

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER

&

SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.61/Ran/2017

Assessment Year : 2012-2013

DCIT, Circle-3, Ranchi	vs	Surjit Mukherjee 73, North Office Para, Doranda, Ranchi-834002
PAN/GIR No. : ABGPM 4839 C		
(Appellant)	..	Respondent

Revenue by : Shri A.K.Mohanty, JCIT(Jr. DR)

Assessee by : Shri P.C.Paul, CA

Date of Hearing : 22.11.2018

Date of Pronouncement : **26.11.2018**

ORDER

Per Pavan Kumar Gadale, JM:

The Revenue has filed this appeal against the order of CIT(A), Ranchi, dated 30.12.2016 in Appeal No.33/Ran/Oth/15-16, passed u/s.143(3)/250 of the Income Tax Act for the assessment year 2012-2013.

2. The revenue has raised the following grounds :-

1. *In the instant case, the then A.O. passed the order u/s 143(3) of the Income-tax Act, 1961 on 29.03.2015 for the Asstt Year 2012-13 on a total income of Rs. 1,60,35,980/- against the return income of Rs.7,81,170/-, by making additions of Rs.1,04,97,940/- on account of mis-match in the figures of opening & closing stock. The Assessing Officer also made addition of Rs.47,56,868/- disallowing the claim of leave encashment.*

The Hon'ble CIT(A), Ranchi vide appeal no. 33/Ran/Oth/15-16 dated 30.12.2016 allowed the appeal filed by the assessee.

2. *The Ld CIT(A) granted the relief of Rs.1,04,97,940/- to the assessee on account of mis-match in the figures of opening & closing stock, due to the fact that the A.O. was not justified in adding the cost of opening work-in-progress of Rs.1,04,97,940/-*

which was clearly appearing in the balance sheet of the earlier Asstt Year and in schedule of work-in-progress of current Asstt Year.

The contention of the Hon'ble CIT(A) is not acceptable and also prejudicial to the interest of revenue. At the time of assessment, the A.O. had asked the assessee to explain the, same but he could not do so and accordingly addition was made. It was seen that the assessee had shown the closing stock figure for the Asstt Year 2011-12 at 'zero' whereas opening stock figure for the Asstt- Year 2012-13 was at Rs.1,04,97,940/- and the assessee was asked to explain the source of this opening stock figure of Rs. 1,04,97,940/-. At that time the A.R. of the assessee replied that the opening stock figure was not brought forward figure, rather a figure taken equal to the cost of the total flats sold in the year and the cost figures routed through the balance sheet. The assessee was not following the recognized project completion method and also was in the habit of recognizing revenue arbitrary. The assessee had also not followed the standard accounting procedure and the expenses incurred for projects were never routed through P & L A/c rather kept in the balance sheet. Also, since the balance sheet enlists only a summary, it does not provide details of project related expenditure year after year, therefore, the genuineness of the expenditure is in doubt. At the time of assessment also, the A.O. had asked the assessee to justify the opening stock figure but he simply stated that this was cost of flats but he failed to substantiate it with relevant documentary evidences. The assessee neither submitted bills / vouchers, cash book, bank book, ledger etc nor explained how he had arrived at closing stock figure. In the absence of the said documents, the genuineness of opening stock could not be verified and the entire opening stock figure of Rs.1,04,97,940/- was added back to the total income of the assessee accordingly.

3. *The Ld. CIT(A) also granted relief of Rs.47,56,868/- to the assessee, on account of 'provision for leave encashment', stating that the assessee has shown 'provision for leave encashment / gratuity' at Col. No. 3d(ii)(c) of the ITR, which is an inadvertent wrong entry, and it does not affect the final figure of liability shown in audited balance sheet.*

But the contention of the Ld. CIT(A) is not acceptable, and is also prejudicial to the interest of revenue, to the extent that, the assessee had debited Rs.47,56,868/- towards provisioning for leave encashment. During the course of scrutiny proceedings, the assessee was asked to substantiate the same, but he failed. Also, since the assessee is a proprietorship concern, the leave encashment provision cannot be allowed and accordingly Rs.47,56,868/- was added back to the total income of the assessee.

4. *As per Instruction No. 21 of 2015 dated 10th Dec, 2015 of the CBDT, New Delhi, the monetary limit for filing appeal u/s 260A before IT AT is Rs.10,00,000/- and in the instant case tax effect is Rs.45,76,443/- and on the basis of above point, accordingly, appeal is to be filed before Hon'ble IT AT, Circuit Bench, Ranchi in the interest of revenue.*
5. *That the other and further grounds will be urged at the time of hearing.*

3. Brief facts of the case are that the assessee is a builder & developer, filed its return of income on 29.09.2012 declaring total income of Rs.7,81,170/- and the return of income was processed u/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and notice u/s.143(2) & 142(1) of the Act along with questionnaire was issued. In compliance to the same, Id. AR of the assessee appeared from time to time and furnished the details. The AO on perusal of the books of accounts, made addition of Rs.1,04,97,940/- on account of mis-match in the figures of opening & closing stock of the assessee. Further the AO also made addition of Rs.47,56,868/- disallowing the claim of leave encashment and assessed the total income at Rs.1,60,35,980/- and passed order u/s.143(3) of the Act dated 29.03.2015.

4. Aggrieved by the order of AO, assessee preferred an appeal before the CIT(A). In the appellate proceedings, the AR of the assessee appeared and argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of the assessee and findings of the AO allowed the appeal of the assessee.

5. Aggrieved by the order of CIT(A), the Revenue has filed an appeal before the Tribunal.

6. Before us, Id. DR supported the order of AO and submitted that at the time of assessment, the A.O. had asked the assessee to explain the, same but he could not do so and accordingly addition was made. The assessee was not following the recognized project completion method and also was in the habit of recognizing revenue arbitrary. The assessee had also not followed the standard accounting procedure and the expenses incurred for projects were never routed through P & L A/c rather kept in the balance sheet. Also, since the balance sheet enlists only a summary, it does not provide details of project related expenditure year after year, therefore, the genuineness of the expenditure is in doubt. At the time of assessment, the A.O. had asked the assessee to justify the opening stock figure but he simply stated that this was cost of flats but he failed to substantiate it with relevant documentary evidences. The assessee neither submitted bills / vouchers, cash book, bank book, ledger etc nor explained how he had arrived at closing stock figure. Therefore, the Id. DR submitted that the AO has rightly made the additions. In respect of second ground the DR submitted that during the course of scrutiny proceedings, the assessee was asked to substantiate the same, but he failed. Since the assessee is a proprietorship concern, the leave encashment provision cannot be allowed and therefore, the AO has rightly added Rs.47,56,868/- to the total income of the assessee and prayed for allowing the appeal.

7. Contra, Id. AR supported the order of CIT(A)

8. We have heard rival submissions and perused the material on record. On the first ground the contention of Id. DR is that Id CIT(A) granted the relief of Rs.1,04,97,940/- to the assessee on account of mis-match in the figures of opening & closing stock, due to the fact that the A.O. was not justified in adding the cost of opening work-in-progress of Rs. 1,04,97,940/- which was clearly appearing in the balance sheet of the earlier Asstt Year and in schedule of work-in-progress of the current Asstt Year. Whereas the CIT(A) observed that the expense details were available in both the Profit & Loss Account as well as in the form of bills and vouchers. In fact it was the sum of these expenses which were capitalised for each project. Therefore, it cannot be said that the genuineness of the expenses were in doubt. On appraisal of the facts and circumstances of the case as well as the judicial pronouncements, the CIT(A) held that the Ld. Assessing Officer was not justified in adding the Cost of Opening Work-in-progress of Rs.1,04,97,940/- which was clearly appearing in the Balance Sheet of the earlier Assessment Year and in the Schedule of Work-in-progress of the current Assessment Year and allowed this ground of assessee. The observations of the CIT(A) on this ground are as under :-

[7.5] I have considered the submissions of the appellant and have also perused the assessment order. I have also perused the Balance Sheets of the appellant as on 31.03.2011 and 31.03.2012 (impugned Assessment Year). The Closing WIP as on 31.03.2011 was shown by the appellant as Rs.81,78,205/- (Joy Villa Rs.28,17,385/-, Doranda Project Rs.49,41,641.53 and Pal Villa Rs.4,19,178.81). The break up of the expenses was also filed. This was taken as the opening WIP as on 01.04.2011 and to that the expenses of Rs.27,38,913.81 was made. As there was no expenses and Sales in Pal Villa it (Rs.4,19,179/-) was transferred to

Balance Sheet and added under the head closing work in progress. When the figures of the two balance sheets are appraised it is found that the observation of the Ld. Assessing Officer regarding the WIP figures were not on correct appreciation of facts.

[7.6] Second charge of the Ld. Assessing Officer against the appellant was that the appellant was not following the recognised project completion

[7.7] Section 145(1) of the Act states that the income chargeable under the heads "Profits and gains of business or profession" shall be computed in accordance with either cash or mercantile system of accounting "regularly employed by the assessee". It is only with effect from 01.04.2015 that a change has been brought about in section 145(2) which permits the Central Government to notify in the Official Gazette from time to time the income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income. That change is prospective and in any event does not apply to the case on hand.

[7.8] The settled legal position as far as section 145 of the Act is concerned is that it is not open to an assessing officer to reject the accounts of an assessee unless he comes to a determination that notified accounting standards have not been regularly followed by the assessee. The Accounting Standard of the ICAI do not have any statutory recognition under the Act although it is binding under the Companies Act, 1956. The method of accounting followed by the assessee in the present case, i.e., completed contract method was certainly one of the recognised methods and has been consistently followed by it. In the case of CIT v. Advanced Construction Co. (P.) Ltd. [2005] 275 ITR 30 (Guj.), it was observed that, "the provision, therefore, specifically provides that the choice of method of accounting lies with the assessee, the only caveat being that it has to show that the chosen method has been regularly followed. The section is couched in mandatory terms and the Department is bound to accept the assessee's choice of method and regularly employed, except for the situation, wherein the Assessing Officer is permitted to intervene, in case it is found that true income, profits and gains cannot be arrived at by the method employed by the assessee.

[7.9] The Delhi High Court in the case of CIT v. Manish Buildwell (P.) Ltd. [IT Appeal No.928 of 2011,-dated 15.01.2011] has ruled that Accounting standard-7 issued by the Institute of Chartered Accountants of India recognizes the position that in the case of construction contracts the assessee can follow either the project completion method or percentage completion method. Neither the revised Guidance Notes 2012 issued by the Institute of Chartered Accountants of India nor the 'Exposure Draft for

Guidance Note on recognition of revenue' issued by the Institute of Chartered Accountants of India in 2011 are mandatory. It is the option of the assessee to follow either the completed contract method or the percentage completion method. The completed contract method followed by the assessee, in the instant case, therefore, could not be faulted with by the revenue authorities and on that basis it is neither correct nor justified to say that the accounts did not present correct and complete picture of its profits. The accounts rejected by the Assessing Officer on the basis adopted by him are, thus, not found tenable.

[7.10] *In CIT v. Bilahari Investment P. Ltd. (2008) 299 ITR 1 (SC) it was observed as under (page-7) : -*

"Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such, method. Similarly, the percentage of completion method is another such method.

Under the completed contract method, the revenue is not recognised until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract.

On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognised under the method determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract

The above indicates the difference between the completed contract method and the percentage of completion method."

[7.11] *The other aspect that appears to have escaped the attention of the Ld. Assessing Officer was that the appellant offered to tax the amounts received. Consequently, not only did it follow a recognised method of accounting and followed it consistently, it also offered to tax the revenue recognised by it. For the impugned Assessment Year the total income on sales was shown as income at Rs.79,33,000/-. In similar circumstances, the Supreme Court in CIT v. Excel Industries Ltd. (2013) 358TTR 295 (SC) observed that the dispute if any raised at the instance of the Revenue would be at best academic. The stand of the appellant in the present case also*

finds support in the decision of the Gujarat High Court in CIT v. Shivalik Buildwell P.Ltd. (2013) 40 taxmann.com 219 (Guj). It was held that the assessee in that case, who was a developer, was entitled to book the amount received as booking advance as income on transfer of the property. Till then the advance booking amounts could not be treated as his trading receipt. The High Court recognised that the assessee in that case was entitled to apply the project completion method in terms of the applicable Accounting Standard.

[7.12] *The Apex Court again in the case of CIT v. Hyundai Heavy Industries Co. Ltd., 291 ITR 482 (SC) took the similar view and held at page 495 as under: -*

"Lastly, there is a concept in accounts which called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "completed contract method" and "percentage of completion method". To know the results of his operations, the contractor prepares what is called a contract account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No. 7. They are "completed contract method" and "percentage of completion method". Thus, as both the methods of accounting are recognized methods of accounting, the assessee is at liberty to choose any of the above and if any one of the method of Recounting is consistently followed by the assessee, the assessing officer cannot change the method of accounting to the "percentage of completion method"."

[7.13] *Another charge of the Ld. Assessing Officer is that the appellant had not followed the standard accounting procedure. The expenses incurred for projects were never routed through Profit & Loss Account, rather kept in Balance Sheet. Since the Balance Sheet enlists only a summary, it did not provide details of project related expenditure year after year; therefore, the genuineness of expenditure was in doubt. I have considered these charges of the Ld. Assessing Officer and find that the method of accounting followed by the appellant was consistent. It is also a fact that the same was accepted for the previous Assessment Year. The expense details were also available both the Profit & Loss Account as well as in the form of bills and vouchers. In fact it was the sum of these expenses which were capitalised for each project. Therefore, it cannot be said that the genuineness of the expenses were in doubt. On appraisal of the facts and circumstances of the case as well as the judicial pronouncements, it is held that the Ld. Assessing Officer was not justified in adding the Cost of Opening Work-in-progress of Rs.1,04,97,940/- which was clearly appearing*

in the Balance Sheet of the earlier Assessment Year and in the Schedule of Work-in-progress of the current Assessment Year. Ground of appeal is allowed.”

9. Before us Id. DR could not bring any new cogent material to controvert the above findings of the CIT(A). Accordingly, we do not see any good reason to interfere with the above findings of the CIT(A) and the same is hereby upheld and this ground of appeal of Revenue is dismissed.

10. With regard to second ground, the contention of Id. DR before us is that since the assessee is a proprietorship concern, the leave encashment provision cannot be allowed and therefore, the CIT(A) is not justified in allowing the claim of assessee. We find that the CIT(A) while dealt with the disputed issue has observed that the assessee has not claimed provision for leave encashment in the profit and loss account for the assessment year under consideration and no such credit entry has been made by the assessee in the balance sheet as well and allowed this ground of appeal of the assessee. The observations of the CIT(A) in this regard are as under :-

“[8] Ground No.3 of the appellant pertains to the addition of Rs.47,56,868/- on account of provision made for leave encashment. The appellant submitted that he had not claimed any expenses towards provision for Leave Encashment/Superannuation/Gratuity of Rs.47,56,868/-. To substantiate his claim the Profit & Loss Account was. The Hard copy of the return was also filed. During the year the taxable Income was Rs.8,20,920/- and the appellant had filed the return of Rs.8,20,920/-. Hence there is no concealment or suppression of figure. Moreover in the I.T.R.'s Profit & Loss Section of the Assessment Year-2012-13 there was no such claim. Only in the Balance Sheet section of the I.T.R. of the Assessment Year-2012-13 due to some defect in the software/processing error a sum of Rs.47,36,868/- appeared under the head provision for Leave Encashment/Superannuation/Gratuity in the inner column. However, neither it has been carried forward to the outer column nor did it make any impact in the total of the Balance Sheet. The

appellant had made no such claim. Had the appellant made any such claim then the liability would have increased to that extent and there would have been difference or mismatch in the Balance Sheet. As the Balance Sheet tallied the mistake was of the software/processing error. If any expenses has not been claimed in the return or in the Profit and Loss Account there cannot be any case of any disallowance. A petition u/s.154 was filed on 23 February, 2016 but had not been disposed off till date.

[8.1] The Ld. Assessing Officer, in this regard has stated that the appellant had debited Rs.47,56,868/- towards provisioning for leave encashment. He was asked to substantiate which he failed. Since, the appellant was a proprietorship concern, the leave encashment provisioning could not be allowed. In the light of the above fact Rs.47,56,868/- was added back to total income.

[8.2] I have considered the submissions of the appellant and have perused the assessment order. I have also perused the balance sheet of the appellant and its profit and loss account for the impugned Assessment Year. In the profit and loss account no such claim was made by the appellant. No such credit entry (liability side) was made in the balance sheet as well. The Liabilities were shown as :-

1.	Current liabilities (advance for flats)	-Rs.45,12,968/-
2.	Sundry Creditors	-Rs.1,07,137.82
3.	Outstanding liabilities	<u>-Rs.2,43,900/-</u>
	Total	-Rs.48,64,006/-

On perusal of the return of income of the appellant I find that under 'Current Liabilities' the appellant had shown the following

Sr. No.	Description	Row of the ITR	Inner Column	Final Figure
1	Sundry Creditors	3(d) (i) (A)	1,07,138/-	
2	Provision for leave encashment/gratuity	3(d)(ii)(C)	47,56,868/-	
3.	Other provision	3(d)(ii)(D)	47,56,868/-	
	Total	3(d) (ii) (E)		48,64,006/-

[8.4] Perusal of the return of income would show that though an inadvertent wrong entry, as shown in Serial No.2 was taken, it did not affect the final figure of liabilities taken in the outer column. The figures have been reprinted as shown in Serial No.2 and 3 above. The figure matches with the figures in the Audited Balance Sheet. Based on the above, it cannot be said that the appellant had either claimed the expenses or had made a false entry of leave encashment in its books. Ground of appeal is **allowed.**"

11. Before us Id. DR could not bring any new cogent material to controvert the above findings of the CIT(A). Accordingly, we do not see any good reason to interfere with the above findings of the CIT(A) and the same is hereby upheld and this ground of appeal of Revenue is dismissed.

12. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 26/11 /2018

Sd/-
(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 26/11/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
DCIT, Circle-3, Ranchi
2. The Respondent –
Surjit Mukherjee,73, North Office Para,
Doranda, Ranchi-834002
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

//True Copy//

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

BY ORDER,

SR.PS, ITAT, RANCHI