

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “D” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA No.565/Ahd/2023  
Assessment Year: 2010-11**

Gayatri Creatives, 21, Sarthi Complex, Near Visat Petrol Pump, Sabarmati, Ahmedabad – 380 005. <b>[PAN – AAGFG 8289 B]</b>	Vs.	The Assistant Commissioner of Income Tax, Circle – 2(2) Now Circle – 2(1)(1), Ahmedabad.
(Appellant)		(Respondent)
Assessee by	Shri Mehul Thakkar, AR	
Revenue by	Shri Sudhakar Verma, Sr. DR	
Date of Hearing	03.07.2024	
Date of Pronouncement	27.08.2024	

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER:**

This appeal is filed by the Assessee against order dated 24.04.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2010-11.

2. The assessee has raised the following grounds of appeal :-

- “1. Bothe the Id. A.O. has erred in reopening the assessment under Section 147 of the I.T Act, 1961 and National Faceless Appeal Centre, Delhi in confirming the reopening of the case.
2. Both the Id. A.O. has erred in making addition of Rs.22,41,216/- bring the understated WIP and NFAC has erred in confirming the same without properly considering the facts of the case on records.”

The assessee has also raised the following additional grounds :-

- “1. The Ld. Assessing Officer ought to have observed that the appellant has furnished full and true particulars of its income at the time of original

*assessment and it is settled position of law that the assessment cannot be validly reopened beyond the expiry of four years from the end of the relevant assessment year in view of the express Proviso to Section 147 of the Income Tax Act which reads as under:*

*"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year"*

2. *The Ld. Assessing Officer ought to have observed that the appellant has furnished full and true particulars of its income of the time of original assessment and it is settled position of law that the assessment cannot be re-opened for a mere change of opinion."*

3. The assessee filed his return of income of Rs.42,98,920/- for the Assessment Year 2010-11 on 24.03.2011. The assessment under Section 143(3) of the Income Tax Act, 1961 was completed on 28.03.2013 thereby assessing the total income at Rs.43,26,030/-. The assessee firm is engaged in the business of contracting and land development. The Assessing Officer noticed that the Balance Sheet of the assessee as on 31.03.2010 showed work-in-progress at Rs.7,85,89,164/- and in the Profit & Loss Account for the Financial Year 2009-10, the work-in-progress was shown at Rs.6,49,00,000/-. However, during the course of assessment, details furnished by the assessee revealed that the closing work-in-progress was Rs.7,85,89,164/- and the opening work-in-progress was Rs.1,14,47,948/-. Thus, the correct figure of work-in-progress for the year should have been Rs.6,71,41,216/- instead of Rs.6,49,00,000/- as shown in the Profit & Loss Account. The Assessing Officer reopened the assessee's case under Section 147 of the Act and notice under Section 148 of the Act was issued to the assessee on 15.03.2017 and the same was duly served upon the assessee. In response to the notice under Section 148 of the Act, the assessee submitted that the original return should be treated as the return filed in response to the notice under Section 148 of the Act. The assessee also requested for reasons for reopening which was forwarded to the assessee on 13.06.2017. The assessee objected to the reopening of assessment under Section 148 of the Act. Notice under Section 143(2) of the Act alongwith order disposing of the objections raised by the

assessee was sent on 27.10.2017. The Assessing Officer made addition of Rs.22,41,216/- in respect of understated work-in-progress.

4. Being aggrieved by the Assessment Order under Section 147 read with Section 143(3) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. There is a delay of 26 days in filing the present appeal for which the assessee has filed affidavit thereby explaining the reason that the operations of the firm were almost closed since 01.04.2019 and there was limited operations and all the partners were not available at the relevant time. After taking cognisance of the affidavit, it appears that the delay is not deliberate on the part of the assessee and hence the delay is condoned.

6. The Id. AR submitted that as regards to the additional grounds taken by the assessee, the Assessing Officer ought to have observed that the assessee furnished full particulars of income at the time of original assessment and it is settled position of law that the assessment cannot be validly reopened beyond the expiry of 4 years from the end of the relevant assessment year in view of the provision of Section 147 of the Act. The Ld. AR further submitted that it is settled position of law that the assessment cannot be reopened for mere change of opinion. On merit, the Id. AR submitted that the work-in-progress furnished by the assessee during the course of assessment proceedings clearly reveal that closing work-in-progress was Rs.7,85,89,164/- and the opening work-in-progress was Rs.1,14,47,948/- but actually the comparison of the difference as proposed by the Assessing Officer is not correct because the assessee firm follows work-in progress method of accounting and pay tax accordingly every year. Therefore, the said explanation was taken into consideration during the original assessment and, therefore, the reopening of the assessee's case is merely a change of opinion which should not be entertained.

7. The Ld. DR relied upon the Assessment Order and the order of the CIT(A).

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee vide letter dated 07.11.2017 during the reassessment have categorically mentioned that the assessee is following work-in-progress method of accounting and is offering tax on the basis of work completed in each and every year. The assessee during the original assessment proceedings also filed his response and after taking cognisance of the expenses and the details in the original assessment, the Assessing Officer has taken cognisance of the accounting method followed by the assessee and taken the view. But while reopening, the said view was changed and in fact the accounting method was not taken into consideration in respect of reopening of the assessee's case as well as passing the reassessment order. Thus, the additional ground taken by the assessee appears to be justifiable. Hence, the additional ground is allowed.

9. Though the additional grounds have been allowed, it will be appropriate to see the merit of the case wherein the assessee has categorically mentioned that the assessee has objected the reopening of the assessment under Section 148 during the reassessment proceedings thereby stating that the assessee has followed work-in-progress method of accounting and already paid taxes accordingly. The CIT(A) has totally ignored this fact and has passed the order without giving any reasons to that effect. Hence, on merit also the assessee proves that the disallowance made by the Assessing Officer is not justified in reassessment proceedings. Thus, on merit also the assessee succeeds.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 27<sup>th</sup> August, 2024.

*Sd/-*  
**(MAKARAND VASANT MAHADEOKAR)**  
Accountant Member

*Sd/-*  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 27<sup>th</sup> August, 2024**

**PBN/\***

*Copies to:*

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*