

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 07/JP/2023
निर्धारण वर्ष/Assessment Years : 2015-16

Panchsheel Colonizers Private Limited, C-82-C, Chaitanya Marg C-Scheme, Jaipur	बनाम Vs.	Income Tax Officer Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADCP 8557 H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri Manish Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Smt Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 17/03/2023
उदघोषणा की तारीख / Date of Pronouncement : 21/03/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 22/11/2022 [here in after (NFAC)] for assessment year 2015-16, which in turn arise from the order of the ITO Ward 2(2), Jaipur dated 29.12.2017.

2. The assessee has marched this appeal on the following grounds:-

“1. On the facts and in the circumstances of the case, the Id. CIT(A) has grossly erred in confirming the Assessment order passed u/s 143(3) of the Income Tax Act, arbitrarily.

1.1. That, Id.CIT(A) has further erred in dismissing the appeal on the wrong application of the facts that since Returned loss was accepted by Id. AO, thus no prejudice was caused to the assessee, grounds raised by the assessee stand void which is contrary to the grounds where assessee has categorically taken the ground of computation of income by "Percentage Completion Method" instead of Project Completion Method" regularly adopted by assessee.

1.2. That, Id.CIT(A) has further erred in not appreciating the fact that though Id.AO had accepted the Returned loss (it was solely for the reason that loss computed by recasting the Trading and Profit & Loss Account was higher than the loss declared by the assessee), however, has worked out the closing value of stock at Rs. 16,18,32,026/- by applying "Percentage Completion method" as against "Project Completion method" regularly followed by the assessee, thus in substance Id.AO has not accepted the trading results declared by the assessee and therefore such observations of Id. CIT(A) deserves to be ignored and excluded and the trading results declared by assessee by following "Project Completion Method" be held as genuine.

1.3. That, Id.CIT(A) has further erred in not considering the judgement delivered by Hon'ble Rajasthan High Court in the case of assessee itself for preceding years, whereby hon'ble Court has approved the Project Completion method as appropriate method of accounting in the case of assessee. It is prayed that decision of Hon'ble High Court being binding and ought to have been followed by Id. CIT(A) and accordingly the amount of closing stock should be replaced by the actual amount as per books of accounts of the assessee.

2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

3. The fact as culled out from the records is that the assessee has filed his e-return on 28.09.2015 for A.Y 2015-16 vide acknowledgement number 833008661290915 declaring total income Nil and current year loss of Rs. 95,84,892/-. The case was

selected for scrutiny on the basis of CASS norms. Notice u/s 143(2) was issued on 13.04.2016 and served upon the assessee. Thereafter notice u/s 142(1) was issued on 15.04.2016. During the year under consideration the assessee has declared total turnover of Rs. 8,16,05,046/-.

3.1 In case of the assessee the Revenue has called for the details based on the percentage completion method and thereby assessee was advised to recast the balance sheet and profit & loss account based on percentage completion method. On being aware that based on that method the loss is computed more than what is computed by the assessee in the return of income. Thus, the returned loss based on the project completion method was adopted. But while doing so in the subsequent year the closing stock for this year based on the percentage completion method was considered as opening balance for the subsequent year instead on project completion method.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT/NFAC. The Id. CIT(A) vide paras 4.1 to 4.3 stated that :

“4.1 The present appeal arises from the order u/s 143(3) of the Income Tax Act 1961 dated 29.12.2017 passed by the ITO, Ward 2(2), Jaipur, for the A.Y 2015-16. The order was admittedly served on 30.12.2017 and the due date for filing the appeal u/s. 249(2) is on 29.01.2018. The appeal has been filed before the due date i.e. on 25.01.2018. There is no delay in filing the appeal. The case was posted for hearing and after considering the reply of the assessee, facts on record and written submissions, the appeal is disposed of as under.

4.2. It is relevant to revisit the section 246 of the IT Act, 1961:

Section 246. (1) Subject to the provisions of sub-section (2), any asses-see aggrieved by any of the following orders of an Assessing Officer (other than the Deputy Commissioner) may appeal to the Deputy Commissioner (Appeals) 68[before the 1st day of June, 2000] against such order-

- (a) an order against the assessee, where the assessee denies his liability to be assessed under this Act 70 or an intimation under sub-section (1) or sub- section (18) of section 143, where the assessee objects to the making of adjustments,] or any order of assessment under sub-section (3) of section 143 or section 144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed,

As referred above, an appeal can be filed before CIT(A), when an assessee is adversely affected by the order passed by AO, In the present case, the returned "nil" income has been accepted by the AO and further allowed to carry forward the claim of current year loss of Rs.95,84,892/ made in the return of income. The returned nil income and the claim of current year loss made in the return have been accepted and no adjustments have been made by the AO, the grounds raised by the assessee becomes void.

4.3 The AO has rightly allowed the claim whatever made in the return of income in accordance with law. I don't find any error or illegality in the impugned order of the AO and the same is upheld. Thus, this ground of appeal preferred by the assessee is found to be devoid of any merit and hence dismissed.”

5. As the assessee did not find any favor on the issue from the order of the Id. CIT/NFAC, has moved this appeal before us. On the Grounds stated in para 2 above. To support the grounds so raised by the assessee, the Id. AR of the assessee has filed a paper book containing the following evidences.

S. No.	Particulars	Page Nos.
1	Copy of Acknowledgement of Return of Income, Computation of Income for the A.Y 2015-16	1-4
2	Copy of Audited Balance Sheet for the A.Y 2015-16	5
3	Copy of re-casted Profit and Loss Account for the AY 2015-16	6
4	Copy of order dated 31.07.2017 passed by Hon'ble ITAT in the case of the assessee in ITA No. 573/JP/2014, 652 & 421/JP/2015 & 64/JP/2017 for the A.Y 2007-08, 09-10 & 10-11.	7-42
5	Copy of order dated 01.09.2017 passed by CIT Jaipur in the case of the assessee in ITA No. 143/2014-15 for the A.Y 2012-13.	43-54
6	Copy of Order dated 01.09.2017 passed by CIT Jaipur in the case of the assessee in ITA No. 323/2013-14 for the A.Y 2011-12.	55-69
7	Copy of Order passed by Hon'ble Rajasthan High Court in the case of assessee for A.Y 2007-08, 2009-10 & 2010-11	70-113
8	Copy of written submission filed before Id. CIT(A) during the course of first appellate proceedings.	114-117

6. The Id. AR of the assessee also relied upon the written submission filed and the same is reiterated herein below.

“Kindly refer to the captioned appeal fixed for hearing today in case of our captioned clients. Under instructions from the assessee and in elaboration to the grounds of appeal already taken, following submission is made for your kind and sympathetic consideration.

It is submitted that the assessee company was incorporated on 13.02.2006 as per the provisions of Companies Act 1956 and is engaged in the business of real estate related to development of townships. The only project undertaken by assessee company is situated at 40 kms from Jaipur City on Ajmer road at village Kotjeswar, Tehsil Mozamabad, District Jaipur. The return of income for the year under consideration was filed declaring total income at NIL. Turnover of assessee includes Sale of Plots and since the assessee has followed the 'Project Completion Method' for determination of income from real estate activity, no income has been booked in respect of the ongoing project, and similarly expenses in connection with Project are capitalized in WIP inventory and no income is booked in respect of such ongoing projects.

Case of Assessee was selected for scrutiny assessment under CASS. Details and explanations sought were furnished and assessment was completed u/s 143(3) of the Income Tax Act, 1961. During the course of assessment proceedings, Id.AO directed the assessee to re cast its Trading and Profit & loss account by adopting Percentage Completion Method. Assessee had declared Return of Income at loss of Rs.95,84,892/- whereas as per Recasted Trading and Profit & loss account, loss was worked out at Rs.25,230,182.30, therefore no addition was made by Id.AO. Aggrieved of the disallowances made by Id.AO, assessee has preferred present appeal.

The groundwise submission is as under:

Grounds of Appeal No. 1 to 1.1:

In these grounds of appeal, assessee has challenged the action of Id. AO in working out closing value of stock at Rs.16,18,32,026/- by applying 'Percentage Completion Method' in Real Estate activity.

The controversy in the present case, in brief, is that the assessee for the purpose of computing the income, has followed "project completion method" and has capitalized all the expenses (direct and indirect) pertaining to the development of its only ongoing project, "PANCHSHEEL PARK" and charged them to the "Work-in-Progress" (WIP) Account which were directly taken to the Balance Sheet. However, the Ld. AO has not accepted the same and re-casted the WIP Account of assessee on the basis of "percentage of completion method" instead of the "project completion method" regularly followed by the assessee and split the same into trading account on one hand and P&L account on the other. However, Id AO has eventually accepted the loss declared by the assessee by observing as under:

"Perusal of which it is notices that the assessee has claimed more loss in recasted P& L account. Considering the facts of the case loss declared by the assessee is accepted"

It is also to be noted here that Id.AO has applied Percentage Completion method in immediately preceding as well as succeeding Assessment years i.e. A.Y. 2014-15 and A.Y. 2016-17. Moreover, while computing profit of Assessment year 2016-17, Id.AO has adopted opening stock at Rs.16,18,32,026/- i.c. closing stock as on 31.03.2015 as per Percentage Completion method as is evident from Assessment orders of A.Y. 2015-16 and 2016-17 itself. It is thus clear that even though, Id.AO in Assessment order has stated that loss declared by assessee is accepted, eventually, Id.AO has recomputed the Closing Stock based on the Percentage Completion method though has not assessed at loss recomputed.

With this background, it is submitted that similar action was taken by Id. AO for Assessment Year 2007-08, 2009-10 and 2010-11 also, wherein in first appeal, the treatment as done by assessee was allowed by Ld. CIT(A) and such orders have been affirmed by Hon'ble ITAT vide order dated 31.07.2017 (APB 07-42). Decision para of order of Hon'ble ITAT (page 27 para 3.3 of ITAT order) is reproduced herewith for your kind consideration (Page 33):

3.3 "We have heard rival contentions and perused the material available on record In the light of the case laws as relied on by the Ld counsel for the assessee, more particularly, judgement of Hon'ble Delhi High Court in the case of CIT vs. Manish Buildwell Pvt. Ltd in ITA No.928/2011 and the decision of the Tribunal in the case of Unique Builders & Developers vs. DCIT in ITA No.73/JP/2012 and 211/JP/2012, we do not see any infirmity in the order of Ld. CIT(A), which is hereby affirmed The ground of the revenue is rejected"

Similarly, following the decision of Hon'ble ITAT, Id. CIT(A), in orders passed for A.Y. 2011-12 & 2012-13 has held "Project Completion Method" as acceptable method of accounting. Department had preferred appeal before Hon'ble Rajasthan High Court against such orders of Hon'ble ITAT, which was decided vide order dared 13.03.2018 in D.B.ITA No. 2/2018. Relevant question of law framed and decision of Hon'ble Court thereon is reproduced as under (APB 70-113):

Question of Law

"2.....

Whether on the facts and circumstances of the case, the Tribunal was justified in deleting the addition made by the Assessing officer by applying percentage completion method, without appreciating that the actual receipts on sale of flats could be ascertained on the basis/allotment agreements entered by the assessee and the assessee has contravened AS-7 and AS-9, which tantamount to not following AS-I provided in section 145(2) of the Act.

.....

.....

Decision:

14. We have heard counsel for the parties.

15. In view of the observations made in para 12, 12.1 onwards and 13, by the Tribunal, we are of the opinion that the Tribunal while considering the case has gone in detail and after considering the facts on record has given a finding. In our considered opinion the Tribunal being a fact finding authority, it will not be appropriate for us to re appreciate the evidence which has already been appreciated by the Tribunal.

16. Therefore, in view of the decision of this Court and the Gujarat High Court, referred to by Mr. Jhanwar, the first issue is answered in favour of the assessee.

17. In view of the decision of Supreme Court referred hereinabove, the second issue is also required to be answered in favour of the assessee.

18. In view of the decision of Gujarat High Court in the case of S.A. Builders (supra), the issue No.(iii) is answered in favour of the assessee and against the department."

6. In that view of the matter, no substantial question of law arises."

It is thus submitted that since the facts and circumstances of the case for the present year i.c. A.Y. 2015-16 are identical to the facts in the preceding years and Ld. AO has changed the method solely based on the conclusion drawn in the orders passed in preceding assessment years. Therefore, the aforementioned orders in the said preceding years deserve to be followed and the method adopted by assessee deserves to be accepted.

On merits, it is submitted that assessee has valued closing stock as per "Project Completion Method" and no discrepancy whatsoever has been pointed by Ld. AO in such valuation. The only reason for making addition was recasting of Trading & Profit & Loss account by following "Percentage Completion" and now since Hon'ble ITAT has confirmed the application of "Project Completion Method", addition made by Ld. AO deserves to be deleted. Further, Ld. AO on his own assumptions and presumptions and without appreciating the method of accounting regularly followed had deviated the results declared by assessee more particularly when he has not invoked the provisions of section 145(3) of the Income Tax Act, 1961, thus the action of the Ld. AO is not only against the provisions of law but also arbitrary and deserves to be stuck down."

7. In addition to the written submission so filed, the Id. AR of the assessee submitted that all the grounds raised by the assessee are in fact interrelated and common in nature. The Id. AR of the

assessee further submitted that during the assessment proceedings, although the assessee is regularly following the project completion method of accounting but as per the direction of the Id. AO assessee submitted recasted Balance Sheet and Profit and Loss account as per the percentage completion method. In accordance with these methods the loss is derived at Rs. 2,52,30,182.30/-. On perusal of this recasted profit and loss account, the Id. AO has observed that the loss is more and therefore, he has accepted the loss as declared by the assessee for an amount of Rs. 95,84,892/-. The Id. AR of the assessee further submitted that the Id. CIT/NFAC has not considered the grounds so raised and taken a view that in the present case returned income is accepted and the assessee was allowed to carried forward the loss there cannot be any further grievance. Hence the appeal was dismissed and the assessee could not get the justice from the Id. CIT(A).

8. Per contra, the Id. Sr. DR has not objected to the submission of the assessee and has no objection as the revenue has already based on the decision of the Hon'ble Rajasthan High Court accepted the method of accounting of project completion method

and the issue attained the finality. Therefore, the closing stock for the year under consideration should be computed based on the method of accounting regularly followed by the assessee and she has not objected to the ground of the assessee.

9. We have heard the rival contentions and perused the material placed on record. It is not disputed that in the assessee's own case, the Hon'ble Rajasthan High Court has confirmed the finding of ITAT. The relevant finding of ITAT (in case of ITO vs. M/s Panchsheel Colonizers Pvt. Ltd. in ITA No. 573/JP/2014 and others dated 31/07/2017) is as under:-

"Therefore, the action of the Ld. AO in recasting the Trading and Profit & Loss Account and varying the closing value of WIP at Rs. 10,02,95,148/- is not at all acceptable in view of nature of the business of the assessee and regular business practice followed by real estate developers and further in view of various judicial decisions given in this regard. The Ld. AO on his own assumptions and presumptions and without appreciating the method of accounting regularly followed tried to deviate the entire issue more particularly when he has not invoked the provisions of section 145(3) of the Income Tax Act, 1961, thus the action of the Ld. AO is not only against the provisions of law but also arbitrary and deserves to be stuck down. Thus the ground deserves to be decided in favour of the assessee, as held correctly by the Ld. CIT(A) and the assessee prays accordingly."

10. Since there is finality in the case of the assessee that the method of accounting followed by the assessee is accepted. Therefore, the closing stock is required to be worked out for the

year under consideration based on regular method of accounting followed by the assessee. Therefore, the Id. AO is directed to consider the closing stock for year under consideration based on the accounts filed by the assessee before him and not on the basis of the recasted profit and loss account and balance-sheet submitted. The Id. AO is directed to give the necessary relief to the assessee in accordance with law in view of the fact the appeal of the assessee is allowed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 21/03/2023

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 21/03/2023

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Panchsheel Colonizers Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 07/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar