



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.**

&

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 242/RJT/2024

(निर्धारण वर्ष/Assessment Year: (2015-16))

Assisntant Commissioner of Income-tax, Circle-2(1), Rajkot, Room No. 311, 3 rd Floor, Aayakar Bhawan, Race Course Road, Rajkot – 360001	Vs.	Sanskar Developers Shop no. 1, Shri Raj Complex, 1-Madhav Park, B/h. Vijay Hostel, 150Ft Ring Road, Rajkot – 360004
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: ACKFS 2310 R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

प्रति आपत्ति/CO No.02/RJT/2024

(a/o ITA No.242/RJT/2024)

(निर्धारणवर्ष / Assessment Year: (2015-16))

Sanskar Developers Shop no. 1, Shri Raj Complex, 1-Madhav Park, B/h. Vijay Hostel, 150ft Ring Road, Rajkot – 360 001	Vs.	Assisntant Commissioner of Income-tax, Circle-2(1), Rajkot, Room No. 311, 3 rd Floor, Aayakar Bhawan, Race Course Road, Rajkot - 360001
स्थायी लेखासं./जीआइआरसं./PAN/GIR No.: ACKFS 2310 R		
(Co-objector)		(Respondent)

निर्धारिती की ओर से/Assessee by : Shri Rashmin Vakariya, Ld. AR
राजस्व की ओर से/Revenue by : Shri Sanjay Punglia, Ld. CIT(DR)

सुनवाई की तारीख/**Date of Hearing** : 30/04/2025

घोषणा की तारीख/**Date of Pronouncement** : 17/07/2025

आदेश / ORDER

Per, Dr. A. L. Saini, AM:

Captioned appeal filed by the Revenue and Cross Objection filed by the assessee, pertaining to Assessment Year 2015-16, are directed against the order passed by the National Faceless Appeal Centre (NFAC) Delhi/Learned Commissioner of Income Tax (Appeals) [in short 'Ld. CIT(A)'], dated 22.02.2024, under Section 250 of the Income Tax Act, 1961 (hereinafter



referred to as “the Act”), which in turn arise, out of an assessment order passed by the National Faceless Assessment Centre Delhi /Assessing Officer (assessing officer) u/s 147 r.w.s. 144B of the Act, vide order dated 29.03.2022.

2. The grounds of appeal raised by the Revenue are as follows:

“(i) Whether on facts and circumstance in law, the learned CIT(A) erred in deleting the addition made on account of estimation of gross profit and under valuation of closing stock in spite of the facts that during the course of re-assessment proceedings, the assessing officer has clearly discussed the grounds on which additions were made and also noted that the conditions mentioned in draft ICDS on Real Estate Transactions issued by CBDT in May 2017 are fulfilled in the present case and therefore the assessing officer estimated net profit at the rate 25% on the gross receipts of Rs.1,88,53,335/-.

(ii) Whether on facts and circumstance in law, the learned CIT(A) erred in deleting the addition made on account of closing stock to the tune of Rs.5,55,35,170/-, without appreciating the fact that the assessing officer has given full justification for making addition on account under valuation of stock.

(iii) Any other ground that the Revenue may raise before or during the proceedings before the Hon'ble ITAT.

(iv) It is, therefore, prayed that the order of the CIT(A) be set aside and that of the assessing officer be restored to the above extent.”

3. The assessee has raised following ground in its cross objection:

“1. The Ld. CIT(A) erred in dismissing ground of appeal relating to initiation of action u/ 148 of the Act.”

4. Revenue has raised two grounds of appeal, which are interconnected and mix, therefore, we shall adjudicate them together. The relevant material facts, as culled out from the material on record, qua ground nos.1 and 2 of the Revenue, are as follows. The assessee's assessment was re-opened, on the ground that income of Rs.47,13,334/-, was not disclosed in the return of income as per provisions of AS-7 and there was under valuation of closing stock which resulted in escapement of income by Rs.5,55,35,170/- and total escapement of income was worked out to Rs.6,02,48,504/- (Rs.47,13,334+ Rs.5,55,35,170).Therefore, a notice u/s 148 of the Act, was issued after



obtaining prior approval of the competent authority. During the course of re-assessment proceedings, the assessing officer noted that the conditions mentioned in draft ICDS on Real Estate Transactions issued by CBDT in May 2017 are fulfilled in the present case and therefore the assessing officer estimated net profit at the rate 25% on the gross receipts of Rs. 1,88,53,335/-. Further, the assessing officer noted that the closing stock was under reported by the assessee to the tune of Rs.5,55,35,170/-hence the same was added as income of assessee.

5. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A), who has deleted the addition made by the assessing officer. During the course of appellate proceedings, the assessee has submitted before Id.CIT(A) that the AS-7 is applicable to construction contracts whereas the assessee is engaged in the business of construction. Further, the assessee submitted that the assessing officer has relied upon ICDS III and computed the net profit at the rate of 25%. The assessee submitted that ICDS III is not applicable to real estate developers and the assessee is not required to follow the percentage completion method. The assessee further submitted before Id.CIT(A) that even the ICDS III, is not applicable to it. The assessee had submitted the computation of net profit to assessing officer during assessment proceedings according to which the net profit comes to Rs.(-)13,64,748/-, as per the method prescribed ICDS III. The assessee submitted that the assessing officer has wrongly applied the net profit percentage of 25% on the estimated WIP without any basis.

6.The Id.CIT(A) accepted the above submission of the assessee and without calling remand report from the assessing officer held that assessing officer has not given any justification for adopting the net profit at the rate of 25% and the assessing officer has not rebutted the computation net profit submitted by the assessee during assessment proceedings in which the profit was worked out to



Rs.(-)13,64,748/- as per ICDS III. Therefore, the addition made by the assessing officer was deleted by Id.CIT(A).

7. For second issue, Id.CIT(A) observed that the assessment was re-opened on the ground that income of Rs.47,13,334/-, was not disclosed in the return of income as per provisions of AS-7 and there was under valuation of closing stock which resulted in escapement of income by Rs.5,55,35,170/- and total escapement of income was worked out to Rs.6,02,48,504/-, (Rs.47,13,334+ Rs.5,55,35,170). Therefore a notice u/s 148 of the Act, was issued after obtaining prior approval of the competent authority. During the course of re-assessment, proceedings, the assessing officer noted that the conditions mentioned in draft ICDS on Real Estate Transactions issued by CBDT in May 2017 are fulfilled in the present case therefore the assessing officer estimated net profit at the rate 25%, on the gross receipts of Rs. 1,88,53,335/-. Further the assessing officer noted that the closing stock was under reported by the assessee to the tune of Rs.5,55,35,170/-, hence the same was added as income of assessee. During the course of appellate proceedings, the assessee has submitted, before learned CIT(A) that assessing officer has estimated profit on percentage completion method and again made addition on account of understated closing stock. The assessee by relying on the decision of Jurisdictional High Court in the case of CIT vs. Dhiraj R. Rungta (2013) 40 taxmann.com 284 (Gujarat) contended that once the profit is estimated, no further addition can be made. Further the assessee submitted that while working out the closing WIP, the assessing officer has wrongly adopted the land cost at Rs.5,62,43,000/-, instead of the correct land cost at Rs.2,96,18,620/-, as per audited books of accounts. Further, the assessing officer again considered the land cost which is included in total purchases of Rs.6,24,24,710/-. Thus the assessee contended that the excess closing stock (WIP) worked out by the assessing officer at Rs.5,55,35,170/-, is on account of error committed by the assessing officer and adopted the higher value of land cost and again



considering the same in purchase cost. **Further, the assessee contended that the adequate opportunity was not given to the assessee since the show cause notice was issued on 26/03/2022 and time was given to submit reply was only 2 days which included the Sunday. Still the assessee had submitted the reply on 28/03/2022 but the same was not considered properly by the assessing officer.**

The Id.CIT(A) accepted the submission of the assessee, as mentioned above and held that assessing officer was not justified in making the addition without verifying the contentions raised by the assessee and adopting the incorrect land cost and also adopting this same twice in purchases again. Due to the incorrect approach adopted by the assessing officer, the excess WIP appears to have been worked out. Therefore, the addition made by the assessing officer was deleted by Id.CIT(A).

8. Aggrieved, by the order of the learned CIT(A), the Revenue is in appeal before us, and assessee filed cross objection before us.

9. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. We note that Ld.CIT(A) has not considered the entire facts of the Assessing Officer and the materials available in the assessment record. Moreover, The Id.CIT(A) did not call the demand report from the assessing officer, in respect of additional evidence/ alternative argument, submitted by the assessee, during the appellate proceedings. The Ld. CIT(A) has concluded the first issue by stating as follows:

“I have considered the facts of the case, contention of the assessing officer and submission filed by the assessee. Considering the submission filed by the assessee, I find that assessing officer has not given any justification for adopting the net profit at the rate of 25% and the assessing officer has not rebutted the computation net profit



submitted by the assessee during assessment proceedings in which the profit was worked out to Rs.(-) 13,64,748/- as per ICDS III. Therefore the addition made by the assessing officer is deleted and the ground of appeal raised by the assessee is allowed.”

10. We note that if the assessing officer has not given any justification for adopting net profit at the rate of 25%, then it was the duty of the learned CIT(A) to give the justification, because learned CIT(A) has co-terminus power, as that of the assessing officer. Further the computation of net profit as per ICDS -III, is neither explained by the assessing officer nor by the learned CIT(A), that is, the terms and condition given as per ICDS-III has neither been discussed by the assessing officer nor by the learned CIT(A). Therefore, order passed by the learned CIT (A) is not as per the mandate of the provisions of section 250(6) of the Act.

11. About the second issue, the learned CIT(A) concluded as follows.

“I have considered the facts of the case, contention of the assessing officer and submission filed by the assessee. Considering the submission filed by the assessee, I find that assessing officer was not justified in making the addition without verifying the contentions raised by the assessee and adopting the incorrect land cost and also adopting this same twice in purchases again. Due to the incorrect approach adopted by the assessing officer, the excess WIP appears to have been worked out. Further I find that the assessing officer had already estimated the net profit on gross receipt therefore again making addition on different ground in respect of the business receipt was not justified. Therefore, the addition made by the assessing officer is deleted and the ground of appeal raised by the assessee is allowed.”

12. From the above findings of the learned CIT(A), we find that Ld.CIT(A) held that due to the incorrect approach adopted by the assessing officer, the excess WIP appears to have been worked out. How much excess WIP worked out by the assessing officer, has not been explained by the ld CIT(A) and just to say that it appears that assessing officer has worked out excess WIP, is not sufficient, the ld. CIT(A) has to quantify the excess WIP, however, he has failed to do so.



13. The Ld. CIT-DR for the Revenue submitted that the assessee under consideration is not following the percentage of completion method. However, Assessing Officer has followed the percentage of completion method and completed the assessment. The Ld. CIT-DR for the Revenue also took us through the assessment order and stated that assessee has submitted the details and documents before Assessing Officer at the fag-end of assessment proceedings, therefore, the assessing officer has not given the sufficient time to conduct enquiry and further enquiry to issue notice u/s 131 and 133(6) of the Act to the third party, to make enquiry. The assessee submitted the documents and evidences before the Assessing Officer at the fag-end when the Assessing Officer did not have any option but to complete the assessment without having conducted any proper enquiry. The ld DR also submitted that on appeal, by the assessee, before Ld. CIT(A), the Ld. CIT(A) did not call for remand report on the documents and evidences submitted by assessee at the fag-end of assessment proceedings and the additional documents submitted by the assessee, during first appellate proceedings, therefore, Assessing Officer could not verify the genuineness of the amount of Rs.5,55,35,170/-. The Ld. CIT-DR also submitted that assessee has not submitted any break-up of purchases. Moreover, incorrect cost of land was taken by assessee and Assessing Officer has made the incorrect estimation and Assessing Officer has made just gross profit addition which was not sufficient. However, the Assessing Officer forgot to make the addition on account of work-in-progress. Moreover, the assessee has neither following AS-7 nor ICDS-III issued by the Central Government and ICAI. Therefore, the matter should be remitted back to the file of Assessing Officer for afresh adjudication.

14. On the other hand, Ld. Counsel for the assessee submitted that ICDS-III is not applicable in the case of assessee, as the assessment year under



consideration is AY 2015-16 and however the ICDS-III is applicable from AY 2016-17 onwards. The Ld. Counsel for the assessee also submitted that AS-7 is also not applicable to the assessee under consideration, as the assessee is in real estate development. Moreover, assessee is following the project completion method. Therefore, Ld. Counsel submitted that Ld.CIT(A) has passed the reasoned and speaking order and therefore the order of Ld.CIT(A) may be upheld.

15. About cross objection (CO) filed by the assessee, the Ld. Counsel for the assessee argued that Ld.CIT(A) was erred in dismissing the ground raised by the assessee, relating to initiation of proceeding u/s 148 of the Act and Ld.CIT(A) has not adjudicated the ground relating to initiation of proceedings under section 148 of the Act in a proper way. The Ld. Counsel for the assessee also stated that initiation of re-assessment proceedings u/s 147 r.w.s. 148 of the Act was bad in law.

16. On the other hand, Ld. CIT-DR for the Revenue, relied on the findings of the learned CIT(A), so far initiation of reassessment proceedings, u/s 147 r.w.s. 148 of the Act, is concerned.

17. We have considered arguments of learned DR for the Revenue, as well as learned Counsel for the assessee and we note that during appellate proceedings Ld. CIT(A) has adjudicated the issue relating to issue u/s 147/148 of the Act and reached on the right conclusion. The conclusion reached by the Ld.CIT(A), in respect of initiation of proceedings u/s 147 r.w.s. 148 of the Act, is reproduced below:

“7.2 I have perused the assessment order, grounds of appeal and submission filed by the assessee. In this case the assessment was re-opened on the ground that income of Rs.47,13,334/- was not disclosed in the return of income as per provisions of AS-7 and there was under valuation of closing stock which resulted in escapement of income by Rs.5,55,35,170/- and total escapement of income was worked out to Rs.6,02,48,504/-. Therefore, a notice u/s 148 was issued after obtaining prior approval of the competent authority. The assessee has contended that the assessment was re-opened on the basis of change of opinion and the notice u/s 148 is not valid.



I find from the original assessment order produced by the assessee that the case was selected for limited scrutiny and assessment was completed by making disallowance of interest on TDS of Rs.2,847/-. It appears from the original assessment order that the issue under dispute in re-assessment order was not subject matter of original limited scrutiny assessment proceedings, hence the assessing officer has not given any finding on the issues raised under re-assessment order either explicitly or implicitly. Therefore, there is no change of opinion while reopening the assessment since the issue under escapement was never examined by the assessing officer in the original assessment order and had not given any finding on the issue under reference. The facts of the case laws relied upon by the assessee are not identical to the facts of the present case. Therefore the contention of the assessee is not acceptable and hence the ground of appeal raised by the assessee is dismissed.”

18. We have gone through the above findings of the learned CIT(A), so far the issue of reopening of assessment, under section 147/148 of the Act, is concerned, and we find that there is no infirmity in the conclusion reached by the learned CIT(A). On a careful reading of the Ld.CIT(A) order and the findings thereon, we do not find any valid reason to interfere with the decision and findings of the Ld.CIT(A) in holding reassessment proceedings, as valid. Therefore, we dismiss cross objection filed by the assessee.

19. In the result, cross objection filed by the assessee, (in CO.No.02/RJT/2024), is dismissed.

20. Coming to the appeal of the revenue, we find that during the assessment proceedings, assessee submitted its reply and documents, before the assessing officer, at the fag-end of assessment proceedings, therefore, assessing officer has not been given the sufficient time to conduct enquiry and further enquiry to issue notice u/s 131 and 133(6) of the Act to the third party, to make enquiry. During the proceedings before the ld. CIT (A), the assessee has admitted this fact, which is reproduced below:

“Further, the assessee contended that the adequate opportunity was not given to the assessee since the show cause notice was issued on 26/03/2022 and time was given to submit reply was only 2 days which included the Sunday. Still the assessee had submitted the reply on 28/03/2022 but the same was not considered properly by the assessing officer.”



21. Considering these facts, we find that during the assessment proceedings, assessee was not given sufficient opportunity of being heard, which is against the principle of natural justice. We note that the Hon'ble Supreme Court in M.S.Gill vs The Chief Election Commission 1978 AIR SC 851 held "The dichotomy between administrative and quasi-judicial function vis-à-vis the doctrine of natural justice is presumably obsolescent after Kraipak (A.K. Kraipak vs UOI AIR 1970 SC 150) which makes the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems and are not any new theology. They are manifested in the twin principles of *nemo judex in parte sua* (no person shall be a judge in his own case) and *audi alterem partem* (the right to be heard). It has been pointed out that the aim of natural justice is to secure justice. As we have also noted above that order passed by the Ld.CIT(A) is not a speaking order, which does not consider the findings of the Assessing Officer and the Ld.CIT(A) did not call the demand report also. Considering the overall facts and circumstances of the case, we are of the view that order passed by the Ld.CIT(A) is very cryptic and non-speaking order. Therefore, we are of the considered view that the matter should be remitted back to the file of Ld.CIT(A) with a direction to decide the issue after calling remand report from assessing officer, in accordance with law. Needless to direct that before passing order afresh, the Ld.CIT(A) shall provide reasonable opportunity to the assessee. The assessee is also directed to be more vigilant and to make timely compliance of the notice issued by Ld.CIT(A). With these directions, the ground of appeal of Revenue is allowed for statistical purposes.



22. In the result, the appeal filed by the Revenue is allowed for statistical purposes, whereas cross objection (CO) filed by the assessee is dismissed.

Order is pronounced on 17/07/2025 in the open court.

Sd/-

(DINESH MOHAN SINHA)

न्यायिक सदस्य/**JUDICIAL MEMBER**

राजकोट /Rajkot

दिनांक/ Date: 17/07/2025

DKP Outsourcing Sr.P.S

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- आयकर आयुक्त(अपील)/ The CIT(A)
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट/ DR, ITAT, RAJKOT
- गार्डफाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार

आयकर अपीलीय अधिकरण, राजकोट