

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, 'SMC': AGRA
(Through Virtual hearing)**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.315/AGR/2019
[Assessment Year: 2014-15]**

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| Asst./Dy. Commissioner of Income Tax, Circle-3, Radhika Bihar, Phase-II, Mathura | Vs | M/s Koshda Buildcon Pvt. Ltd. Tilak Dwar, Mathura |
| | | PAN-AADCK6280E |
| Revenue | | Assessee |

| | |
|-------------|---------------------------|
| Revenue by | Sh. Surendra Pal, CIT(DR) |
| Assessee by | Sh. M.M. Agrawal, CA |

| | |
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| Date of Hearing | 11.10.2023 |
| Date of Pronouncement | 27.10.2023 |

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the Revenue is directed against the order of the Ld. CIT(A)-1, Agar, dated 30.07.2019 for the Assessment Year 2014-15.

2. The grounds of appeal reads as under:-

“1. That the Ld. CIT (A)-1, Agra has erred in law and facts in deleting the addition of Rs.5,17,61,420/- because the applied percentage completion method in assessment order is correct as the "Project Completion Method" was not in existence before 01.04.2003.

2. That the decision of Ld. CIT (A)-1, Agra is not acceptable as the same is against the principles of Accounting Standard adopted by Institute of Chartered Accounts of India.

3. That the assessment order dated 26.12.2016 passed under section 143(3) of the IT Act, 1961 is as per law and addition of Rs.5,17,61,420/-made by applying the Percentage Completion method is justified.

4. *That the appellant craves leaves to add or delete or alter or modify any one or more ground (s) of appeal during the appellate proceedings.*

5. *That the order of the Ld. CIT A)-1, Agra being erroneous in law and on facts be set aside and the order of the Assessing Officer be restored."*

3. Brief facts of the case are that a survey was conducted by the department on the assessee and immediately after the survey proceedings, its director submitted before the Assessing Officer a working of its profit on the basis of percentage completion method. Net profit of Rs. 5.0 crores was estimated by the assessee in that working. However, vide its return of income filed on 13.09.2014, returned income of Rs.28,29,150/- only has been declared by it. The Assessing Officer has noted in his order that the assessee had informed to him during the impugned proceedings that in accordance with the agreement reached with the authorities during the survey proceedings, it has changed its method of accounting from Project completion method to Percentage completion method and the resultant effect has been explained by the auditors in the Notes to accounts. After going through the assessee's submissions and examining its books of account, the Assessing Officer made the impugned addition of Rs.5,17,61,420/- to the assessee's returned income in the following words:-

"3.1 The assessee has also submitted written reply on 21.12.2016 along with calculation of profit on the basis of percentage completion method. This working is not matched with the working given as on 15.02.2014.

3.2 The profit worked out by the assessee is not accepted keeping in view of AS-7. The assessee has not worked out its profit properly. The assessee has claimed revenue expenses containing following expenses:

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|-------|---------------------------------|----------------------|
| i. | Advertisement expenses | 11,08,902/- |
| ii. | Brokerage | 2,97,532/- |
| iii. | Hoarding & Kon. Expenditure | 12,42,702/- |
| iv. | Gaushala expenses | 5,89,824/- |
| v. | Other Marketing expenses | 2,00,365/- |
| vi. | Electricity, Power & Fuel | 27,51,990/- |
| vii. | Depreciation | 13,23,232/- |
| viii. | Finance charges (interest etc.) | 4,08,98,375/- |
| ix. | Salary (Construction) | <u>33,48,498/-</u> |
| | Total | 5,17,61,420/- |

Above mentioned expenses may not be allowed as the same is treated to be included in estimated cost of the project, no further revenue expenses (above expenses) may be allowed.

4. However, vide its reply dated 21.12.2016 the assessee has stated that some expense have been capitalized and included in closing stock. But during the assessment proceedings assessee could not furnished/produced supporting evidence for the same: Therefore, considering the statement and reply given by the director Shri Shayam Sunder Bansal during survey and post survey proceedings and reply and details filed during the assessment proceedings it is clear that the assessee not shown his actual profit and debited unallowable expenses to calculate the profit as per percentage completion method. Therefore, an addition of Rs. 5,17,61,420/- is made to the income of the assessee."

4. Against the above order, the assessee appealed before the Ld.

CIT(A).

5. The Ld. CIT(A) considered the submissions and held as under:-

"Having carefully examined the appellant's submissions and the appellant's assessment folder, I find that no adverse inference has been drawn by the A.O. in reference to any of the documents impounded during the survey proceedings at its premises. The appellant company's action of adopting the percentage completion method in place of the project completion method has also been accepted by him. The only evidence mentioned by him in the assessment order is the statement of Shri Shyam Sunder Bansal, being one of its directors, recorded during the survey which was

conducted on 14.02.2014. The A.O. has also relied upon Shri Shyam Sunder Bansal's reply dated 15.02.2014 whereby working of profit has been submitted by him and thereby net profit of Rs. 5.0 crores has been estimated. The impugned addition was however not made by the A.O. by estimating the appellant's net profit at Rs. 5.0 crores on the basis of appellant's working given on 15.02.2014 or on the basis of any shortcoming discovered by him in the book results vis-à-vis that working. It has instead been made by disallowing nine expenses claimed as deduction by the appellant company. According to the Assessing Officer, accounting standard AS-7 has not been followed by the appellant and supporting evidences for the aforesaid expenses could not be produced by it during the assessment proceedings.

On a perusal of the assessment folder, it is observed that six hearings were held during the assessment proceedings and the appellant's A.R. attended all of those. Besides, on the last of such hearings, i.e. on 21.12.2016, which was five days before passing the impugned order, the appellant's A.R. and Shri Shyam Sunder Bansal, director of the company who had deposed during the survey proceedings, attended and produced books of account and a written reply. The A.O. has recorded in the order sheet that on that day the books of account were test checked and impounded material/ hard disk, too was opened and checked and the case was discussed with them. Further, I notice that during the assessment proceedings voluminous details containing written submissions and copies of ledger accounts of the expenses were produced and submitted by the appellant and there is no evidence on record which may indicate that any discrepancy in those was noticed or pointed out by the A.O.

6.4 Therefore, in light of the above discussion, it can be seen that during the assessment proceedings, the evidences regarding the expenses were produced by the appellant and no specific bill/ voucher or expense has been pin-pointed by the A.O. as to be non-genuine or incurred not for the purpose of business.

As regards the A.O.'s contention that AS-7 has not been followed by the appellant-company, I am in agreement with the appellant that this accounting standard is prescribed by the ICAI in respect of accounting of Construction Contracts and not for the appellant, who is a real-estate developer.

Further, if we refer to the table given by the appellant at Paragraph no. 4.3 of its written submission dated 27.12.2017(reproduced above), it is seen that:-

- Out of expenses of Rs. 5,17,61,420/- disallowed by the A.O., as much as Rs.1,96,82,204/- have already been capitalized by the appellant in its books of account, and

another Rs. 13,23,232/-, being depreciation expenses, have been added back by the appellant while computing its income chargeable to tax and claimed under the provisions of section 32. Thus, under the facts and circumstances of this case, no addition in respect of these expenses totaling Rs. 2, 10,05,436/- can be legally made.

- The remaining disallowed expenses total Rs. 3,07,55,984/-, out of which Rs.2,81,61,680/- are categorized under the head of Finance Charges while the rest are marketing expenses. It can be observed that the appellant has followed the Guidance Note (issued by ICAI) in claiming deduction of the four marketing expenses grouped under the heads of Advertising expenses', 'Brokerage', Hoarding & Kiosk expenses' and Other marketing expenses'. It has also been able to explain the working and break-up of these expenses and no evidence exists on record which may indicate that these expenses are inflated or not legally deductible.
- As regards the deductibility of expenses categorized as Finance charges, vide paragraphs no. 5.3, 5.4, 5.5, 6 and 7.1 of its written submission dated 27.12.2017, the appellant has given cogent reasoning and relied upon certain judicial precedents in its favour. On an appreciation of the same, I am in agreement with the appellant that these expenses, too, are allowable as deduction while computing the appellant's taxable income.

6.5 As regards the A.O.'s indirect reliance on the statement of Shri Shyam Sunder Bansal (Director of the appellant company) dated 14.02.2014, it is seen that no adverse evidence about the genuineness of the expenses was found during the survey on the basis of which Shri Bansal estimated the net profit of more than Rs. 5 crores.

Similarly, the A.O.'s indirect reliance on Shri Bansal's letter dated 15.02.2014 is unwarranted because the computation of net profit at paragraph no. 7 thereof has not been found to be correct. During the course of the assessment proceedings, the appellant was questioned why the net profit declared in its return of income in accordance with the net profit worked out in the aforesaid letter dated 15.02.2014: Vide its reply dated 19.02.2016 to the A.O.'s query, the appellant had given its explanation which has not been controverted by the A.O. in the assessment order. Relevant extract of appellant's reply dated 19.02.2016 is reproduced below:-

"9. The question now is why the profit declared by the assessee is not in accordance with the letter dated

15.02.2014 by the Managing Director of the company and why the profit declared by the assessee is not in vicinity of profit of Rs. 5 crore estimated in the said letter. In this regard, please note that the letter dated 15.02.2014 issued by Managing Director was not in complete peace of mind and he made calculation mistakes, which are quite apparent and open for full verification. Firstly, the calculation was made on the basis of sale of entire area of 439,560 square feet. He thus estimated profit on the basis of area which was not even booked, whereas profit can be worked on the basis of area sold (Whether sale deed has been made or not). The assessee has recognised revenue on the basis of sale of 24220 square feet in respect of registry executed and 221,850 square feet in respect of Advance booking as per Percentage Completion Method, which is the actual area sold. Even till the date of this letter, the assessee has huge unsold area and no profit on unsold area can be recognized under any method of accounting (this is not the case of contractor who do work on behalf of contractee whereas the assessee is builder). Secondly, overheads were estimated at that time looking to the books of accounts at Rs. 2.50 crore, without making provision for accrued liabilities towards interest and other expenses, which were all required to be mandatorily made in the books of accounts. It is very empathetically submitted that firstly there are no unusual expenses debited in the books of accounts during post survey period and each and every expenditure is fully verifiable. The expenditure on interest (which is major expenditure) is mainly related to loans availed during pre-survey period and there can be no allegation of inflating any expenditure. We have submitted entire details on record and submit no such inference of inflation of expenses would be found therein. It is therefore, submitted that income cannot be determined on the basis of said letter of Managing Director which is partly based on misconception and wrong estimates, otherwise the book result are in consonance of letter submitted by the Managing Director of the company."

After verifying the facts and figures contained in the working of net profit given in Sri Bansal's letter dated 15.02.2014 and comparing it with the corresponding working of net profit as per the appellant's books of account, I find myself in agreement with the appellant that the earlier working was made on the wrong assumption of sale of the entire project (4,39,560 sq. feet), and in actuality, the sale of project area (even upto 31.03.2014) was only 2,46,070 sq. feet. The non-finalization of overheads for F.Y. 2013-14 upto the date of survey i.e. 14.02.2014, is also not ruled out.

6.6 Hence, in light of the above discussion, I am inclined to believe that the appellant company has worked out its profit as per the percentage of completion method in accordance with the law and also that the A.O.'s action of disallowing part of the expenses claimed by it as deduction is not warranted. The addition of Rs.5,17,61,420/- to the appellant's returned income is therefore deleted.”

6. Against the above order, the Revenue is in appeal before us.
7. We have heard both the parties and perused the records. The main aspect of the disallowance in this case is admission by Shri Shyam Sunder Bansal, one of the director. This aspect is ignored by the Ld. CIT(A). He has accepted the explanation that the admission was wrong. The Ld. CIT(A) has accepted the detailed submissions in this regard and observed that he has examined these submissions and the books of the assessee. We find that these aspects considered by the Ld. CIT(A) were never before the Assessing Officer. We find that this is contravention of Rule 46A. Hence, in the interest of the justice, we remit this issue to the file of the Assessing Officer to consider the issue afresh considering the submission made before the Ld. CIT(A).
8. In the result, this appeal filed by the Revenue stands allowed for statistical purposes.

Order pronounced in the open court on 27th October, 2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 27.10.2023.

Shekhar

Copy forwarded to:

1. Appellant

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi