

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI C.M. GARG, JM & SHRI L.P. SAHU, AM
आयकर अपील सं./ITA No.255/CTK/2018
(निर्धारण वर्ष / Assessment Year :2015-2016)

M/s Ashirvad Infrastructure, Flat No.1, Plot No.26, Budha Nagar, Laxmisagar, Bhubaneswar-751006	Vs.	ITO, Ward-2(2), Bhubaneswar
स्थायी लेखा सं./PAN No. : AATFA 5443 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Brajabandhu Bihari, AR
राजस्व की ओर से /Revenue by	:	Shri Subhendu Dutta, DR
सुनवाई की तारीख / Date of Hearing	:	06/09/2019
घोषणा की तारीख/Date of Pronouncement	:	11/09/2019

आदेश / ORDER

Per L.P.Sahu, AM:

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 23.04.2018 for the assessment year 2015-2016.

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

1. *That the order passed by the honorable Commissioner of Income Tax (Appeal)-I as well as the order of assessment passed by the learned Assessing Officer, Ward-2 (2), Bhubaneswar without valid reason and without considering the facts of the case is illegal, unjustified and liable to be quashed.*
2. *That the estimation of net profit @15% on closing stock treating it as sale is unjustified, arbitrary and not tenable in law.*
3. *That as per the audited statement of accounts of the appellant, the net taxable profit ratio to sales was 1.04%. On the basis of this the taxable profit on stock, if treated as sale shall be Rs.1,95,610.*
4. *That again once this is taxed this year, the assessee shall claim refund in subsequent year, when the said stock has actually been sold in the AY 2016-17 and AY 2017-18.*

5. *That above all there was actually stock valued at cost amounting to Rs. 1,88,08,700/- as on 31.03.2015 as per certificate of architect.*
6. *That the appellant begs to urge further grounds to be raised at the time of hearing.*

3. Brief facts of the case are that the assessee derives income from construction and sale of flat and filed return of income electronically on 01.10.2015 showing gross total income at Rs.8,08,190/-. The case was selected for scrutiny and statutory notices were issued to the assessee on various dates but no proper compliance was made on the part of the assessee. On scrutiny of documents available before him, the AO noticed that the assessee has shown closing stock(WIP) of Rs.1,88,08,700/-, which was verified from the trading profit and loss account and balance sheet. Thereafter details were called for as per notice u/s.142(1) of the Act dated 01.11.2017 to furnish the details of closing stock with valuation report. On the date of hearing the assessee could not furnish sufficient documents/evidences/books of accounts for verification on the above stated issue. Even another opportunity was also given to the assessee for furnishing the details upto 8th December, 2017 but the assessee neither appeared before the AO nor filed any details. Accordingly, the framed the assessment and added the entire amount of closing stock(WIP) to the total income of the assessee.

4. Feeling aggrieved by the order of AO, the assessee appealed before the CT(A) and the CIT(A) considering the submissions of the assessee and findings of AO has applied Percentage Completion Method (PCM) and estimated @15% profit on the entire value of closing stock(WIP) as declared by the assessee in his profit and loss account and balance sheet. Accordingly, the CIT(A) substituted by profit of Rs.28,21,305/- on the valuation of closing stock.

5. Further feeling aggrieved by the order of CIT(A), the assessee is in appeal before the Income Tax Appellate Tribunal.

6. Ld. AR before us filed paper book which is placed on record containing written submission of material fact, balance sheet as on 31.03.2015 and copy of tax audit report for A.Y.2015-2016 and submitted that both the authorities below are not justified and the entire value of closing stock should not be added and no any receiving has been recognized from the closing stock as shown in the profit and loss account. He also submitted that once it is added in the impugned year, the assessee will get benefit in the subsequent year as opening work-in-progress. The tax would be neutralized. Therefore, ld. AR prayed for allowing the appeal of the assessee.

7. On the other hand, ld.DR relied on the order of AO and submitted that the AO has rightly added the amount of unexplained closing stock(WIP) to the total income of the assessee. The assessee has also not cooperated with the department at the assessment stage and unable to substantiate the value of closing stock(WIP). No any report has been obtained from the technical persons/architect for valuing of the closing stock(WIP). The assessee should value on the basis of percentage completion method as prescribed by the Institute of Chartered Accountants of India (ICAI) for the construction contract.

8. After hearing both the sides and carefully perusing the entire materials available on record and the orders of lower authorities, we find that the CIT(A) has applied percentage completion method and accordingly calculated profit @15% on the value of closing stock(WIP). We further observe that the assessee has also disclosed in the balance sheet advance from customers of Rs.2,91,31,903/-. As per charging of income-tax u/s.4 of the Act, the law is settled that profit should be taxed in the year in which it has been earned/accrued by the assessee. The assessee has followed mercantile system of accounting and in respect of the construction contract. The Percentage Completion Method (PCM) has been recognized for calculating of the profits. As per our considered opinion, the assessee should have been obtained the

valuation report from any technical persons/architects for valuing of the closing stock(WIP) and accordingly he should have been disclosed in his profit and loss account. It is undisputed that the assessee has taken advance from customers i.e. the final sale value has not been recognized. We also notice from the order of AO that the assessee did not cooperate during the course of assessment proceedings for substantiating the valuation of closing stock(WIP) as shown in the profit and loss account. Further as per the profit and loss account filed before us by the assessee at paper book page no.6, we find that the gross profit of the assessee comes to 6.45% on the assessee's business for the year under consideration. Therefore, as per our considered opinion, the authorities below should apply the GP rate on the impugned amount @6.45%. Accordingly, we restrict the addition estimating @6.45% on the value of closing stock(WIP) as shown by the assessee in his profit and loss account. Hence, the profit on the closing stock of Rs.1,88,08,700/- estimated @15% by the CIT(A) without any basis, is restricted to 6.45% and the profit is directed to be taxed in the impugned assessment year on the closing stock at Rs.12,13,161/-. Further in regard to the contention of ld. AR that the assessee will get benefit of opening work-in-progress in the next year, it is made clear that the assessee has not cooperated during the course of assessment stage for substantiating the value shown in the profit and loss account

of work-in-progress. The AO has added as unexplained closing stock (WIP) and the Id. CIT(A) has observed that percentage completion method (PCM) has not been followed. Therefore, the contention of the assessee is not accepted. Accordingly, the grounds of appeal of the assessee are partly allowed.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on this 11/09/ 2019.

**Sd/-
(C.M.GARG)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-
(L.P.SAHU)**

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 11/09/2019

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
M/s Ashirvad Infrastructure,
Flat No.1, Plot No.26, Budha Nagar,
Laxmisagar, Bhubaneswar-751006
2. प्रत्यर्थी / The Respondent-
ITO, Ward-2(2), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कटक** / DR, ITAT,
Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, कटक /
ITAT, Cuttack