

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "G", MUMBAI
BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.4895/Mum/2013

Assessment Year: 2008-09

ACIT CC-2, Room No. 13, A-Wingh, 6 th Floor, Ashar IT Park, Road No. 16Z, Wagle Indl. Estate, Thane-400604.	Vs.	M/s Gahlot Construction, Plot No. 28A, Sector-11, Opp. Jui Nagar Railway Station, Sanpada, Navi Mumbai-400705. PAN: AAOFM5698J
(Appellant)		(Respondent)

ITA No.4896/Mum/2013

Assessment Year: 2009-10

ACIT CC-2, Room No. 13, A-Wingh, 6 th Floor, Ashar IT Park, Road No. 16Z, Wagle Indl. Estate, Thane-400604.	Vs.	M/s Gahlot Construction, Plot No. 28A, Sector-11, Opp. Jui Nagar Railway Station, Sanpada, Navi Mumbai-400705. PAN: AAOFM5698J
(Appellant)		(Respondent)

Revenue by : Ms. Anupama Shukla (DR)

Assessee by : Shri Hitesh M. Shah (AR)

Date of hearing : 12.04.2016

Date of Pronouncement : 27.05.2016

ORDER

PER PAWAN SINGH, JM:

1. These two appeals filed by the Revenue against the order of CIT(A)-1, Thane dated 21.03.2013, for AYs 2008-09 & 2009-10 were heard together as identical ground are raised in both appeals and being disposed of by a consolidated order.

2. First we will discuss the fact of **ITA No. 4895/Mum/2013**.
3. The brief facts of the case are that search and seizure action u/s. 132(1) of the I.T. Act was initiated in the case of M/s. Gajra Group on 19.02.2009, simultaneously the office premises of the assessee at Plot No. 28A, Gahlot Complex, Sector-18, Nerul, Navi Mumbai was also surveyed u/s. 133A of the Act. Consequent upon notice u/s. 153C was served upon the assessee. In response to the notice, assessee filed return of income along with profit & loss a/c and balance sheet on 28.04.2010 declaring total income of Rs. 10,92,965/-. During the course of assessment proceeding, the assessee was show caused as to why income of Rs.53,00,000/- should not be added to the total income of assessee on the basis of percentage completion method. Which was admitted during the course of search proceeding while recording the statement u/s. 132(4) to the Act. The assessee filed reply dated 26.04.2010 wherein it was contended that assessee never adopted percentage completed method for revenue recognition as a builder and submitted that they are following the project completion method, the explanation of the assessee was not accepted by the AO. The AO recorded that during search proceeding, the assessee has voluntarily admitted and offered income of Rs. 53,00,000/- on the basis of percentage completion method for AY-2008-09 and detailed working was signed by Shri Ramesh Gajra and Shri Vijay Gajra and furnished to the Addl DIT (Inv.), Kalyan on 12.04.2009. The assessee has not filed letter of retraction till date of filing of return of income which clearly confirmed that assessee voluntarily agreed to offer income for tax and thus added Rs. 53,00,000/- in the income of assessee besides the other addition.
4. Aggrieved by the order of AO, the assessee filed an appeal before the CIT(A). The Ld. CIT(A) after hearing the appeal and considering the submission and the evidence placed on record and concluded that AO had wrongly proceeded to estimate the profit of assessee-firm on percentage completion method and accepted the appeal. And concluded that assessee was regularly following and offering the profit for taxation on project completion method. And deleted the addition in the impugned order dated 21.03.2003, against which the present appeal is filed by revenue before us.
5. We have considered the rival contention of the parties and perused the material available on record. Departmental Representative (DR) for revenue argued that

during the search action, the assessee voluntarily made the statement and offered the income and the addition was made on the basis of declaration offered by the assessee during the search proceeding. DR further argued that restored the order of AO and set-aside the order of CIT(A). Authorised Representative (AR) of the assessee argued that the assessee-firm were following project completion method of accounting which is evident from the return of income filed on record for AY-2008-09. The assessee never adopted the percentage method of accounting. During the search proceeding, the statement of Shri Ramesh Lalji Gajra, partner of the Gajra Construction was recorded wherein it was pointed out by the search party that as per accounting standard 15 issued by the ICAI the percentage completion method has been made compulsory in case of Builder & Developer w.e.f. 01.04.2004 which has to be followed as per section 155 of the Act and on the basis of pointing out Shri Ramesh Lalji Gajra agreed to offer income of Rs. 53,00,000/- for AY 2008-09 and Rs. 1,60,00,000/- for AY 2009-10. AR further argued that declaration was not voluntary and that is why the assessee decided to continue with the project completion method and accordingly filed return of income u/s. 153A without offering the income as declared while making statement u/s. 132(4) of the Act. The Id AR for assessee argued that similar additions were made in assessee's sister concern but on appeal to ITAT the same deleted vide ITA No.1267/M/2013 dated 15.05.2015.

6. We have considered the arguments advanced by the Ld DR for Revenue and AR for assessee. We have noticed that in the case of Bhoomi Construction Project Vs ACIT & ACIT Vs Bhoomi Construction Project vide ITA No.1267/M/2013& ITA No. 2174/M/2013 dated 15.05.2015 (case of assessee's sister concern) the co-ordinate bench of this Tribunal on identical issues held as under:

“Additional income offered voluntarily - return of income filed in response to notice u/s 153A - at the time of search the assessee had offered to disclose the income on the basis of percentage completion method which has been retracted later on - Held that:- There is no finding that the assessee has been following percentage completion method regularly since beginning or in any other project. There is no such evidence or documents which have been found during the course of search indicating that the assessee had been following percentage completion method regularly. If the assessee has been following one of the recognized methods as prescribed by AS-9, then it cannot be held that the Revenue can impose a different method upon the assessee unless there is a finding of fact that such a method is not reflecting the true profits of the assessee. Now it has also been brought on record by the Id. Counsel that in the subsequent year i.e. in the year of completion of the project in A.Y. 2012-13, the Revenue itself has accepted the project completion method for

recognition of revenue and accordingly, has assessed the income of the project on the same method. Thus, a contrary view cannot be taken for this year. - Decided against revenue."

7. We have noticed that issue raised in this appeal is squarely covered by the order of the Tribunal in ITA No.1267/M/2013 dated 15.05.2015 (case of assessee's sister concern). Hence keeping in view the principle of consistency, hence, we do not find any substance in the appeal filed by the revenue.

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8. Since the identical issues are raised in this appeal and we have already decided the similar grounds of appeal against the Revenue in ITA No. 4895/M/2013, hence, both this is appeal of the Revenue is also dismissed.

In the result, both the appeals filed by the revenue are dismissed.

Order pronounced in the open court on this 27th May, 2016.

Sd/-

(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 27/05/2016

S.K.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR,
ITAT, Mumbai
6. गार्डफाईल / Guard file.

Sd/-

(PAWAN SINGH)

JUDICIAL MEMBER

आदेशानुसार/BY
ORDER,

उप/सहायकपंजीकार
(Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai