आयकर अपीलीय अधिकरण "ए" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI

श्री सी .नागेंद्र प्रसाद, न्यायिक सदस्य **एवं**
श्री मनोज कुमारअग्रवाल, लेखा सदस्य के समक्ष।

BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./I.T.A. No.4659/Mum/2015
(**निर्धारणवर्ष** / Assessment Year: 2011-12)

Deputy Commissioner of Income Tax 32(2) Pratyakshkar Bhavan, Room No.308, C-10, 3rd Floor Bandra Kurla Complex, Bandra (E) Mumbai-400 051	बनाम/ Vs.	**Lotus Construction** B-1, Neela Apartment Mandapeshwar Road, Borivali (W) Mumbai-400 092
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No.AACFL-5653-J**		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Revenue by	:	Rajesh Kumar Yadav,Ld.DR
Assessee by	:	None

सुनवाईकीतारीख/ **Date of Hearing**	:	11/07/2018
घोषणाकीतारीख / **Date of Pronouncement**	:	13/07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2011-12 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-44 [CIT(A)], Mumbai, *Appeal No.CIT(A)-44/JCIT.32(2)/ITA-50/2014-15* dated 12/06/2015. The assessment for impugned AY was framed by *Ld. Assistant*

Commissioner of Income Tax-15(3), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961 on 30/03/2014 wherein the income of the assessee has been assessed at Rs.118.37 Lacs after certain additions / disallowances as against returned income of Rs.48.44 Lacs *e-filed* by the assessee on 29/09/2011. None has appeared for assessee despite notice and no adjournment application is on record. Left with no option, we proceed to dispose-off the same on the basis of material available on record and after hearing Ld. Departmental Representative [DR], *Shri Rajesh Kumar Yadav.* The effective grounds raised in the appeal reads as under:-

> *1. " On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in restricting addition of unexplained expenditure of Rs.3,20,060/- (@8% of Rs.40,00,753) u/s.69C of the I.T.Act on account of bogus purchases as against the addition of Rs.40,00,753/- made by the AO without appreciating that the assessee has not produced any cogent evidence to substantiate the fact that it had taken actual delivery of goods purchased from this party and that the notices under 133(6) issued to the party from whom alleged bills were received were returned undelivered by the postal authorities with the remark 'not available at this address 'and this address' and the assessee has also failed to produced the party before the AO."*
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> *2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance made by the AO overlooking the statement given by the party and explicit finding of the investigation carried out by the Sales Tax Department and corroborated by the enquiries of the AO.*
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> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition on account of different in closing stock of Rs.23,93,082/- by placing reliance on decision in the case of Chainrup Sampatram Vs. CIT (1953) (24 ITR 481) without appreciating the fact that assessee's nature of business is entirely different from the case law referred.*
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> *4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting disallowance of sales promotion expenses of Rs.5,98,650/- without appreciating the fact that the assessee failed to submit documents in support of its claim"*

2.1 The assessee, being *resident firm,* was engaged as *builder & developer* during impugned AY and was saddled with certain additions in an assessment u/s 143(3). The following additions are the subject matter of appeal before us:-

No.	**Name**	**Amount (Rs.)**
1.	*Bogus Purchases*	*40,00,753/-*
2.	*Valuation of Closing Stock*	*23,93,082/-*
3.	*Disallowance of Sales Promotion Expenses*	*5,98,650/-*
	Total	***69,92,485/-***

The addition of *bogus purchases* have been made since the assessee could not substantiate the purchases made from an entity namely *Global Trade Impex* who was found to be *suspicious / hawala dealers* by *Sales Tax Authorities, Maharashtra.* The addition on account of *Sales Promotion Expenses* has been made in view of the fact that the expenses were incurred in cash and the assessee could not produce the supporting vouchers.

2.2 The addition against *closing stock* was made since it was noticed that the assessee, while arriving at closing stock during impugned AY, reduced the cost of shops / offices given free to the tenants. The assessee, vide replies dated 03/03/2014 & 18/03/2014 put forth the computations and justification of the same, the relevant portion of which has been extracted by Ld. AO in *paras 4.2.2 & 4.2.3* of the quantum assessment order. However, not convinced, Ld. AO opined that since certain area was given free of cost, the valuation should have been arrived at on the basis of *Total Saleable Area* as against *Total Constructed Area* as taken by the assessee. The valuation in the aforesaid manner resulted into impugned additions of Rs.23.93 Lacs in the hands of the assessee.

3. Aggrieved, the assessee contested the same with partial success before Ld. CIT(A) vide impugned order dated 12/06/2015 wherein Ld. CIT(A), after considering the submissions, estimated the addition on account of *alleged bogus purchases* to 8% and deleted addition on account of *Sales Promotion Expenses* in view the fact that this expenditure was merely 1% of total sales receipts. The addition on account of closing stock was deleted by making the following observations:-

> *I have gone through the facts of the case. It is the fact that the assessee is developing a plot of land wherein some of the shops have been allocated for free to the original owners and the assessee was only supposed to develop the same. If the expenditure is not reduced from the calculation of the closing stock, it would definitely lead to inflated gross profit for the assessee and would not give a true picture of the affairs of the business. I agree with the contention of the appellant that once the land which has been procured for free and has not been considered by the appellant while computing the total cost incurred for the project, then there is no question of considering it as closing stock value. Further the arguments advanced by the appellant as supported by the decision of the Hon'ble High Court in the case of Chainrup Sampatram Vs Commissioner of Income Tax (1953) (24 ITR 481) wherein the Hon'ble court have held that the closing stock should be valued at cost or net realization value whichever is lower, is found to be relevant in the facts and circumstances of the present case. Also since the assessee has been following the same method of valuing the closing stock, then naturally the opening stock has also been accordingly followed. In my considered opinion, the method adopted by the appellant is correct and no interference is called for. The ground of appeal is hereby allowed.*

Aggrieved, the revenue is in further appeal before us.

4. The Ld. DR, at the outset, submitted that the assessee contested the estimated addition of 8% without any success before this Tribunal vide ITA No. 4858/Mum/2015 dated 12/02/2018. The copy of the same has been produced before us. The Ld. DR submitted that the estimate was on the lower side since the Tribunal in many cases, under identical circumstances,

has confirmed full disallowance. The action of Ld. first appellate authority in deleting other additions was also contested.

5. We have carefully considered the contentions and perused relevant material on record. So far as the estimation of 8% on account of *alleged bogus purchases* is concerned, we find the same to be quite just and reasonable in the circumstances of the case since the assessee was engaged in *construction activities* and could not carry out the same without actual consumption of material. Therefore, we find no infirmity in the stand of lower authority in this regard. Moreover, the issue has already been dealt with by this Tribunal in assessee's appeal wherein the estimation has been found to be reasonable. Ground Numbers 1 & 2 stands dismissed.

6. So far as the disallowance on account of *Sales promotion Expenses* is concerned, we find that the assessee has miserably failed to substantiate the expenditure with supporting vouchers / documents and all the expenditure was in cash. The complete onus, in this regard, was on assessee which he has failed to discharge. Therefore, the addition to the extent of 20% of expenditure in question i.e. Rs.5,98,650/- stand confirmed by us. The same works out to Rs.1,19,730/-. Ground Number 4 stands partly allowed.

7. So far as the addition on account of valuation of closing stock is concerned, we find that the revenue is unable to controvert the fact that the assessee was consistently following the same method of accounting for valuing the closing stock. Further the difference in the valuation is arising

only on account of the fact that Ld. AO has considered *Total Saleable Area* as against *Total Constructed Area* taken by assessee while arriving at the valuation. We are of the opinion that the cost is incurred vis-à-vis *Total Constructed Area* out of which *Saleable Area* may be less in view of the fact that some land is occupied / given free of cost by the assessee. One more aspect is the fact that any change in valuation of the closing stock would be tax neutral in nature in the sense that the same would impact the opening stock of the subsequent year and would go on reduce the profits of the subsequent year. Therefore, considering the totality of facts, we concur with the stand of Ld. CIT(A) in this regard and finding no infirmity in the same, dismiss this ground of appeal.

8. Resultantly, the revenue's appeal stand partly allowed in terms of our above order.

Order pronounced in the open court on 13th July, 2018

Sd/-	Sd/-
(C.N.Prasad)	**(Manoj Kumar Aggarwal)**
न्यायिकसदस्य / **Judicial Member**	लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांकDated : 13.07.2018

Sr.PS:-Thirumalesh

<u>आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त (अपील)/ The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधिमुंबई ,आयकरअपीलीयअधिकरण ,/ DR, ITAT, Mumbai
6. गार्डफाईल /Guard File

आदेशानुसार/ BY ORDER,

उपसहायकपंजीकार/ (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण ,मुंबई **/ ITAT, Mumbai**