

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' A '**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

I.T. A. No.51 /Bang/2015
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax,
Circle 6(1)(1), Bangalore.

.... Appellant.

Vs.

M/s. Sky Top Builders Pvt. Ltd.,
No.175, 6thCross, Gandhinagar,
Bangalore-560 009.

..... Respondent.

Appellant By : Shri Kamaladhar, Standing Counsel.
Respondent By : Shri Chandrashekar V, Advocate.

Date of Hearing : 29.09.2016.

Date of Pronouncement : 21.10.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the Revenue is directed against the revision order dt.10.10.2014 of Commissioner of Income Tax (Appeals) for the Assessment Year 2010-11.

2. The Revenue has raised the following grounds :

1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2. On the facts and in the circumstances of the case the learned CIT(A) erred in deleting the addition of Rs 2,51,57,828/- made by the AO by holding that percentage completion method is not applicable in estimation of the profits without appreciating the findings of the Assessing officer that no income was offered by the assessee derived from Sky Top Green City project in which the assessee had completed 38.15% of the project.
3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
4. The appellate craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.

3. The only issue involved in this appeal of revenue is regarding the addition made by the Assessing Officer on the basis of Percentage Completion Method ('PCM') which was deleted by the CIT (Appeals). The assessee is a private limited company and engaged in the business of development of land and formation of residential sites for housing co-operative society. The assessee has been following completed contract method for the purpose of the income offered to tax. During the assessment proceedings the Assessing Officer noted that despite having so many projects on hand the assessee has offered only Rs.5,10,03,861 on receipts from contracts and Rs.10,05,69,468 from sale of sites of two

projects namely Ballur and Green City. The assessee in its computation statement shown profit of Rs.48,91,678 only. The Assessing Officer found that there are 33 projects undertaken by the assessee which are at various levels of development. Out of them Project Skytop Green City was claimed to have completed more than minimum of 20% (38.15%) but no income was offered from it by the assessee during the year under consideration. The Assessing Officer further noted that the assessee itself disclosed in its web site that more than 1000 sites from Skytop Green City project have been sold out and entire substantial risk has been transferred to the buyers. Accordingly, the Assessing Officer applied PCM and made an addition of income from Project Skytop Green City by recomputing the income on the basis of advance received and proportionate cost of construction incurred as on 31.3.2010. Thus the Assessing Officer has worked out the profit attributable to the advance received at Rs.9,45,78,304 and by taking the percentage of the project completed to the extent of 26.60%, the income was proportionately computed at Rs.2,51,57,828. The assessee challenged the action of the

Assessing Officer before the CIT (Appeals). The CIT (Appeals) has deleted the addition made by the Assessing Officer.

4. Before us, the Id. DR has submitted that the Assessing Officer has reproduced the disclosure of the assessee in its web site that more than 1000 sites from the said project namely Skytop Green City have been sold out during the year under consideration. Thus the Assessing Officer has applied the PCM for computing the income from the said project. The Id. DR has submitted that the Assessing Officer has relied upon the judgment of Hon'ble Supreme Court in the case of J K Industries Vs. Union of India 297 ITR 176 (SC) wherein the Hon'ble Supreme Court has upheld the matching principle of recognizing the revenue and cost. Therefore when the Accounting Standard requires the assessee to follow PCM and offer income based on the stage of completion of various undergoing projects then the income offered by the assessee is not a real income but it is a distorted income for avoiding income tax. He has relied upon the order of the Assessing Officer and submitted that when the Assessing Officer has followed the Accounting Standard as well

as the judgment of Hon'ble Supreme Court then the CIT (Appeals) is not justified in deleting the addition made by the Assessing Officer.

5. On the other hand, the learned Authorised Representative has submitted that the assessee offered the income from this project to tax, this fact has been duly appreciated by the CIT (Appeals) while passing the impugned order. The Assessing Officer has proceeded on wrong presumption that the assessee has not offered any income from this project. The Id. AR has referred to the Schedule 14 of paper book and submitted that the assessee has shown sale from the sites in Skytop Green City project of Rs.9.95 Crores whereas the Assessing Officer has recorded in the assessment order that the assessee has not offered any income from this project. The Id. AR has then referred to profit and loss account as well as Schedule 8 and submitted that the land account under the project Skytop Green City has been substantially reduced from Rs.41.86 Crores to Rs.28.63 Crores which shows that the assessee has shown the sales and income from this project. The Id. AR has further submitted that when the assessee is consistently following this method then the Assessing Officer cannot disturb the method regularly followed

by the assessee. He has relied upon the decision of Hon'ble Supreme Court in the case of CIT v Bilahari Investment (P) Ltd. (2008) 299 ITR 1 (SC).

6. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer proceeded to recompute the income of the assessee by recording the fact that the assessee has claimed on its web site that more than 1000 sites have already been registered. It is pertinent to note that this project is only the development of sites and not the construction of residential units. Once the sites in the project are carved out and it is registered in the name of the purchaser then the issue of project completion or percentage completion method becomes irrelevant as the corresponding expenditure in development of the project is almost over once the plotting of the land is completed. The only expenditure which can be claimed post booking of the sites is regarding construction of roads if not completed at the time of sale. The question of project completion or percentage completion is more relevant in the case of building construction project where the sale is booked in advance much prior to

the construction work is completed and therefore the advance booking cannot be offered as income until and unless the project is completed upto a certain level and the corresponding expenditure can be estimated with a certain degree of accuracy. Thus the matching concept is touch stone of the project completion as well as percentage completion method which means the income can be accurately ascertained by recognizing the revenue as well as corresponding expenditure for earning the said revenue. In the case on hand the project is only for carving out of sites of plots of land and therefore once the plotting of land is completed and sale is booked, the question of percentage completion method or project completion method becomes irrelevant. The Assessing Officer has considered the project completed to the extent of 26.60% and then worked out the income of the assessee proportionately from this project. The CIT (Appeals) has deleted the addition by considering the fact that the assessee has shown the sale from this project and therefore no addition is justified. It is pertinent to note that when the assessee has already shown the sale from this project which is only a project of carving out of sites then the factual question arises is

whether the sites which are registered in the name of purchaser by receiving the advance is based on some document or it is only a booking of site by taking only a token amount. Therefore in order to ascertain that the booking constitute sale depends on the nature of transaction between the parties whether the assessee has received the entire sale consideration or substantial sale consideration and at the time of booking the sale / transfer documents are executed between the parties. Since the relevant record has not been produced before us therefore it is not possible to give a concluding finding on this issue. Further whether the transfer documents have created the respective rights and obligation in respect of the sites in question. Therefore, all these aspects which are relevant for considering the issue of recognizing the revenue from the sale of sites are required to be verified and examined. In view of the above facts and circumstances of the case, we set aside this issue to the record of the Assessing Officer for verification of the relevant evidence / documents through which the sale of the sites were booked by the assessee during the year under consideration or

uptil 30.3.2010. Needless to say the assessee shall be afforded appropriate opportunity of hearing.

8. In the result, the revenue's appeal is allowed for statistical purpose.

Order pronounced in the open court on the 21st day of Oct., 2016.

Sd/-

(S. JAYARAMAN)

Accountant Member

Bangalore,

Dt. 21.10.2016.

Sd/-

(VIJAY PAL RAO)

Judicial Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore