

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.811/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2018-19)

ITO-22(3)(6) Room No.206, 2 nd Floor, Piramal Chamber, Lalbaug, Mumbai-400012.	बनाम / Vs.	Sambhav Shelter, Mumbai V 55, DR E Moses Road Worli Next to Furniturewala Showroom, Mumbai-400018.
स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : ABGFS8321M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Anuj Kisnadwala
Revenue by:	Shri Ganensh Rakh (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 23/08/2023

घोषणा की तारीख /Date of Pronouncement: 25/10/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. CIT(A)/NFAC, Delhi dated 17.01.2023 for the AY. 2018-19.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) deleting the addition of Rs.1,73,36,141/- made by the AO after rejecting the books of account of the assessee and estimating the profit @ 8% of the revenue recognized.

3. Brief facts are that the assessee is a partnership firm and has filed its return of income for AY. 2018-19 on 29.10.2018 declaring total income of Rs.30,85,410/-. The assessee firm is engaged in business of real estate development viz property developer & builders. The AO notes that the assessee recognizes the revenue on percentage completion method. Later on, the case of the assessee was selected for



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scrutiny and the scrutiny was in respect of three (3) issues i.e. (i) income from real estate business (ii) unsecured loans and (iii) sales turnover/receipt. According to the AO, while he scrutinized the books of the assessee *vis-à-vis* the tax audit report (TAR), there was certain discrepancy so he show-caused the assessee as to why its books of account should not be rejected u/s 145(3) of the Income Tax Act, 1961 (hereinafter “the Act”). Pursuant to which assessee filed its reply which was not accepted by AO who rejected the books of account of the assessee u/s 145(3) of the Act and proceeded to estimate the income of the assessee. And the AO noted that the assessee had claimed total revenue from operations during at Rs.25,52,69,395/- but on perusal of the audit report, it was seen that the assessee has shown zero turnover and has zero net profit and has declared total income of Rs.30,85,410/- in its ITR. The AO also noted that the assessee has claimed closing stock of Rs.43,49,47,272/- whereas has claimed closing stock of Rs.1,14,63,282/- as per disclosure as per ICDS in audit report. Thus, according to the AO, the stock was not maintained properly and the return of income filed by the assessee cannot be accepted. According to him, the assessee was unable to reconcile quantities handled by it as between sales and closing stock. Hence according to the AO, the accounts maintain by the assessee are to be taken as unproved in view of the discrepancies and as stated above. So he estimated the profit @ 8% of Rs.25,52,69,395/- which works out to Rs.2,04,21,551/-. Since, the assessee has already declared its income amounting to Rs.30,85,410/-, hence, the addition was made at Rs.1,73,36,141/-.



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Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who allowed the appeal of the assessee, the revenue is before us.

4. We have heard both the parties and perused the records. We note that the AO has rejected the books of account of the assessee on the premise that there was mismatch in turnover figures in the tax audit report and the Income tax return. According to the AO, the assessee could not demonstrate that it had maintained stock records and not able to reconcile the quantities of the sale as well as the disclosure as per the ICDS to the tune of Rs.1,14,63,282/-. On appeal, the Ld. CIT(A) has reversed the action of the AO and accepted the books of account maintained by the assessee in its regular business activity. The Ld. DR representing the revenue, assailing the action of the Ld. CIT(A) submitted that even though the assessee has shown turnover of Rs.25,52,69,395/- in the audited accounts (refer page no. 33 PB) but the assessee in its tax audit report (*TAR/Form 3CB filed from page no. 42 to 46 PB*) has shown at page no. 65 as item no. 10 under the sub-heading “details regarding turnover, gross profit etc”, the assessee has shown turnover as ‘zero’. Therefore, there was per-se mismatch between the audited books and the TAR as evident from the discussion (*supra*). And therefore, according to him, the AO found discrepancy in the books and the TAR which was the ground for rejection of the books. According to the Ld. DR, the Ld. CIT(A) has not appreciated the AO’s observation that stock was not maintained properly. And also about the closing provision of Rs.1,14,63,282/-. Therefore, the action



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of the Ld. CIT(A) accepting the books of account of the assessee is legally unsustainable.

5. Per contra, the Ld. AR drew our attention to the page no. 33 of PB and page no. 65 of PB and also the show cause notice issued by the AO placed at page no. 87 of PB; and reply given by the assessee at page no. 89 of PB, wherein the assessee brought to the notice of the AO that the assessee firm was engaged in the developing of a *single property/project* and has been following percentage completion method for recognizing revenue. According to the Ld. CIT(A), as per the percentage completion method, the revenue need to be recognized based on the total cost incurred *vis-à-vis* its estimated project cost. According to the Ld. AR, as per this methodology, the assessee has recorded turnover of Rs.25,52,69,395/- (refer page no. 33 of PB) whereas in the Form 3CB/TAR, at item no. 40 against serial no. (a) total turnover of the assessee was erroneously shown as 'zero' which ought to have been Rs.25,52,69,395/- and Rs.'zero' was that of previous year. According to the Ld. AR, this was a data entry error and the auditor who audited the accounts of the assessee as well as the TAR was the same, and realizing the mistake, has filed the certificate to the effect that while filling up the Form 3CB/TAR, error crept in while punging/typing at point no. 40 of the TAR, wherein turnover of the assessee ought to have been recorded as Rs.25,52,59,395/- whereas zero has been erroneously entered; and realizing the mistake, assessee has filed before the authorities corrected version of the particular



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column which is found placed at page no. 96 of PB. Taking into consideration, the aforesaid explanation, the Ld. CIT(A) has appreciated the facts and did not find fault with the assessee on this score (mismatch as pointed out by AO). According to the Ld. AR, the other issue was regarding the closing stock which according to the AO was not maintained properly by the assessee. On this issue, the Ld. AR submitted that since the assessee is following percentage completion method for recognizing the revenue from real estate project, the closing stock (WIP) is based on mathematical formula and that assessee had only one work site wherein all the purchases are received directly and issued immediately for construction. Thus, it was contended that there is no opening or closing inventory of materials as such. According to the Ld. AR, it was also brought to the notice of the Ld. CIT(A) that the AO had pointed out to disclosure as per ICDS in audit report of an amount of Rs.1,14,63,282/- which according to the Ld. AR, was the closing provision for expenses as reflected in the balance-sheet and is not on account of closing stock. In the light of the aforesaid facts brought to the notice of the Ld. CIT(A), he accepted the explanation given by assessee and found that there was inadvertent error/data entry in the TAR/Form 3CEB in respect of turnover and taken note of the fact that the assessee firm was developing only one project and have only one work-site and was following the percentage completion method for recognizing revenue from its real estate project. The Ld. CIT(A) noted that AO could not appreciate the computation of the closing stock as per such method and misdirected himself to



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compare the activity of assessee with trading/manufacture which was erroneous. Likewise, the Ld. CIT(A) did not countenance the action of AO treating Rs.1,14,63,282/- as closing stock whereas it was the closing provision of expenses as reflected in balance-sheet. In the light of the aforesaid facts, the Ld. CIT(A) was pleased to reverse the action of the AO and accepted the books of account of the assessee. In this regard, it is noted that the AO has nowhere given a finding of fact that the assessee has not regularly followed the method of accounting specified u/s 145(1) of the Act. It is also not the case of the AO that the assessee has not computed the income in accordance with the standard notified u/s 145(2) of the Act. The AO's satisfaction that the accounts are not correct or complete cannot be accepted merely because there was inadvertent mistake in the TAR which was explained by the assessee as inadvertent error while entering the date which fact is seen supported by auditor who has accepted the mistake by filing an affidavit which is found placed at page no. 98 of PB. And it also noted that assessee filed the rectified TAR which is found placed at page no. 96 of PB. Therefore, the action of the AO to reject the books cannot be accepted and the Ld. CIT(A) has rightly reversed his action on this issue and accepted the books of account of the assessee and we confirm the impugned action of Ld. CIT(A). Having upheld the action of the Ld. CIT(A) and accepted the books of account, the action of AO to have estimated the income of the assessee is legally unsustainable. And therefore, we confirm the action of the Ld. CIT(A) deleting the estimated addition made by the AO.



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6. In the result, the appeal of the revenue stands dismissed.
Order pronounced in the open court on this 25/10/2023.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 25/10/2023.
Vijay Pal Singh, (Sr. PS)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai