

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM**

**आयकर अपील सं. / ITA No.977/PUN/2015**  
**निर्धारण वर्ष / Assessment Year :2010-11**

Common Wealth Developers Pvt. Ltd.,  
601, Orbit Plaza,  
New Prabhadevi Road,  
Mumbai – 400025

.... अपीलार्थी/Appellant

PAN: AACCC9426H

Vs.

The Dy. Commissioner of Income Tax,  
Central Circle -1 (2), Pune

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Suhas P Bora  
प्रत्यर्थी की ओर से / Respondent by : Shri Achal Sharma

सुनवाई की तारीख / <b>Date of Hearing : 10.07.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 10.09.2018</b>
--	--

**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-11, Pune, dated 30.01.2015 relating to assessment year 2010-11 against order passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The Learned CIT(A) erred both in law as well in facts in making reduction in the work-in-progress recorded by the appellant on the basis of conjectures and surmise.*
2. *The Learned CIT(A) erred in law and as well as in facts to rely upon the report of the Government Valuer who was unlawfully commissioned under section 131(1)(d) by the ADI Investigation.*
3. *The Learned CIT(A) erred in law and as well in facts in not accepting the book results of the value of civil construction recorded by the appellant without bringing in to record any noticeable defects to reject the same though the entries in the books are duly supported by the bills and vouchers which were subjected to close scrutiny and audit by the Chartered Accountants.*
4. *The Learned CIT(A) erred in facts in not taking into consideration that the appellant maintained regular books of accounts and statutory audit as provided under section 44AB was conducted by the Chartered Accountants who had not made any adverse remarks as to the maintenance of the books of accounts.*

3. The issue raised in the present appeal is against computation of work-in-progress.

4. Briefly, in the facts of the case, the assessee was engaged in the business of real estate and construction. For the year under consideration, the assessee had furnished return of income declaring total income at Nil. The assessee was part of Pride Group of companies. Survey under section 132 of the Act was carried out in the Pride Group on 07.09.2011. The assessee is one of the concerns belonging to Pride Group. The Government Registered Valuer Shri Nitin Lele was appointed for verification of cost incurred for the project 'The Mall' undertaken by M/s. Commonwealth Developers Pvt. Ltd. As per report dated 25.05.2012, the expenses of ₹ 28,24,83,269/- were incurred by the assessee for financial years 2006-07 to 2011-12. Further, the Valuer has stated that during the period from 2006-07 to 2008-09, the cost of work was ₹ 14,54,31,032/-. The major components of this cost was steel purchase at ₹ 4,86,42,072/-, labour charges ₹ 7,24,17,084/-, excavation and breaker charges ₹ 1,03,42,409/-. He further stated that (a) no work was observed executed during this period but an amount of ₹ 13.17 crores was spent for material and direct expenses during this period; (b) in the year 2009-10,

₹ 1.81 crores were spent for material and direct expenses. The major contributor to the expenses was PMC charges which was ₹ 1.44 crores. The Assessing Officer on verification of Profit and Loss Account noted that the assessee had debited sum of ₹ 1.81 crores on account of cost of construction. The assessee was asked to furnish breakup of expenses. The Assessing Officer further observed that sum of ₹ 26,26,900/- was incurred on account of civil cost of construction and remaining amount consisted of Architect fees, PMC expenses, etc. The Assessing Officer show caused the assessee to explain as to why the appropriate expenses for cost of civil construction shown in Annexure-1 should not be disallowed. The assessee in reply submitted that total expenses of ₹ 1.81 crores had been incurred and breakup of the same was filed, which have been transferred to work-in-progress. The Assessing Officer rejecting the explanation of assessee held that as per Valuer's report, it was observed that no work was executed during the period from 2009-10 to 2010-11, but expenses of ₹ 13.17 crores was spent on material and direct expenses. In the year 2009-10, sum of ₹ 1.81 crores was spent on material, where the major contributor was of PMC charges and direct expenses; hence the said direct expenditure of ₹ 26,26,900/- was disallowed on account of bogus expenses claimed as construction expenses.

5. The CIT(A) upheld the order of Assessing Officer as the assessee but for furnishing the breakup of expenses and ledger account extracts and stating that the payments towards these expenses were made by cheque, had not furnished any details in support of his claim that the expenditure in question was incurred for the purpose of business of assessee. The CIT(A) vide para 4.3.5 at pages 11 and 12 of the appellate order further observed as under:-

*"4.3.5 However, on verification of the financials for the year, it is noticed that no income was recognized from the subject project during the year and the entire expenditure incurred till 31.03.2010 was shown as closing work-in-progress vide Schedule VII of the P & L a/c. Therefore, it is not correct on the part of the*

*Assessing Officer to treat the said expenditure as taxable income of the appellant for the year. The Assessing Officer ought to have reduced the expenditure of Rs.26,26,900/- from the closing work-in-progress shown vide Schedule VII of the P & L a/c if he is of the view that the expenditure is not genuine in the light of the report of the Valuer. Therefore, there is merit in the alternate contention that the amount of Rs.26,26,900/- cannot be taxed separately when no income was recognized from the project 'The Mall' in this year. Accordingly for the year under consideration, the addition of Rs.26,26,900/- made by the Assessing Officer treating the same as taxable income cannot be approved and the same is hereby deleted. This however does not preclude the AO from verifying the genuineness of the expenditure once again in the year in which the impugned expenditure was set off against income recognized if any, and taking appropriate action as per law in that year. Subject to these directions, Grounds of appeal No.1, 2 and 3 stand partly allowed."*

6. The assessee is in appeal against the order of CIT(A).
  
7. The learned Authorized Representative for the assessee pointed out that where the expenses debited to Profit and Loss Account were supported by books of account which were audited, then no addition could be made only on the basis of valuation report of the Government Approved Valuer. In this regard, he placed reliance on the ratio laid down by the Hon'ble Supreme Court in the case of Sargam Cinema Vs. CIT (2010) 328 ITR 513 (SC) and the Pune Bench of Tribunal in the case of Dr. Shivaji Ramchandra Kolekar Vs. ITO (2014) 8 TaxCorp (A.T.) 35190 (Pune). The learned Authorized Representative for the assessee further pointed out that the books of account were not rejected by the Assessing Officer and in the absence of the same, no addition was warranted in the hands of assessee.
  
8. The learned Departmental Representative for the Revenue stressed that incurring of expenditure in the hands of assessee was in dispute, hence disallowance under section 37(1) of the Act. He further pointed out that the facts before the Pune Bench of Tribunal were different.
  
9. The learned Authorized Representative for the assessee in rejoinder pointed out that the Assessing Officer in paras 3 and 5 had disallowed the expenses but the

CIT(A) in para 4.3.5 has modified the order; but it is established that the audited books of account were not rejected by either Assessing Officer or CIT(A). Our attention was drawn to the details of cost of civil construction of expenses totaling ₹ 26,26,900/-, which are placed at pages 218 to 249 of Paper Book, wherein the amounts were paid through cheque and even TDS was deducted.

10. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is with regard to expenditure which has been booked by the assessee as work-in-progress. The assessee had not debited the said expenses to Profit and Loss Account nor claimed the expenditure as deduction for the year under consideration. The assessee was constructing project 'The Mall' and had included the said sum as part of its cost of construction and shown the same at the close of the year under the head 'Work-in-progress'. Pursuant to search action on the Pride Group of cases on 07.09.2011, of which the assessee was one of the sister concerns, the Government Registered Valuer was appointed in order to verify the cost of project developed by the assessee. In his report, the Government Approved Valuer noted expenditure of about ₹ 1.81 crores and stated that the said expenditure was incurred for material and direct expenses, out of which major expense was PMC charges of ₹ 1.44 crores. He also stated that during the period, no civil construction work was carried out. The Assessing Officer thus, disallowed sum of ₹ 26,26,900/- being bogus expenses claimed as construction expenses. The CIT(A) held that in the absence of details of cost of construction, the Assessing Officer was justified in doubting the genuineness of expenditure shown to have been incurred, but he further held that it was not correct on the part of Assessing Officer to treat the expenditure as taxable income of the assessee. He was of the view that the said expenditure of ₹ 26,26,900/- should have been reduced from the closing work-in-progress shown in the Profit and Loss

Account, if the Assessing Officer was of the view that the expenditure was not genuine in the light of the report of the Valuer. The CIT(A) thus, held that sum of ₹ 26,26,900/- could not be taxed separately in the hands of assessee, since no income was recognized from the project 'The Mall' in the year. He thus, deleted the addition made by the Assessing Officer in this regard. However, he further held that the Assessing Officer could verify the genuineness of the expenditure for the year in which impugned expenditure was set off against the income recognized, if any, in accordance with law. The assessee has challenged the action of CIT(A) in this regard i.e. direction given for verifying the genuineness of expenditure which was part of work-in-progress. The said action was taken on the basis of report of DVO.

11. The issue which arises in the present appeal is whether where the books of account of the assessee were audited and the said audited books of account have not been rejected, can the addition or disallowance be made in the hands of assessee, on the basis of any reference made to the DVO.

12. The Hon'ble Supreme Court in Sargam Cinema Vs. CIT (supra) had held that where the books of account have not been rejected, then no reference could be made to the DVO for assessing the cost of construction.

13. Applying the said principle, the Pune Bench of Tribunal in Dr. Shivaji Ramchandra Kolekar Vs. ITO (supra) had held as under:-

*"6. We have carefully considered the rival submissions on this aspect. In the present case, the Assessing Officer has invoked Section 69B of the Act to tax the difference in the value of cost of construction as estimated by the DVO and that declared by the assessee in his books of account. Section 69B of the Act empowers the Assessing Officer to tax an amount invested by the assessee which is found to be over and above the amount recorded in the books of account maintained. However, a crucial expression in Section 69B of the Act is that the Assessing Officer ought to find ".....that the amount expended on making such investments or*

*in acquiring ..... exceeds the amount recorded in this behalf in the books of account maintained by the assessee .....". The aforesaid words appearing in Section 69B of the Act imply that before making an addition under this section, Assessing Officer was required to reach a positive finding that the assessee has spent an amount on cost of construction which is more than the amount recorded in the books of account. Ostensibly, the only basis brought out by the Assessing Officer to make the impugned addition under Section 69B of the Act is the report of the DVO estimating the value of construction at higher figure. The report of the DVO is at best, an estimate but not an evidence to prove any undisclosed investment in construction by the assessee, especially in a situation where no infirmity or discrepancy has been established by the Assessing Officer in the account books maintained by the assessee. The Hon'ble Supreme Court in the case of Sargam Cinema (supra) held that no addition can be made on the basis of the report of the DVO without the books of account being rejected, wherein expenditure relating to the construction is recorded and such books of account have not been rejected by the Assessing Officer under Section 145 of the Act. Thus, on this count the addition deserves to be deleted.*

*7. In the present case, the dispute with regard to the cost of construction arose for the first time in assessment year 2001-02. We have perused the assessment order and find that the Assessing Officer has not rejected the books of account under Section 145 of the Act. In-fact, in para 3 of the assessment order, the Assessing Officer has observed that the assessee explained the return of income filed by producing books of account such as Cash-Book, Ledger, etc. Even after his examination of the cost of construction of the Hospital Building, the Assessing Officer has not pointed out any discrepancy in the cost of construction declared in the books of account. In para 4 of the assessment order the only basis for making of reference to the DVO appears to be "local enquiries". As per the Assessing Officer, "local enquiries" revealed that expenses shown by the assessee on construction of the Hospital Building were understated by the assessee. On this basis the Assessing Officer has justified the reference to the DVO for estimation of the cost of construction of the Hospital Building. In our considered opinion, the material on record does not show what was the nature of "local enquiries" and what was the material gathered which could show any infirmity/discrepancy in the cost of construction declared by the assessee in the account books maintained. Therefore, considering the entire discussion in the assessment order, we find that the Assessing Officer could not have referred the matter to the DVO because the books of account were not rejected, following the parity of reasoning laid down by the Hon'ble Supreme Court in the case of Sargam Cinema (supra)."*

14. Applying the said ratio laid down by the Hon'ble Supreme Court in Sargam Cinema Vs. CIT (supra) to the facts of the present case, we hold that where the Assessing Officer has failed to reject the books of account of assessee, then no reference could be made to the DVO for verifying the cost incurred for the project 'The Mall'. The assessee in any case had debited the said expenditure to the head 'Work-in-progress', which has to be set off against the income in later years. Accordingly, we hold that there is no merit in the order of Assessing Officer in disallowing the said expenditure as not allowable. We further hold that the CIT(A)

has erred in directing the Assessing Officer to verify the genuineness of expenditure once again in the year in which the impugned expenditure was set off against income recognized, if any. Such an action is not warranted, since it is based on the report of the DVO, for which reference was made without rejecting books of account. Accordingly, we reverse the finding of CIT(A). The grounds of appeal raised by the assessee are thus, allowed.

15. In the result, appeal of assessee is allowed.

Order pronounced on this 10<sup>th</sup> day of September, 2018.

<b>Sd/-</b> <b>(D.KARUNAKARA RAO)</b>	<b>Sd/-</b> <b>(SUSHMA CHOWLA)</b>
लेखा सदस्य / <b>ACCOUNTANT MEMBER</b>	न्यायिक सदस्य / <b>JUDICIAL MEMBER</b>

पुणे / Pune; दिनांक Dated : 10<sup>th</sup> September, 2018.

*GCVSR*

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

1. अपीलार्थी / The Appellant;
  2. प्रत्यर्थी / The Respondent;
  3. आयकर आयुक्त(अपील) / The CIT(A)-11, Pune;
  4. The CIT Central, Pune;
  5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए"
  6. / DR 'A', ITAT, Pune;
- गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune