

IN THE INCOME TAX APPELLATE TRIBUNAL

‘C’ BENCH : BANGALORE

BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER

AND

SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1644 & 1645/Bang/2018
Assessment Year : 2011-12 & 2012-13

M/s Monarch Plaza Comforts Pvt. Ltd., 54, Brigade Road, Bengaluru. PAN – AABCM 3282 A	Vs.	The Asst. Commissioner of Income-Tax, Circle-4(1)(2), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri S Ramsubramanyan, C.A
Revenue by	:	Smt. R Premi, JCIT (DR)

Date of Hearing	:	02-03-2021
Date of Pronouncement	:	23-03-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by the assessee against order dated 27/12/2017 passed by Ld.CIT(A)-4, Bangalore for assessment year 2011-12 on following grounds of appeal:

- “1. That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant has not raised any objections

for making assessment u/s. 147 of the Act therefore, cannot raise any ground on the jurisdiction.

3. That the learned Commissioner of Income Tax (Appeals) ought to have furnished the reasons recorded u/s. 148(2) of the Act.

4. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant had earned a profit of Rs.35,05,415/- in the business of development on the only ground that the appellant has agreed for the addition during the assessment proceedings and it is consistently followed for preceding and subsequent years.

5. That the appellant is entitled to challenge the addition with respect to profit on development even if the authorized representative of the appellant has agreed for such addition as there is no estoppel against the law.

6. That the learned Commissioner of Income Tax (Appeals) ought to have appreciated neither the principles of valuation of WIP adopted by the appellant nor the method of determination of profit by the assessing officer is correct in law.

7. That the learned Commissioner of Income Tax (Appeals) ought to have held method of determining the profit by the learned assessing officer is erroneous as it is neither as per percentage of completion method nor project completion method.

8. That the learned Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant being a developer and not a contractor, the revenue or income can be recognized only when the appellant sells the units.

Each of the above grounds is without prejudice to one another and the appellant craves the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend, or otherwise modify either all or any of the above grounds wither before or at the time of hearing this appeal."

Brief facts of the case are as under:

Assessment year 2011-12

2. The assessee is a developer and filed its return of income for year under consideration on 26/07/2013 declaring total income of Rs.1,03,29,370/-for assessment year 2011-12. Subsequently, the case was reopened by issuing notice under section 148 of the Act, on 29/11/2013. In response, assessee filed letter dated 11/02/2015 replying that original return filed by assessee may

be treated as return in response to notice under section 148 of the Act. Subsequently, notice under section 143(2) was issued to assessee.

3. During the reassessment proceedings the Ld.AO noticed that the assessee declared net loss of Rs.25,000 for year under consideration and 15% of investments as income for assessment year 2010-11 and 2012-13. As the assessee did not declare profit during the year, the Ld.AO worked out additional income of Rs.35,30,415/- by considering 15% of the investment made in work in progress.

The Ld.AO observed that assessee had claimed sum of Rs.1,95,382/- as credit card commission charges paid to bank for collection of payments for sales through credit cards. Since the assessee failed to deduct TDS, disallowance under section 40(a)(ia) of the Act was made in the hands of assessee.

The Ld.AO also noted that assessee debited bank interest amounting to Rs.1,53,688/- against which, no TDS was deducted. The same was disallowed by the Ld.AO under section 40(a)(ia) of the Act.

4. Aggrieved by the additions made by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

5. The Ld.CIT(A) deleted the disallowance of Rs.1,95,382/-, being credit card commission charges paid to bank. However, confirmed the additional profits in the hands of the assessee for years under consideration as computed by the Ld.AO. The assessee had raised a legal ground challenging the validity of

assessment proceedings before the Ld.CIT(A) which was dismissed.

6. Aggrieved by the order passed by the Ld.CIT(A), assessee is in appeal before us now.

7. At the outset, the Ld.Counsel before us did not press Ground No.2-3, challenging the validity of reassessment proceedings.

Accordingly these grounds are dismissed as not pressed.

8. The Ld. Counsel restricted his arguments issues raised on merits in Ground 4-8 and the Additional Ground raised vide application dated 14/02/2021.

9. The Ld.Counsel submitted that, the additional ground so raised was not raised before the Ld.CIT(A), however it emanates from the order of assessment, and no new records needs to be verified in order to adjudicate.

10. He placed reliance on the decision of Hon'ble Supreme Court in case of CIT vs National Thermal Power Corporation Ltd., reported in 229 ITR 383 and Jute Corporation of India vs CIT reported in 187 ITR 688. It is also submitted that, these are consequential grounds and needs to be considered for computing actual tax payable for the year under consideration.

11. We have perused submissions advanced by both sides in light of records placed before us.

12. Following additional grounds raised by assessee before us:

“The Appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal to file following additional grounds:

1. That the learned lower authorities erred in law and on facts in not allowing TDS credit of Rs.12,67,871/- as appearing in Form No. 26AS.
2. That the learned lower authorities erred in law and on facts in computing interest u/s 234A, 234B and 234C as under without considering the above TDS credit of Rs. 12,67,871/-.

Particulars	As per assessment order	Amount in Rs.
		Correct computation
Interest u/s 234A	22,18,318	7,48,380
Interest u/s 234B	1,00,327	1,09,246
Interest u/s 234C	42,22,246	18,10,710

The above grounds can be adjudicated based on the documents available on record and no new further facts or materials are required to adjudicate the above ground. It is also submitted that the above additional ground no. 2 is purely consequential and can be decided accordingly. The above two grounds were not raised before lower authorities by oversight.

The appellant relied on the following decisions of the Hon'ble Supreme court in :

- a. CIT Vs National Thermal Power Corporation (229) ITR 383 b. Jute Corporation of India Vs CIT (187) FIR 688.

Hence, it is humbly prayed that the Hon'ble Tribunal be pleased to admit the above grounds and decide the same on merits in the interest of equity, justice and good conscience.

13. We note that the additional ground raised by assessee emanates from the assessment order. It is also noted that the issue raised in additional ground is necessary to be adjudicated for determining tax payable by assessee for year under consideration. And therefore this issue deserves to be adjudicated. We also observe that no new facts needs to be investigated in order to adjudicate this ground. Respectfully following the ratio laid down by Hon'ble Supreme Court in the decisions referred to herein above, we admit the additional ground raised by assessee.

Based on the above discussion, we restrict our view limited to Grounds 4-8 and Additional Ground raised by assessee. Accordingly, ground 2-3 raised by assessee stands dismissed as not pressed.

Ground 4-8:

14. The Ld.Counsel submitted that admittedly, assessee declared income at 15% on the WIP. He submitted that assessee adopted a method of determination of income which is unknown to law or to the approved accounting standards. However the contention of Ld.Counsel is that, the Ld.AO instead of adopting correct method to determine income in the hands of assessee, estimated the income as percentage of WIP, which is also erroneous and in law unapproved. He objected to the observation of authorities below that, assessee agreed to the addition, which is not based on approved accounting standards.

15. The Ld.Counsel submitted that, assessee has only 2 options; either follow project completion method or percentage completion method, which is the generally accepted accounting principles and A-S 7 issued by Institute of chartered accountants of India. He submitted that, the Ld.AO estimated the income and computed addition on an ad-hoc basis, which is not recognised either by the accounting standards or under the Income tax Act.

16. On the contrary, the Ld.Sr.DR submitted that, assessee admitted to the addition made by Ld.AO, for its own violation. She thus supported the orders passed by authorities below.

17. We have perused submissions advanced by both sides in light of records placed before us.

18. On perusal of para 3 of assessment order, it cannot be said that the addition was an agreed addition. Ld.AO noted that assessee declared 15% of work in progress investment as profit from assessment year 2010-11 and 2012-13 including the year under consideration. As the Ld.AO observed that for the year under consideration assessee has shown the net loss, a further 15% of investment was computed by the Ld. AO as additional income. This ad hoc method of computing income in the hands of assessee is without any basis. Admittedly, neither assessee nor the Ld.AO followed any of the recognised method to declare profits as per accounting standard 7 issued by Institute of chartered accountant of India. It is noted that the method adopted by assessee and revenue is not in accordance with A-S 9, which is a guidance note on recognition of revenue for real estate transaction based on satisfaction of revenue recognition.

19. In our opinion, the method adopted by assessee though was not a recognised method; the method of computation of additional income by AO is also uncalled for. We rely on Circular No.14 of 1955 dated 11/04/1955 issued by CBDT, wherein it is expressed that assessing officers are expected to educate the assessee and allow claims that alleged timidly due to assessee, even when such a claim is not made. In the present case, the Ld.AO ought to have guided assessee for adopting one of the recognised method of accounting to arrive at the correct income

vis-a-vis the method of accounting adopted by assessee in the previous assessment year or the immediately succeeding assessment year.

20. We rely on the decision of Hon'ble Supreme Court in case of CIT vs British Paints India Ltd., reported in 188 ITR 44. In this case, Hon'ble Supreme Court observed that assessee was valuing the work in progress and finished products at raw material cost by excluding other overriding expenditure. Hon'ble Supreme Court, held the method adopted by assessee therein was not acceptable, as it was not recognised method.

21. Further, we note that the method adopted by the Ld.AO to determined taxable income in the hands of assessee is not correct. It was incumbent on the Ld.AO to correct the mistake in the method adopted by assessee to compute taxable income for year under consideration. Merely because assessee had followed an unrecognised method to compute taxable income in the immediately preceding and succeeding assessment year, cannot be an estoppel under the statute to correct the mistake that has crept in. The Ld.AO was duty-bound to correct the method of computation of income by adhering to either of recognised accounting standards. We refer to and rely upon to the decision of Hon'ble Bombay High Court in case of in case of Nirmala L. Mehta vs. A. Balasubramaniam, CIT & Ors., reported in (2004)

269 ITR 1 held that, merely because the assessee has offered the income, that would not take away the right to contend that amount was not chargeable to tax. Hon'ble Court, referring the

Article 265 of the Constitution of India, that reads as under:

Article 265 of the constitution of India reads as under:-

“No tax shall be levied or collected except by authority of law.”

22. We therefore remand this issue back to Ld.AO to consider it afresh. The Ld.AO shall resort to either of the recognised methods of accounting standards acceptable under the Income tax Act to compute the income in the hands of assessee if any for the year under consideration.

23. At this juncture the Ld.Counsel submitted that for assessment year 2012-13, also assessee had computed its income in similar manner. Accordingly we remand the issue raised by assessee in ground No. 2-7 for asst. year 2012-13, for recomputing the income in the hands of assessee in accordance with the recognised methods of accounting standards acceptable under income tax act.

24. Assessee shall be granted proper opportunity of being heard. Assessee is directed to file all requisite relevant documents in support and to assist the Ld.AO in computing the correct taxable income for years under consideration.

25. In respect of the additional ground raised by assessee for assessment year 2011-12,

26. Ground No.1 refers to TDS credit not allowed as appearing in form 26 A-S.

27. Ground No.2 is in respect of computing interest under section 234A, B, C on the amount on which TDS credit has not been granted.

28. These grounds are interrelated to with each other and require verification by the Ld.AO. Assessee is directed to file requisite evidences in support of its claim. Ld.AO is directed to consider the issue alleged here in accordance with law.

Accordingly the grounds raised by assessee on merits stands allowed for statistical purposes for asst. year 2011-12 & 2012-13.

In the result appeal filed by assessee stands partly allowed.

Order pronounced in the open court on 23rd March, 2021

Sd/-
(CHANDRA POOJARI)
Accountant Member
Bangalore,
Dated, the 23rd March, 2021.
/Vms/

Sd/-
(BEENA PILLAI)
Judicial Member

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-3-2021		Sr.PS
3.	Draft proposed & placed before the second member	-3-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-3-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-3-2021		Sr.PS/PS
6.	Kept for pronouncement on	-3-2021		Sr.PS
7.	Date of uploading the order on Website	-3-2021		Sr.PS
8.	If not uploaded, furnish the reason	-3-2021		Sr.PS
9.	File sent to the Bench Clerk	-3-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS