

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

**BEFORE SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 6915/MUM/2024
(A.Y. 2018-19)**

Runwal Enterprises Ltd. 4 th Floor, Runwal and Omkar Square, Off eastern Highway, Sion East, Mumbai-400022	v/s. बनाम	DCIT, CC-4(1), Mumbai Kautilya Bhavan, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAICP4839P		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Mr. Pradeep Rawal
Revenue by :	Shri. R. R. Makwana

Date of Hearing	13.02.2025
Date of Pronouncement	20.02.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-52/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 24.10.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2018-19.

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

“1. On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals)-52, Mumbai has erred in not quashing the assessment order passed on 19.05.2021 by the Assessing Officer u/s 143(3) r.w.s 144B of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals)-52, Mumbai erred in upholding the addition of Rs.33,84,618/- disallowable u/s.43B of the Act, that was not even claimed in the computation of total income, disregarding the submissions filed by the appellant company and while ignoring the fact that

(a) The appellant company only claimed the costs attributed to the stage of project completed as expense and debited to the profit and loss account, aligning with the established and accepted principles of Accounting Standard on Construction Contracts (AS-7) while recognizing the remaining costs by debit to Closing Work in Progress and carried forward for claim in subsequent years.

(b) During the captioned year, out of total gratuity provided for Rs.33,84,618/-, the appellant company has debited gratuity expenses in the Profit & Loss Account only to the extent of Rs 18,03,193/-(51.81% based on stage of project completion) following the above-mentioned method of accounting and hence the balance gratuity expense of Rs 15,81,425/- has been included in the Work-in-progress and not claimed even as expense in the Profit & Loss Statement.

(c) Even the said debit of Rs 18,03,193/- in the profit and loss account, was suo-moto disallowed in the income tax return filed by appellant and with remaining Rs. 15,81,425/- not even debited to Profit and loss account, the total addition of Rs.33,84,618/- is based on mistaken impression that the same is claimed as deduction from total income and the same amounted to double taxation in the hands of the Appellant Company.

(d) The appellant company has provided complete details pertaining to Inventories (which includes Closing Work-in-progress) during the course of the assessment proceedings and the same has not been questioned by the Assessing Officer. The Ld. CIT(Appeals) and the Assessing Officer mechanically followed the erroneous and mechanical computerized processing, that stood negated during scrutiny assessment proceedings.

(c) The case was selected for complete scrutiny, inter alia, on the issue of Disallowance u/s 40A(7) (Gratuity provision) as per notice under section 143(2) of the Act already issued on 22.09.2019, the issuance of intimation u/s 143(1) thereafter on 21.12.2019 by CPC during the ongoing scrutiny assessment proceedings was void ab initio and that nevertheless prejudiced the minds of both the Assessing Officer as well as Ld. CIT(Appeals) on the glaring fact that there was no such claim of Rs.33,84,618/- at all in the return of income and the fact that the said addition by CPC was merely imported from Tax Audit Report and not from any claims as such, made in the returns of income. The reliance is placed on [1999] 105 Taxman 134 (Madhya Pradesh)/[1999] 239 ITR 217 (Madhya Pradesh) [26-02-1999], wherein it was held that where notice under section 143(2) has been issued and matter is in process under sub-section (2), then to change course and resort to section 143(1)(a)(i) would be against principles of natural justice and without jurisdiction.

3. On the facts and in the circumstances of the appellant company's case and in law, the Ld. Commissioner of Income Tax (Appeals)-52, Mumbai has failed



to appreciate the fact that the Faceless Assessing Officer passed an assessment order without issuing any show cause notice to the appellant company as per requirement of provisions of section 144B✓ while ignoring the settled legal position including by the Judgement of Hon'ble Bombay High Court in the matter of Teerth Developers and Teerth Realities JV (AOP) Vs. Additional/Joint/Deputy/Assistant Commissioner of Income-tax/Income-tax Officer [2024] 169 taxmann.com 94 (Bombay) wherein it was held that Where Faceless Assessing Officer passed an assessment order making certain additions to income of assessee without issuing any show cause notice-cum-draft assessment order to assessee as per requirement of provisions of section 144B, impugned assessment order was manifestly illegal and a nullity in eyes of law, hence deserved to be quashed and set aside.

4. The appellant craves leave to add to, alter, amend, modify and/or delete all or any of the foregoing grounds of appeal.”

3. Brief facts of the case are that the assessee filed original return on 26.10.2018 and revised return declaring income of Rs. 50,16,59,280/- on 28.12.2018. The case was selected for scrutiny and a notice u/s 143(2) was issued on 22.09.2019. During the course of assessment proceedings, the case was also processed by the Central Processing Centre, Bengaluru [CPC] and an order u/s 143(1) was passed on 21.12.2019 wherein a disallowance of Rs. 33,84,614/- was made u/s 43B on account of inconsistency in the amount debited in Profit & Loss [P&L] account. Subsequently, the assessment was finalised u/s 143(3) r.w.s. 144B of the Act on 19.05.2021 wherein the only addition made was on account of Rs. 33,84,614/- u/s 143 which was earlier added during the processing of the return.

4. Aggrieved with the order of Ld. AO, the assessee preferred an appeal before Ld. CIT(A). However, the assessee's appeal was dismissed on the ground that no appeal was filed against the intimation u/s 143(1) vide which the impugned addition was made and the same was only reiterated in the order u/s



143(3) of the Act. Ld. CIT(A), therefore, held that no separate addition was made in the assessment order. He dismissed the appeal without adjudicating the issue on merit.

Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. The assessee has taken as many as four grounds of appeal. However, the sole issue involved in these grounds is relating to the addition of Rs. 33,84,618/- u/s 143 of the Act.

6. Before us, Ld. AR has submitted that as notice u/s 143 was already issued on 22.09.2019, the issuance of intimation u/s 143(1) thereafter on 21.12.2019 by the CPC was not called for. Ld. AO vide para 5 of the assessment order has made the addition of Rs. 33,84,618/- on the ground that the same was added u/s 143(1) of the Act. But no opportunity was provided to the assessee to explain the discrepancy before making this addition. Even during the appellate proceedings, Ld. CIT(A) dismissed the assessee's appeal totally disregarding the submissions made by the assessee on the merits of the issue.

Ld. DR, on the other hand, has relied on the orders of lower authorities.

7. We have heard the rival submissions. It is seen that the issue has not been examined on merits by the Ld. CIT(A). Since the assessment order u/s 143(3) incorporates the disallowance of Rs. 33,84,614/- made u/s 43B, vide order u/s 143(1), therefore, the same got incorporated in the order u/s 143(3) dated



19.05.2021. Hence, Ld. CIT(A) was not justified in dismissing the appeal without considering the merits of the issue. We, therefore, set aside the order of Ld. CIT(A) and direct him to decide the appeal afresh on merits after affording due opportunity to the assessee to make his submissions.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.02.2025.

Sd/-

RAHUL CHAUDHARY

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 20.02.2025

अनिकेत सिंह राजपूत/ स्टेनो

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.

