assessee claims that the assessee made payment of Rs.78,35,400/- upto March 2013. The AO is also directed to verify the same.

6. Here it may also be pointed out that from the records that service tax provisions on property transaction became effective w.e.f. 01.06.2010 and TDS on transfer of property (Sec. 194IA) became effective w.e.f. 01.06.2013. The ITS statement of the assessee shows payment of service tax in A.Y. 2013-14 and 2014-15 and TDS u/s. 194 IA in A.Y. 2014-15 as also sale of property transaction in A.Y. 2013-14 and 2014-15 (AIR Information). These issues do not appear to have been looked into and examined during the course of assessment in the years in question despite the completion of project seen at 100% in A.Y. 2013-14. Also VAT is payable/collectible on sale of property during the period in question has not been seen. The details of VAT payment by the assessee have not been called for during the assessment proceedings. The submission of the assessee in this regard in fact concede that for reasons mentioned in the submissions, the A.O. has not examined the implications of these levies in so far as recognition of income as required by AS-9. Probably if this data was procured and examined, the applicability of AS-9 would have been realized and the assessment could have been done accordingly so as to recognize incomes in the relevant assessment years. In fact in the submission made by the assessee during A.Y. 2012-13 wherein details of Booking Advance and Deposits are

mentioned, it is seen that the assessee has registered its first sale document on 24.12.2008 and there have been regular sales documents thereafter. The assessee has contended that the issue regarding service tax, MVAT and TDS u/s.194-IA on sale of property and the consequent implications were considered by the A.O. during the course of assessment proceedings and in support of his contentions stated that the assessee had made submissions on each of these aspects. This contention is not acceptable because nothing from the records indicates or suggests that these issues have been examined or considered during the assessment proceedings. The AO, as is apparent from record, does not appear to have applied his mind on these; issues and considered the implications of the same on the income offered in the return of income/computation of income filed by the assessee.

7. In fact, the assessee has himself admitted 100% completion of the project and considering the same and in-consonance with the Accounting Standard 9 that would apply to the project which the AO has failed to consider, the assessment is held to be erroneous and prejudicial to the interests of the revenue.

8. Therefore, it is held that the order dated 14.03.2016 u/s 43(3) of the Income-tax Act, 1961 is erroneous in so far as it is prejudicial to the interests of the revenue within the meaning of clauses (a) and (b) of Explanation 2 below sub-section (1) of Sec. 263 of the Act, 1961 and, as the Assessing Officer failed to conduct inquiries which should have been carried out, the assessment order is hereby set aside to the Assessing Officer with the direction to pass a fresh assessment order in accordance with law and after affording an opportunity of being heard to the assessee. The order shall be passed under the supervision and guidance of the Addl./Jt. CIT-28(1), Mumbai.

4. Against the above order, the assessee is in appeal before the ITAT.
5. On careful consideration, we find that the assessee is following project completion method. This has been recognized in assessee's own case by the ITAT in ITA Nos. 4895 & 4896/Mum/2013 for A.Ys. 2008-09 and 2009-10, vide order dated 27.05.2013. The concerned order reads as under:

6. We have considered the arguments advanced by the Ld DR for Revenue and AR for assessee. We have noticed that in the case of Bhoomi Construction Project Vs ACIT & ACIT Vs Bhoomi Construction Project vide ITA No.1267/M/2013& ITA No. 2174/M/2013 dated 15.05.2015 (case of assessee's sister concern) the co-ordinate bench of this Tribunal on identical issues held as under: "Additional income offered voluntarily - return of income filed in

response to notice u/s 153A - at the time of search the assessee had offered to disclose the income on the basis of percentage completion method which has been retracted later on - Held that:- There is no finding that the assessee has been following percentage completion method regularly since beginning or in any other project. There is no such evidence or documents which have been found during the course of search indicating that the assessee had been following percentage completion method regularly. If the assessee has been following one of the recognized methods as prescribed by AS-9, then it cannot be held that the Revenue can impose a different method upon the assessee unless there is a finding of fact that such a method is not reflecting the true profits of the assessee. Now it has also been brought on record by the Id. Counsel that in the subsequent year i.e. in the year of completion of the project in A.Y. 2012- 13, the Revenue itself has accepted the project completion method for recognition of revenue and accordingly, has assessed the income of the project on the same method. Thus, a contrary view cannot be taken for this year. - Decided against revenue.” 7. We have noticed that issue raised in this appeal is squarely covered by the order of the Tribunal in ITA No.1267/M/2013 dated 15.05.2015 (case of assessee’s sister concern). Hence keeping in view the principle of consistency, hence, we do not find any substance in the appeal filed by the revenue.

6. In the present order, the assessee has completed the project and accounted for the resultant profit/loss. Under these circumstances, the Id. CIT’s observation that the assessee has not recognized any income of the project for any earlier assessment year or succeeding assessment year applying AS-9, is not at all sustainable. Once it is held that the assessee is following project completion method consistently and it has followed the same during the current assessment year in which the project has been completed, there is no question of recognizing any income for any earlier or succeeding assessment year. The Id. CIT’s observation that the loss does not seem to have been examined properly is also a surmise without any cogent reasoning. Furthermore, the Id. CIT has also directed to examine the allowability of expenses. For this also, no cogent reason has been mentioned by the Id. CIT. We note that the A.O. has examined the expenses incurred and made some disallowances also. Hence, the Id. CIT’s direction to examine the expenses is a direction for making a roving enquiry not permissible u/s. 263 of the I. T. Act. Hence, we set aside the direction of

the ld. CIT *qua* examination of the method of accounting for revenue recognition and examination of expenditure.

7. As regards the ld. CIT's observation to examine the service tax, TDS and MVAT provision and their applicability, the ld. Counsel of the assessee's submission is that these are not applicable and have been complied with to the extent necessary. In this regard, we note that the A.O.'s order is silent on these issues, hence, if the ld. CIT has given a direction to examine these issues, no prejudice will be caused to the assessee. Hence, we uphold the order of the ld. CIT to this extent only.

8. In the result, this appeal filed by the assessee stands partly allowed.

परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 05.10.2017

Sd/-
(Saktijit Dey)

न्यायिक सदस्य / Judicial Member

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 05.10.2017

व.नि.स./Roshani, Sr. 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
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai