

**IN THE INCOME-TAX APPELLATE TRIBUNAL “A” BENCH,
MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2134/MUM/2024
(A.Y. 2016-17)**

Deputy Commissioner of Income Tax, Circle -1, ASHAR IT Part, Wagle Industrial Estate, Thane West	v/s. बनाम	Ashirwad Enterprises, 302/3 rd Floor / Rajshree Plaza, Noori Baba Road, LBS Marg, Makhmali Talao Thane 400602, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AANFA8929M		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Sanjiv Brahme & Shri Jayant Bhatt
Respondent by :	Shri Ajay Chandra (CIT - DR)

Date of Hearing	03.09.2024
Date of Pronouncement	06.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the Revenue against the order of the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 23.01.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2016-17.

2. The grounds of appeal taken by the Revenue are as under:

"1) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that out of the total project cost of Rs. 48, 08,68, 918/-, cost incurred upto 31-03-2016 is of Rs.38,89,08,824/-, i.e. 80.80% of the work is

completed in respect of the project undertaken, hence, profit needs to be recognised in the same percentage.

2) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that agreement to sale executed upto 31-03-2016 are of Rs 53,85, 83,608- and 80.80% of the sales consideration of sales agreements executed works out to Rs. 43.56,06,422/- and after reducing cost booked in FY 2014-15 of Rs.9,55,22,248/- and sales booked in F.Y. 2014-15, the income for F.Y. 2015-16 works out to Rs. 18, 70,28,3 74/-.

3) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the actual cost of the project till completion works out to Rs. 48,08, 68,918/-, against which, the assessee's estimation of the project cost is of Rs. 70 Crores. Thus, there is difference of 45.57% in the actual project cost and the estimation made by the assessee.

4) The appellant prays that the order of the CIT(Appeals) on the above grounds be set aside and that of the Assessing Officer be restored.

3. Brief facts of the case are that the assessee filed its return declaring income of Rs. 5,20,29,670/- on 15.10.2016. The assessee is a Partnership Firm engaged in the construction business. During the year, the assessee was engaged in construction of a residential project in respect of which net profit of Rs. 5,20,29,666/- was declared as against total sales of Rs. 14,61,41,484/-. In response to the queries raised by the AO regarding method of accounting, the assessee submitted that there was no change in the accounting system for the year under consideration as compared to earlier years and that it has been consistently following the Percentage of Completion Method. The assessee further submitted details of sales and expenses relating to earlier years in respect of the same project. After examining the accounts and other details, the AO came to the conclusion that the assessee had not offered correct income for



the year under consideration. It was held by the Ld. AO that the income recognized on the basis of Percentage Completion Method works out to Rs. 18,70,28,374/-, whereas, the assessee has recognized income only to the extent of Rs. 5,06,50,406/-. Accordingly, difference of Rs. 13,63,77,968/- was added to the income and assessment was completed at a total income of Rs. 18,84,07,630/-.

4. Aggrieved with the said order, the assessee preferred an appeal before the Ld. CIT(A). The assessee contended that the figures adopted by the Ld. AO were not correct. It was observed by the Ld. CIT(A) that the project under consideration was completed in F.Y. 2016-2017. After detailed examination of the assessee's reply, the Ld. CIT(A) held that the assessee has been correctly following the Percentage of Completion Method and the same has been accepted by the department in the past years. He, therefore, held that the claim of the assessee cannot be disturbed at this stage. Accordingly, the appeal of the assessee was allowed by the Ld. CIT(A).

5. Before us, the revenue is in appeal against the order of Ld. CIT(A). The department has contended that out of total project cost of Rs. 48,08,68,919/-, cost incurred upto 31.03.2016 is to the extent of Rs. 38,89,08,824/-. Thus, 80.80% of the work has been completed in respect of Project at hand and hence, revenue has to be recognized in the same percentage.



6. We have heard the rival submissions and perused the material before us. Ld. AR has reiterated that the assessee has applied Percentage Completion Method consistently and the same cannot be disturbed at this stage. The department has also accepted the assessee's computation for earlier as well as subsequent years in scrutiny proceedings. In support of its claim, the Ld. AR has made available a copy of the assessment order for AY 2017-18 passed under sec 143(3) of the Act, wherein, the assessee has declared total income of Rs. 37,33,09,000/-. Assessee's computation has been accepted while finalizing the scrutiny assessment at returned income. It was also reiterated by the Ld. AR that the AO has taken full turnover till 31.03.2016 disregarding the turnover already offered in the returns filed for earlier years and duly accepted in the scrutiny assessments for the AYs 2014-2015 and 2015-2016. Moreover, the AO's action of estimating the profits disregarding the method of booking expenses consistently followed by the assessee amounts to rejection of its Books of Accounts, whereas, no case has been made out for rejection of books by the AO. It was further emphasized by the Ld. AR that huge income of Rs. 37,33,09,000/- has been declared in the A.Y. 2017-18 against total sales of Rs. 54,55,72,922/- which has also been accepted as such by the Assessing Officer during scrutiny assessment. Thus, overall it has offered Rs. 64 cr. income over the years as against turnover of Rs. 113 cr. which is more than 55% of the total turnover. Hence, there is no revenue implication in case a part of the profit declared in



A.Y. 2017-18 is taxed in current A.Y., as rate of tax for both AYs is the same. Since, whole exercise is revenue-neutral, there is no justification for the AO to disturb the declared profit and make addition in the year under consideration.

7. Ld. DR on the other hand, strongly relied on the order of the Ld. AO. We have carefully considered the rival submissions and it is noted that the assessee has declared the net taxable income of Rs. 37,00,35,170/- for AY 2017-18 and Rs. 9,58,72,009/- for AY 2018-19. Thus, in total net income of Rs. 55,63,54,509/- has been offered for taxes during the four assessment years from AY 2015-16 to AY 2018-19 which amounts to more than 55% of the total turnover. There is no justification for disturbing the computation of assessee only for the year under consideration, especially since all the earlier years and succeeding year have been completed u/s. 143(3) of the Act after due scrutiny without disturbing the declared profits or the method of accounting.

8. In view of the above facts and circumstances, we find no reason to interfere with the order of Ld. CIT(A). As a result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 06/11/2024

Sd/-

AMIT SHUKLA

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai



दिनांक /Date 06.11.2024

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

