

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 166/Coch/2024

Assessment Year : 2007-08

M/s. Empire Builders, 41/418 C Chicago Plaza, Rajaji Road, Ernakulam, Kerala – 682 035. PAN: AABFE5806H	Vs.	The Deputy Commissioner of Income Tax, Circle – 2(1), Ernakulam.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	27.11.2024
Date of Pronouncement	:	27-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 30/11/2023 in respect of the A.Y. 2007-08 and raised the following grounds:

<i>Sl.No.</i>	<i>Grounds of Appeal</i>	<i>Tax effect</i>
1	<i>The learned assessing officer erred in referring the cost of building to the Department Valuer u/s 142A of the income tax act without rejecting the books of accounts.</i>	0
2	<i>The assessing officer and CIT(Appeals) erred in making an</i>	27,79,220

	<i>addition of Rs.59,75,010/- based on the valuation report and without considering the expenditure incurred by the assessee on Generator, Elevator, Fire fighting equipment, transformer etc.</i>	
3	<i>The assessing officer has not considered the indirect and administrative expenses incurred by the assessee during the construction period</i>	0
4	<i>Any other relevant grounds that may be allowed at the time of hearing</i>	0
	<i>Total Tax Effect</i>	27,79,220

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business of construction. During the assessment year 2007-08, the assessee was in the construction of a commercial complex at Ernakulam. The assessee vide its return of income disclosing a taxable income of Rs. 80,27,540/- based on the estimated cost at 90% and the corresponding estimated profit accruing thereon. The AO sought for some details for which the assessee submitted the details. The AO in order to ascertain the cost of investment in the property, had referred the matter to the departmental valuer u/s. 142A of the Act. Thereafter, the value was fixed at Rs. 6,46,37,000/- as against the actual expenditure incurred at Rs. 6,97,65,946/-. The AO had estimated the sale price of the property at Rs. 10 crores and reduced the value fixed by the departmental valuer and arrived the cost profit at Rs. 3,53,63,000/-. Thus the AO had arrived an estimated gross profit at 35% which is not a practical one. The AO thereafter reduced the profits already considered for the A.Ys. 2005-06 and 2006-07. Then the AO had reduced the profit for the A.Y. 2007-08 to Rs. 75,62,990/- even though, the assessee had disclosed an income of Rs. 80,27,540/- in their return of income. The AO added an amount of Rs. 59,75,010/- to the income declared by the assessee and determined the total income at Rs. 1,41,25,070/-. The AO had added the gross profit of Rs. 59,75,010/- based on the Departmental Valuation Officer report obtained u/s. 142A of the Act which was disputed by the assessee before the

Ld.CIT(A). The assessee contended that the estimated gross profit as unexplained investment u/s. 69C of the Act is not correct since the value estimated by the departmental valuer had not considered the certain other major expenditures. The assessee also contested the estimated value of Rs. 10 crores. The assessee further submitted that the AO had rejected the real income theory and the project developed by the assessee is stock in trade and is assessable u/s. 28 of the Act. The assessee also submitted that on the sale of stock in trade, what accrues to the assessee is the value as per the deed of sale and hence there is no provision in section 28 of the Act to substitute to the accrued consideration for market value of such consideration. The assessee also contended that Accounting Standard 7 applies to the assessee and from 01/04/2003, revised Accounting Standard 7 was applicable only to a Contractor and in the case of a real estate developer, revised AS-9 was prescribed and as per revised AS-9, income has to be computed only on completion of the project i.e. when the property was sold. On these grounds, the assessee submitted that the order of the AO is not correct.

3. The Ld.CIT(A) in its order in paragraph 7.2 had extracted the finding given by the AO and thereafter in paragraph 7.2.1 had given his finding in a very cryptic manner. For the sake of convenience, we have extracted the finding of the Ld.CIT(A) from para 7.2.1.

“7.2.1 During the course of assessment proceedings, the appellant has also accepted the report of the DVO's valuation of Rs. 6,46,37,000/- but he added further expenses related to generator, transformer, indirect expense and subsequent expenses making the cost of construction at Rs. 7,71,78,000/-. The Ld. A.O. did not accept the explanation of the appellant and treated the cost of project at Rs. 6,46,37,000/- only. The excess profit on account of lower cost was distributed in three years and the excess cost for the year is worked at Rs. 59,75,010/-. During the appellate proceedings, in his written submissions, the appellant has worked out cost at Rs. 6,97,65,945/- and contended that his cost and DVO cost is in the tolerance range of 10%, hence, the report of the DVO should be ignored. This contention was not taken by him before the A.O. I have gone through the

submissions of the appellant and notice that the appellant has taken different views during assessment proceedings and appellate proceedings. The contentions of the appellant are without any evidence. Keeping in view of this, these grounds of the appellant are dismissed.”

4. From the reading of the above finding given by the Ld.CIT(A), we came to the conclusion that the Ld.CIT(A) had not considered the various grounds raised by the assessee but dismissed the appeal on the ground that the assessee had taken different views during the assessment as well as appellate proceedings. The Ld.CIT(A) had not considered the merits of the case but passed an order without meeting out the various grounds raised by the assessee. Therefore we are of the opinion that the order of the Ld.CIT(A) is a non-speaking order and on that score, we are setting aside the order of the Ld.CIT(A) and remit the issue to the file of Ld.CIT(A) with the direction to decide the appeal on merits and pass a well considered speaking order.

5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27th January, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 27th January, 2025.
/MS /

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|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin