

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

I.T.A. No. 2489/PN/2017 : Assessment Year : 2007-08

M/s. Sneh Developers
1194/1, Madhu Vrindavan Society,
2nd Floor, Opp. Dnyanesh Mangal,
Karyalaya, Shivajinagar,
Pune-411 005.
PAN ABFFS1926F

Appellant

Vs.

Dy. Commissioner of Income-tax
Circle 3, Pune.

Respondent

Appellant by : None
Respondent by : Shri Pankaj Garg

Date of Hearing : 03-02-2020
Date of Pronouncement : 04-02-2020

ORDER

PER LALIET KUMAR, JM :

This appeal of the assessee is arising out of Order passed by the CIT(A) on 3rd August 2017 on the following grounds.

On facts and in law,

- (1) *The learned CIT(A) erred in holding that the reopening u/s 148 as justified in law and without appreciating that the reopening u/s 148 was bad and doubtful debts in law and therefore, the reassessment order ought to have been held as null and void.*
- (2) *The learned CIT(A) erred in estimating the income of the assessee @ 15% of the total sales declared during the year without appreciating that the assessee had not earned any such income and hence, the addition made ought to have been deleted.*
- (3) *The learned CIT(A) failed to appreciate the various reasons given by the assessee for lesser profitability in the said project*

and therefore, there was no reason to estimate the income of the assessee @ a5% of the total sales declared during the year.

- (4) Without prejudice, the assessee submits that the adoption of net profit rate @ 15% is very high and the same may kindly be reduced substantially.*
- (5) The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

2. Brief facts: The assessee is a partnership firm, engaged in the business of construction of commercial projects at Fergusson College Road, Pune. A search was carried out at the premises of the assessee and during the search certain documents were seized which indicated that the assessee had generated ‘on-money’ on sales of units. The learned A.O on account of ‘on-money’, had estimated the income of the assessee for A.Y 2004-05 and made the addition. Feeling aggrieved by the order, the assessee filed an appeal before the Tribunal and the Tribunal had given directions for estimating the gross profit of the assessee from unaccounted sales consideration at 25%.

3. Relying on the directions of Tribunal for A.Y 2004-05, the A.O had issued a notice u/s 148 of the Act for A.Y. 2007-08 and the case of the assessee was re-opened for the reasons recorded. The A.O in para 6 and 7 mentioned the reasons for making the additions in the assessment order as under:

- “6. The ITAT held that estimated gross profit of the assessee from the unaccounted sales consideration @ 25% and drawing analogy from this the then Assessing Officer had reasons to believe that gross profits from the amounts recorded in the regular books should also be @25% that in A.Y. 2007-08 has shown a loss of Rs. 20.18 LACS. The case of the assessee was reopened and the assessee was asked to explain why gross profit should not be estimated @ 25% for A.Y 2007-08. The assessee foiled its reply vide his letters dated 13-2-2015 and 2-3-2015. The assessee’s argument is that ITAT has adopted rate of profit @25% on adhoc basis and only on unaccounted portion of sales and the same percentage of profit should not be applied on accounted sales during the year.*

7. *Assessee's argument is duly considered but not accepted fully as in the case of builder and promoter there can rarely be any loss in a project. The assessee has been showing loss in A.Y 2005-06 (Rs. 10,384/-), A.Y 2006-07 (Rs. 3,66,392/-) and in A.Y 2006-07 also the assessee has shown a loss of Rs. 20,18,827/- . When ITAT has adopted a profit of 25% on unaccounted sales then the loss on accounted sales cannot be accepted at any cost hence books of the assessee are rejected and profit of 20% on accounted sales is estimated @ Rs. 1,132,4,796/- as the profit for A.Y 2007-08."*

4. Feeling aggrieved by the order passed by the A.O the assessee preferred an appeal before the CIT(A) and the CIT(A) had given a partial relief to the assessee and estimated net profit of the assessee at 15%. The finding of the learned CIT(A) is mentioned in paras 5.2, 5.3 and 5.4 to the following effect:

"5.2 *I have perused the facts of the case. It is observed that the appellant has shown sales of Rs. 5,66,23,980/- during the year. The income shown is a negative figure, which is absolutely uncommon in the case of a builder. No prudent builder will carry out a business for incurring loss. In the facts of the present case, there were clear indications that the appellant was involved in receiving on-money against sale of premises in the 'Millennium Plaza' project. This fact was clearly established through entries made in the seized documents and which has been added also in the preceding A.Ys and confirmed at the appellate stage. In view of this peculiar fact, the books of account of the appellant are not reliable and therefore, the A.O has rightly rejected the same. In fact, it is not only the right but the duty of the A.O to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom. It is incorrect to say that the Officer is bound to accept the system of accounting regularly employed by the assessee, particularly, the correctness of which has been questioned in the past as the appellant had received on-money which was not shown in the return.*

5.3 *Section 145 confers sufficient power upon the A.O, it I posed a duty upon him – to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where accounts are prepared without disclosing the actual receipt it is the duty of the A.O to determine the taxable income by making such computation as he thinks fit. Each year being a self contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee had been found to be such that income could*

not properly be deducted therefrom. It is therefore, not only the right but the duty of the A.O to act in exercise of his statutory power, as he had done in the present case, for determining what, in his opinion, was the correct taxable income.

“5.4 In view of the aforesaid discussion, I uphold the action of the A.O in rejecting the book results. The A.O in the assessment order has computed net profit at the rate of 20% of accounted sales. However, I feel that the rate adopted by the A., is little on the higher side and therefore, he is directed to adopt the profit at the rate of 15% on the total sales of Rs. 5,66,23,980/-. The A.O is therefore, directed to re-compute the income accordingly. The grounds are partly allowed.”

5. The assessee is in appeal before us on the grounds mentioned hereinabove. However, while going through the grounds raised by the assessee, it appears that the Ground No. 4 is actually a substantial ground which was challenged by the assessee before us. At the time of hearing, none was present on behalf of the assessee. As a matter of record, notices for appeal were sent to the assessee on 30-9-2019, 15-11-2019 and 24-12-2019. But none appeared on all these occasions. Today also, none appeared on behalf of the assessee. As such, the Tribunal is left with no other option but to decide the matter based on the material available on record. The learned CIT(A) in para 5.4 has mentioned that the A.O has estimated net profit of the assessee at 20% of the accounted sales. However, the CIT(A) had reduced Net Profit to 15% on the basis of estimation.

6. In our opinion, when the Tribunal in the earlier round of litigation for the earlier year i.e. A.Y. 2004-05 on account of search conducted in the group on 16-2-2013, have come to the conclusion that ‘on money’ was received by the assessee, ‘on accounted’ sales and have estimated gross profit at 25%, then CIT(A) should not have deviated from decision of the Tribunal and have reduced Net Profit to 15% there is no distinguishable fact insofar as present assessment year vis-a-vis earlier assessment year/s are concerned. In view thereof, in our opinion there is no reason to interfere with the finding recorded by the CIT(A) as the CIT(A) was more than liberal for granting relief to the assessee as the CIT(A) has reduced net profit of the assessee from 20% to 15%, in spite of decision of Tribunal in

earlier assessment year. In view of the above, we are of the opinion that no interference is required to by the Tribunal to the decision of CIT(A).

7. In the background of above, the appeal of the assessee is dismissed.

Order pronounced in the open court on 4th February, 2020.

Sd/-

D. KARUNAKARA RAO
(ACCOUNTANT MEMBER)

Pune; Dated : 4th February, 2020
Ankam

sd/-

LALIET KUMAR
(JUDICIAL MEMBER)

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), 2 Pune
4. Pr. CIT 2, Pune
5. The Addl. CIT Rang 3
6. DR, ITAT, "B" Bench, Pune.
7. Guard File.

// True Copy//

BY ORDER,

Sr. Private Secretary
ITAT, Pune

		Date	
1	Draft dictated on	3.2.2020	Sr.PS/PS
2	Draft placed before author	3-2-2020	Sr.PS/PS
3	Draft proposed and placed before the second Member	4-2-2020	JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS	4-2-2020	Sr.PS/PS
6	Kept for pronouncement on	4-2-2020	Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk	5-2-2020	Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		