

IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH : RAIPUR

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.102/RPR/2015
Assessment Year: 2010-11

Shantipushpa Associates, Vs. ITO, Ward 1(1),
Opp. Bank of Baroda, Ayakar Bhavan,
Link Road, Vyapa Vihar,
Bilaspur (CG). Bilaspur (CG).

PAN : AAFFS5574B

(Appellant)

(Respondent)

Assessee by : Shri Sunil Kumar Agrawal, CA &
Ms Lakshmi Sharma
Revenue by : Shri V.B. Sargar, DR
Date of Hearing : 10.08.2018
Date of Pronouncement: 22.10.2018

ORDER

PER R.K. PANDA, AM:

This appeal by the assessee is directed against the order dated 12th January, 2015 of the CIT(A), Bilaspur, relating to Assessment Year 2010-11.

2. The facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of civil contractor and builder. It filed its return of income on 25th March, 2011 declaring total income at Rs.4,17,820/-. The Assessing Officer completed

the assessment u/s 143(3) determining the total income at Rs.1,22,94,010/- wherein he made additions of Rs.2,50,000/- by disallowing an amount of Rs.2,50,000/- on estimate basis out of the aggregate expenditure of Rs.9,41,721/- in respect of salary, coolie, cartage, purchase expenses and travelling expenses for want of complete vouchers. Similarly, he made addition of Rs.2,20,728/- being the difference in the value of investment declared by the assessee towards construction of building at Rs.97,46,803/- and the value determined by the DVO at Rs.99,67,531/-. The Assessing Officer further made addition of Rs.1,14,05,462/- being the amount debited by the assessee on account of expenses to be incurred on the sold area on the ground that the provision debited by the assessee is not an allowable expenditure.

3. In appeal, the Id.CIT(A) deleted the addition of Rs.2,20,728/- for which the Revenue is not in appeal, therefore, we are not concerned with the same. So far as the addition of Rs.2,50,000/- made by the Assessing Officer out of various expenses claimed in the P&L Account, the Id.CIT(A) restricted the same to Rs.1,25,000/-. So far as the addition of Rs.1,14,05,462/- disallowed by the Assessing Officer out of the provisions made for expenses incurred in the sold area is concerned, the Id.CIT(A) allowed only Rs.18 lakhs and sustained the balance amount.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following revised grounds:-

“1. On the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in not adjudicating the issue that the Id AO has disallowed the expenses at Rs.2,50,000, while the assessee has incurred

expenses at Rs.9,41,721, out of which only Rs.2,44,108 has been claimed in the P&L account and the remaining of Rs.6,97,613 has been capitalized and included in 'Building WIP account' as on 31-3-10, and has further erred in sustaining the disallowance at Rs.1,25,000 on ad hoc basis without rejecting the books of account u/s 145(3), and hence, addition sustained at Rs.1,25,000 is liable to be deleted.

2. On the facts and in the circumstances of the case and in law the Id.CIT(A) has erred in sustaining the disallowance of 'provision of expenses' at Rs.96,05,462, without considering the fact that, the assessee has expensed all the amounts of Rs.1,14,05,462/- in between 1.4.2010 to 30.6.2011 relating to the 'provision of expenses' made on 31.3.2010 and there is no balance outstanding as on 31.3.2011 in the account of 'provision for expenses', in spite of the fact that, the DVO has also verified & certified that the assessee has expensed total cost at Rs.10,57,06,781 for the total saleable area of 68,692 sq. feet (i.e., sold area of 17,806 sq. feet and remaining area of 50,886 sq. feet) up to 30-6-2011 and this cost of Rs.10,57,06,781 of total area of 68,692 sq. feet, has also not been objected/ refuted by the Id AO, and hence, addition sustained at Rs.96,05,462 is liable to be deleted.

3. Without prejudice to the above, alternatively, the Id CIT(A) has erred in not adjudicating the issue that the revenue recognition in case of builder & developer, may be adopted as per the 'Accounting standard-9' & 'percentage of completion method' by adopting 50% completion as on 31-3-2010 (i.e., as certified by the DVO) and accordingly, the revenue (i.e., sale proceeds) will be recognized (scaled down) at Rs.1,13,88,512 (i.e., at 50% completion as on 31-3-2010) in place of Rs.2,27,77,025 and thus, there is no requirement of making 'provision for expenses' of Rs. 1,14,05,462, and thus, the addition sustained at Rs.96,05,462 is liable to be deleted.

4. On the facts and in the circumstances of the case, the Id CIT(A) has erred in estimating the liability for future expenses at Rs.18,00,000 for cost of transformer, internal electricity connection, common toilets and parking space, and for such arbitrary and unfair estimation, he has not given any valid/ admissible basis, and he further erred in not estimating the liabilities for future expenses for the common area in the commercial complex, facilities like- lifts, flooring, plastering, painting, water fittings, security system expenses, common corridors, water head tanks etc. which is essential part of the commercial complex, and for the legal obligation taken to complete the 'remaining works mentioned in

the alleged sale deeds' for the sold area of shops, halls & offices of 17,806 sq. feet.

5. On the facts and in the circumstances of the case and in law, the Id CIT(A) has erred in concluding that construction cost of sold area of 17,806 sq.feet would be at Rs.716 per sq.feet (i.e., Rs. 1,09,53,743 actually incurred plus Rs.18,00,000 accepted as liability for future expenses), while the average construction cost comes to Rs. 1,538 per sq.feet (i.e., Rs. 10,57,06,781 as total cost incurred for the whole area of 68,692 sq.feet) which was duly certified by the DVO and it was also not objected/ refuted by the Id AO as well as the Id CIT(A).”

5. We have heard the rival arguments made by both the sides and perused the material available on record. So far as the Ground No.1 is concerned, the same relates to order of the CIT(A) in sustaining the disallowance at Rs.1,25,000/- as against Rs.2,50,000/- disallowed by the Assessing Officer. We find, the Assessing Officer, after verification of the details of expenses such as salary, coolie, cartage, purchase expenses and travelling expenses found that the expenses are supported by internal vouchers only and details like name and address of employee, designation, works assigned, etc. are not properly maintained against the payment of salary. The salary disbursement register was not provided and the component of personal expenses cannot be ruled out for want of proper bills and vouchers against travelling expenses. Therefore, the Assessing Officer on *ad hoc* basis made disallowance of Rs.2,50,000/-. We find the Id.CIT(A), after considering the totality of the facts, restricted such disallowance to Rs.1,25,000/-. The action of the CIT(A), in our opinion, is justified under the facts and circumstances of the case. It is an admitted fact that the assessee, during the course of assessment proceedings, could not produce the vouchers with full

supporting evidences. In our opinion, whenever an expenditure is claimed, the onus is always on the assessee to substantiate the same with evidence to the satisfaction of the Assessing Officer regarding the allowability of the same. Since the assessee, in the instant case, has failed to discharge the onus cast on it by adducing necessary corroborative proof, especially when the payments are made in cash, therefore, we do not find any infirmity in the order of the Id.CIT(A) sustaining an addition of Rs.1,25,000/- out of the disallowance of Rs.2,50,000/- made by the Assessing Officer. The ground raised by the assessee is, accordingly, dismissed.

6. So far as the remaining four grounds are concerned, they all relate to the order of the CIT(A) giving relief of only Rs.18 lakhs out of the addition of Rs.1,14,05,462/- made by the Assessing Officer out of the provision for expenses.

7. The facts, in brief, are that the Assessing Officer, on verification of the audit report submitted by the assessee found that the assessee firm has debited an amount of Rs.1,14,05,462/- to Profit & Loss Account under the head 'Provision for expenses to be incurred on sold area.' On being asked by the Assessing Officer to explain the basis of calculation of the expenses, the assessee submitted that the provisions for the expenses are debited to meet out the expenses to be incurred proportionately for the common area of the commercial complex. According to the Assessing Officer, a provision is recognised when: (i) an enterprise has a present obligation as a result of the past event; (ii) it is probable that an outflow of resources will be required to settle the obligation and (iii) a reliable estimation can be made of the amount of the

obligation. If these conditions are not met, no provision can be recognized. The Assessing Officer observed that there is no doubt that there is an obligation as a result of the past event and an outflow of resources will be required. However, the question is as to whether the estimate made by the assessee is reliable or not. He noted that the assessee has made an estimation of the construction work to be done in the coming years out of the sale receipt of the current year. He noted from the nature of the work to be done by the assessee in the coming years that the cost will vary from time to time and, therefore, it is not crystal clear. Since there is a doubt regarding the estimation of the cost to be done in the future and now, the reliability in the estimation is also doubtful and the condition to recognise a provision is not fulfilled, therefore, the expenses claimed by the assessee under the head of the provision is nothing but only a deferment of profit and tax. He, therefore, disallowed the provision for expenses of Rs.1,14,05,462/- and made addition of the same to the total income of the assessee.

8. Before the CIT(A), the assessee made elaborate submissions. It was submitted that the assessee in the year under consideration sold 17,806 sq. ft. of shops in the lower ground floor and third floor and received net sale consideration of Rs.2,27,77,025/-. It was submitted that the assessee is following mercantile system of accounting and percentage completion method for recognition of revenue. It recognized the revenue by way of registered sale deeds and gave physical possession to them on that occasion. Receipts were recognized as revenue receipts against the sale of some constructed shops which can be verified from the sale deeds and the

assessee had the legal obligation to complete the remaining construction work mentioned in the said deeds and for this legal liability including development of common area pertaining to the sold area, a reliable estimate of the liabilities of Rs.1,14,05,462/- was made and debited to the P & L Account under the head 'Provision of expenses on sold area.' It was argued that the provision was made for completing the facilities like electricity work, lifts, flooring, plastering, painting, water fittings, security system expenses, common corridors, common toilets, water tanks, etc., on a scientific and reasonable basis on past data available for cost of construction and future estimates on the basis of price quotation of material and on the basis of actual expenses incurred between 01.04.2010 and 30.09.2010. Therefore, there is no reason for the Assessing Officer for computing the method adopted for estimates created on 31st March, 2010. It was further submitted that the assessee had actually incurred the expenses in the financial year 2010-11. The only dispute is regarding the date on which the liability was crystallised. It was argued that an amount of Rs.4,92,89,579/- was actually incurred as cost of construction in financial year 2010-11 out of which the amount of Rs.1,14,05,462/- was provided in the year since it was related to the sold area of shops and offices in the month of October, 2009 and March, 2010. In other words, it was allocated proportionately on sold area to the total constructed area. The balance of Rs.3,78,84,117/- was capitalized as work-in-progress in financial year 2010-11. It was argued that the assessee invested Rs.1,41,39,845/- in the financial year 2011-12 and, thus, the total finished cost of commercial complex of remaining 50886 sq. ft. and common area of 24645 sq. ft. in various plots is

Rs.8,33,47,576/-. It was argued that the cost of construction stands at Rs.1638/- per sq. ft. of salable area of shops and offices in the commercial complex. The assessee also filed the details of percentage of sold area to different purchasers with total projected area of construction, terms and conditions mentioned in the conveyance deed and the future liability of the assessee on unfinished construction on sold area, yearwise analysis of percentage of construction work completed, etc.

9. However, the Id.CIT(A) was not satisfied with the arguments advanced by the assessee. After going through the various details filed by the assessee, he observed that the assessee grossly failed to furnish any iota of evidence regarding the basis of provision made by the assessee towards the unfinished work. However, considering the fact that estimating the charges of internal electricity connection with proportionate estimated liability on sold area will be around Rs.3 lakhs and estimated expenditure for use of common toilets and parking space towards the future liability at Rs.15 lakhs, the Id.CIT(A) allowed the amount to the extent of Rs.18 lakhs as provisions on such future liabilities. Thus, the Id.CIT(A) gave relief of Rs.18 lakhs to the assessee out of the disallowance of Rs.1,14,05,462/- made by the Assessing Officer and sustained Rs.96,05,462/- out of such provision of expenses.

10. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

11. The Id. counsel for the assessee submitted that the Id.CIT(A) himself has admitted that 43.58% construction is completed upto 31.03.2010 and he was of the

opinion that the assessee being a builder and developer and follows Accounting Standard-9 and applied Percentage Completion Method for arriving true and fair view of its financial statements. He submitted that going by the finding of the CIT(A), if the assessee has completed 50% completion as on 31.03.2010, then the revenue should have been recognized at Rs.1,13,88,512/- in place of Rs.2,27,77,025 which is the full value of consideration and, therefore, there is no requirement of making provision for expenses at Rs.1,14,05,462/- The ld. counsel for the assessee filed the following three tables to substantiate his case and submitted that any of the methods may be followed and ultimately it will be revenue neutral when the project is completed:-

METHOD-1

AY 10-11	Amt.
Sales of shops and offices:	Rs.2,27,77,025
Less: cost of construction upto 31.3.10 (proportionately for 17,806 sq. feet) (Rs.4,22,77,357 x 17,806 sq. feet/68,692 sq. feet)	(-) 1,09,53,743
Less: provision made for expenditure to be incurred in future for present obligation for completion of the alleged area of 17,806 sq. feet, as mentioned in the conveyance deed and mutually decided by the parties.	(-) 1,14,05,462
Profit on sale of 17,806 sq. feet (as per audited accounts)	Rs.4,17,820

METHOD-2

FY 09-10 (AY 10-11)	Amt. in Rs.
Sales: 44% of total sale value of Rs.2,27,77,025 for the sold area of 17,806 sq. feet as per the conveyance deed (as scaled down as per '% completion method', as per 'AS-9')	1,00,21,891
Less:	(-) 1,09,53,743

cost of construction actually incurred/shown as per the P&L account (Rs.4,22,77,357 x 17,806 sq. feet/68,692 sq. feet)	
Profit/(loss) on sale of 17,806 sq. feet	(-) 9,31,852

METHOD-3

FY 09-10 (AY 10-11)	Amt. in Rs.
Sales: Full sale value of Rs.2,27,77,025 for the sold area of 17,806 sq. feet as per the conveyance deed.	2,27,77,025
Less: cost of construction actually incurred/shown as per the P&L account (Rs.4,22,77,357 x 17,806 sq. feet/68,692 sq. feet)	1,09,53,743
Profit on sale of 17,806 sq. feet (i.e., before making 'provision of exp' of Rs.1,14,05,462 in the books)	1,18,23,282
Since, the whole project was 44% complete as on 31.3.2010 and 25.92% of the floor area has been sold upto 31.3.2010, so, profit would be restricted to 44% x 25.92% = 11.40% of the profit of Rs.1,18,23,282 (i.e., before making 'provision of exp' of Rs1,14,05,462 in the books):	
Net Profit would be Rs.1,18,23,282 x 11.40%	13,47,854

12. Relying on various decisions including the decision of the Hon'ble Supreme Court in the case of *Calcutta Company Ltd. vs. CIT reported in 37 ITR 1* and various other decisions as filed in the paper book and written synopsis he submitted that the expenditure which is incidental to the business on accrual basis, though it was not incurred during the relevant accounting year, should be allowed as a deduction.

13. The ld. DR, on the other hand, heavily relied on the order of the CIT(A).

14. We have considered the rival submissions made by both the sides and perused the orders of the authorities below. We find the assessee in the instant case, has debited an amount of Rs.1,14,05,462/- on account of provision for expenses to be incurred on the sold area. We find the Assessing Officer disallowed the same on the ground that the estimation of cost to be done in future is not reliable although there is an obligation as a result of the past event and an outflow of resources will be required. We find the Id.CIT(A) restricted such disallowance to Rs.96,05,462/-, after allowing relief of Rs.18 lakhs to the assessee on account of proportionate expenses towards the future liability on account of internal electricity, common toilets, parking space, etc. It is the submission of the Id. counsel of the assessee that the provision for expenses is only in respect of area of the shops sold and the assessee has an obligation to bear the expenditure as per sale deed on account of the unfinished work and expenses towards development/construction of the common area such as common toilets, corridors, parking space, lawns, etc.

15. We find the Hon'ble Supreme Court in the case of Calcutta Company Ltd. (supra) has observed as under:-

“4. The law is settled : if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are \satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.”

16. We further find the Assessing Officer himself in the instant case has admitted that the assessee has an obligation as a result of past event and outflow of resources will be required. He, however, did not allow the provision for expenses to be incurred for sold area. Although the Id. CIT(A) accepted a part of such provision, the Revenue is not in appeal for the same meaning thereby that such provision is required to be made. After considering the totality of the facts of the case and from the various details furnished by the assessee, we are of the opinion that the third method which has been reproduced at para No.8 appears to be more scientific and reliable which is as under:-

FY 09-10 (AY 10-11)	Amt. in Rs.
Sales: Full sale value of Rs.2,27,77,025 for the sold area of 17,806 sq. feet as per the conveyance deed.	2,27,77,025
Less: cost of construction actually incurred/shown as per the P&L account (Rs.4,22,77,357 x 17,806 sq. feet/68,692 sq. feet)	1,09,53,743
Profit on sale of 17,806 sq. feet (i.e., before making 'provision of exp' of Rs.1,14,05,462 in the books	1,18,23,282
Since, the whole project was 44% complete as on 31.3.2010 and 25.92% of the floor area has been sold upto 31.3.2010, so, profit would be restricted to 44% x 25.92% = 11.40% of the profit of Rs.1,18,23,282 (i.e., before making 'provision of exp' of Rs1,14,05,462 in the books):	
Net Profit would be Rs.1,18,23,282 x 11.40%	13,47,854

17. We, therefore, direct the Assessing Officer to verify the calculation as made above and if found correct to adopt the profit at Rs.13,47,854/- from such sold area. The grounds raised by the assessee are, accordingly, partly allowed.

18. In the result, the appeal filed by the assessee is partly allowed.

The decision was pronounced in the open court on 22.10.2018.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 22nd October, 2018

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi