

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 910/Ahd/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

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| Vallabh Infra Near Sai Nagar Society, Khodiyar Nagar Cross Road, New VIP Road, Vadodara, Gujarat, 390025 | बनाम/ Vs. | Assistant Commissioner of Income Tax Circle 3(1), Vadodara |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AALFV1332M | | |
| (Appellant) | .. | (Respondent) |

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| अपीलार्थी ओर से /Appellant by : | Shri Prashant Upadhyay, A.R. |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Rohit Aasudani, Sr. DR |

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| Date of Hearing | 04/09/2024 |
| Date of Pronouncement | 01/10/2024 |

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’) dated 21.02.2024 for the Assessment Year 2016-17. There was delay of 10 days in filing of this appeal. The assessee has filed an affidavit explaining the reason for delay. It was explained that the email-id on which the order was received was accessed timely, which led to this delay. Considering the explanation of the assessee, the delay is condoned.

2. The brief facts of the case are that the return of income for A.Y. 2016-17 was filed on 27.09.2016 declaring total income of Rs.17,39,690/-. The assessee is a builder. The case was selected for limited scrutiny to examine whether the income from real estate business was correctly offered for tax. In the course of assessment, the AO found that the assessee had shown gross profit of Rs.82,90,716/- on sales of Rs.6,55,34,200/- which worked to 12.65%. The AO had called for the details in respect of percentage of completion of work and from the details as furnished it was found that the cost incurred up to 31.03.2016 was Rs.11,33,49,799/-, which was 93.3% of the estimated project cost. The assessee had received total booking amount (in excess of 10%) of Rs.9,22,86,501/-. The AO worked out the gross profit by applying Percentage Completion Method and accordingly computed the gross profit at Rs.1,09,66,430/- ($\text{Rs.9,22,86,501/-} \times 93.93\% \times 12.65\%$). Accordingly, differential gross profit of Rs.26,75,715/- ($\text{Rs.1,09,66,430} - \text{Rs.82,90,715/-}$) was added to the total income. The assessment was completed under Section 143(3) of the Act on 28.12.2018 at total income of Rs.44,15,410/.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Tribunal, which was decided by the Ld. CIT(A) vide the impugned order and the appeal of the assessee was dismissed.

4. The assessee is now in appeal before us.

5. The assessee has taken following grounds in this appeal:

- “1. *The order of Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (hereinafter referred to as CIT (A)) is bad in law.*
2. *The learned CIT (Appeals) erred in fact and in confirming the addition amounting to Rs. 26,15,715/- made by Assistant Commissioner of Income Tax, Circle 3(1), Vadodara (hereinafter referred to as the AO) being estimated profits by wrongly applying the gross profit margin based on Percentage Completion Method.*
3. *The Honourable CIT (Appeals) erred in fact and in law by passing order without considering submissions made by the appellant to the AO against the Show Cause Notice.*
4. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”*

6. Shri Prashant Upadhyay, Ld. AR appearing for the assessee submitted that the Ld. CIT(A) had passed ex-parte order and upheld the addition as made by the AO. The Ld. AR explained that the assessee was consistently following completed contract method for computing income from real estate business. Accordingly, the income arising from sale of units was offered to tax in different years. He submitted that the AO had neither disputed the method of revenue recognition as adopted by the assessee nor the genuineness of sale value or the cost of project or any other expenditure incurred by the assessee was doubted. Under these circumstances, the AO was not correct in rejecting the completed contract method consistently followed by the assessee and adopting the income for this year on the basis of Percentage Completion Method. He, therefore, requested that the

matter may kindly be remanded to the Ld. CIT(A) to examine this aspect and decide the matter on merits of the case.

7. Per Contra, Shri Rohit Aasudani, the Ld. Sr. DR supported the order of the Ld. CIT(A). He submitted that no compliance was made by the assessee before the Ld. CIT(A) in spite of repeated opportunities provided by him, the reason for which has not been explained. Further that the submissions as made by the assessee now were not considered by the ld. CIT(A) in the absence of any compliance by the assessee. The ld. SR-DR expressed his no objection if the matter was set aside to the Ld. CIT(A) to examine the matter on the merits of the case.

8. We have carefully considered the rival submissions. It is found that the Ld. CIT(A) had allowed opportunities to the assessee on 13.01.2021, on 05.01.2024 and again on 09.02.2024. But no compliance was made by the assessee on any of these dates. The assessee had not explained as to why no compliance could be made before the Ld. CIT(A) in spite of three opportunities as provided by him. It is also not the case of the assessee that the notices of the Ld. CIT(A) were not received by him. It is found from Form No.35 that the assessee had given his consent that the notice/communication may be sent on email as mentioned in the Form. Apart from making lame excuses, no convincing explanation has been given for the non-compliance made before the Ld. CIT(A).

9. As regarding merits of the case, we do not find any reason as to why the AO had rejected the project completion method of accounting regularly employed by the assessee and had estimated the income on Percentage Completion basis in this year. The AO has neither doubted the correctness of the sales, cost of the project and the expenses incurred by the assessee nor found any defect in the method of accounting followed by the assessee. Further, the books of account of the assessee were also not rejected before adopting the Percentage Completion method for estimating the income for this year. The contention of the assessee is that it was a builder and not a contractor nor a developer. Therefore, the Project Completion Method was rightly adopted by it to recognize the revenue as per Accounting Standard -9. According to the assessee, the Accounting Standard-7 was not applicable in its case. The assessee has filed paper book in two sets (Page 1 to 83 & Page 1 to 171) in support of its various contentions on merits as well as on the legal ground as taken.

10. It is found that in the absence of any compliance and any such explanation before the Ld. CIT(A), he has upheld the addition as made by the AO. The nature of method of accounting regularly adopted by the assessee and the reason for estimating income by the AO on the basis of Percentage Completion Method in this year was not examined by the Ld. CIT(A) on merits. We, therefore, deem it proper to set aside the matter to the file of Ld. CIT(A) to examine the issues as raised by the assessee before us

and as discussed above, as these issues were not adjudicated on merits by the Ld. CIT(A). The Ld.CIT(A) will examine the matter on its merits and give independent finding without being influenced by the observations made by us in this order. At the same time, **since the assessee has not explained the reason for non-compliance before the Ld. CIT(A), we deem it proper to impose a cost of Rs.5,000/- (Rs. Five Thousand only) on the assessee, which should be deposited in Prime Minister Relief Fund within fifteen days of this order** and a copy of the receipt should be furnished to this Office as well as before the Ld. CIT(A). The Ld. CIT(A) will proceed in the set aside proceeding only after verifying that the cost have been paid by the assessee. The assessee is also directed to make compliance before the Ld. CIT(A) and not to seek any adjournment without a valid reason. In the case of non-compliance on the part of the assessee the Ld. CIT(A) will be at liberty to pass the order as deemed fit.

11. In the result, appeal preferred by the assessee is allowed for statistical purposes.

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| This Order pronounced on | 01/10/2024 |
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad; Dated 01 /10/2024
S. K. SINHA