

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'एस. एम. सी', अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" SMC " BENCH, AHMEDABAD

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No. 507/Ahd/2024  
Assessment Year : 2017-18

K.K. Infrabuild 702, Gunjan Tower Opp. Synergy House Subhanpura, Gorwa Vadodra - 390 023 Gujarat	Vs	The Income Tax Officer Ward-1(2)(1) Vadodara
PAN: AAQFK 9998 P		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sunil Talati, AR
Revenue by :	Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 14/05/2024  
घोषणा की तारीख /Date of Pronouncement: 28/05/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

The present appeal is filed by the assessee against the order dated 31.1.2024 of Additional/Joint Commissioner of Income Tax(A)-9, Mumbai (hereinafter referred to as "A/JCIT(A)") u/s.250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") arising against the order of the Income Tax officer Ward-1(2)(3), Vadodara (hereinafter referred as the "AO") u/s.143(3) of the Act, relating to Assessment Year (AY) 2017-18.

2. The assessee has taken following grounds of appeal before us:

1. *The Ld. CIT(A) has erred in confirming the disallowance made by Ld. A.O of depreciation amounting to Rs.14,92,312/- without appreciating the facts available on record. It is submitted that the appellant rightly claimed the depreciation. Hence, the same be held now and impugned addition so confirmed is prayed to be deleted.*
2. *Without prejudice to the above, the Ld. CIT(A) has erred in not considering the alternate claim of the appellant and confirming the disallowance amounting to Rs.14,92,312/-. It is submitted that the appellant recognises revenue on a percentage completion basis by following AS - 7/ ICDS - III and such depreciation so disallowed is included while calculating the percentage completion and unbilled revenue. Hence, it is prayed to that Ld. A.O be directed to consider the revised working of unbilled revenue, resulting to reduced disallowance amounting to Rs. 14,25,623/-. The same be held now.*
3. *The order passed by the Ld. CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*
4. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.*

**Facts of the case:**

3. The assessee is engaged in the business of civil construction. The return of income was filed by the assessee on 29.9.2017 declaring total income of Rs. 10,23,100/-. The case was selected for the scrutiny under CASS for the AY 2017-18.

3.1. On verification, it was observed by the AO that the assessee has claimed Depreciation at the rate of 30% on the heavy vehicles purchased during the year under consideration. The Assessee claimed that these

vehicles are used for the business of hiring the vehicles and, therefore, eligible for higher depreciation.

3.2. On the basis of sub-contracting agreement between the assessee and the contractor GHV(India) Pvt. Ltd., the AO concluded that there is no separate clause of providing any vehicle for hire charges and, therefore, the heavy vehicles purchased are not used for the business of plying and hiring the vehicles. The AO also noted that assessee has recognized revenue on the basis of percentage completion method.

3.3. The AO passed an order u/s.143(3) of the Act disallowing excess depreciation of Rs.14,92,312/- claimed by the assessee. The Assessee filed an appeal against the said order with the Ld. A/JCIT(A), who dismissed the appeal sustaining the addition of excess depreciation.

4. Aggravated by the order the Ld. A/JCIT(A), the assessee filed an appeal before us.

**On grounds of appeal:**

5. During the course of hearing, the ld.counsel for the assessee stated that the assessee is engaged in the business of Civil Construction and Infrastructure work and recognize the revenue on the basis of percentage completion method.

5.1. The ld.counsel for the assessee stated that the assessee is not pressing for the Ground No. 1, i.e. for claiming depreciation at higher rate. Hence, the same is dismissed as such.

5.2. The Id.counsel for the assessee further argued that since the assessee is following percentage completion method, the profit is calculated according to the ICDS III and AS -7 and, therefore, there is a need to recompute the revenue to be recognized and profit accordingly and, therefore, requested to refer the matter back to AO.

5.3. The Ld. DR relied on the orders of lower authorities and stated that the assessee is eligible for depreciation only according to section 32 of the Act. He further stated that, in case, the matter is remanded back to the AO, depreciation should not be higher as claimed by the assessee and it should be as per section 32 of the Act.

6. We have heard the contentions of both the parties and perused the material available on the records. In exercise of the powers conferred by sub-section (2) of section 145 of the Act, the Central Government has notified the income computation and disclosure standards to be followed by all assessees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB of the said Act) following the mercantile system of accounting for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

6.1. This Notification No. SO 3079(E) dated 26.9.2016 is applicable from the assessment year 2017-18 and subsequent assessment years. Income Computation and Disclosure Standard III deals with Construction Contract

which is applied in determination of income for a construction contract of a contractor. As per this standard, contract revenue and contract costs associated with the construction contract should be recognized as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

6.2. In the present case, the assessee is following percentage completion method and same is not disputed by either the AO or the A/JCIT(A). Because the AO has disallowed the higher depreciation as claimed by the assessee, the depreciation amount will change which is to be considered for the cost of construction. It is also the fact that the depreciation is included in the cost of contract. Therefore, it is necessary to re-calculate the cost of the contract and corresponding profits following the percentage completion method to determine the correct income.

6.4. As claimed by the assessee, there will not be any change in disallowance made by the AO owing to change in amount of depreciation and confirmed by A/JCIT(A). However, due to recalculation of cost and profit, the revenue to recognize will certainly change and consequently total income may change. Therefore, in considerate view, we refer the matter back to the file of Assessing Officer with direction to recalculate the cost,

revenue and profits of the assessee, after giving an opportunity of being heard.

7. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

**Order pronounced in the Open Court on 28 May, 2024 at Ahmedabad.**

**Sd/-**  
**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER** *True Copy*

**Sd/-**  
**(MAKARAND V.MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 28/05/2024

*टी.सी.नायर, व.नि.स.।T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-concerned/Addl/JCIT(A)-9, Mumbai
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad