

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “E”, MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 664/M/2024
Assessment Year: 2016-17**

Tyro India 5, New Ambica Apartment, Jawahar Nagar Road, Goregaon (West), Mumbai- 400062. PAN: AACFT6482D	Vs.	ITO Ward 31(3)(2) now transferred to 41(4)(4) Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai- 400051.
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Bhupendra Shah, A.R.
Revenue by : Shri P.D. Chougule (Addl. CIT), Sr. D.R.

Date of Hearing : 22 . 05 . 2024
Date of Pronouncement : 30 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the order of the Ld. CIT Appeal vide its order no. ITBA/NFAC/S/250/2023-24/1058988376(1) dated 22/12/2023 for assessment year 2016-17.
2. The following grounds of appeal have been raised:-

“1. In the facts and circumstances of the case and in law, the Assessing Officer erred in not following the

instructions No. 20/2015 dated 29.12.2015 issued by the Central Board of Direct Taxes in connection with scope of scrutiny assessment by

- a) *Wrongly converting the limited scrutiny into a full scrutiny without appropriate approval*
 - b) *Wrongly exceeding scope of Limited Scrutiny as can be seen at last page of assessment order*
2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in not providing an opportunity for clarifying a doubt arising due to a clerical error as regards application of Method of Accounting for Revenue Recognition*
 - a. *By overlooking past years' records*
 - b. *Project Completion Method of accounting consistently followed by the Appellant*
 - c. *Applying Percentage of Completion Method*
 - d. *Estimating profit of Rs. 97,97,855/- @10% of WIP without any comparable instance*
 3. *In the facts and circumstances of the case and in law, the Assessing Officer erred in initiating penalty u/s 271(1)(c) and also charging interest under section 234A,, 234B, 234C and 234D.*
 4. *In the facts of the case and in Law, the learned CIT(A) erred in confirming the addition of Rs.97,97,855/-/- without granting a physical hearing through Video Conferencing.*

[B] Relief Prayed

The appellant therefore prays as follows,

1. *To quash the order passed exceeding limited scrutiny and without issuing a show cause*
2. *To delete the disallowance of bonus of Rs. 97,97,855/-*
3. *To delete the initiation of penalty u/s 274 r ws 271(1)(c) and charging of interest under section 234A, 234B, 234C and 234D.*

[C] General-

- *The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.*
- *This appeal is filed on time and the same may please be allowed in full.*

- *A Detailed paper book along with case laws will be submitted at the time of hearing.”*

3. The facts of the case, in brief, are that the assessee is a partnership firm and engaged in the business of Importing/Manufacturing/Reselling of entry automation & security systems, hardware, Interior related Items, Automatic door, Windows, Air Curtains, etc. The assessee is also engaged in the construction work and had undertaken re-development work of Divyapuri Co-operative Housing Society Limited in the year 2011 which is still in progress. The assessee has shown profit from its construction business at Rs.2,86,137/- under percentage of completion method. The assessee has shown collectively a net profit from both the business at Rs.6,26,878/-.
4. During the assessment proceedings, it was noticed by the Assessing Officer that as per AIR information, the assessee had sold four flats during the assessment years consideration. The date wise sales appearing in AIR information are given as under-

Sr. No.	Transaction Date	Transaction Amount
1.	08/04/2015	Rs. 1,37,54,000/
2.	05/09/2015	Rs. 1,08,00,000/-

3. 21/10/2015 Rs. 90,00,000/-

4. 02/03/2016 Rs. 83,00,000/-

Total- 4,18,54,000/-

5. However, on verification of details of sales filed during the assessment proceedings, it was found that the assessee had recorded only three sales during the year and has not recorded the value of flats sold on 08/04/2015. The AO, thus noted that there was gross negligence on the part of the assessee in recording financial statements on which the entire revenue recognition depends. On further verification of P&L account it was seen that the assessee had not credited any sales in P&L account. It was seen that the assessee had shown opening work-in-progress (WIP) at Rs.8,25,42,393/- and after debiting various construction related expenses, shown a closing WIP at Rs.9,79,78,559/- and thereafter, a sum of Rs.2,86,137/- was offered as net profit from construction business. The assessee, therefore, was asked to produce the working as to how the said profit of Rs.2,86,137/- was calculated and why the sales effected during the year were not shown in the P&L A/c. In response to the same, the assessee vide letter dated 27/12/2018 submitted as under-

*“...We have shown profit for the A.Y.2016-17 under Tyro Construction account for Rs.2,86,137/- We maintain accounts for construction activity, on **project completion method**. Sales are not shown in P&L account of Tyro Construction account as the project is not completed in A.Y.2016-17. The profit reflected in Tyro construction P&L account is on the basis of percentage of **project completion method**.”*

6. The assessing officer, however, was not satisfied with the explanation offered by the assessee stated as above and concluded that the assessee has not returned the correct income and accordingly, applied a net profit rate of 10% on construction business which worked out at Rs.97,97,855/- on the ground that at one hand he was following the project completion method, whereas, in the profit and loss account the net profit has been declared on the basis of percentage of project completion method.
7. Aggrieved by the order of the assessing officer, the assessee filed appeal before the Ld. CIT Appeal who decided the appeal against the assessee vide its order no. ITBA/NFAC/S/250/2023-24/1058988376(1) dated 22/12/2023 for assessment year 2016-17 on the ground that the appellant failed to produce any material evidence to substantiate its claim as to how the profit was calculated. The Ld. CIT (A)

also noted *“that the submissions filed by the appellant were confusing in nature and thus, tantamount to tax evasion. Despite the fact that the appellant was provided sufficient opportunities during the appellate proceeding, which remained in vain. The appellant, therefore, has not discharged his onus both at assessment or appellate proceedings. In the absence of any supportive evidence, the contentions of the appellant are not tenable. Hence, I hold that the addition made by the AO is in order and no interference is called for. The addition made by the AO amounting to Rs. 97,97,855/- is confirmed.”*

8. During the appellate proceedings before us, it was found that the Ld. CIT Appeal has dismissed the appeal on the ground that the appellant, despite given several opportunities, did not produce any material evidence to substantiate its claim as to how the profit was computed. After careful consideration of the facts of the case and the material available on record, we find that the appeal deserves to be set aside and be restored to the file of the Ld. CIT Appeal for adjudicating the issue afresh by providing adequate opportunity of being heard to the appellant. The appellant is also directed to appear before

the Ld. CIT (Appeal) and produce all relevant documents/material before him to substantiate its claim.

9. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 30.05.2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 30.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.