

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 105/Ahd/2022
Assessment Year 2017-18**

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| M/s Soham Buildcon, Nr. Raghav Industrial Park, SP Ring Road, Ramol, Ahmedabad PAN: ACMFS5211R (Appellant) | Vs | PCIT-3, Ahmedabad (Respondent) |
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**Assessee by: Shri Parin Shah, A.R.
Revenue by: Shri Sudhendu Das, CIT-D.R.**

Date of hearing : 06-11-2023
Date of pronouncement : 31-01-2024

आदेश/ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Principal Commissioner of Income Tax- 3, Ahmedabad passed in the proceedings carried out u/s 263 vide order dated 30/03/2022 for the assessment year 2016-17.

2. The only issue raised by the assessee is that the learned PCIT erred in holding the assessment order as erroneous and prejudicial to the interest of the revenue.

3. The facts in brief are that the assessee, a partnership firm, is engaged in the business of real estate construction. The assessee has undertaken a project namely "Soham Sanidhya and Bungalow" which consist of 44 units of bungalow, 177 units of flats and 31 units of Shop. During the year under consideration, the assessee sold 8 units of bungalows for a value of Rs. 4,05,86,464/- only. In the return of income filed for the year under consideration, the assessee has declared income of Rs. 96,65,030/- which was subsequently accepted by the AO in the assessment order passed under section 143(3) of the Act.

4. However, the learned PCIT on perusal of assessment records found that project being bungalow was completed for more than 83% and till end the of the year under consideration, the total cost of Rs. 22,40,38,488/- was incurred which is 36% of total expected revenue of Rs. 61,85,58,873/- whereas the assessee has shown the sale at Rs. 4,05,86,464/- only which is only 6% of expected revenue. Besides, the assessee also received a considerable amount of Rs. 16,03,69,069/- as booking receipt and treated the same as an advance from the customers. As such, the assessee has recognized revenue against only 8 bungalows only out of 44 based on the sale

deed registered during the year. As per the Id. PCIT, the assessee being in the business of construction of residential and commercial complex was required to recognize revenue on percentage completion method as provided under accounting standard 7 issued by the ICAI. However, the assessee has not explained the method of accounting employed for revenue recognition and neither did the AO raise any question in this regard. As per the Id. PCIT, the accounting standard 9 provides rules for revenue recognition in the course of business but method envisaged under AS-9 does not apply on revenue from special business being construction. The accounting guidelines issued by the ICAI also envisaged that the revenue from the business of real estate construction shall be recognized as per percentage completion method. However, the AO, without verifying correct method of revenue recognition and correct application of accounting standard accepted the returned income of the assessee. The Id. PCIT further found that no inquiry whatsoever was made by the AO regarding the method of valuation of closing stock of Rs. 19,75,26,263/- which was neither anywhere stated by the assessee. The learned PCIT also found that there were several questions raised in the notice issued under section 142(1) of the Act which were not replied/explained by the assessee, but the AO did not bother to examine the same.

5. Thus, the learned PCIT in view of the above observation held that the AO has passed the assessment order under section 143(3) of

the Act without proper inquiry and application of mind which makes the assessment order as erroneous insofar prejudicial to the interest of the revenue. The learned PCIT to buttress his finding has also referred to the provision of explanation 2 of section 263 of the Act inserted by the Finance Act No. 20 of 2015 w.e.f. 1st June 2015. In view of the above, the learned PCIT accordingly set aside the assessment order by holding the same as erroneous insofar prejudicial to the interest revenue and directed the AO to make fresh assessment.

6. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

7. The learned AR before us submitted that the assessee has been following the project complete method and the income from the project has already been offered to tax over the years. Furthermore, the project has already been completed. Thus, there is no error which is causing prejudice to the Revenue.

8. On the other hand, the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the learned PCIT has set aside assessment order for fresh assessment by holding

that the AO passed the assessment order without proper verification and application of mind. The provision of section 263 of the Act empowered the Id. Commissioner of income tax to call for the records of any proceeding under the Act and examine the same. If the Id. Commissioner considers that the order passed by the AO in any such proceeding is erroneous and prejudicial to the interest of the revenue, then he/she may pass such order as circumstances justify which may include enhancing or modifying the assessment, canceling the assessment, and directing the AO to make fresh assessment. The Hon'ble Supreme Court in the landmark judgment in the case of Malabar Industrial Co. Ltd vs. CIT reported in [2000] 243 ITR 83 (SC) has analyzed the provisions of section 263 of the Act and held that to invoke the provision of section 263 of the Act, the Id. Commissioner has to satisfy two conditions, the first being order passed by the AO is erroneous and second being the order is prejudicial to the interest of the revenue. In the absence of any one of the conditions, the provision of section 263 of the Act cannot be invoked. The relevant observation of the Hon'ble Supreme Court is extracted as under:

A bare reading of section 263(1) makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied of twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1).

Coming to the facts of the case on hand, the assessee firm is in the business of real estate development and developing a bungalow project consisting of 44 bungalows. From the finding of learned PCIT it transpired that the assessee has recognized revenue from the project on execution of sale deed whereas the learned PCIT is of the view that revenue should have been recognized based on percentage completion method. As per the learned PCIT, the AO has not made inquiry regarding the method of revenue recognition and the method of valuation of closing stock employed by the assessee. Accordingly, the Id. PCIT held that the order passed by the AO is erroneous and prejudicial to the interest of the revenue.

9.1 On the other hand, the learned AR for the assessee before us has contended that the assessee has started the project in the AY 2015-16 and started to recognize revenue from the project from the year under consideration (i.e. A.Y. 2017-18) and sales from all the 44 bungalows has already been recognized in the books of accounts till AY 2022-23 based on execution of sale deed. Thus, the method employed has been consistently followed. The income arising from the sale of bungalows has been offered and due tax has been paid accordingly.

9.2 From the above, we note that the dispute is only regarding the method of revenue recognition and method of valuation of closing stock. There is no dispute or allegation about genuineness of sale

value of the bungalow or cost of the project, or any other expenditure incurred by the assessee. Accordingly, we are of the considered opinion that there is no prejudice to the revenue caused due to the method adopted by the assessee. As such, the assessee has offered income from the project over the period and paid due taxes. The only difference here may arise as per the method adopted by assessee, the income which should have offered in the year by employing percentage completion method (PCIT method) was deferred in subsequent year but in such a scenario the assessee should have offered less income in subsequent year. Thus, it is a tax natural exercise. In holding so, we draw support and guidance from the judgment of Hon'ble Supreme court in the case of CIT vs. Bilahari Investment Pvt. Ltd reported in 299 ITR 1, where it was held as under:

15. Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. Completed contract method is one such method. Similarly, percentage of completion method is another such method.

16. Under completed contract method, the revenue is not recognised until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to P & L account. The said method determines results only when contract is completed. This method leads to objective assessment of the results of the contract.

17. On the other hand, percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognised under this method is determined by reference to the stage of completion of the contract. The stage of

completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.

18. *The above indicates the difference between completed contract method and percentage of completion method.*

19. *In the judgment of the Bombay High Court in Taparia Tools Ltd.'s case (supra) it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there is no finding recorded by the Assessing Officer that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. **We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme spread over a period of time.***

9.3 Likewise, the value of closing stock becomes the opening stock in the next year, hence the same is also a tax natural exercise. Hence there is no loss of tax, causing prejudice to the revenue due to the method adopted by the assessee which was accepted by the AO in the assessment order. Even if the AO has not properly inquired about the same and assuming that the Action of the AO is erroneous. But in view of the above discussion, there is no prejudice against the revenue. Therefore, the twin conditions to exercise the power under section 263 of the Act have not been satisfied. Hence, we hereby restore the assessment order and set aside the order of learned PCIT. Thus, the grounds of appeal of the assessee is hereby allowed.

10. In the result, appeal of the assessee is hereby allowed.

Order pronounced in the open court on 31-01-2024

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad : Dated 31/01/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद