

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" B " BENCH, AHMEDABAD

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

1. ITA No.1719/Ahd/2019 &
2. ITA No.1720/Ahd/2019

(Assessment Years : 2013-14 & 2014-15 respectively)

Shri Hari Corporation A/13, Vrundavan Park Society Viratnagar Road, Odhav Ahmedabad - 382 415	Vs	The Dy.CIT Circle-3(1)2 Ahmedabad
PAN: ABSFS 9846 B		
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Vijay H. Patel, AR
Revenue by :		Shri Nitin Vishnu Kulkarni, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/06/2024
घोषणा की तारीख /Date of Pronouncement: 28/06/2024

आदेश/O R D E R

PER SHRI MAKARAND V. MAHADEOKAR, AM:

Both the captioned appeals by the assessee are directed against the separate orders of the Commissioner of Income Tax(Appeals)-9, Ahmedabad [CIT(A) in short] dated 03/10/201 & 04/10/2019 for the Assessment Years (AYs) 2013-14 & 2014-15 respectively. Since the common issues are involved in both the appeals, these were heard together and are being disposed of by this consolidated order for the sake of convenience.

2. First, we take up the assessee's appeal in ITA No.1719/Ahd/2019 for AY 2013-14 as a lead case.

Facts of the case:

3. The assessee is a firm engaged in the business of developing and building housing projects. The return of income was filed by assessee on 29.09.2013 declaring total income at Rs.44,43,650/- The return was processed u/s 143(1) of the Income Tax Act, 1961 ("the Act" in short). Later on, the case was selected for scrutiny assessment. During the course of assessment proceedings, it was observed by the Assessing Officer (AO) that the work-in-progress (WIP) is suppressed by the assessee and the certificate issued by civil engineer is not reliable.

3.1. Therefore, the AO referred the case to the District Value Officer (DVO) to ascertain the fair market value of the work-in-progress. The District Valuation Officer, vide his order under section 142A of the Act, No.2(7)/DVO/2015-16/403 dated 7th of September-2016, estimated the fair market value of the WIP. The AO issued show-cause notice to the assessee. The AO not satisfied with the reply of the assessee, made an addition of Rs.1,39,61,058/- being difference in the value of work-in-progress and passed an order under section 144 r.w.s. 142A of the Act.

3.2. The assessee preferred an appeal before CIT(A), who partly allowed the appeal of assessee by granting relief of Rs.22,18,856/- and substituted the addition by Rs.1,17,42,202/-.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us with following grounds of appeal:

"1. In law and in the circumstances of the case, the impugned order passed by the Id Dy. Commissioner of Income Tax, Circle -3(1)(2), Ahmedabad and subsequently partly confirmed by the Id. CIT(A) - 9 is unlawful, against natural justice and bad in law. It deserves to be annulled.

2. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming addition of Rs.1,17,42,202/- out of Rs.1,39,61,058/- made by the AO on account of valuation of WIP u/s 142A by DVO. The Id CIT (A) has recalculated the addition on the basis of Valuation of Immovable properties Guidelines, 2009. The guideline is not applicable to the appellant as the issue covered under this case is for the closing stock (WIP) and not for the immovable property. The AO may kindly be directed to delete such addition in total.

3. The appellant craves leave to add, alter, and amend any ground/s of appeal on or before hearing of the appeal."

On the grounds of appeal:

5. During the course of hearing, the Ld.Counsel for the assessee submitted that the reference for valuation to DVO u/s 142(A) of the Act is relating to the work-in-progress and as per the provision of section before amendment w.e.f. 01-10-2014, this section was applicable to valuation of investment referred to in section 69 or section 69B of the Act or valuation of other article referred to in section 69A of the Act and, thus, the AO was wrong in referring the matter to DVO for valuation relating to work-in-progress. He further stated that the AO has not rejected the books of accounts, has not doubted the expenses and without doing so has passed the order u/s 144 r.w.s. 142A of the Act. The Ld.Counsel for the assessee also stated that AO has made an addition on the basis of estimated cost setting aside actual cost as per books. The Ld.Counsel for the assessee reiterated before us that both the AO and the Ld.CIT(A) have not

considered closing work-in-progress as on 31-03-2013 as opening work-in-progress for F.Y. 2013-14, i.e. A.Y. 2014-15.

6. The Ld. Departmental Representative (DR), on the other hand, relied on the order of the Ld.CIT(A). He further stated that in section 142A of the Act, the word "Asset" is added to cover current assets like work-in-progress and, hence, Assessing Officer has rightly referred the WIP for valuation to DVO. He also stated that section 142A of the Act is an operative provision and on the day of assessment the provision was applicable. He also brought to our attention that the Certificate issued by the Government Registered Valuer was not correct and the Valuer himself withdrew the Certificate.

6.1 The Ld.Counsel for the assessee stated that both the AO and the Ld.CIT(A) have not taken into consideration clarification in respect of statement of Valuer Shri A.Y. Chipa in which he stated that he has not withdrawn the Certificate, but has relied on the measurements given by the technical person of the assessee and he has not issued any wrong Certificate. The Ld.Counsel for the assessee also pointed out that there was negligible difference in the cost estimated by DVO and the cost as per "calculation sheet" submitted during the course of assessment in reply to the show-cause notice issued by the AO and this difference was due to the fact that administrative expenses were not included in valuation by the DVO.

6.2. After hearing the rival contentions and perusing the material on record, it is observed that the primary issue revolves around the applicability of section 142A of the Act to the valuation of WIP prior to its amendment. It is noted that the AO did not reject the books of accounts or

disbelieve the expenses recorded therein, which undermines the basis for invoking section 144 of the Act. The AO must first express dissatisfaction with the books of accounts before referring the valuation. The judicial precedent in the case of *Sargam Cinema v. CIT* reported in (2010) 328 ITR 513 (SC) supports this interpretation.

6.3. The rejection of books of accounts by the Assessing Officer refers to the process, where the AO determines that the books of accounts maintained by the taxpayer are not reliable, accurate, or complete enough to assess the true income of the taxpayer. This rejection must be based on specific reasons and evidence that indicate discrepancies or inadequacies in the books of accounts including deviations from standard accounting practices. In our considered opinion, the AO has not provided detailed reasons and documentation to justify the rejection of the books of accounts.

6.4. At this juncture, it is important to see the criteria for rejection of books of accounts and we deal with the same in the context of present case as follows:

1. If the books of accounts contain significant inaccuracies, inconsistencies, or discrepancies that make it difficult to ascertain the correct income, the AO may reject them. This can include mismatched entries, unexplained credits or debits, or arithmetic errors. In the present case, AO has not recorded any one of these situations except the incorrectness of certificate issued by Government Approved Valuer. If the certificate from the Engineers or Valuer is found to be incorrect but the books of accounts have not been rejected by the Assessing Officer (AO), the key issue remains whether the addition made by the AO can be sustained. Even if the Engineer's Certificate is incorrect, the addition cannot be made solely based on this without rejecting the books of accounts. The correctness of the Engineer's

certificate does not override the need to reject the books of accounts before making an addition.

2. If the books of accounts are incomplete, meaning they do not record all transactions or lack of supporting documents, the AO can reject them. This includes missing invoices, vouchers, or other essential documents that support the entries in the accounts. In the present case, the AO has not brought on record any evidence to indicate that the books are incomplete.
3. If the books of accounts are not maintained according to the prescribed accounting standards or principles, the AO may find them unreliable. This includes not following the generally accepted accounting principles (GAAP) or the standards set by the Institute of Chartered Accountants of India (ICAI). In the present case AO has not recorded any such his findings on the method of valuation followed by the assessee.

6.5. We also note that the addition is made on the estimated value, without substantial evidence to contradict the actual cost recorded by the assessee, which is not justifiable.

6.6. The Ld.CIT(A)'s partial relief indicates some merit in the assessee's arguments but does not fully address the core issue of rejection of books of accounts. The Ld.CIT(A) in his order for AY 2013-14 has recorded observations which are as follows:

"5.5.3 Since the accounts of the appellant company were ready as on the date of inspection of the above-mentioned two projects i.e. 13.04.2016 and both the projects were also found to be completed in the books of accounts for A.Y. 2014-15, therefore, the valuation officer ought to have provided the working based on the actual expenditure debited in the books of accounts and worked out the valuation for each of the financial years ending on 31.03.2011, 31.03.2012, 31.03.2013 and 31.03.2014 (year in which the project is completed) in respect of Ashirwad Dreams

and as on 31.03.2013 and 31.03.2014 in respect of Abaj Paradise separately. However, the same has not been done by the valuation officer.

5.5.4 In the assessment order, the A.O. has not given the basis for arriving at the figures of Rs.3,91,61,643/- in respect of Ashirwad Dreams and of Rs. 1,95,49,367/- for Abaj Paradise. It appears that the A.O. has included some other costs for which no basis has been made available by him in his order. Therefore, the actual expenses as debited in the books of accounts have to be believed for arriving at the cost of construction expenses incurred. It is also a matter of record that the assessing officer did not examine the books and pointed out the defects for rejecting the books of accounts. It is only the Registered Valuer's certificates obtained for total cost of the two projects i.e. Abaj Paradise and Ashirwad Dreams (Pages 156 and 157 of the paper book) which have been taken by the appellant as WIP for the respective projects. Therefore, the A.O. ought to have worked out the cost of construction by deducting the cost of closing WIP from the opening WIP for working out the difference between the cost of WIP as valued by the DVO. Since it appears that no such exercise has been carried out by the A.O."

6.7. After recording above observations, the Ld.CIT(A) carried out the estimation exercise based on the average rate of Gross Profit for the whole project. He also recorded the observation on the valuation of the DVO as follows:

"5.6.5 Thus, the valuation done by the departmental valuation officer appears to be not based on the accounted figures of expenses booked by the appellant for arriving at the correct figure of the current expenses incurred. Hence, there being violation of the guidelines of the CBDT published in 2009 as this is not a case where the expenses had not been booked by the appellant in its books but the reference is made on the basis of the belief that the registered valuer has not correctly certified the WIP as per the certificates referred to above. Therefore, considering all these facts in mind, the valuation of the expenses of the current year i.e. for A.Y. 2013-14 have to be estimated of its own and ignoring the valuation report."

6.8. Before granting partial relief, the Ld.CIT(A) also recorded the following observations:

"The enhanced estimate by applying the rate of 20% over the declared direct cost of the project is further based on the following observations: -

- a) *The A.O. has not mentioned the working of direct cost of the project for the year under consideration and not provided the working in the assessment order.*
- b) *The DVO has all the details of the two projects as on the date of inspection i.e. 13.04.2016 and the projects were completed by that date as the sales of flats and shops were declared by the appellant and therefore, he ought to have adopted the %age method of valuation as provided in the guidelines as reproduced above.*
- c) *The appellant has also not substantiated the figures of direct cost for the year under consideration during the course of appellate proceedings. Therefore, the proportionate cost over the years during which the project continued has been re-worked out without considering the indirect expenses so as to rebut the contention for making nominal variations if the indirect expenses are also considered for the purpose of working out the expenses incurred by the appellant.*
- d) *It is not ascertainable as to whether the cost of the project for the assessment year under consideration was inclusive of the opening WIP and the expenses incurred during the year under consideration were considered or not? If the proportionate cost of working is allowed in each year, it would disturb the already drawn accounts right from A.Y.2011-12 to A.Y.2016-17 for which the copies of accounts have been furnished.*
- e) *The gross profit for the entire project has been declared at 19.84% on the total receipts of Rs.28,36,78,250/- and therefore, the total cost of the project would be Rs. 22,73,98,300/- till 31.03.2016 in respect of both the projects. By giving effect to this appellate order, the total enhancement for A.Y.2013-14 will be by Rs.22,18,856/- and in terms of G.P., it would be only of 0.78% of the gross receipts of Rs.28,36,78,250/-.*

“6.2 The appellant's claim that the effect to the estimated WIP should be given in the subsequent assessment years has already been rejected in the assessment order for A.Y.2014-15 which is not the subject matter of the present appeal and hence no such claim is entertained in the appeal against the impugned assessment order. Further, the A.O. has treated the figure of Rs. 1,39,61,058/- as "deemed to be the income" by holding that such excess has not been explained satisfactorily and resulted into investment in the form of work in progress which exceeded the amount recorded in the books of accounts. Therefore, there cannot be any telescopic effect as it is not the case of estimating the closing WIP

6.3 In view of the foregoing discussions, the appellant would get the relief of Rs.22,18,856/- as worked out above and the addition made by the A.O. in respect of two projects would be substituted at Rs. 1,17,42,202/- for Rs. 1,39,61,058/- adopted by the DVO through his valuation reports in respect of these two projects.

6.4. In the result, this ground no.2 of the appeal is partly allowed."

6.9. While the Ld.CIT(A) provided partial relief, the recalculation of estimation does not rectify the fundamental issue of the improper application of section 142A of the Act without rejecting the books of accounts and without recording proper reason of assuming that the value of work-in-progress is suppressed. The AO must adhere to the provisions of sub-section (3) of the section 145 of the Act, before making an assessment in the manner provided in section 144 of the Act. The Ld.CIT(A) has not considered this before going ahead with his own estimation rejecting DVO's valuation.

6.10. We also note that the Valuer (Shri A.Y. Chipa) has submitted the letter clarifying that he has not withdrawn the Certificate and its correctness should not be doubted. Both the Assessing Officer and the Ld.CIT(A) have not taken into consideration this letter by Valuer which is a basis for referring the Valuation to DVO.

6.11. Based on the above analysis, we conclude that the addition based on the estimated cost, without discrediting the actual costs recorded, is not justifiable.

6.12. In the result, the addition of Rs.1,17,42,202/- confirmed by the Ld.CIT(A) is directed to be deleted. Therefore, the appeal of the assessee for A.Y. 2013-14 is allowed.

7. In the next appeal of the assessee, i.e. ITA No.1720/Ahd/2019 for **AY 2014-15**, the following grounds have been raised:

"1. In law and in the circumstances of the case, the impugned order passed by the Id Dy. Commissioner of Income Tax, Circle -3(1)(2), Ahmedabad and subsequently partly confirmed by the Id. CIT(A) - 9 is unlawful, against natural justice and bad in law. It deserves to be annulled.

2. On the facts and in the circumstances of the case, the Id. CIT (A) has grossly erred in confirming addition of Rs.1,73,71,270/- out of Rs. 2,05,85,408/- made by the AO on account of valuation of WIP u/s 142A by DVO. The Id CIT (A) has recalculated the addition on the basis of Valuation of Immovable properties Guidelines, 2009. The guideline is not applicable to the appellant as the issue covered under this case is for the closing stock (WIP) and not for the immovable property. The AO may kindly be directed to delete such addition in total.

3. The appellant craves leave to add, alter, and amend any ground/s of appeal on or before hearing of the appeal."

8. After hearing the arguments presented by both the Assessee and the Revenue, and upon careful examination of the relevant records, we find that the grounds of appeal raised for both the assessment years under consideration are identical.

9. In the earlier Assessment Year, i.e. 2013-14, we have thoroughly examined the issues raised and delivered a detailed order allowing the appeal in favor of the assessee.

10. Considering that there have been no material changes in the facts and circumstances of the case, we see no reason to deviate from the findings and conclusions narrated by us in the AY 2013-14.

11. We find merit in the appellant's contentions that the principles laid down in the earlier assessment year apply with equal force to the current assessment year, i.e. AY 2014-15. Therefore, consistent with our findings in the earlier order, we hereby allow the grounds of appeal raised by the appellant for A.Y. 2014-15.

12. In the combined result, both the appeals of the Assessee in ITA Nos.1719/Ahd/2019 & 1720/Ahd/2019 for AYs 2013-14 & 2014-15 respectively are allowed.

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

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

Ahmedabad, Dated 28/06/2024

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)-9, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

देशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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