

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD " B " BENCH – AHMEDABAD

Before Shri Rajpal Yadav, JM, & Shri Manish Borad, AM.

ITA No.706/Ahd/2014
Asst. Year: 2009-10

M/s Sabhaya Corporation, 30-31, Priyank Row House, Satellite Road, Mota Varachha, Surat.	Vs.	DCIT, Circle-6, Surat.
Appellant		Respondent
PAN ABJFS0005M		

Appellant by	Shri Rashesh Shah, AR
Respondent by	Shri James Kurien, Sr. DR

Date of hearing: 30/9/2016
Date of pronouncement: 5/10/2016

O R D E R

PER Manish Borad, Accountant Member.

This appeal of the Assessee for Asst. Year 2009-10 is directed against the order of Id.CIT(A) –I, Surat, dated 14.02.2014 vide appeal no.CAS-I/TFR-6.80/219/2012-13 passed against order u/s 143(3) of the IT Act, 1961 (in short the Act) framed on 23.12.2011 by DCIT, Circle-6, Surat.

2. Briefly stated facts of the case as culled out from the records available before us are that assessee is a partnership firm engaged in the business of construction of flats. Survey action u/s 133A of the

Act was carried out at the business premises of the assessee on 15.9.2008. Partner of the assessee firm admitted to have earned unaccounted income of Rs.1,11,00,100/- over and above the regular business of the firm and offered to disclose the same during Asst. Year 1009-10. Return of income was filed on 24.09.2009 declaring total income at Rs.1,00,17,890/-. The case was selected for scrutiny assessment and notice u/s 143(2) of the Act following by notice u/s 142(1) of the Act along with questionnaire was issued and duly served on the assessee. Books of accounts were produced along with audited financial statement. During the course of assessment proceedings Id. Assessing Officer observed that GP rate has drastically decreased to 3.82% in the year under appeal as against GP rate of 24.67% in the immediately preceding year. As per assessee the reasons for this drastic decrease occurred due to reason that in the preceding Financial Year closing stock as on 31.3.2008 was overstated by Rs.10,10,213/- due to wrong estimates. This overstated closing stock of work in progress as on 31.3.2008 was taken up as opening stock in the year under appeal and, therefore, GP was reduced to the extent of Rs.10,10,213/-. However, Assessing Officer was not convinced with this reply and was of the view that books of account are audited for both the financial years which have been duly certified by partners of the firm. As per Assessing Officer this plea of the assessee has been taken with the intention to lower down the tax liability in this year because in the previous year the income was very low whereas in this year due to surrender in the course of survey surrendered amount has also been added in the regular business income. Accordingly Id. Assessing

Officer rejected the books of account u/s 145(3) of the Act and estimated the fall in GP at Rs.14,59,833/- and added the same to the income of the assessee. Ld. Assessing Officer also made an addition towards unexplained cash credit of Rs.8,70,238/- and after making addition of Rs.23,30,071/- income was assessed at Rs.1,23,47,961/-.

3. Aggrieved, assessee went in appeal before the first appellate authority. Ld. CIT(A) supported the action of Id. Assessing Officer in rejecting the books of account u/s 145(3) of the Act due to anomaly in the books of account with regard to the closing work in progress. Ld. CIT(A) sustained the addition to the extent of Rs.10,10,213/- on account of fall in GP and deleted the addition of Rs.8,70,236/- towards unexplained cash credit u/s 68 of the Act.

4. Aggrieved, assessee is now appeal before the Tribunal and has raised following grounds of appeal :-

1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income Tax (Appeals) has erred in confirming the action of Assessing officer in rejecting books of accounts u/s. 145(3) of Income Tax Act 1961.
2. On the facts and circumstances of the case as well as law on the subject the learned Commissioner of Income Tax (Appeals) has erred in partly confirming the action of Assessing Officer and making addition of Rs. 10,10,213/- on account of low G.P Ratio.
3. It is therefore prayed that the above additions made by Assessing Officer and confirmed by learned Commissioner of Income-tax (Appeals) may please be deleted.
4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal

5. Ground Nos. 1 & 2 are inter related and so they are taken together for disposal.

6. Ld. AR submitted that the fall in GP rate from 24.63% to 3.82% was on account of change in estimates which has resulted into higher GP in earlier years and reduction on profits in the current year because closing work in progress in earlier year was mistakenly taken excess by Rs.10,10,213/-. Apart from that there was no mistake or defects in the books of account. There was no case of any suppression of income or defect in the method of accounting. Fall in GP is marginal and is fully explained and looking to the nature of business activities i.e. construction business there are absolute chances of error of judgment or difference of opinion or element of estimation in determining the value of work in progress. Ld AR submitted that the GP rate might be a symptom of malice with which assessee's account would be suffering. However, it is the duty of the Assessing Officer to pin point the malice and bring it out in the assessment order by marshelling the facts encompassing the same. In the case of low GP there could be inflated purchases or unrecorded sales. There is no such finding by the Assessing Officer, therefore, no addition should be sustained towards GP rate. Ld. AR referred and relied on the decision of the Co-ordinate Bench in the case of Ashok Kumar B. Modi vs. Addl.CIT in ITA No.1060/Ahd/2008 for Asst. Year 2004-05 and other vide order dated 20.4.2012.

7. On the other hand, Id. DR supported the orders of lower authorities and further added that the overstated closing stock in previous year could have been rectified by the assessee by filing the revised return and further assessments are made for each year and true income of the particular year needs to be assessed and, therefore, income for the year under appeal has been rightly calculated by the Id. Assessing Officer.

8. We have heard the rival contentions and perused the material on record and gone through the decision referred by the Id. AR. In this appeal of assessee ground no1. & 2 are inter connected relating to the issue for rejection of books of account u/s 145(3) of the Act duly confirmed by Id. CIT(A) and addition sustained by Id. CIT(A) at Rs.10,10,213/- on account of low GP ratio. We observe that assessee firm commenced its business from 1.6.2007 i.e. during Asst. Year 2008-09. GP rate for Asst. Year 2008-09 was shown at Rs.24,.67% whereas in Asst. Year 2009-10 i.e. the year under appeal GP has lowered down to 2.82% which was the beginning of the issue before the Id. AO to examine this aspect. Before the lower authorities, assessee has repeatedly mentioned that this reduction in GP has arisen due to the mistake committed in the preceding F.Y. i.e. A.Y. 2008-09 wherein closing working in progress has been over stated by Rs.10,10,213/- which has resulted into the overstated opening stock for the year under appeal lowering the GP rate to 3.82%. We also observe that apart from this particular observation no defect has been pointed out by the lower authorities in the books of account, financial statement, revenue and other expenditure incurred and in all

accepted the issue relating to GP rest of books result have been accepted. We further observe that Id. CIT(A) has sustained this addition towards lower GP rate at Rs.10,10,213/- by observing as below :-

3.3 I have considered the facts of the case, basis of addition and submissions of appellant. The reason given by appellant for reducing the income during the year that in the earlier year income was shown at higher amount as the value of closing stock was overstated by Rs. 10,10,213/- therefore to correct the mistake, income was reduced by that amount during the year under consideration, does not seem convincing. The AO has rightly held that the books of account of assessee were duly audited by auditors and closing stock valuation has been certified by the partners then how can assessee claim that he has wrongly taken the figure of closing stock in A.Y. 2008-09. In this way, assessee itself is contradicting his own audit report which has been certified by him for the valuation of closing stock. In my opinion, if it was a mistake on the part of appellant in the earlier year by overstating the value of closing stock, it should have been corrected by him by filing revised computation alongwith revised return of income as he was having enough time of one year from the end of the relevant assessment year to do so. But, it has not been done. Now, when the appellant has come to know that there is huge rise in the profit of the year under consideration, in order to reduce the profit, he has taken this plea that the value of closing stock in the earlier year was overstated which requires to be corrected this year by reducing the profit to that extent. This change of stand by appellant cannot be accepted. The appellant cannot be allowed to change the method of valuation of closing stock or reducing the income of the year under consideration for the mistakes committed in any of the earlier years to suit its convenience so as to deprive the revenue of legitimate tax. The change in method of valuation of closing stock is not bonafide on the part of appellant for the reason that profit is being under estimated by that method of accounting. The AO has rightly concluded that the valuation of closing stock is very crucial aspect to determine the true picture of any concern and in the case of appellant, it has contradicted its own valuation of closing stock therefore the books of account maintained by appellant are not authentic and reliable. The conclusion drawn by AO is also supported by the judgment of Hon'ble High Court of Delhi in the case of Triveni Engineering and Industries Ltd. vs. CIT reported in 320 ITR 430 wherein it has been held that accounting method cannot be changed to suit the convenience

of the assessee so as to deprive the Revenue of legitimate tax. In view of this, I sustain the conclusion drawn by AO of rejecting the books of account and estimating the profit.

However, while estimating the profit, AO has observed that the appellant has shown less G.P. of 3.82% in comparison to G.P. of 24.67% of immediate preceding year. He, therefore, estimated the G.P. @ 24.67% of earlier year and made the addition of Rs. 14,59,833/-. In my opinion, once the AO has come to know that there is under estimation of profit by Rs. 10,10,213/- in the year under consideration, he should have made the addition to that extent only by estimating the gross profit. Had the AO not in the knowledge of exact figure of under estimation of profit, he could have worked out the profit on estimation basis on the basis of earlier years G.P. rate. But, here he is in the knowledge of the specific amount of suppression of profit therefore he should have made the addition of that specific amount even if the books of account were rejected u/s. 145(3) of the Act and estimated the profit.

Without prejudice to the above, even if books of account of appellant are not rejected u/s. 145(3) of the Act, the addition of Rs. 10,10,213/- is liable to be sustained for the reason that the AO has found out that the appellant has wrongly reduced the profit of the year under consideration taking the basis of mistake committed in the earlier year which is not allowable as per law. Any mistake of earlier year has to be rectified or revised in that year only and it cannot be carried forward in subsequent years to be rectified or revised. There is no provision in the Income Tax Act to carry forward the mistake of earlier year and rectify it in subsequent year. Moreover, the appellant has shown the figures of closing stock at lower value in place of actual value* just to reduce his profit as per his convenience. This cannot be allowed. In this way also, addition of Rs. 10,10,213/- is liable to be sustained in the case of appellant.

In view of above discussion, I hold that addition of Rs.10,10,213/- is justified in the case of appellant in place of addition made by AO at Rs. 14,59,833/-. I, therefore, direct the AO to make the addition of Rs. 10,10,213/- only. Thus, the appellant gets part relief. This ground is partly allowed.

9. Further, we have also gone through the decision of the Tribunal referred to by the Id. AR in the case of Ashok Kumar B. Modi (supra)

and find that the facts are quite different to those of the assessee and so it will not be relevant to be considered here in this appeal.

10. From the above discussion and finding of Id. CIT(A) and in the given facts and circumstances of the case the undisputed fact is that the only reason for lower GP by Rs.10,10,213/- was due to overstated closing work in progress in FY 2007-08 i.e. Asst. year 2008-09 due to wrong estimate taken by the assessee. We are of the view that purpose of assessment is to assess the correct income of the assessee for the year. If there is a mistake in the preceding year then that needs to be corrected. One cannot take a plea to take a set off of excess income shown in the preceding year against the income in the current year. Further if we calculate GP for this year by correctly taking working in progress as reduced by Rs.10,10,213/- then we will be able to reach to the correct GP and the resultant figure is what the Id. CIT(A) has sustained.

11. Therefore, we are of the view that Id. CIT(A) has rightly sustained this amount of Rs.10,10,213/- as the assessee was having all possible ways to rectify its mistake in the preceding FY by revising the return, correcting the financial statement and getting it duly certified by the auditors. We, therefore find no reason to interfere with the order of Id. CIT(A). We uphold the same. The grounds raised by the assessee are dismissed.

12. Ground no.3 & 4 are of general in nature which need no adjudication.

13. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 5th October, 2016

Sd/-
(Rajpal Yadav)
Judicial Member

sd/-
(Manish Borad)
Accountant Member

Dated 05/10/2016

Mahata/-

Copy of the order forwarded to:

1.	The Appellant
2.	The Respondent
3.	The CIT concerned
4.	The CIT(A) concerned
5.	The DR, ITAT, Ahmedabad
6.	Guard File

BY ORDER

Asst. Registrar, ITAT, Ahmedabad

1. Date of dictation: 01/10/2016
2. Date on which the typed draft is placed before the Dictating Member: 03/10/2016 other Member:
3. Date on which approved draft comes to the Sr. P. S./P.S.:
4. Date on which the fair order is placed before the Dictating Member for pronouncement: _____
5. Date on which the fair order comes back to the Sr. P.S./P.S.:
6. Date on which the file goes to the Bench Clerk: 6/10/16
7. Date on which the file goes to the Head Clerk:
8. The date on which the file goes to the Assistant Registrar for signature on the order:
9. Date of Despatch of the Order: