

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G", MUMBAI  
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

**ITA No. 2351/Mum/2023 (A.Y.2018-19)**

**Sunstream City Pvt Ltd.**

6<sup>th</sup> Floor Akruti Trade Centre, Road  
No. 7, Marol MIDC Andheri (E)  
Mumbai- 400093

**PAN: AAACZ2602A**

..... Appellant

Vs.

**ITO, National e-Assessment Centre,  
Delhi**

..... Respondent

Appellant by : Shri Fenil Bhatt  
Respondent by : Shri Dr. Kishor Dhule, CIT-DR  
  
Date of hearing : 19/10/2023  
Date of pronouncement : 21/11/2023

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC"), Delhi dated 31.05.2023 u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2018-19. The assessee has raised the following grounds of appeal:-

*1. On the facts and circumstances of the case as well as in law the Learned Assessing Officer has grossly erred in directing addition of alleged difference in*

*Closing Work in progress (Closing Stock) for A.Y. 2017-18 and opening Work in Progress (opening Stock) for A.Y. 2018-19 amounting to Rs. 87,82,67,129/- u/s 69A of the Act. The disallowance, upheld by the Learned Commissioner of Income Tax (Appeals) is unfair, illogical and against the principals of natural justice and equity.*

*2. On the facts and circumstances of the case as well as in law, the Learned Assessing officer, in directing disallowance of the aforesaid Rs. 87, 82, 67,129/- has grossly erred in directing disallowance of the following genuine and bonafide transactions;*

*a. Reversal of land Rights Purchased amounting to Rs. 84, 52, 86,250/-.*

*b. Reversal of Earlier Year expenses written back amounting to Rs. 49, 71,962/-.*

*c. Reversal of earlier year Interest Provision written back amounting to Rs. 2, 80, 08,917/-.*

*The above disallowances upheld by the Learned Commissioner of Income Tax (Appeals) is unfair, illegal and against the principals of natural justice and equity.*

*3. on the facts and circumstances of the case as well as in Law, the Learned Assessing Officer has grossly erred in directing disallowance of expenses capitalized to the Work in progress account. The Learned Assessing Officer has not appreciated that for expenses to be disallowed, they need to be claimed in the Profit and Loss Account. The disallowance, upheld by the Learned Commissioner of Income Tax (Appeals) is unfair, illogical and excessive.*

*4. The Learned Assessing Officer as well as the Learned Commissioner of Income tax has not given a fair and reasonable opportunity to the appellant to present its case.*

*5. the order under appeal is not only bad in law and invalid, but also against the principals of natural law of equity and justice.*

*6. the appellant reserves its rights to add, to amend, alter/delete and/or modify the above grounds of appeal before or during the course of appellate proceedings.*

2. The brief facts of the case are that assessee company filed its return of income on 28.10.2018, declaring total income at Rs. 45,17,557/-. Case of the assessee was selected for complete scrutiny under CASS. Case of the assessee was assessed u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act and additions to the tune of Rs. 87, 82, 67,129/- were made vide Para 9 of the assessment order. Assessee being aggrieved with the same preferred an appeal before the Ld. CIT (A), who in turn confirmed the action of the AO. Assessee being further aggrieved with the same preferred the present appeal before us.

3. We have gone through the order of AO, Order of the Ld. CIT (A) submissions of the assessee alongwith grounds of appeal raised. It is observed that addition made by the AO is an account of difference between closing stock as on 31.03.2017 and opening stock as on 01.04.2017 amounting to Rs. 87,82,67,129/-. To justify this difference assessee submitted reconciliation chart before the Ld. CIT(A) as under vide page 4 of the CIT(A) order :-

4. To further substantiate appellant's contention, attention is invited to the table below which reconciles the difference of Rs. 87, 82, 67,129/- in Work in Progress (Hereinafter referred to as "WIP") account which has been subjected to addition u/s. 69A of the Act to the returned income of the appellant.

<i>Particulars</i>	<i>Amount (Rs)</i>	<i>Remarks</i>
<i>Closing WIP as per ITR of AY 2017-18</i>	<i>1034,08,11,630/-</i>	<i>--</i>
<i>Opening WIP as per ITR of AY 2018-19</i>	<i>946,25,44,501/-</i>	<i>--</i>

<i>Difference</i>	<i>87,82,67,129/-</i>	<i>--</i>
<i>Please note that the difference is arising on account of below mentioned line items which have been reflected in Note-25 (Changes in Inventories of Incomplete projects and finished properties) forming part of the audited financials as on 31.03.18. Copy of financials is enclosed as Exhibit 1.</i>		
<i>Closing WIP as per ITR of AY 2017-18</i>	<i>1034,08,11,630/-</i>	<i>--</i>
<i>Less: Reversal of Land Rights Purchased</i>	<i>84,52,86,250/-</i>	<i>--</i>
<i>Less: Reversal of Earlier Year expenses written back</i>	<i>49,71,962/-</i>	<i>--</i>
<i>Less: Reversal of earlier year interest provision written back</i>	<i>2,80,08,917/-</i>	<i>--</i>
<i>Opening WIP as per ITR of AY 2018-19</i>	<i>946,25,44,501/-</i>	<i>Thus there is no difference as alleged in the Assessment Order</i>

**Note:**

*Attention is invited that the reversal of expenses in the above statement are for expenses which were capitalized to the WIP account in the earlier years and have not been claimed in the Profit & Loss Account. Considering that there is no claim in the Profit & Loss Account, the capitalized expenses have been charged off from the WIP account and do not have any impact of the Profits of the Company for the year. (Please refer note 25 of the balance sheet of the Company enclosed as Exhibit 1) Respective years in which the expense was incurred and has been capitalized to the WIP account along with face of Profit & loss account of the same years denoting that the expense is not claimed attached as "Additional Evidence" - Exhibit 6*

5. The reconciliation chart reproduced (supra) looks to reasonable as far as explanation towards differences in figures of last year's closing stock and this year's opening stock is concerned. The validity of this chart is dependent on corroborative evidences and necessary accounting ledgers of the previous years. It

is found that assessee has filed paper book before the bench on 18.10.2023 in which vide page no. 47 to 51 assessee produced financial of year ending 31.03.2016 and 31.03.2017, duly audited. This serves the purpose of item no. 3 and 4 in reconciliation table reproduced (supra). Assessee confirmed that these documents were there before the lower authorities also. We have gone through the order of Ld. CIT (A) wherein no cognizances of these information/documents were taken.

6. As far as issue of reversal of land rights purchased is concerned we found vide page no. 59 and 72 to 123 (vide exhibit no 7, 8 and 9) of the paper book assessee produced the copies of petition filed before the Hon'ble Bombay High Court and order of Hon'ble Court. In addition to this assessee filed certificate from M/s. Hubtown Ltd dated 01.02.2023 showing cancellation of FSI purchase (exhibit 14). It is observed that as per the certificate of the assessee filed before us all this documents and information were there before the AO and Ld. CIT(A), rather as per page 7, para 4 of the Ld. CIT(A) order a reference is there of remand report dated 19.01.2023 and 13.03.2023. Still, no authentic verification found to be carried out by the authorities below.

7. We came across another document, i.e., Rectification application filed by the assessee u/s. 154 of the Act vide page no. 52-55 of the paper book dated: 15-04-2021, wherein assessee pointed out to the AO about non-consideration of relevant information, but till date no order on the same has been passed by the Jurisdictional AO.

8. In view of the above observations, we find that no proper verification of the explanations/documents furnished by the assessee has been carried out by the authorities below. In the result, we deem it fit to restore the matter back to the file of Ld. CIT (A) for proper verification of the explanations/documents furnished by the assessee after giving a proper opportunity of being heard and to pass a legitimate speaking order. Assessee is directed to comply with all the hearing notice without fail and adjournment on the issue.

9. **In the result, appeal filed by the assessee is allowed for statistical purposes.**

Order pronounced in the open court on 21<sup>st</sup> day of November, 2023.

Sd/-

(PAVAN KUMAR GADALE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 21/11/2023

*Shubham P. Lohar*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai