

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "G" Bench, Mumbai.

Before Shri B.R. Baskaran (AM) & Shri Rahul Chaudhary (JM)

I.T.A. No. 682/Mum/2023 (A.Y. 2013-14)

Mr. Sanjeev Motwani B4-Sheel Apartment 16 th Road, Bandra W Mumbai-400 050. PAN : AGAPM0183G (Appellant)	Vs.	ACIT-23(3) Matru Mandir Grant Road Mumbai-400 007. (Respondent)
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Assessee by	Dr. K. Shivram & Shri Shashi Bekal
Department by	Shri Virabhadra S. Mahajan
Date of Hearing	19.06.2023
Date of Pronouncement	11.08.2023

O R D E R

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 10.02.2023 passed by Ld CIT(A), NFAC, Delhi and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the addition of Rs.10,01,280/- relating to the valuation of closing stock.

2. The facts relating to the case are stated in brief. The assessee is an individual and is the proprietor of M/s Jeevat Construction and this concern was undertaking construction contract works from Indian Railways. The assessee had executed certain projects and the amount spent on those projects was shown as Closing work in progress (closing stock) of Rs.49,44,536/- in the preceding year, which was brought forward as opening stock during the year under consideration. It is pertinent to note that the

assessee did not execute any project during the year under consideration. With regard to the above said work executed, it was submitted that it was executed in part only in the preceding years. Since the Railways did not approve the same, it was not continued and the matter was referred to Arbitration. It is the submission of the assessee that in view of the passage of time, the value of Closing Work in progress has gone down and hence the assessee has adjusted the value by revaluing the same at Rs.39,43,256/-. It is the submission of the assessee that he did so following the accounting principle of valuation of stock at "Cost or market value, whichever is lower".

3. Before the AO, the assessee submitted that he shall be offering the arbitration award amount received as his income by adjusting the same against stock. The AO took the view that the assessee did not provide any basis for revaluing the stock and the revaluation has been done on the whims of the assessee. He also took the view that the Accounting Standards do not permit such a revaluation. Accordingly, he did not permit the revaluation, which resulted in an addition of Rs.10,01,280/- to the income of the assessee.

4. The Ld CIT(A) agreed with the view taken by the assessee. He relied upon the decision rendered in the case of Goa Carbon Ltd vs. JCIT (ITA No.3 of 2016), wherein it was held that if the assessee failed to produce any material to support the variation between the cost price and market price, then the addition is justified. He also placed reliance on the decision rendered by Hon'ble Supreme Court in the case of British Paints Ltd, wherein it was held that, if the accounting system followed by the assessee does not disclose correct profit, the AO is entitled to change the same. Accordingly, the Ld CIT(A) also held that the assessee has failed to produce any evidence to justify the value of closing stock adopted by him. Accordingly, the Ld CIT(A) upheld the addition made by the AO.

5. We heard the parties and perused the record. There is no dispute with regard to the fact that the assessee was undertaking construction contracts obtained from Railways. It is the submission of the assessee that he had executed a contract partially in the earlier years and due to dispute with the Railways, the same was not completed and the matter has been referred to arbitration. We notice from the submissions made before Id CIT(A) that the assessee has received arbitration award of Rs.24,88,231/- and Rs.6,16,571/- during the years relevant to the AY 2018-19 and 2019-20. The above said awards were adjusted against the value of closing stock. After the receipt of above said award, the value of closing stock stood at Rs.7,95,000/- as on 31.3.2019.

6. It is the contention of the assessee that the value of construction work executed by it partially was deteriorating with the passage of time and hence he has factored in the said loss by reducing the value of stock. According to the assessee, the stock has to be valued at cost or market value, whichever is less and the said accounting principle has been followed in reducing the value of stock. Since the assessee did not furnish any basis for reducing the value, the tax authorities rejected the said action of the assessee.

7. We notice that the events occurring thereafter, in our view, support the case of the assessee. We noticed that the assessee has shown the details of "Work in Progress" (Stock) for AY 2017-18 to 2019-20.

Asst. Year	Stock as on 01-04 (Opening stock)	Award received	Closing stock as on 31.03.
2017-18	38,00,000	-----	38,00,000
2018-19	38,00,000	24,88,231	14,11,769
2019-20	14,11,759	6,16,571	7,95,000

The above table shows that the assessee could not recover the amount spent by it fully till 31.3.2019. The assessee has executed the contract work

for railways and hence it could recover his contract value from Railways only, i.e., it is not the case that the assessee could encash value of work by handing over the same to some other person. Hence, there was no option for the assessee to pursue the matter with Railways only and accordingly, the dispute has been referred to Arbitration. From the table shown above, it could be seen that the assessee is yet to recover Rs.7,95,000/- even after expiry of six years from the end of the year under consideration.

8. Valuing the closing stock at cost or market value is a recognized accounting principle. There is one more principle, i.e., the Principle of Prudence, as per which, all known losses should be provided for, even if it is not actually incurred. In our view, the wisdom of the assessee in reducing the value of closing stock (work in progress) could be covered under the Principle of Prudence also and the said action of the assessee stands vindicated by the future events. When the arbitration award is not expected to be fully favourable to the assessee, then it is the duty of the assessee to provide for known loss and in our view, the action of the assessee in reducing the value of closing work in progress may be substantiated under this principle also. If the assessee receives any money in excess of the value of WIP, the same shall be taxable in the year of receipt. Accordingly, in the facts and circumstances of the case, we are of the view that there is no reason to disbelieve the value of closing work in progress disclosed by the assessee.

9. In view of the foregoing discussions, we are of the view that the tax authorities are not justified in making the impugned addition. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO accept the value of closing work in progress declared by the assessee and delete the consequential addition made.

10. In the result, the appeal filed by the assessee is allowed.

Pronounced on 11.8.2023.

Sd/-
(Rahul Chaudhary)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Mumbai.; Dated : 11/08/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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