

IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 5238/Mum/2016 (Assessment Year 2010-11)

M/s. Gahlot Construction Plot No. 28A, Sector-11 Opp Jui Nagar Railway Station, Navi Mumbai Pin Code-400 705.	Vs.	ITO 28(1)(5) Mumbai
(Appellant)		(Respondent)

I.T.A. No. 3900/Mum/2016 (Assessment Year 2010-11)

ACIT CC-2 Thane	Vs.	M/s. Gahlot Construction Plot No. 28A, Sector-11 Opp Jui Nagar Railway Station, Navi Mumbai Pin Code-400 705.
(Appellant)		(Respondent)

PAN No. AAOFM5698J

Assessee by	Ms. Ritika Agarwal
Department by	Shri Rajore Satishchandra R
Date of Hearing	16.10.2018
Date of Pronouncement	16.10.2018

ORDER

Per B.R. Baskaran (AM) :-

These cross appeals are directed against the order dated 15.3.2016 passed by Ld CIT(A)-11, Pune and they relate to the assessment year 2010-11.

2. We shall first take up the appeal filed by the Revenue, wherein the revenue is contesting the decision of Ld CIT(A) in deleting the income estimated by the AO from the project by following percentage completion method.

3. The assessee is a partnership firm and carrying on the business of builders and developers. During the year under consideration, its project was still under construction. Since it was following project completion method for offering income, it did not offer any income from the business of construction. The AO noticed that the assessee was subjected to search u/s 132(1) of the Act on 19-02-2009 and the assessee had admitted income for AY 2008-09 and 2009-10 under percentage completion method. Accordingly, the AO had assessed income in AY 2008-09 and 2009-10 under percentage completion method. Following the same methodology, the AO estimated income of the assessee under percentage completion method at Rs.69.75 lakhs by adopting profit percentage of 8%.

4. In the appellate proceedings, the Ld CIT(A) noticed that identical addition made by the AO in AY 2008-09 and 2009-10 has been deleted by him by accepting the contention of the assessee that it was following project completion method. Following the same, the Ld CIT(A) deleted the addition made by the AO towards profit from construction of project. Aggrieved, the revenue has filed this appeal.

5. At the time of hearing, the Ld A.R furnished a copy of order dated 27.05.2016 passed by the co-ordinate bench in the assessee's own case in AY 2008-09 and 2009-10 in ITA No.4895 & 4896/Mum/2013. From the perusal of the same, we notice that the Tribunal has confirmed the order passed by Ld CIT(A) in deleting the addition made by the AO under Percentage completion method. In this regard, the co-ordinate bench has followed the decision rendered by the Tribunal in the case of Bhoomi Construction Project (ITA No.1267/M/2013 & 2174/M/2013 dated 15.05.2015), wherein also the assessee had surrendered additional income during search proceedings under Percentage completion method. It was noticed that the assessee has been following Project completion method and the profit offered by it under Project completion method was accepted in the subsequent years. Hence the Tribunal

held that the addition could not have been made under percentage completion method.

6. The Ld A.R submitted that the project was completed by the assessee in AY 2013-14 and the income/loss arising from the project was offered by it in that year and the same has been accepted. In view of these facts, following the decision rendered by the Tribunal in the assessee's own case in AY 2008-09 and 2009-10, we uphold the order passed by Ld CIT(A) on this issue.

7. We shall now take up the appeal filed by the assessee. The first issue contested by the assessee relates to the interest income earned by it from short term fixed deposits. While the assessee claims the same as part of its Business income, the tax authorities have assessed it as income under the head income from other sources.

8. The Ld A.R submitted that the assessee was required to keep part of funds received from Customers as advance in banks in order to meet urgent requirements of business and the same has fetched interest income. She submitted that such interest income is assessable under the head Business as per the decision rendered by Hon'ble Bombay High Court in the case of CIT vs. LOK Holdings (2009)(308 ITR 356).

9. We heard Ld D.R and perused the record. We notice that, in the earlier years, the assessee did not contest the decision rendered against the assessee by Ld CIT(A) on this issue. We notice that the assessee has parked the part of Customer advances only in banks, which has earned interest income. We notice the prayer of the assessee is squarely covered by the decision rendered by Hon'ble Bombay High Court in the case of Lok Holdings (supra). Accordingly we set aside the order passed by Ld CIT(A) on this issue and direct the AO to consider interest income as part of its business receipts.

10. The next issue contested by the assessee relates to the addition of Rs.2,52,219/- made u/s 68 of the Act. The Ld CIT(A) confirmed the addition for the reason that the assessee has filed confirmation letters, which did not contain details about the creditor. The Ld A.R submitted that the creditor has since expired. She further submitted that the assessee has furnished details in the form of confirmation obtained for a subsequent year, wherein the address of the creditor is also given. In view of these, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO for examining this issue afresh.

11. In the result, the appeal of the revenue is dismissed and the appeal of the assessee is treated as allowed.

Order has been pronounced in the Court on 16.10.2018.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 16/10/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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