

**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. 665/M/2024
Assessment Year: 2017-18**

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/250/2023-24/1058988518(1) dated 22/12/2023 for assessment year 2017-18.

1. 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 enhancing scope of scrutiny wrongly converting the CASS based

scrutiny into a full scrutiny without appropriate approval.

2. *In the facts and circumstances of the case and in law, the Assessing Officer erred in Applying Percentage of Completion Method as the Method of Accounting for Revenue Recognition without stating any reasons and thereby*
 - a. *Overlooking past years' records.*
 - b. *Overlooking the fact that Project Completion Method of accounting is consistently followed by the Appellant*
 - c. *Estimating profit of Rs 29,78,944/- @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 270A 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. 29,78,944/- without granting a physical hearing through Video Conferencing.*

[B] Relief Prayed:

The appellant therefore prays as follows,

1. *To quash the order passed exceeding CASS based scrutiny and without issuing a show cause notice*
2. *To delete the disallowance of Rs. 29,78,944/-*
3. *To delete the initiation of penalty u/s 274 r w s 270A 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.”*

5. *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 business of automation and security systems and in addition to this has taken up construction activities. The assessee has prepared two different Profit & Loss A/c., one for the automation business and the other for the construction activities. In regard to the construction activities, the assessee has shown Opening Work In Progress at Rs.9,79,78,559/- and Closing Work in Progress at Rs.12,77,67,999/-. The assessment for A.Y. 2016-17 has been completed in the case of the assessee on 29/12/2018 wherein the following facts have been brought on records. The assessee had undertaken redevelopment work of Divyapuri Co. op. Housing Society Ltd in the year 2011. The assessee had constructed 10 floors consisting of 2 flats on each floor. The assessee had to handover 12 flats to the old members free of cost and the balance 8 flats were to be sold and have been sold. The details have already been discussed in the assessment order for the A.Y. 2016 - 17. Since the entire constructed property has been sold, the assessee was supposed to offer the profit on the same. However the assessee has still shown Work in progress. Further, in the

Assessment order for A.Y. 2016-17, the net profit margin is decided @10% of the total WIP shown in the Profit & loss A/c. for the A.Y. 2016-17. Thus a sum of Rs 29,78,944/- is brought to tax under the head income from business, since the project is complete. The assessee has shown profit from its construction business at Rs.29,78,944/-, the details of which are given as under:-

Opening Work in Progress	Rs 9,79,78,559/-
Closing Work in Progress	Rs 12,77,67,999/-
Addition	Rs 2,97,89,440/-
Profit @ 10% on Rs 2,97,89,440/-	Rs 29,78,944/-

6. 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.9,79,78,559/-

and after debiting various construction related expenses, shown a closing WIP at Rs.12,77,67,999/- and thereafter, a sum of Rs.29,78,944/- 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.29,78,944/- 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.2017-18 under Tyro Construction account for Rs. 29,78,944/- 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.2017-18. The profit reflected in Tyro construction P&L account is on the basis of percentage of **project completion method**.”*

7. 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.

2. 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/250/2023-24/1058988518(1) dated 22/12/2023 for assessment year 2017-18 on the ground *“that the appellant failed to produce any material evidence to substantiate its claim as to the calculation of profit. Rather the contrary submissions filed by the appellant were in the nature of creating confusion and leading to tax evasion. The appellant was provided sufficient number of opportunities even at the stage of appellate proceeding, which remain in vain. The appellant has not discharged his onus at any stage of departmental proceedings be it assessment or appellate. 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 towards is in order and no interference is called for. The addition made by the AO amounting to Rs.2,97,89,440/- is confirmed.”*
8. During the appellate proceedings before us, it was found that the Ld. CIT Appeal has dismissed the grounds taken by the

appellant before him 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.