

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

BEFORE SHRI TR SENTHIL KUMAR, JUDICIAL MEMBER
And
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 441/AHD/2020
निर्धारण वर्ष/Asstt. Year: 2015-2016

The Income Tax Officer, Ward-1(3)(5), Ahmedabad.	बनामVs.	Sainath Land Developers, 207, Nirman House, Nr. Sardar Patel under Bridge, Usmanpura, Ahmedabad-380013. PAN: ABSFS3435Q
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(अपीलार्थी /Appellant		(प्रत्यर्थी /Respondent)
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Revenue by :	Shri Rignesh Das, Sr. DR
Assessee by :	Shri Pritesh L Shah, AR

सुनवाई की तारीख/Date of Hearing : 18/12/2024
घोषणा की तारीख/Date of Pronouncement: 31/12/2024

आदेश/ORDER

PER NARENDRA PRASAD SINHA, AM:

This appeal is filed by the Revenue against the order of the Ld. Commissioner of Income Tax (Appeal)-10 [in short CIT(A)], Ahmedabad, dated 19.03.2020 for the Assessment Year 2015-16.

2. The brief facts of the case are that the assessee is a partnership firm and the return of income for AY 2015-16 was filed by the assessee on 24.09.2015 declaring total income of Rs.4,68,360/-. The case was selected for limited scrutiny under CASS. In the course of assessment proceeding, the

AO found that the assessee had opening work in progress (WIP) of Rs.6,47,47,376/- and during the year the assessee had sold stock (flats & shops) of Rs.4,20,11,458/-. However, in the P & L account, the assessee had shown sale proceed of Rs.55,70,000/- only. Thus, the difference in the sales as per the WIP stock account and as per P & L account was found by the AO for which an explanation was sought. The assessee had explained that it was following the percentage completion method and the profit from the sales were already disclosed in the earlier years and that only the profit pertaining to the current year was disclosed in the accounts of this year. The AO, however, did not accept the explanation of the assessee and made addition of Rs.4,20,11,458/- on account of undisclosed sales. Accordingly, the assessment was completed u/s.143(3) of Act on 27.12.2017 at a total income of Rs.4,24,79,818/-.

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

4. Now, the Revenue, aggrieved with the order of the Ld. CIT(A), has filed the present appeal before us. The following grounds have been taken in this appeal:

- 1. The Ld. CIT(A) has erred in law and on the facts & in circumstances of the case by deleting the addition of Rs.4,20,11,458/- on account of undisclosed sale.*
- 2. It is, therefore, prayed that the order of Ld.CIT(A) may be set aside and the that of the Assessing Officer be restored.*

5. Shri Rignesh Das, Ld. Sr. DR appearing for the Revenue submitted that the AO had rightly made the addition on account of undisclosed sales on the basis of figures as appearing in respect of opening and closing of WIP for this year vis-à-vis the sales as disclosed in the P&L account. He submitted that the Ld. CIT(A) was not correct in deleting the addition on the basis of certain additional evidences filed in the course of appellate proceedings and without calling for any remand report from the AO. He contended that the AO was not allowed an opportunity to verify the facts and figures as submitted before the Ld. CIT(A) in the course of appellate proceedings, which was reproduced in his order.

6. Per Contra Shri Pritesh L Shah, the Ld. AR of the assessee explained that the assessee was consistently following the percentage completion method of accounting since AY 2012-13, which was accepted by the Department in the past. The assessee had disclosed income on the basis of percentage completion method considering the advances received in the past years. Thus, the revenue was shown as income by the assessee even if there was no sale, following the accounting principle of the percentage completion method. Under the circumstances, the AO was not correct in rejecting the accounting method of percentage completion consistently followed by the assessee and applying project completion method in the current year. The Ld. AR submitted since the income from sale of Rs.4,20,11,458/- disclosed in the current year was already substantially offered to tax in the earlier year on the basis of percentage completion method, the addition as made by the AO in the current year had led to double addition. According to the Ld.AR, the AO was not correct in rejecting the method of accounting in the current year without giving effect

to the profit already offered by the assessee in the earlier years. The Ld. AR also relied upon the following decisions in support of his contention that following the principle of consistency, the change in the method of accounting adopted by the AO in the current year, was not justified.

- i. *Bilahari Investment Pvt. Ltd.* 299 ITR 1 [2008] SC
- ii. *Unity Construction Co Vs. ITO* 2014 Tax Pub (DT) 4833 (Ahmedabad ITAT)
- iii. *Peninsula Land Ltd. Vs. DCIT* 2022 134 taxmann.com 270 (Mumbai ITAT)

7. We have carefully considered the rival submissions. At the outset, the addition of Rs. 4,20,11,458/- in respect of difference in WIP stock account during the year is not found correct. The assessee had disclosed sales of Rs.55,70,000/- in P & L account. Therefore, the set-off of this amount should have been allowed from the sales as worked out from the difference in WIP of stock and only the balance amount should have been considered as undisclosed sales. The AO did not allow the set-off for sales as disclosed by the assessee in the P & L account, which was not correct. On merits, there is no dispute to the fact that the assessee was consistently following the percentage completion method of accounting. This method of accounting as followed by the assessee, was accepted by the Department in the earlier years. This fact was explained by the assessee before the AO to account for the difference in sales as appearing in the WIP stock account and in the P & L account. However, the AO had not given any reason to reject the explanation of the assessee. The Ld. CIT(A) has rightly held that the AO did not point out any defect in the books of accounts nor he pointed out any discrepancy in the submission of the assessee. The contention of the assessee

that the Ld. CIT(A) had considered certain additional evidences is not found correct. The assessee had only submitted charts in respect of "WIP Movement Statement", "Advance Booking received from the Members" and "Chart of profitability statement" of the different years before the Ld. CIT(A). The facts and figures as appearing in these charts were not new evidences but part of accounts already filed by the assessee in the ITRs for different years. Further, the Revenue has not pointed out any discrepancies in these figures. Thus, no new evidences or figures were considered by the Ld. CIT(A) and, therefore, there was no requirement to call for any remand report from the AO.

8. It is a settled position of law that once the method of accounting has been accepted by the Revenue in the earlier years it cannot be rejected in the subsequent year without bringing anything on record to show that the fact was different during that year. No such discrepancy was recognized and brought on record by the Revenue. The accounting method adopted by the assessee was a recognized method of accounting as per the Accounting Standards issued by ICAI and the percentage completion method was consistently followed by the assessee in all the years to recognize its revenue, which was also accepted by the Revenue. Under the circumstances, the AO was not correct in rejecting the method of accounting regularly followed by the assessee and in working out the income on the basis of actual sales made during the year. When a fundamental aspect permeating through the different assessment years is found as a fact and the parties have allowed that position to be sustained; it would not be open and appropriate to allow that position to be changed in a subsequent year. The Revenue cannot be allowed to flip-flop the method of accounting regularly

followed by the assessee without pointing out any defect in the accounts of the assessee. As rightly pointed by the assessee, the profit out of the sales were already substantially accounted for by the assessee in the earlier years on the basis of percentage completion method and the addition made in the current year on the basis of actual sales had led to double addition.

9. The Hon'ble Supreme Court has held in the case of *Bilahari Investment P Limited (supra)* that every assessee is entitled to arrange its affairs and follow the method of accounting which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in distortion of profits that the Department can insist on substitution of the existing method. No such finding was recorded by the AO in this case that the assessee didn't follow the method of accounting regularly adopted by it or that the method as adopted had resulted in distortion of profit. Far from distortion of profit, the addition made by the AO in this case has resulted into double addition.

10. The coordinate bench of Mumbai Tribunal in the case of *Peninsula Land Limited (supra)* had held that where the assessee was following percentage completion method of accounting for revenue recognition and the assessee had recognize project revenue on that basis, the AO was not justified in rejecting the methodology adopted by the assessee and estimating the business profit on the basis of actual sales during the year.

11. In view of the above facts and judicial precedents, we do not find anything wrong with the order of the Ld. CIT(A). He has rightly upheld the method of accounting regularly followed by the assessee and has correctly

deleted the addition as made by the AO. The addition made by the AO was not only incorrect but was based on wrong presumption which had led to double addition. As explained by the assessee the work-in-progress credited to P&L account comprised of cost-plus profit on percentage completion method and the closing balance of WIP was accordingly disclosed in the accounts. Thus, the profit was already disclosed in closing WIP every year and this fact has not been controverted by the Revenue. Therefore, the Ld. CIT(A) has correctly deleted the addition made by the AO in the current year.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 31st December, 2024 at Ahmedabad.

**Sd/-
(TR SENTHIL KUMAR)
JUDICIAL MEMBER**

**Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER**

(True Copy)

अहमदाबाद/Ahmedabad, दिनांक/Dated 31/12/2024

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

आदेशानुसार/ BY ORDER,

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