

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI S. S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 3389/Ahd/2010

निर्धारण वर्ष/Assessment Year: 2007-08

DCIT, Circle-8, Surat	V/s.	M/s. Vaghasia Associates, 50/3, Suryam Residency, Singanpore, Dabholi Road, Surat PAN : AAFFV 6838 A
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Revenue by :	Shri O.P. Vaishnav, CIT-DR
Assessee(s) by :	Shri Mehul R. Shah, AR

सुनवाई की तारीख/Date of Hearing : 21/05/2015

घोषणा की तारीख /Date of Pronouncement: 12/06/2015

आदेश/O R D E R

PER G.D. AGRAWAL, VICE PRESIDENT:

This is an appeal filed by the Revenue and is directed against the order of the Ld. Commissioner of Income-tax(Appeals)-V, Surat dated 12.10.2010, pertaining to Assessment Year 2007-08.

2. Ground Nos. 1, 2 & 3 of the Revenue's appeal read as under :-

1. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.2,94,17,251/- made by the A.O. on account of suppression of profit despite the fact that the said addition was made on the basis of the impounded material impounded during the course of survey u/s 133A from the assessee premises.*
2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.29,70,895/- made by the A.O. u/ 69C on account of labour charges despite the fact that the said*

addition was made on the basis of the impounded material impounded during the course of survey u/s 133A from the assessee premises.

3. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in accepting the plea of the assessee that the figures mentioned on page 110 of impounded book BF/7 are nothing but an estimate despite the fact that the book BF/7 was impounded just 3 days before from the closing of the F.Y. 2007-08 and the assessee failed to produce any substantive evidence before the A.O. regarding its claim of estimation.*

3. All the above three grounds are interrelated; therefore, they are being taken-up and considered together.

4. The facts of the case are that the assessee derives income from construction and sale of flats. During the accounting year relevant to assessment year under consideration, there was survey at the assessee's premises on 28.03.2007. During the course of survey, certain papers were found and impounded. One of the papers, i.e. page 110, there was a Trading and Profit & Loss account for the year ended on 28.03.2007; as per which, the net profit worked out to Rs.2,94,17,251/-. During the course of survey, the assessee has disclosed an income of Rs.1,24,00,000/- which was credited to the Profit & Loss account for the year under consideration. However, in the return of income, the assessee did not offer any income from this project except the income surrendered at Rs.1,24,00,000/-. The entire expenditure incurred as per books of accounts was shown as work-in-progress. The Assessing Officer made the addition of Rs.2,94,17,251/-, treating the same as business income of the assessee for the year under consideration. On appeal, the CIT(A) deleted the same. The Revenue aggrieved with the order of the CIT(A) is in appeal before us vide Ground No.1 of the Revenue's appeal.

5. As per trading and profit & loss account found at the time of survey, the labour payment was Rs.98,19,829/-, but as per audited balance-sheet and profit & loss account filed alongwith the return of income, the labour payment was disclosed at Rs.68,48,934/-. The Assessing Officer treated the difference of Rs.29,70,895/- as unexplained expenditure u/s 69C of the Income-tax Act. The CIT(A) deleted the same; hence, the Ground No.2 of the Revenue's appeal.

6. Ground No.3 of the Revenue's appeal is only the argument in support of above two grounds.

7. At the time of hearing before us, it is submitted by the Id. Departmental Representative that during the course of survey at the assessee's premises, a loose paper was found which was Trading and Profit & Loss account in respect of assessee's business for the period from 01.04.2006 to 28.03.2007. The said paper is at page No.14 of the assessee's paper-book and from the said paper, it is evident that the figures are odd figures and therefore, it cannot be accepted that this was only an estimated profit & loss account as claimed by the assessee before the Assessing Officer as well as CIT(A). He also stated that on the said paper, it is nowhere mentioned that it is an estimated profit & loss account or projected profit & loss account and not the real profit & loss account. He, therefore, submitted that the Assessing Officer was fully justified in making the addition of net profit as disclosed by the Profit & Loss account as on 28.03.2007. That the accounting year ended just 3 days after 28.03.2007 and therefore, there cannot be much change in the net profit. He, therefore, submitted that the addition made by the Assessing Officer as per Profit & Loss account found at the time of survey was rightly made by the Assessing Officer and the same should be sustained. The Id. Departmental Representative further

pointed out that as per Profit & Loss account found at the time of survey, the labour payment was Rs.98,19,829/- while in the audited Profit & Loss account filed alongwith return of income, the labour payment disclosed was only Rs.68,48,934/-. Obviously, the balance labour payment was not recorded by the assessee in the books of accounts. Thus, the same was made out of unexplained source and the addition was rightly made by the Assessing Officer u/s 69C of the Income-tax Act. He, therefore, submitted that on both these counts the order of the CIT(A) should be reversed and that of the Assessing Officer may be restored.

8. The Id. Counsel for the assessee, on the other hand, pointed out that the Trading and Profit & Loss account found at the time of survey is rough and estimated Profit & Loss account. He pointed out that the land for the project was purchased in the preceding year and the construction work was also started in the preceding year and has been shown as closing work-in-progress in the last year. That the Profit & Loss account found at the time of survey does not disclose either the opening work-in-progress or the land cost. That the correct trading and P&L account cannot be prepared without considering value of land or opening work-in-progress. He also stated that this Profit & Loss account is only rough and estimated one in which profit expected on the completion of project was worked out. He submitted that the assessee is following the project completion method. During the year under consideration, the project was certainly not completed and the contract work income shown in the Trading & Profit & Loss account found at the time of survey was the sale consideration which was to be received by the assessee on the sale of flats which have been booked till 28.03.2007. That from the flats booked till 28.03.2007, the consideration actually received by the assessee up to 31.03.2007 was only Rs.52,95,000/-, which was even less

than the 10% of the sale consideration which was to be actually received. That not a single sale deed was executed and even the construction work was not completed. Therefore, the total expenditure incurred by the assessee was disclosed in the audited Profit & Loss account and balance-sheet as work-in-progress. That the project was completed in the previous year relevant to Assessment Year 2009-10 and the income of Rs.3,08,58,867/- was disclosed from this project. The assessment for Assessment Year 2009-10 is completed u/s 143(3); copy of which is placed in assessee's paper-book at pages 56-57. He pointed out that the assessee was entitled to exemption u/s 80IB and therefore, the entire income earned by the assessee from this project was exempt u/s 80IB. He submitted that since during the year under consideration, the project was in progress, the question of determination of income from the said project could not arise. Therefore, the Profit & Loss account prepared till a particular date was only rough/estimated/projected Profit & Loss account. The figure of the profit in the said Profit & Loss account is near about the profit which was actually earned by the assessee from this project. He, therefore, submitted that merely because the assessee prepared some estimated/projected Profit & Loss account till a particular date in the year under consideration, income from the project cannot be assessed.

9. With regard to labour payment, he explained that the labour payment mentioned in the paper was also estimated/projected one, which the assessee was supposed to incur on the completion of the project. He further submitted that except the loose paper, no corroborative evidence was found with regard to incurring of any labour payment over and above what was debited in the books of account. That the labour payment debited in the books of accounts is duly supported by bills and vouchers of the petty labour contractors. The complete details of the labour payment made by the

assessee alongwith necessary bills and vouchers were produced before the Assessing Officer during the assessment proceedings. The regular books of accounts are duly audited by the Chartered Accountant. The auditor has not pointed out any discrepancy in the maintenance of the books of accounts or in respect of labour payments. He, therefore, submitted that merely because some estimated labour payment was written on the projected profit & loss account, the addition for unexplained expenditure cannot be made.

10. We have carefully considered the arguments of both the sides and perused the material placed before us. The first question is whether the income from the project is to be assessed in the year under consideration, because if the project income is to be assessed in the year under consideration, then only the question of determination of income from the said project would arise. There are two recognized methods for determination of income in the case of contractor or builder. One is “percentage completion method” and the second is “project completion method”. In the first method, the income is recognized on the basis of percentage of completion of the project, but in the second case, the income is recognized only after completion of the project. Admittedly, the assessee was following the project completion method. From the facts of the case it is evident that during the accounting year relevant to assessment year under consideration project was not completed. The assessee started the construction of building in the immediately preceding year and the construction work continued in the year under consideration and also in subsequent year. The assessee also started booking of the flats, but neither the building construction was completed nor the sale deed was executed. It was pointed out by the Id. Counsel that the amount credited in the loose

paper as “contract work income” was only projected sale proceeds which assessee was to receive on the sale of the flats which were booked till the date of survey. That out of the actual sale consideration of flats at Rs.5,63,27,300/-, the amount received by the assessee till the end of the accounting year relevant to assessment year under consideration was only Rs.52,95,000/-. Thus, the sale consideration received was not even 10% of the total sale consideration of the flats. Not a single sale deed was executed. From these facts, it is evident that the project under consideration was far from completion during the accounting year relevant to assessment year under consideration. It was also pointed out by the Id. Counsel that the project was actually completed in the previous year relevant to Assessment Year 2009-10 in which the income from the same project was offered. The assessment for Assessment Year 2009-10 is completed u/s 143(3) and copy of the assessment order is placed on record. These facts, stated by the Id. Counsel, have not been controverted before us at the time of hearing. Considering the totality of these facts, we have no hesitation to hold that the income from the project under consideration during the year under consideration was not assessable in this year, because the project was not completed. Once the income is not assessable, the question of determination of quantum of income from the said project is only academic. In view of above, we do not find any merit in Ground No.1 of the Revenue’s appeal and the same is rejected.

11. So far as the difference between the labour payment mentioned in the profit & loss account found at the time of survey and the labour payment disclosed in the books of account and the audited profit & loss account, the finding of the CIT(A) is as under:-

“... It is further seen that it is not the case that the amount of Rs.98,19,829/- appearing in the impounded Trading & P&L a/c has been actually paid as no material evidencing the payment of labour charges to that extent has been brought on record. As complete details of labour parties have been filed during the course of assessment proceedings, Assessing Officer could have verified the actual facts by making independent inquiry from the labour contractors. As details relating to PAN and address are already on record, Assessing Officer ought to have made cross verification before coming to the conclusion that assessee has suppressed its labour charges. The addition u/s 69C can be made only when assessee is found to have incurred the expenditure and the source of which is not satisfactorily explained. However, in the instant case it has not been proved that assessee actually incurred labour charges to the extent of Rs.98,19,829/- as against the claim made in the audited accounts at Rs.68,48,934/-. As such in absence of any corroborative evidences indicating the fact that assessee actually incurred more expenditure than what is shown in the audited accounts, no addition u/s 69C could be made. Hence, addition made by Assessing Officer is directed to be deleted and the appeal on this count is allowed.”

12. The above finding of fact recorded by the CIT(A) has not been controverted before us. During the course of survey, the Revenue has seized various papers and the books of accounts. However, there is no corroborative evidence in respect of labour payment mentioned in the profit & loss account found at the time of survey. On the other hand, complete details of the labour payments debited in the books of accounts have been furnished. Moreover, after the arguments of both the sides and the facts of the case, we are of the opinion that the profit and loss accounts found at the time of survey is only an estimated profit and loss account in which projected profit is worked out which the assessee expected to earn on the completion of the project. From the profit & loss account found at the time of survey, we find that on income side there was a credit of Rs.5,63,27,300/- with the narration “contract work income”. The assessee is not doing any contract work, but this amount was the sale consideration which the assessee was expected to receive on the execution of sale deed of the flats booked till the date of survey. At the expenditure side, there is no debit for

the value of the land or the opening work-in-progress. Considering the totality of these facts as well as the factual finding recorded by the CIT(A), we are of the opinion that the CIT(A) was fully justified in holding that in the absence of any corroborative evidences indicating the fact that assessee actually incurred more expenditure than what was shown in the books of accounts, no addition u/s 69C can be made. We, therefore, uphold the order of the CIT(A) with regard to Ground Nos. 2 & 3 of the Revenue's appeal and thus, these grounds of Revenue are rejected.

13. Ground No.4 of the Revenue's appeal reads as under:-

"4. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.2,57,358/- made by the A.O. after disallowing the transportation exp. despite the fact that the assessee failed to produce any substantive evidence in support of these exp. and thus failed to discharge the onus to prove genuineness of the exp. before the A.O."

14. We have heard both the parties and perused the material placed before us. The CIT(A) deleted the addition with the following findings:-

"7.3 I have considered the reasons given by assessing officer and also the submissions of appellant. On perusal of the above, it is seen that assessee has filed all the relevant evidences in support of the genuineness of expenditure claimed by it. It is seen that during the course of assessment proceedings, assessee filed copy of relevant invoices issued by the parties to whom payment of transportation charges have been made. The assessee has also made TDS from payment of transportation charges. Since, assessee has filed all the relevant invoices, the nature of expenditure stands clearly explained and addition cannot be made on the ground that month-wise details of such expenditure has not been filed. Here, also Assessing Officer has failed to bring any evidence on record by making independent inquiry from the parties to whom transportation charges have been paid which could indicate that the expenditure incurred by assessee is not genuine. In absence of any such evidence on record, I am of the opinion that the claim of expenditure made by assessee cannot be disallowed as assessee has clearly discharged the burden cast on it in proving the genuineness of expenditure. Hence, the

addition of Rs.2,57,358/- is hereby deleted and the appeal on this count is allowed."

15. The above factual finding recorded by the CIT(A) has not been controverted by the Revenue at the time of hearing. In the ground of appeal, the Revenue has contended that the assessee failed to produce substantive evidence in support of these expenses. However, the CIT(A) has recorded the finding that the assessee had filed the relevant invoices issued by the parties to whom the payment of transportation charges have been made. The assessee has also deducted TDS from the payment of transportation charges. Thus, the CIT(A) was of the opinion that from these evidences the nature of the expenditure stands clearly explained. After considering the facts of the case and arguments of both the sides, we do not find any justification to interfere with the order of the CIT(A) and the same is sustained. Thus, Ground No.4 of the Revenue's appeal is rejected.

16. Ground No.5 of the Revenue's appeal reads as under:-

"5. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition of Rs.4,41,28,000/- made by the A.O. on account of unexplained investment in land despite the fact that the addition was made on the basis of the loan documents in possession of State Bank of Mysore and the valuation made by the bank was very well accepted by the assessee to avail the loan facility."

17. The relevant facts relating to Ground No.5, as given by the Assessing Officer in his order, read as under:-

"6.1 The bank has mortgaged the open plot of land and as per their valuation, the value of the open plot of land is of Rs.448.59 lacs whereas in the books of accounts the purchase cost of land is of Rs.7,31,000/-. The assessee was issued show cause which is reproduced as under:

"As per the copy of sale deed of /and in question dated 16.2.2006, you have purchased the land measuring 6523 Sq. mtrs. at Revenue Survey No. 112 of Village Singanpore, T.P. 26, Final Plot No.50/3, for Rs.7,31,000/-. From the copy of the sale deed, it is also found that the same is registered at Sr. No..1830 of Katargam, Surat, 2006. The land on which residential towers/complex constructed, worked out at Rs. 112.06 per sq. Mtrs, which is prima facie very low rate. You are hereby issued show cause and required to produce the Valuation Report of the approved Registered Valuer.

5.1 It is also noticed that as per medium term long term agreement with State Bank of Mysore dated 28.02.2007 under the head "security and margin", it is contended that the equitable mortgage of open land at SY No. 112/2, TPS No. 26: Final Plot No. 50/3 Paikie measuring 6523 sq. mtrs. at Singanpore, Surat valued at Rs.448.59 lacs belonging to you on which they have sanctioned a medium term loan of Rs.3 crores. You are hereby issued cause as to why the value of the land should not be considered as per the agreement with State Bank of Mysore."

6.2 Therefore, as per para 5 & 5.1 of the show cause notice dated 22.12.2009, the assessee was asked to produce the valuation report of the approved registered valuer. The assessee was also issued show cause notice as to why the value of the land should not be considered as per the agreement with State Bank of Mysore, Surat. The assessee reply on this issue is reproduced as under:

"We have purchase land on 16/2/2006 measuring 6523 sq.mtrs & after the gap of 12 months the assessee had obtained loan from state bank of mysore on 28/02/2007. In between this period of 12 months assessee firm has developed the land by doing leveling, fencing etc as a result of which market price of the land has increased. Further assessee has purchase land at the total cost of Rs, 731000 which was as per jantri rate prevailed at that time. Copy of Jantri is enclosed. Further the financial institution sanctioned the loan on the basis of market value & not as per value adopted in the books of a/c. We further states that bank had disbursed the term loan stage wise as per the progress of construction. We are enclosing herewith copy of loan statement showing the various dates on which loan was disbursed by the bank."

6.3 On careful examining the assessee's reply, it is ascertained that the land was purchased at the total cost of Rs.7,31,000/- which is as per jantri rate

prevailed at that time, but the copy of jantri is not enclosed by the assessee in the show cause reply.

6.4 *it is worthwhile to mention here that in the fastest developing like Surat, purchasing of land admeasuring 6523 sq. rnt on 16.2.2006 for Rs.7,31,000/- is not believable. It is also found that the assessee has constructed residential towers/complex on it. As per local news paper Divya Bhaskar dated 1.6.2008, the market price of a small hut in slums of Surat was between Rs.3 lakhs to Rs. 7 lakhs and the price of shop at Rs.8.5 lakhs (see Annexure'A'). Therefore, the value of purchase of land admeasuring 6523 sq. mts. For Rs.7,31,000/- is apparently not justified. To substantiate its claim;*

- i) The assessee did not enclose copy of so called jantri as per the jantri rate of the land which was purchased by it for mere consideration of Rs.7,31,000/-.*
- ii) The assessee did not furnish the valuation report of approved registered valuer.*
- iii)The assessee has not adduced any document to prove that the work of leveling, fencing etc. was carried out by them. Even if it is assumed that the work of leveling, fencing etc. was carried out by the assessee, it is difficult to believe that the market value of the open plot of land can rise by as high as 6136%.*

6.5 *Besides, the assessee itself admitted that the financial, institution has sanctioned the loan on the basis of market value and not as per value adopted in the books of accounts. Therefore, there is no ambiguity in adopting the real market value at Rs.448.59 lakhs as adopted by the State Bank of Mysore as per agreement dated 28.2.2007. Therefore, the assessee has undervalued the land to the extent of Rs.4,41,28,000 i.e.(Rs.4,48,59,000 - Rs.7,31 ,000/-).*

6.6 *Therefore, the amount of Rs.4,41,28,000/- is treated as unexplained investment of the assessee u/s 69 of the I.T. Act."*

18. The CIT(A) deleted the addition; hence, this ground of appeal by the Revenue.

19. We have heard both the parties and perused the material placed before us. The assessee had purchased an open plot of land on 16.02.2006

for a sum of Rs.7,31,000/-. Subsequently, in the year 2007, the assessee mortgaged this plot of land for obtaining the loan from State Bank of Mysore. For the purpose of obtaining the loan, the value of the said plot of land was determined at Rs.448.59 lacs. Since the valuation of the plot claimed by the assessee for the purpose of obtaining the bank loan was several times higher than the purchase value shown by the assessee, the Assessing Officer did not believe the purchase value and made the addition of Rs.4,41,28,000/- u/s 69 of the Income-tax Act. The Id. Counsel for the assessee argued at length and pointed out that the loan was not obtained merely on the mortgage of the plot but on the mortgage of the entire project, i.e., plot as well as flats to be constructed on the said plot. The Id. Departmental Representative, on the other hand, supported the order of the Assessing Officer and pointed out that the value of the plot only was shown at Rs.448.59 lacs and it is impossible that the value of the plot would increase about 60 times in a year's period. He, therefore, submitted that the addition as made by the Assessing Officer u/s 69 should be sustained. However, in our opinion, the issue whether the purchase price shown by the assessee at Rs.7,31,000/- is the correct purchase price or not is not relevant in the year under consideration. The year under appeal before us is Assessment Year 2007-08 and the relevant previous year would be 01.04.2006 to 31.03.2007. Admittedly, the assessee purchased the said plot of land on 16.02.2006 which would fall in the Assessment Year 2006-07. We, therefore, hold that the issue of addition u/s 69 in respect of purchase of land as on 16.02.2006 cannot be considered in Assessment Year 2007-08. Therefore, any addition for alleged understatement of purchase price of plot purchased on 16.02.2006 cannot be sustained in Assessment Year 2007-08. With this remark, we hold that the deletion of addition by the CIT(A) for unexplained investment in the purchase of plot was fully justified and

therefore, his order on this point is sustained. Thus, Ground No.5 of the Revenue's appeal is rejected

20. Ground No.6 of the Revenue's appeal reads as under:-

"6. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in allowing the claim of the assessee regarding deduction u/s 80IB of the Act despite the fact that the A.O. brought many evidences on record that assessee has violated the provisions of the Act thus making him ineligible for the claim."

21. After considering the arguments of both the sides and facts of the case, we find that this ground raised by the Revenue is misconceived. The CIT(A) has not given any finding that the assessee is entitled to deduction u/s 80IB. The relevant finding of the CIT(A) reads as under:-

"9. In the fifth ground, the assessee has claimed deduction u/s 80IB(10) of the Act on various additions made to the income of assessee.

9.1 As additions made to the income of assessee stand deleted, the above ground becomes infructuous and the same is not discussed on merits."

22. From the above, it is evident that the CIT(A) has treated this ground as infructuous and did not give any finding on merit. Thus, the Ground No.6 of the Revenue's appeal is misconceived and the same is rejected being misconceived.

23. In the result, the Revenue's appeal is dismissed.

Order pronounced in the Court on 12th June, 2015 at Ahmedabad.

Sd/-

**(S. S. GODARA)
JUDICIAL MEMBER**

Ahmedabad; Dated 12/06/2015

Bija T., PS

Sd/-

**(G.D. AGRAWAL)
VICE-PRESIDENT**

आदेश की प्रतिलिपि अद्येवित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकर (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad