

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

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1078/Ahd/2018
Assessment Year : 2014-15

Shri Narendra Laxmansingh Solanki Prop: M/s.Satyam Projects 17/34, Satyagrah Chhavani Opp: ISRO Satellite Road Ahmedabad. PAN : AFHPS 8383 Q	DCIT, Cir.3(2) Ahmedabad.
---	------------------------------

(Applicant)		(Responent)
--------------------	--	--------------------

Assessee by :	Shri S.N. Divatia, AR
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 21/04/2022
घोषणा की तारीख /Date of Pronouncement: 20/07/2022

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld.Commissioner of Income-Tax (Appeals)-3, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 23.11.2017 under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] pertaining to the Asst.Year 2014-15.

2. Registry has pointed out a delay of 63 days in filing appeal before the Tribunal by the assessee. The assessee has filed an application seeking condonation of the delay stating the reason for

the delay as having filed a rectification application to the AO against the addition confirmed by the Ld.CIT(A), pointing out that the incomes added having been returned to tax in subsequent year tantamounted to double addition, but the application not being considered for a considerable time by the AO the assessee filed appeal thereafter to the ITAT delayed by 63 days. An affidavit of the assessee stating the above on oath was filed before us.

3. Ld.DR objected to the condonation of delay.

4. We have heard both the parties. We have noted that the assessee has demonstrated reasonable and bonafide cause for the delay in filing the appeal before us. Considering the same and also noting the small period of delay, we condone the same. Order was pronounced during the course of hearing and the appeal proceeded to be heard with thereafter.

5. Grounds raised by the assessee in appeal are as follow:

“1.1 The order passed u/s.250 on 23.11.2017 for A.Y.2014-15 by CIT(A)-3, Abad, confirming the addition of Rs.25,24,873/- towards alleged short receipts is wholly illegal, unlawful and against the principles of natural justice.

1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the explanations furnished and the evidence produced by the appellant.

2.1 The Id. CIT(A) has grievously erred in law and or on facts in upholding the difference of Rs.25,24,873/- between the receipts as per books and form No.26AS as revenue receipt liable to tax in this year.

2.2 That in the facts and circumstances of the case as well as in law, the Id.CIT(A) ought not to have upheld the difference of Rfe.25,24,873/- between the receipts as per books and form No.26AS as revenue receipt liable to tax in this year.

3.1 Without prejudice to above and in the alternative, the addition to the extent of receipts already declared in the succeeding year ought to have been excluded from this year or vice-versa.

3.2 Without prejudice to above, the Ld. CIT(A) has grievously erred in law and or on facts in upholding addition of Rs.25,24,873/- instead of restricting the same to the gross profit rate.”

6. Short issue in the present appeal, as is evident from the grounds of appeal, relate to the addition made to the income of the assessee of Rs.25,24,873/- on account of difference in the contractual receipts as reflected in Form No.26AS, the data of TDS during the year on various contractual receipts of the assessee, and that as shown in the books of the accounts and returned for taxation.

7. The facts of the case are that the assessee is engaged in the business of civil contractor in the proprietary concern, M/s.Satyam Projects and had declared total turnover of Rs.1.09 crores declaring GP at the rate of 9.16% and net profit at the rate of 3% during the year. The difference in the contractual receipts in Form No.26AS and in the books of the assessee were on account of two parties viz.

Apple Wood Estate Ltd., of Rs.3,31,228/- and
CONCORD Biotech Ltd. of Rs.21,93,645/-.

8. The ld.counsel for the assessee contended that it had been demonstrated to the authorities below that while the assessee had booked sales of approximately Rs.5,54,69,796/- and Rs.1,19,18,891/- in respect of both the parties; the sales as per Form No.26AS reflected difference of Rs.3,31,228/- and Rs.21,93,645/- respectively with respect to the two parties, which was explained to be on account of difference in the method of accounting such receipts in the books of the assessee and of the party to whom the bill was raised by the assessee. The ld.counsel for the assessee pointed out that in the case of Apple Wood Estate

Ltd. it had been explained that the assessee had booked this amount as work-in-progress (WIP) and reflected sales on account of the same in the succeeding year while in the case of other party i.e Concord Biotech Ltd., an amount of Rs.10,15,775/- had been booked as WIP in the impugned year while remaining amount out of total difference of Rs.21,93,645/- had been booked as sales in the succeeding year. It was explained that this difference in the accounting of the sales by the assessee and the other party was on account of the fact that the bills raised by the assessee were sent to the other party who only after going through various items, for which bill was raised and after noting, whether the work was satisfactorily completed and measuring everything and finding everything to be 'okay' would pass the bill, which would not be necessarily for the same amount, as that for which it was raised, and as a consequence, though the work was completed in the impugned year and bill was also raised by the assessee in the impugned year, since the other party had accepted the bill in the subsequent year, the assessee had booked this bill in subsequent year. The ld.counsel for the assessee pointed out that with respect to both the parties necessary evidence to substantiate the explanation was also filed as under:

- i. in the case of Apple Wood Estate Ltd. he pointed out that copy of subsidiary ledger account of parties in the books of the assessee, booking the said amount as WIP was placed before the Revenue authorities, and it was placed before us also at PB page no.6 to 7;
- ii. in respect of CONCORD Biotech Ltd. it was pointed out that copy of account of CONCORD Biotech Ltd. in the books of the assessee was placed for the impugned year i.e. Asst.Year 2014-15 as also for the succeeding year i.e. Asst.Year 2015-16,

pointing out accounting for certain bills relating to these parties in the subsequent year.

- iii. Our attention was also drawn to copies of payments released-note issued by the party, CONCORD Biotech Ltd. as evidence to the fact that it was only on parties being satisfied of the work being completed, that the bills raised by the assessee was accepted and generally after reducing certain amount from the bill raised. Copies of the bills of the assessee and the payment release-note were placed before us at PB Pg.No.19 to 24.

The ld.counsel for the assessee contended that there was no reason, therefore, to make any addition on account of these difference in the contractual receipts on account of the said two parties, as that reflected in the books of the assessee, and that in the 26AS.

9. The ld.DR on the other hand, relied on the order of the ld.CIT(A) specifically to para 4.2 as under:

“4.2 Decision: I have considered the facts mentioned in the assessment order and the submissions of the appellant carefully. The disallowance of Rs.25,24,873/- is discrepancy in contract receipt in respect of two related parties.

- (i) Applewood Estate Ltd of Rs, 3,31,228/- and
- (ii) Concord Biotech Ltd of Rs. 21,93,645/-.

As regards discrepancy of Rs.3,31,228/- in 26AS with respect to Applewood Estate Ltd, the appellant has submitted that it pertains to the ad-hoc provision made by the said party on 31.3.2014 in respect of labour & purchases in respect of the period after works certified. It was submitted that the contra a/c received from the Applewood Estate Ltd, indicates that it has debited Rs.5,91,864/- towards labour exp, and Rs.1,65,692/- toward labour charges. Therefore, the appellant claimed to show the figures as work-in-Progress till the final certification by Applewood Estate Ltd. The appellant vide submission dated 21.11.2017 stated that this amount was not booked in work-in-progress, therefore, conflicting submissions on the record but none explaining the discrepancy pointed by the AO. It appears that the amount is being claimed by revising the figure of WIP stock by

passing JD entry as provision against the sates which have been booked on or before 31.03.2014.

As regards discrepancy in 26AS with respect to Concord Biotech Ltd of Rs.21,93,645/- the appellant submitted that there are receipts as per Form no. 26AS of Rs. 1,41,12,536/-- whereas it was Rs.1,19,18,891/- as per books. It was submitted that the payment certificate was not finalized due to some disputes regarding quantum of work completed by the agent and some portion has been accounted in WIP. The appellant submitted that the amount which has not been accounted as work in progress, has been accounted for that differential receipts as income in A.Y. 2016-16 as evident the ledger account for F.Y.2014-15 wherein the entries on 05,06.2014 and 01,07.2014 pertaining to RA Bill No. 1-6-8. The appellant submitted copy of return for A.Y.2015-16 and detailed ledger account copy of Concord Biotech Ltd. in his books of accounts. The perusal of the same indicates clearly the date wise accounting of the concerned receipt asunder:

Date	Amount (Rs.)
05.06.2014	10,15,355/-
05,06.2014	1,93,720/-
01.07.2014	49,021/-
01.07.2017	7,51,536/-
	20,09,452/-

Therefore, the AR tried to say that the concerned amount to the extent of Rs.20,09,452/- is genuine and has been offered in next assessment year 2015-16. Thus, there is a time gap between the date of issue of invoice, passing of the bill and actual payment. However, the appellant could not explain as to how it is not taxable in assessment year 2014-15 when the work is actually executed till 31.03.2014, The fact remains that the appellant as per audit report u/s.44A8 is using mercantile system of accounting. It is my opinion that it is nothing but postponement of tax liability i.e. the amount which has been taxed in A.Y.2014-15 is being tried to be partly shown in A.Y.2015-16. This is against the scheme of Income Tax Act and accepted principle of accounting. It is also my finding that theory of showing the amount in WIP is failing as that claimed amount of Rs.10,15,775/- is not adding up to any explanation. For instance, if this amount of so-called WIP of Rs.10,15,775/- is further reduced by Applewood Estate Ltd. of Rs.3,31,228/-, it would result into an amount of Rs.6,84,547/-. This has to be seen with reference to an amount of Rs.20,09,452/- already verified in chart above and the total would add up to Rs.26,93,999/- but the amount of addition is only Rs.25,24,873/-, Therefore, the addition of Rs.25,24,873/- which is taxed as per details contained in 26AS is hereby confirmed. The appellant has. discretion to take necessary action for verified amount of Rs.20,09,452/- in respect of Concord

Biotech A.Y.2015-16, The grounds of appeal No.2.1 to 4.1 are hereby dismissed.”

10. We have heard contentions of both the parties; we have gone through the orders of the Id.CIT(A) and have also gone through the documents referred by the Id.counsel for the assessee before us. We have noted that the assessee has explained the difference as being on account of the assessee not booking the relevant invoices in its books as sales either for the reason that it had reflected the same was WIP or had booked the same in the subsequent year, and had also explained the reason for doing so, and substantiated the same also with the copy of ledger account of the parties. The Id.CIT(A), we find, has rejected the explanation, primarily for the reason that since the assessee followed the accrual method of accounting, and the job was completed and bill raised by the assessee, the corresponding sales should have been booked in the impugned year only. We do not find any merit in this logic of the Id.CIT(A). Even as per the accrual system of accounting, the income is said to have been accrued only when the other party accepts its liability with respect to the bills raised on it. Until then no income is said to be accrued. Even going by the logic of the Id.CIT(A) we find that the assessee had rightly booked income on account of bills which he had demonstrated, were accepted by the CONCORD Biotech Ltd. in the subsequent year. This, income accrued to the assessee in the subsequent year only when the bills were passed and accepted by the CONCORD Biotech Ltd.. With regard to these bills, therefore, the assessee had rightly booked the amounts in the subsequent year, and no addition was called for to be made to the income of the assessee in respect of these bills in the impugned year. As for remaining amounts relating both the Apple Wood Estate Ltd. and CONCORD Biotech Ltd. of Rs.3,31,228/- & Rs.10,15,775/-

,respectively, which the assessee had explained that it had booked this amount in its WIP and not as sales of the year,we find that it had substantiated its explanation by producing copy of its ledger account reflecting the same. We see no reason to reject this explanation of the assessee. Nothing has been pointed out by the Revenue as to why the assessee was wrong in booking these amounts, as its WIP. In view of the same, the addition on account of this difference pertaining to Apple Wood Estate Ltd. and CONCORD Biotech Ltd. is also not sustainable.

11. We may added that the assessee, in any case had reflected sales from these parties amounting to Rs.5.54 crores from Apple Wood Estate Ltd. and Rs.1.19 crores CONCORD Biotech Ltd.. Difference noted was to the extent of Rs.3.31 lakhs in the case of Apple Wood Estate Ltd. which is not even one percent of the total sales booked from the Apple Wood Estate Ltd. and Rs.21.93 lakhs in the case of CONCORD Biotech Ltd. which is approximately 20% of the sales. Further, we have noted that the assessee has shown turnover of Rs.10.09 crores, declaring GP at 9.16% and Net Profit of 3% during the year. Having disclosed such huge turnover, and disclosed appropriate net profit and having duly explained the difference in the turnover, as reflected in its books and in Form No.26AS there is no reason to believe that the assessee had wrongly not disclosed sales on these very small amount of Rs.3.00 lakhs and Rs.21 lakhs (approximately) from the aforesaid two parties.

In view of the above, we direct the deletion of addition of Rs.3,31,228/- and Rs.21,93,645/- on account of difference in sales as reflected in the books of the assessee, and that in Form 26AS

amounting to Rs.25,24,873/-. The ground of appeal of the assessee is allowed.

12. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 20th July, 2022 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 20/07/2022