

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Rajpal Yadav, Judicial Member
& Shri Amarjit Singh, Accountant Member**

**ITA No. 1918/Ahd/2014
Assessment Year: 2008-09**

DCIT(OSD) Cir-9, Ahmedabad (Appellant)	Vs	Prafulchandra J. Agarwal, 4 th Floor, "Kadam" Judges Bungalow Road, Bodakdev, Ahmedabad-380054 (Respondent) PAN No. AAB PA3 656 P
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**ITA No. 1642/Ahd/2014
Assessment Year: 2008-09**

Prafulchandra J. Agarwal, 4 th Floor, "Kadam" Judges Bungalow Road, Bodakdev, Ahmedabad-380054 PAN No. AAB PA3 656 P (Appellant)	Vs	ACIT Cir-9, Ahmedabad (Respondent)
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**Revenue by: S. N. Divatia, AR
Assessee by: S.K. Dev, Sr. DR**

Date of hearing : 21-02-2019
Date of pronouncement : 27-03-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

The appeal filed by the Revenue for A.Y. 2008-09 and appeal filed by the assessee, arise from order of the CIT(A)-VIII, Ahmedabad dated 31-03-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

The grounds of appeal of the Revenue:

“1a). The Ld. Commissioner of Income Tax (Appeals)-VIII, Ahmedabad has erred in law and on facts in deleting the disallowance of Rs. 12,06,342/- [out of total disallowance of Rs. 1,23,15,922/- made on account of difference between disclosure and book profit] which included interest expenses on borrowed funds not used for Assessee’s business.”

1b). The Ld. Commissioner of Income Tax (Appeals)-VIII, Ahmedabad has erred in law and on facts in deleting the disallowance of Rs. 8,40,478/- made on amount of Sharafi interest on borrowed funds not used for Assessee’s business.

1c). The Ld. Commissioner of Income Tax (Appeals)-VIII, Ahmedabad has erred in law and on facts in deleting the interest expenses & loan processing charges amounting to Rs. 3,82,762/- & Rs. 2,36,179/-, respectively, on personal loans of Assessee on borrowed funds not used for Assessee’s business.”

The grounds of appeal of the assessee:-

“1.1 The order passed u/s. 250 on 31.03.2014 for A.Y. 2008-09 by CIT(A)-VIII, Abad, partly upholding the addition to the extent of Rs. 17,24,076/- is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.

2.1 The Ld. CIT(A) has grievously erred in law and or on facts in upholding the addition to the extent of Rs. 17,24,076/- in respect of difference between disclosed income and net profit shown in the return of income.

2.2 That in facts and circumstances of the case as well as in law, the Ld. CIT(A) has grievously erred in confirming the addition of Rs. 17,24,076/- towards the difference.”

All the grounds of appeal of the Revenue and assessee are interconnected based on common facts therefore for the sake of convenience they are adjudicated by this common order:

2. In this case return of income declaring total income of Rs. 1,41,80,610/- was filed on 27.09.2008. Subsequently notice u/s. 143(2) of the Act was issued on 14.09.2009. The assessee firm is engaged in the business of builder and developer.

3. In the case of the assessee a survey action u/s. 133A of the Act was conducted on the assessee's business premises on 23.05.2008. During the course of survey in answer to question no. 18 of statement the assessee stated that he had paid advance tax of Rs. 7,00,000/- for F.Y. 2007-08 but his profit would be approximately Rs. 2.62 crore from his property concern namely M/s Aggarwal Enterprises. However, the assessee has filed return of income on 27.09.2008 showing income of Rs. 1,41,80,610/-. On verification of P&L Account the AO has noticed that assessee has shown net profit of Rs. 1,38,84,078/- as his income from M/s. Agarwal Enterprise. Therefore, he observed that assessee has shown his income at lower side by the amount of Rs.1,23,15,922/-. In his explanation the assessee has explained that at the time of survey he had considered and estimated total net profit of his scheme Kanakdhara but because of pending construction work he could not disclose net profit at Rs. 2.62 crore. Accordingly he has disclosed the net profit up to the stage of completed construction of the project till 31.03.2008. The AO was not agreed with the explanation of the assessee and stated that the survey was conducted after the completion of the previous year and at the time of survey

action the assessee was well aware of the stage of completion of construction work of Kanakdhara scheme, therefore, explanation of the assessee was not acceptable that construction work was pending. Therefore after taking into consideration the declared profit of Rs. 2.62 crore in his statement the AO has made addition of Rs. 1,23,15,922/- to the total income of the assessee.

4. Aggrieved assessee has filed before the Ld. CIT(A). The Ld. CIT(A) has partly allowed the appeal of the assessee and restricted the addition to the amount of Rs. 17,24,076/-. The relevant part of the decision CIT(A) is reproduced hereunder:

“5.3 Decision:

I have carefully considered the facts of the case, the assessment order and the written submission of the appellant. A survey operation was conducted at the premises of the appellant wherein disclosure of approximately 2.62 crores was made, by the appellant. However in the return of income which was filed subsequent to the survey the appellant shown a return of income of Rs. 1.4180610/- crores. The AO accordingly considered the difference as undisclosed income of the appellant. During the course of appellate proceedings, the appellant who had furnished additional evidences and has sought to explain the reasons for differences between the disclosure made during the course of survey and that filed in the return of income. The assessing officer has also verified the claim of the appellant and has given his report. The appellant has submitted that the difference had arisen mainly because of the reason that profit from Kadambari-1 project was conceded twice, the administrative expenses of about 62 Lacs were not considered at that time. The appellant has submitted that the AO had considered income taking into account project expenses only. The general and administrative expenses as per the chart given by the appellant have to be considered to arrive at the net profit.

The assessing officer in the remand report has submitted that the claim of the appellant regarding profit from Kadambari-1 project is acceptable. It has been informed by him that after examining the documents it was apparent that the profit was taken twice and the assessee's contention was correct.

Regarding the expenses which were not considered at the time of the survey it has been informed by the AO that the claim of the appellant of

Rs.4388714/- the expenses pertaining to Agarwal Enterprises, was examined. He is informed that the other items of expenses appear to be normal however the interest payable on Sarafi and salary expenses have increased abnormally as compared to last year.

In response to the comment given by the AO the appellant has submitted that the table itself indicate that there is no jump in salary expenses. However the increase in interest expenses is due to the fact that the appellant business has increased considerably and the interest expenditure have accordingly increased. It has been explained by the appellant that the interest expenditure is duly accounted for in the books of accounts. The loans taken are also duly reflected in the regular books of accounts of the appellant which were audited and therefore, the increase in interest is duly reflected in books of accounts and supported by documents. After examining the comparison of various expenses it is noted that there is no noticeable increase in salary expenses as compared to the earlier year. The increase is there in respect of the interest expenses which have been explained by the appellant by way of copies of accounts. The books of accounts of the appellant were audited and the interest is duly shown in reflected in the books of accounts. In view of these the explanation given by the appellant is acceptable to this extent that the increasing interest expenditure is duly supported by facts. However, there are other expenses also which are miscellaneous in nature, such as Cab Expenses of Rs. 1.93 lakhs, printing and stationary expenses of 1.64 Lacs, salary expenses of 4.03 Lacs, telephone expenses of 1.02 Lacs, travelling expenses of 1.84 Lacs etc. for which there is no apparent explanation about the increase therein. It is important to note that the survey was conducted at the premises of the appellant after the close of financial year. The appellant, as claimed by him, is maintaining books of accounts a regular basis and therefore, during the statement recorded at the time of survey he should have been aware about all the expenses which have been incurred by him and should have informed the correct profit. The findings given by the AO is partly correct to this extent that the appellant has inflated certain expenditure in order to reduce the taxable income. The views of the AO has also been corroborated by the present AO in the remand report, in view of these facts and circumstances and considering the fact that interest expenditure was duly recorded in books of accounts the claim of the appellant is not accepted to the extent of Rs. 10 Lacs.

The other expenses which remain to be considered was expenditure such as depreciation, Audit Fee, Sarafi interest and loss on sale of car aggregating to Rs. 1786603/-, which according to the appellant was not taking into consideration. The assessing officer after examining the contention of the appellant during the stage of remand proceedings has commented that the expenses appear to be reasonable except the interest expenditure. In respect of the interest expenditure as discussed in the preceding paragraph it is noted that the interest expenditure is duly accounted for. Accordingly the contention of the appellant deserves to be accepted.

The next item which is also is to be taken into account for reconciling the difference is the incorrect computation of GP for working out the profit. The appellant has submitted its chart indicating the difference in GP taken at the time of survey and actually shown in the books of accounts. For the sake of convenience and clarity the comparison Chart given by the appellant is reproduced here under:

Sr. No.	Particulars	Survey	Actual	Difference
1	Kadambari - I	68,82,194	60,01,491	8,80,703
2	Kanakdhara	1,12,50,033	1,03,99,484	8,50,549
3	Kadambari - III	3,53,523	5,44,624	(1,91,101)
4	Kadambari - II	13,12,882	13,23,138	(10,356)
5	Kadambari - IV	7,30,920	7,30,920	-
6	Other Income	13,00,000	11,05,819	1,94,181
			TOTAL] 7,24,076/-

The AO has reported in the remand report that the appellant had not been able to give any satisfactory explanation regarding the difference of income worked out at the time of survey and the actual shown in the books of accounts. The total difference shown in the above chart is Rs. 1724076/- the AO has informed that though the appellant had given the working of deviation but could not give any supporting evidence in support of this claim.

The appellant in rejoinder to the remand report has submitted that the evidence relating to supervision charges, were now being produced in the form of declaration given by two parties who have supervised the services in the projects of Kanakdhara project.

The submission of the appellant is not acceptable for the reason that the appellant has not given detailed explanation before the AO during the course of remand proceedings where one more opportunity was provided to him. The AO has very logically and clearly analysed every evidence provided by the appellant and has even agreed with the contentions of the appellant wherever the information given by the appellant was correct. It is to be noted that the survey was conducted at the premises of the appellant after the close of the financial year and the appellant must have been aware about the all the details of the gross profit working. Therefore, logically the gross profit accepted by the

appellant during the course of survey should be accepted. Further the reasons for deviation such as payment of supervision charges and wrong debit of purchase is not supported by any documentary evidence. The supervision charges claim appears to be an afterthought as there is no mention of the same during the survey. Though the appellant has given some certificates in regarding supervision charges in the rejoinder to the remand report, the same cannot be now accepted as it is a clear afterthought as the appellant could have produced the same before the AO during the course of assessment proceedings or even in the course of remand proceedings. In view of these facts and in absence of any clear explanation the extent the submission of the appellant regarding difference of Rs. 1724076/- is not acceptable.

*In view of the above discussion, the addition made by the AO is restricted to Rs. 1724076/-. The ground of appeal is accordingly, **partly allowed.**”*

5. We have heard the rival contention of both the sides and perused the material on record. During the course of assessment the A.O. has observed that during the course of survey u/s. 133A on 23.05.2008 the assessee stated to have paid advance tax of Rs. 7 lakhs and the current year profit was estimated at Rs. 2.62 crore. However, the net profit was shown at Rs. 1,38,84,078/- for the year under consideration which the AO has found to be lower than the income declared during the survey. The AO has compared the expenses for the current year and the preceding year and observed that at the time survey, the assessee had no planning in mind to show lower profit. Therefore, the difference of Rs. 1,23,15,922/- between the declared income of Rs. 2.62 crore at the time of survey and Rs. 1,38,84,078/- as per P.S.L. was added the total income of the assessee. The assessee has submitted that difference in the profit from Kadambari-I project has arisen because of the following reasons:-

“(i) the profit of Rs.43,82,194/- of Kadambari-1 project as per page 63 of the impounded material was taken twice. It was already taken into consideration at Rs.68,82,194 in the computation made at the time of survey.

(ii) the expenses aggregating of Rs.43,88,714 of Agrawal Enterprise, the proprietary concern of the appellant was left out to be considered. The said expenses are evidenced from page 33 of the impounded material.

(iii) at the time of survey, the expenditure such as depreciation, audit fee, sharafi interest and loss on sale of car aggregating to Rs. 17,86,803/- was not taken into consideration. It will be appreciating that the said expenses are normal in the course in appellant's business and its entries are passed at the time of finalization of the annual accounts so that the same were considered in the tentative P & L a/c prepared at the time of survey.

(iv) There is a difference in the income as considered at the time of survey and the actual income of various projects as per the chart given herewith. The appellant has also filed reconciliation showing the nature of such difference and the main reason is the G.P. taken on higher side at the time of survey and mistakes in respect of some of the expenses such as purchases, telephone etc.

(v) The appellant has also enclosed herewith a comparative chart showing the nature of items wherein such difference arises."

6. The AO has also reported in the remand part as per page no. 17 of the CIT(A) order that the claim of the assessee regarding profit from Kadambari-I project is acceptable. With the assistance of the Ld. Representative we have gone through the material on record and observed that there was no abnormal increase in the salary expenses, however, there was increase in the interest expenses compared to the preceding year. It is noticed that the interest expenses have been increased as per the business need of the assessee and the same was duly accounted in the book of accounts. The AO has not disproved the material fact that borrowed money on which interest paid was not used for the purpose of the business of the assessee. Regarding difference of Rs. 17,24,076/- in respect of gross profit taken at the time of survey and actually declared in the books of account in respect of six categories stated at page 19 of the order of the CIT(A), we have noticed from the material available on record that the assessee had failed to explain the same with appropriate material and supporting evidences. The assessee has also failed to substantiate his claim of payment of supervision charges and other deviation before the AO and before

the Ld. CIT(A) as reported at Page No. 20 of the Ld. CIT(A). In this connection we have perused the material on record and consider that there is no infirmity in the decision of Ld. CIT(A).

7. Accordingly both the ground of the Revenue and appeal of the assessee are dismissed.

8. In the result both appeal of the Revenue and assessee are dismissed.

Order pronounced in the open court on 27-03-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad : Dated 27/03/2019

Tammy

True Copy

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद