

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1725/Ahd/2015

निर्धारण वर्ष/A.Y. 2010-11

Income Tax Officer, Ward-5(2)(4), Ahmedabad	Vs	M/s. Swastik Developers, 1/31, Eeshita Tower, Nr. Samved Hospital, Commerce College Road, Navrangpura, Ahmedabad-38009 PAN : ABOFS 2217 A
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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By Revenue :	Shri V.K. Singh, Sr DR
By Assessee :	Shri S. N. Divatia, AR

सुनवाई की तारीख/Date of Hearing : 15/02/2018

घोषणा की तारीख/Date of Pronouncement: 22/02/2018

आदेश/ORDER

PER S.S. GODARA, JUDICIAL MEMBER :-

This revenue's appeal for assessment year 2010-11 arises against the CIT(A), Ahmedabad-5's order dated 11.03.2015 in case No. CIT(A)-5/Wd.991)/135/2014-15 reversing Assessing Officer's finding in both rejecting assessee's books under section 145(3) of the Income-tax Act, 1961 (in short the "Act") as well as restricting the addition to Rs.2,67,767/- from Rs.58,32,000/- estimated by the Assessing Officer at 25% of net profits on relevant project.

Heard both the parties. Case file perused.

2. It emerges from the case records that the revenue seeks to revive Assessing Officer's action in both rejecting assessee's books as well as estimating its net profits to Rs.58,32,000/- @ 25% of the total sales. Both

the learned representatives take us through learned CIT(A)'s findings elaborately discussing the relevant facts, Assessing Officer's reasons as well as assessee's submissions as under:-

"3.4. I have considered the facts of the case and submissions made by the appellant. In this case the AO has made the addition of Rs.58,32,000/- by estimating the net profit @25% of the total sales invoking the provisions of Section 145(3) of the I.T. Act. He has noticed certain discrepancies in the books of account and the same are discussed alongwith the submissions obtained from the appellant from para No.3 to 3.3 of the assessment order. Briefly the AO has observed that the project labour expenses consists of slab 1 to slab-8 was not correct because the labour expenses charged by the labour contractor for 6th floor and 7th floor only. The AO also observed that the bills produced for the 4th floor were prior to the date of bill of the third floor. So this clerical mistake claimed by the appellant have not been accepted. Further observed that the assessee has not submitted any proof regarding completion of the work within such a short period. Further the appellant has specifically asked to submit the details of expenditure month-wise but he has failed to do so. In the measurement of work bill submitted it was found that nowhere the date of the work has been mentioned. Even the phase-wise work report have also not been submitted by the appellant from the Municipal Corporation or from the certified engineer. Merely the payments made through cheques for various expenses would not be enough to prove the genuineness of the transactions. Thus the onus has not been discharged to prove the genuineness of the labour expenses. Further with regard to the sale receipts charged by the appellant on the basis of the jantri rate is found correct but not genuine as the appellant was very silent regarding discrepancies found specially in respect of Flat No.501, 502 and 503 which is sold with terrace right with same built up area i.e. 113 sqr. Yards. It is pertinent to mention that for Unit No.502 the appellant had charged Rs.55 lakhs but the same sale price has not been charged on other terrace right units like 501 and 503. In view of the discrepancies found the books of accounts of the appellant were rejected by invoking the provision s of Section 145(3) of the Act and thereafter the net profit of Rs.58,32,000/- on this project was estimated @25% on sale of Rs.2,33,28,000/-.

3.5. During the course of present appellate proceedings the appellant reiterated the same submission as provided to the A.O., further submitted that the appellant has followed the percentage completion method in place of project completion method whereby it has recognized the income progressively in proportion of the completed work. In this method the appellant had to make various estimations on account of expenses that would be incurred in future and then he could recognize the income. He has

submitted the details about the total sales, interest to partners, returned income, income offered for taxation etc. during the three years period when the project was completed. For the sake of reference the same are reproduced hereunder:-

Financial Year	Sale (Rs./cr.)	Interest to Partners (Rs./lakhs)	Returned Income (Rs. / lakhs)	Income offered for tax (Rs. / lakhs)
1	2	3		6
2008-09	0	24.20	-25.80	24.20
2009-10	2.33	25.76	-15.97	25.76
2010-11	2.88	3.76	48.96	10.82
	5.21	53.60	7.18	60.78

3.6. From the above chart, it is evident that the appellant had the total sales of Rs.5.21 crores on which it has shown the overall income of Rs.60.78 lakhs. So there was the net profit of 11.66% of the turnover. So it is true that in the year under consideration there was the loss shown in the books of accounts but so far as the entire project is concerned there was the profits derived on sales.

3.7. Further it was submitted that the claim of expenses with regard to the RCC work from labour contractors namely M/s Jay Ambe Construction were at Rs.9,38,090/- and not the labour expenses of Rs.13,92,532/- as observed by the A.O.

3.8. Further with regard to the charges of RCC work for the 6th and 7th floor @ 65% by Shri Pravin P. Chotalia it was submitted that the payments to him was made in addition to the base rate. The base rate was Rs.52,775/- and for carrying out the terrace level work additional 65% of the base rate was charged by him i.e. on 6th and 7th floor. The 65% rate was as per the terms of extra 10% charges for every floor. So it was pleaded that in fact there was no additional RCC work bill but it was only considered to decide the rate of the work done at the terrace level. Further argued that the RCC charges were paid only for parking level, first floor, 2nd floor and 3rd floor by Jay Ambe Construction, 4th floor by Tushar Jani and 5th floor and overhead tank by Shri Pravinbhai P. Chotalia. With regard to the AO's observation it was submitted that the date of bill raised by Tushar Jani for 4th floor dtd. 20.6.2009 was prior to the 3rd floor bill date i.e. 25.7.2009. It was submitted that instead of 8lh calendar month by mistake bill date was written as June i.e. 6th calendar month. So this was the typographical error but it does not lead to the inference that no construction of the 4th floor has been made and no expenditures there upon have been made.

In support he submitted the copies of the invoices of labour contractors namely M/s.Jay Ambe Construction, Shri Pravin P. Chotalia and Shri Tushar Jani relating to RCC work along with detailed measurement papers.

3.9. Further argued that the AO had issued the notices u/s. 131 to all the major contractors and obtained details including contra confirmations, measurement sheet etc. and no discrepancies were noticed therein with comparison to the details and submissions given by the appellant. Thus it was pleaded that all the claim of expenditures were made genuinely and there was no discrepancies in the books of accounts and no rejection u/s. 145(3) of the Act was warranted.

3.10. Further with regard to the sale proceeds of some flats which was less than the sale proceeds of the other flats, it has been pleaded by the appellant that the sale rate of each and every unit could not be same and it depends upon various factors. It varies from one unit to another unit. However, it was submitted that the sale price of all the units were more than the jantri rate. Thus, it cannot be said that any of the flats have been shown below the jantri rate. Further pleaded that the AO had issued the summons u/s.131 of the Act to all the buyers and during the course of assessment proceedings they have been examined. But no discrepancies with regard to any suppression of the sale proceeds in respect of sale of any unit has been found. This means that the amount recorded in the books of assessee were in conformity with the amount paid by each of the purchasers of the units. Further it was submitted that sale deed price was in conformity with the sale amount shown in the books of accounts. Further pleaded that the price range of the flat was between Rs.28 lakhs to 35 lakhs. However, after observing the break even point and having considered the comfort of liquidity the prices were raised subsequently for its two flats and waited for atleast 6 months to sale them. This has actually fetch the higher prices for the two flats sold last for the Flat No.402 and 502 which is recorded in the books of accounts.

3.11. Considering the facts and submission it is found that no specific discrepancies have been pointed out by the A.O. in the assessment proceedings although the major labour contractors have been examined during the assessment proceedings by him. Merely due to few technical breaches it would not tantamount to any bogus claim of expenditures or the case where the expenditures have been inflated. The appellant has given the detailed break-up about the constructions carried out alongwith lay out plans, invoices and bills raised by the contractors along with measurement of work carried out by them. All these details were in tally with the books of accounts of the appellant vis-a-vis the records kept by the contractors. Not

a single instance has been found where any claim of bogus expenditure have been made or any understatement of any expenditures have been made.

3.12. Further with regard to the observations of the AO that the sale price of each of the flats must be same is without any base. It is worth here to mention that sale rate of the flat depends upon various factors like its location, booking time, mode of payment, terms of payment and other various factors.. The sale price can never be similar to all the units. Even in the examination proceedings u/s.131 of the Act of the buyers no instance of any understatement of the sale price has been found by the A.O. Thus, on presumption basis no inference can be drawn about the understatement of the sale proceeds of few flats.

3.13. In view of the aforesaid discussion, the AO's stand of rejecting the books of accounts u/s. 145(3) is found without any basis and therefore the same is not approved. In the similar manner the addition made by the A.O. assuming the N.P. rate at 25% of the total sales is also not substantiated with any comparable case. The basis of taking the N.P. rate at 25% (neither less nor more) has not been explained by the A.O. more particularly when the appellant has shown the net profits @11.66% on the entire project.

3.14. However, it is also a fact that the labour payments are not fully verifiable with regard to the works carried out by them. Since the complete details about the work carried put and the working of their labour expenses are not fully verifiable therefore the possibilities of such claims at the inflated rate cannot be ruled out. Thus, to plug the leakage of revenue it would be fair and reasonable to disallow the labour expenses of Rs.2,67,767/- being 10% of the labour claims with regard to the labour expenses relating to contractors namely Jay Ambe Construction at Rs.9,38,090/-, Pravin P. Chotalia at Rs.8,32,000/-, Shri Himanshu Prajapati at Rs.6,75,585/-, Tushar Jani at Rs.2,32,000/- totaling to Rs.26,77,675/- has been made. Thus, the disallowance of the labour expenses to the extent of Rs.2,67,767/- is confirmed and the relief is granted to the balance amount."

3. Learned departmental representative vehemently contends that the Assessing Officer had rightly rejected the assessee's books in order to estimate its profit @ 25% on the total sales coming to Rs.2,33,28,000/-. He particularly places a strong reliance on Assessing Officer's reasons as

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discussed in CIT(A)'s order in paragraph 3.4 that the assessee had failed on multiple issues making the Assessing Officer to reject its books of accounts under section 145(3) of the Act. Mr. Divatia on the other hand highlights the fact that the assessee has followed percentage completion method. He takes us through the relevant corresponding incomes right from the assessment year 2008-09 onwards hereinabove. His case therefore is that the assessee's books of accounts have been correctly maintained throughout. He then quotes Hon'ble jurisdictional High Court's judgment in CIT vs. Vikram Plastic & Ors, 239 ITR 161, upholding the tribunal's order that an Assessing Officer's action invoking section 145 of the Act is not sustainable in case there are no discrepancies or defects pointed out in an assessee's books of accounts regularly maintained not indicating any inflated purchases or suppressed sales or any deviation from the regular method of accounting followed.

4. We keep in mind the said legal principles to advert back to revenue's grievance in the instant case. Learned departmental representative first of all fails to dispute the fact that the assessee had earlier shown profit in its books of accounts in preceding assessing year qua the relevant project by following percentage completion method. This follows CIT(A)'s detailed discussion on Assessing Officer's findings in support of his action rejecting books of accounts in paragraph 3.8 to 3.13. The same have gone unrebutted from the revenue's side. We further invited learned departmental representative's attention to assessee's paper-book forming part of record comprising of all relevant particulars. Nothing comes from the revenue's side to controvert the CIT(A)'s detailed findings extracted in preceding paragraph. We thus find no substance in revenue's argument seeking to revive Assessing Officer's action rejecting assessee's books followed by estimation of net profits @ 25% in the

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impugned assessment year. Revenue's two substantive grounds in the instant appeal are therefore declined.

5. This revenue's appeal is dismissed.

Order pronounced in the Court on 22nd February, 2018 at Ahmedabad

Sd/-

Sd/-

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**(S.S. GODARA)
JUDICIAL MEMBER**

Ahmedabad, Dated 22/02/2018

Dr

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

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

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आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad**