

**आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.6178/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2011-12)

I.T.O. - 16(2)(2), R. No. 214, 2nd floor, Matru Mandir, Tardeo Road, Mumbai - 400 007.	<b>बनाम/</b> v.	M/s Matushree Builders & Developers, 8-A, Gr. Flr., Apollo House, B.S. Marg, Fort, Mumbai - 400 023.
स्थायी लेखा सं./PAN : AANFM0260F		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Revenue by :	Shri Neil Philip
Assessee by :	Shri Beharilal

सुनवाई की तारीख / **Date of Hearing** : 01-11-2016

घोषणा की तारीख / **Date of Pronouncement** : 19-12-2016

आदेश / ORDER

**PER RAMIT KOCHAR, Accountant Member**

This appeal, filed by the Revenue, being ITA No. 6178/Mum/2014, is directed against the appellate order dated 23<sup>rd</sup> July, 2014 passed by learned Commissioner of Income Tax (Appeals)- 27, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2011-12, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 24<sup>th</sup> February, 2014 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the Tribunal”) read as under:-

“1. Whether on the facts and in the circumstances of the case and in the law, the Ld. CIT (A) was justified in deleting the addition of 10% of work in Progress at Rs. 1,23,39,676/- made by the Assessing Officer following percentage completion method as against the project completion method adopted by the assessee which led to postponement of tax liability.

2. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.

The Appellant prays that the order of the CIT (A) on the above grounds be set aside and that of the Assessing Officer be restored.”

3. The brief facts of the case are that the assessee is engaged in the business of construction of building. The assessee has undertaken a project in the name of ‘Quantum Tower’, Rambaug, S.V. Road, Malad (W), Mumbai. The construction of the project was commenced in the financial year 2008-09. The assessee is following ‘project completion method’ of accounting and has claimed to have offered to tax income on completion of the project by following ‘project completion method’, while revenue is contending that the assessee has postponed its tax liability by following ‘project completion method’ and instead the assessee should have followed ‘percentage completion method’ to offer income for taxation. Thus, the controversy revolved around bringing to tax the income of the project by the builder wherein the assessee having followed ‘project completion method’ while the Revenue is contended that the assessee should follow ‘percentage completion method’ for offering to tax income earned on the project carried on by the assessee. The assessee has contended before the A.O. that the assessee is builder, and since inception the assessee is following ‘project completion method’ which is accepted by the Revenue, as the return of income has been filed for assessment years 2009-10 & 2010-11 by the assessee by following ‘project completion method’ wherein

no income was offered to tax keeping in view that the project was not completed in the said years and shall be offered for taxation when the project is completed by following 'project completion method'. The AO relied upon decision of Mumbai-tribunal in Champion Construction Company v. ITO , 5 ITD 495(Mum-trib) wherein Mumbai-tribunal held that income of the project should be computed and taxed year wise. The tribunal held that the tax-payer should not be given license to put off his tax liability for unlimited period. The assessee submitted that Accounting Standard AS-7 issued by the Institute of Chartered Accountants of India(ICAI) is applicable to contractor and not to builder . The assessee submitted that with respect to builder, the assessee can follow 'project completion method' and offer the tax on income when the project is completed. It was submitted that in case of builder, if the project is not completed due to any reason, builders are compelled to return the advance booking amount received . It was submitted that while in the case of contractors undertaking construction work is done on behalf of other and revenue becomes crystallized on the execution of contract with time and milestones and hence percentage completion method is stipulated by AS-7 for construction activities. It was submitted that in case of builder , the tax-payer can follow project completion method , while as per AS -7 percentage completion method is applicable to the contractors. It was further submitted that as per section 145 of the Act, the Revenue has not stipulated any method for computing the income for the builders and hence the assessee can follow project completion method , and same has been consistently followed by the assessee which has been accepted by the Revenue in the two immediately preceding years i.e. assessment year 2009-10 and 2010-11. The A.O. rejected the contention of the assessee and computed the income @ 10% of the closing work-in-progress held by the assessee as at year end of Rs. 39,93,42,253/-, wherein income was worked out to be Rs. 3,99,34,225/- and the same was added to the income of the assessee by the AO vide assessment order dated 24-02-2014 passed by the AO u/s 143(3) of the Act.

4. Aggrieved by the assessment order dated 24-02-2014 passed by the A.O. u/s 143(3) of the Act, the assessee filed appeal before the Id. CIT(A).

5. The Id. CIT(A) accepted the contentions raised by the assessee and held that consistency has to be followed and since the Revenue has accepted the method of accounting followed by the assessee in the earlier years, the Revenue cannot be allowed to change the method of accounting in the impugned assessment year by shifting from the 'project completion method' to 'percentage completion method' for offering income to tax. The learned CIT(A) also accepted the contention of the assessee, that in case of builder project completion method can be followed by the tax-payer, vide appellate order dated 23-07-2014 passed by learned CIT(A).

6. Aggrieved by the appellate order dated 23-07-2014 passed by Id. CIT(A), the Revenue is in appeal before the Tribunal.

5. The Id. D.R. relied on the order of the A.O. and submitted that the assessee is following 'project completion method' under which the income cannot be correctly computed and the assessee should have followed the percentage completion method. The Id DR relied upon the assessment order of the AO.

6. The Id. Counsel for the assessee submitted that the assessee is builder and had consistently following 'project completion method' and the income has been offered for taxation in the year when the project was completed, the assessee has duly paid the taxes to the Revenue albeit in subsequent years and no prejudice is caused to the Revenue. It was submitted that the assessee is builder and the assessee can follow project completion method as in the case of builder, the revenue gets crystallized when the building is

completed as in case of any default , the builder may be required to refund the advance received on bookings from the buyers of the flat. The ld. Counsel submitted that Revenue has duly accepted the 'project completion method' followed by the assessee in the immediately preceding two years. The ld. Counsel submitted that principle of consistency has to be maintained and the Revenue cannot be allowed to change the method of accounting suddenly in the impugned assessment year while allowing the assessee to follow 'project completion method' in the earlier years .The ld. Counsel for the assessee relied upon the appellate orders of the learned CIT(A). The learned counsel for the assessee relied upon following decisions' :

- |       |                                   |                           |
|-------|-----------------------------------|---------------------------|
| (i)   | CIT v. Manish Build Well (P) Ltd. | 245 CTR (Del) 397         |
| (ii)  | Awadhesh Builders v. ITO          | 37 SOT 122 (Mumbai)(Trib) |
| (iii) | ITO v. Pratiksha Enterprises      | 4 DTR (Mumbai)(Trib) 547  |
| (iv)  | Abode Construction Ltd. v. ITO    | 95 TTJ (Mumbai)(Trib) 35  |
| (v)   | ACIT v.Rajesh Builders            | 3 SOT 917 (Mumbai)(Trib)  |

7. We have heard the rival submissions and perused the material including the case laws cited by both the parties. The assessee is engaged in the business of construction of building namely 'Quantum Tower', at Rambaug, S.V. Road, Malad (W), Mumbai. The construction of the said building started in the financial year 2008-09 . The assessee obtained the commencement certificate in the month of January, 2009 and the construction work also started immediately. We find that the assessee is consistently following 'project completion method' of accounting and the same was accepted by the Revenue in the preceding two years i.e. assessment year 2009-10 and 2010-11 and the ld. DR could not controvert the same before us. The 'project completion method' of accounting has been consistently followed by the assessee in the earlier years for offering income to tax which was accepted by Revenue in the preceding years 2009-10 and 2010-11 , and

it is the contention of the assessee that no prejudice has been caused to the Revenue as all due taxes have been paid to Revenue in respect of the said project 'Quantum Tower', Rambaug, S.V. Road, Malad (W), Mumbai , albeit in the subsequent years when project was completed. The project is stated by the assessee to have been completed in the financial year 2013-14. The assessee has placed on record the copy of provisional Profit & Loss account for the financial year 2013-14 (paper book/page 23) which was also submitted before learned CIT(A)(paper book/page 22) , whereby the profit earned by the assessee is reflected at Rs. 3.85 crores on total sales of Rs. 42.10 crores while closing stock is reflected at Rs. 29.5 crores. However, audited profit and loss account as well income tax return for the said financial year 2013-14 are not placed on record before the tribunal to evidence that the entire profits on this project 'Quantum Tower' was offered to tax by the assessee in the return(s) of income filed with the Revenue albeit in subsequent years and due taxes were paid to Revenue on the entire project by following project completion method.

The assessee has relied upon following case laws :

(vi)	CIT v. Manish Build Well (P) Ltd.	245 CTR (Del) 397
(vii)	Awadhesh Builders v. ITO	37 SOT 122 (Mumbai)(Trib)
(viii)	ITO v. Pratiksha Enterprises	4 DTR (Mumbai)(Trib) 547
(ix)	Abode Construction Ltd. v. ITO	95 TTJ (Mumbai)(Trib) 35
(x)	ACIT v. Rajesh Builders	3 SOT 917 (Mumbai)(Trib)

We have observed that the Courts/Tribunal has consistently allowed following project completion method in cases of builders' as the builders are stated to have earned profits on the sale of the flats and on completion of the project as any abandonment or termination of the project due to any reason mid-way will entail refund of booking advance to the buyers vis-à-vis contractors

engaged in construction activities for their clients wherein any abandonment of the construction by their client will not affect their revenue as they are undertaking construction on behalf of the clients, and merely plea raised by Revenue that under 'project completion method' the true and correct profit could not be ascertained is not supported by any material on record to prove that the assessee has used this method to postpone tax liability indefinitely and/or to evade the taxes , and which necessitated and required adoption of other method of accounting as contemplated u/s 145 of the Act. It is not shown by learned DR that Government has prescribed adoption of Percentage completion method of accounting for builders u/s 145 of the Act and the builders cannot follow project completion method of accounting within the mandate of Section 145 of the Act. It is also not shown that project completion method followed by the assessee is in infringement of cash or mercantile method of accounting as stipulated u/s 145 of the Act. The Revenue has accepted the 'project completion method' in the immediately preceding two years i.e. assessment year 2009-10 and 2010-11. It is also not shown by learned DR that the project completion method of computing income is not allowed by the provisions of the Act or it does not yield in computing correct income of the assessee. It is well settled that project completion method is one of recognized method of accounting. The above view is supported by decision of Hon'ble Delhi High Court in the case of CIT v. Manish Build Well Private Limited(supra), wherein Hon'ble Delhi High court observed as under:

*“8. It is well settled that the project completion method is one of the recognized methods of accounting. In CIT v. Hyundai Heavy Industries Co. Ltd. [2007] 291 ITR 482 / 161 Taxman 191 (SC) the Supreme Court held as follows:-*

*"Lastly, there is a concept in accounts which is called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "completed contract method" and "percentage of completion method". To know the results of his operations, the contractor prepares what is called a contract account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No.7. They are "completed contract method" and "percentage of completion method".*

*This view was reiterated by the Supreme Court in CIT v. Bilahari Investment (P.) Ltd. [2008] 299 ITR 1/168 Taxman\_95 with the following observations:*

*"Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such method. Similarly, the percentage of completion method is another such method.*

*Under the completed contract method, the revenue is not recognized until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract.*

*On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The*

*amount of revenue recognized under this method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.*

*The above indicates the difference between the completed contract method and the percentage of completion method." (underlining ours)*

**9.** *After the above judgments of the Supreme Court it cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the Income Tax Act. Accounting Standards 7 (AS7) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method. In view of the judgments of the Supreme Court (Supra), the finding of the CIT (A), upheld by the Tribunal, does not give rise to any substantial question of law. Further, the Tribunal has also found that there was no justification on the part of the assessing officer to adopt the percentage completion method for one year (the year under appeal) on selective basis. This will distort the computation of the true profits and gains of the business. For these reasons, we are of the view that no substantial question of law arises. We, therefore, decline to admit question Nos. 2 and 3."*

We have also observed that the tribunal in the case of Awadhesh Builder v. ITO(supra) held as under:

**“2.6** *We have perused the records and considered the rival contentions carefully. The assessee is a builder and real estate developer. The dispute is regarding year of accounting of income. The dispute is not whether the assessee had underestimated the income in a particular year. The assessee has been following project completion method as per which income has to be accounted in the year in which project is complete and the flats are sold. The assessee in the earlier two years followed the same method which has been accepted by the department. Though the earlier returns were accepted summarily under section 143(1), the fact is that these assessments have become final and method followed by the assessee in these years stands accepted by the department. However, in the current year, the department has tried to assess the income on the basis of percentage completion method as per which the income has to be assessed on the basis of percentage of work completed during the year. The case of the department is that the profit is inbuilt into the quantum of work done by the assessee and, therefore, the profit has to be computed annually on the basis of work done in a particular year. The department has placed reliance on the judgment of Hon’ble High Court of Delhi in case of Tirath Ram Ahuja (supra) and on the judgment of Hon’ble High Court of Patna in case of Sri Sukhdeodas Jalan (supra). Reference has also been made to the decision of Tribunal in case of Champion Construction Co. (supra).*

**2.7** *However, on careful perusal of the above orders, we find that the same are distinguishable. The case of Tirath Ram Ahuja (supra) and Sri Sukhdeodas Jalan (supra) related to the profit declared by a contractor. The case of a contractor is different from that of the real estate developer. The profit earned by a contractor depends upon the quantum of work done and is not dependent on whether the flats/shops constructed are*

*actually sold by the owner or not. Therefore, in case of a contractor, profit can be estimated on the basis of work done. In case of real estate developer, he can earn the profit only when the space constructed sold. In case, due to some reasons, the project is terminated or is abandoned the builder has to refund the advances received from the buyers and in that case, there cannot be any profit because the flats/shops could not be sold as the construction remained incomplete. In that case, it will be only a case of investment by the builder profit from which will arise only on sale of flats. Similarly the case of Champion Construction Co. (supra) is also distinguishable as in that case construction was complete and 80 per cent of the flats had been sold.*

**2.8** *It is established legal position that an assessee can follow any recognised method of accounting and condition is that the same method has to be followed consistently. In case of a building project, the Institute of Chartered Accountants of India which is an authority on prescribing accounting standards had prescribed accounting standard AS-7 in 1983 for accounting of income in respect of real estate projects and in terms of AS-7 which was applicable to both contractor and real estate developer, a person is free to follow either of project completion method or percentage completion method depending upon the nature of project. The assessee, in this case, has followed project completion method which is one of the prescribed methods by the Institute of Chartered Accountants of India. The accounting standard AS-7 was subsequently revised and revised statements were made applicable to housing projects undertaken on or after 1-4-2003 and as per the revised standards, revised AS-7 was applicable only to a contractor and in case of real estate developer, revised AS-9 was prescribed as per which the income has to be accounted only on completion of project when the flats are*

*sold, i.e., when legal title passes to the buyer or when seller enters into agreement with the buyer for the sale and gives possession to the buyer under the agreement. In this case, the project was not complete during the year and, therefore, there was no question of passing on of the title of ownership or handing over of the possession. Thus, even in terms of the revised accounting standard which was applicable for most part of the work done by the assessee the income had been correctly declared as per project completion method in the year of completion. Even if one applies the old accounting standards on the ground that the project of the assessee had been undertaken prior to 1-4-2003, the assessee was free to follow either percentage completion method or project completion method. The assessee has followed project completion method which was one of the prescribed methods and the same method has been accepted by the department in the earlier years. Department, therefore, cannot reject the method and apply percentage completion method in a subsequent year. This view is also supported by several decisions of the Tribunal as mentioned in para 2.5 of this order earlier which have been relied upon by the learned AR of the assessee. The assessee already, following the same method, has declared the entire income in assessment year 2007-08 when the project was complete. The same income, therefore, cannot be assessed in the earlier year by rejecting the regular and recognised method being followed by the assessee. We are, therefore, unable to sustain the order of CIT(A) upholding the order of Assessing Officer rejecting the method followed by the assessee. The order of CIT(A) is set aside and the claim of the assessee is allowed.”*

We also find that the assessee has claimed to have duly paid the entire taxes from the profit earned on the said project by following project completion method albeit in subsequent years and it is claimed that no prejudice has

been caused to the Revenue. But, however to substantiate this contentions evidences are not placed on record by the assessee before us except provisional profit and loss account for financial year 2013-14. After considering the various case laws cited by the assessee based on peculiar facts of the case, we are of the considered view that consistency has to be followed as the Revenue has accepted the 'project completion method' in the past . The entire profit from this project is stated to have been offered for taxation and due taxes are stated to have been paid to the Revenue albeit in assessment year 2014-15. In our considered view in order to render substantial justice and fair play in the instant case keeping in view peculiar facts and circumstances of the case, we are inclined to accept the appellate order of the Id. CIT(A) subject to verification by the A.O. that the entire profits earned by the assessee from this project 'Quantum Tower' in totality has been offered for taxation and due taxes on this project were duly paid to Revenue as contended by the assessee , albeit in the succeeding years by following 'project completion method' , (including, inter-alia, profit earned on sales of Rs. 42.10 crores as well on closing stock of Rs.29.50 crores) for which the assessee is directed to produce relevant evidence before the AO to substantiate that entire income from this project in totality has suffered tax and no prejudice is caused to the Revenue . In view of our detailed discussion and reasoning as detailed above, the appeal filed by the Revenue is dismissed subject to verification by the A.O. that the entire profits from this project has been offered for taxation by the assessee albeit in succeeding years and due taxes have been paid by the assessee to the Revenue with respect to the project 'Quantum Tower', on Rambaug, S.V. Road, Malad (W), Mumbai. The assessee is directed to appear before the AO and produce relevant evidence to substantiate its contentions before the AO. Needless to say that the AO shall grant assessee proper and sufficient opportunity of being heard in accordance with principles of natural justice in accordance with law. We order accordingly.

8. In the result, appeal filed by the Revenue in ITA No. 6178/Mum/2014 for assessment year 2011-12 is dismissed as indicated above.

Order pronounced in the open court on 19<sup>th</sup> December, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 19-12-2016 को की गई ।

Sd/-  
(JOGINDER SINGH)  
JUDICIAL MEMBER

sd/-  
(RAMIT KOCHAR)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 19-12-2016

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व.नि.स./ R.K., Ex. Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai