

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD 'A' BENCH, HYDERABAD.**

**BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.346/Hyd/2022		
Assessment Year: 2017-18		
Sai Charan Townships, Plot No.111, Prashasan Nagar, Jubilee Hills, Road No.12, Hyderabad. PAN : ACBFS3257J	Vs.	Asst.Commissioner of Income Tax, Central Circle – 3(3), Hyderabad
(Appellant)		(Respondent)
Assessee by:		Shri Mohd. Afzal, Advocate.
Revenue by:		Shri Shakeer Ahamed, Sr. AR.
Date of hearing:		31.08.2023
Date of pronouncement:		31.08.2023

ORDER

Per Shri Laliet Kumar, J.M.

This appeal is filed by the assessee, feeling aggrieved by the orders of the Commissioner of Income Tax (Appeals) – 11, Hyderabad invoking proceedings u/s 143(3) of the Income Tax Act, 1961 for the A.Y 2017-18 on the following grounds :

“1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.

2. The learned Commissioner erred in confirming the order of the Assessing Office wherein, an amount of Rs. 1,40,52,853/- is added with an assumption that income is to be computed as per percentage of completion method.

3. The learned Commissioner ought to have appreciated that the assessee is recognizing the revenue on sale of plots, therefore, erred in confirming the addition of Rs. 1,40,52,853/ -.

4. The learned Commissioner ought to have appreciated that the Assessing Officer has not found any defect in the books of accounts or in the method adopted by the assessee for recognition of revenue, therefore, erred in confirming the addition of Rs.1,40,52,853/-.

5. The learned Commissioner erred in confirming the addition of Rs.2,13,678/- made u/s 40A(3) of the IT Act, which is disallowed without pointing any of the violation of the provisions of section 40A(3) of the IT Act.”

2. The assessee has raised the additional grounds which read as under :

“1. The learned Assessing Officer erroneously assumed that as per the ICDS (Income Computation and Disclosure Standard) w.e.f 01.04.2015, the assessee being a real estate developer mandatorily to follow percentage completion method, whereas, CBDT vide circular No.10/2017, dt: 23.03.2017, clarified that there is no specific ICDS notified for real estate developers, the learned CIT also erred in not considering the CBDT Circular. Therefore, the addition made by the Assessing Officer applying the percentage completion method, amounting to Rs.1,40,52,853/- is to be deleted.

2. The learned Commissioner erred in confirming the order of the Assessing Officer wherein, percentage completion method as notified by the CBDT w.e.f 01.04.2005 was applied to make an addition of Rs. 1,40,52,853/-, whereas, the CBDT clarified that there is no specific ICDS notified in respect of, real estate developers. Therefore, the addition made by the Assessing Officer applying the percentage completion method, amounting to Rs. 1,40,52,853/- is to be deleted.”

3. The appeal filed by the assessee is barred by limitation by 94 days. The assessee has moved a condonation petition explaining reasons thereof. We have heard both the parties on this preliminary issue. Having regard to the reasons given in the petition, we condone the delay and admit the appeal for hearing.

4. The brief facts of the case are that assessee is a partnership firm filed its return of income for A.Y. 2017-18 on 01.11.2017 declaring an income of Rs.23,42,820/-. Thereafter, the case was selected for scrutiny under CASS and was transferred to Central Circle-3(3), Hyderabad u/s 127 of the IT Act consequent to survey in one of its sister concerns. Thereafter, notices u/s 142(1) r.w.s. 129 of the Act was issued to the assessee on 15.02.2019. Thereafter, the department had issued notices u/s 142(1) to the assessee firm from time to time through ITBA portal on various dates. In response to the same, assessee firm had submitted the information as called for. Considering the information submitted by the assessee, Assessing Officer opined that the assessee worked out profit as per AS-9 i.e. Project Completion method. According to the Assessing Officer, the profit has to be worked out as per the disclosure standards notified by the CBDT. Hence, issued show cause notices to that effect.

4.1. In response to the show cause notices, assessee firm filed a letter accepting to offer the profit as per percentage completion method and worked out the profit at Rs.41,64,726/-. The assessee himself submitted that 50.67% project is completed and hence, the corresponding profit of the assessee firm was worked out to Rs.1,66,87,244/-. Accordingly, the difference of profit which was already declared by the assessee for the project in earlier years comes to Rs.1,40,52,853/- was added to the income of the assessee. Thereafter, an amount of Rs.2,13,678/- was also added to the income of the assessee as per its voluntary acceptance with respect to cash expenses of more than Rs.20,000/- made

during the F.Y. 2016-17. Thus, assessment was completed on 31.10.2019 u/s 143(3) of the Act.

4. Feeling aggrieved with the order of Assessing Officer, assessee carried the matter before the Id.CIT(A), who in turn dismissed the appeal of the assessee.

5. Before us, Id. AR filed written submissions mentioning that assessee had furnished all the information as sought by the Assessing Officer, who has not pointed out any defect in the books of accounts and hence, the books of accounts were not rejected. The Id. AR further submitted that the only contention of the AO/CIT(A) is that the assessee being a 'real estate developer' is required to mandatorily follow the percentage completion method for revenue recognition as notified by the Central Board of Direct Taxes, Notification dt.31.03.2015.

6. Ld.AR further submitted that the learned lower authorities have decided the issue without considering the explanation offered by the assessee and that assessee failed to appear due to unavoidable circumstances. Ld.AR further submitted that as the assessee has sufficient cause from putting in appearance before the Id.CIT(A), matter may kindly be remitted back to the authorities below for afresh adjudication. He had also submitted that there is no ICDS as notified by the CBDT for real estate developer and hence, application of percentage completion method was not in accordance with law.

7. Per contra, the ld.DR has raised objection for remanding the matter back to the file of lower authorities.

8. We have heard the rival submissions and perused the material on record. From the perusal of the order of ld.CIT(A), it is abundantly clear that the ld.CIT(A) has granted as many as 9 opportunities to the assessee to file the reply and to participate in the appeal proceedings. However, the assessee has not effectively participated. Further, in the proceedings before the learned Assessing Officer and the ld.CIT(A), assessee has accepted the method employed for as per the accounting standards for the purpose of activities carried out by the assessee. Though, assessee had filed an application for additional grounds before us challenging the method of accounting applied by the Assessing Officer, however the ld. DR had objected to for the reasons given by Assessing Officer.

9. Before us, the Revenue has submitted that it has no objection if the matter be sent back to the ld.CIT(A) for afresh adjudication. Further, on perusal of the order passed by ld.CIT(A), we found that assessee failed to appear before the ld.CIT(A) despite granting of sufficient opportunities. In para 6 of the order of ld.CIT(A), it was clearly mentioned that assessee was given as many as nine opportunities to substantiate its case and that on

17.02.2022, though the assessee was given final opportunity however, the assessee not complied the same. On perusal of the order of Id.CIT(A) on merits, we found that the Id.CIT(A) has failed to consider the explanation given by the assessee with respect to the accounting method adopted while arriving profit. As the explanation of the assessee has not been considered by the Id.CIT(A) and the order of Assessing Officer had been confirmed without appreciating the record, we deem it appropriate to remand back the matter to the file of Id.CIT(A) with a direction to consider the explanation offered by the assessee and the documents placed on record before us after affording sufficient opportunities of hearing to the assessee in accordance with the law.

10. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Id.CIT(A) shall consider the evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. After considering the documents filed by the assessee and the submissions made by the assessee, the Id.CIT(A) shall pass a detailed speaking order dealing with the contentions of the assessee. Needless to say assessee needs to explain as to why percentage completion method should not be applied, which was accepted by assessee for computing the income of the assessee. We have not adjudicated the other grounds on merits as we are setting aside the orders passed by the lower authorities to the file of Id.CIT(A) for fresh adjudication. The assessee is directed to

appear before the Id.CIT(A) and cooperate in early hearing of the appeal.

11. Thus, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 31st August, 2023

Sd/-

Sd/-

(RAMA KANTA PANDA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 31st August, 2023

TYNM / SPS

Copy to:

S.No	Addresses
1	Sai Charan Townships, C/o. Mohd Afzal, Advocate, #402, Sherson's Residency, 11-5-465, Criminal Court Road, Red Hills, Hyderabad - 04.
2	Assistant Commissioner of Income Tax, Central Circle - 3(3), Hyderabad.
3	PCIT(Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order