

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

[Before Sri J. Sudhakar Reddy, Accountant Member & Sri S. S. Viswanethra Ravi, Judicial Member]

I.T.A. No. 497/Kol/2012
Assessment Year: 2008-09

D.C.I.T. Circle-11, Kolkata.....Appellant
Aayakar Bhawan
P-7, Chowringhee Square
Kolkata - 700 069

M/s. Abmika Allied Services Pvt. Ltd..... Respondent
265, Parnasree
24 Pgs (S)
Kolkata - 700 060
[PAN : AAECA 3831 A]

Appearances by:

Shri S. Dutta, AR, appeared on behalf of the assessee.

Shri Arindam Bhattacharjee, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : December 20th, 2017

Date of pronouncing the order : January 31st, 2018

O R D E R

Per J. Sudhakar Reddy :-

This appeal filed by the revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XIX, Kolkata, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act'), dt. 09/01/2012, for the Assessment Year 2008-09, on the following grounds:-

"1) Whether, on the facts and in the circumstances of the case, the Ld. CIT(A) is justified in directing re-computation the profit or loss from business by following accounting standard AS-9 instead of percentage completion method as adopted by the Assessing Officer."

2. The assessee is a company and is in the business of land development. The assessee claims to be originally a partnership firm in the year 2002-03 and subsequently it claims to have converted itself in a Private Limited Company, in the Assessment Year 2003-04.

2.1. The assessee acquires land from different land owners and after developing the same sells plots of different sizes to buyers for construction of houses. The Assessing Officer records that the assessee has four projects, which are as follows:-

<i>Name of the project</i>	<i>Date of commencement</i>
1. <i>Abmika Garden</i>	<i>07.07.2003</i>
2. <i>Abmika City</i>	<i>10.07.2005</i>
3. <i>Remy Park</i>	<i>18.12.2006</i>
4. <i>Ambika Vally</i>	<i>03.06.2007</i>

During the impugned Assessment Year, the assessee recognised revenue of Rs.71,44,294/-, as sales which is 7.5 per cent of the advances received from customers as on 31/03/2008. He also charged matching cost of Rs.66,95,665/-, being 7.5 per cent of the cumulative balance of Project WIP on 31/03/2008. The basis of adoption of 7.5 per cent, was not disclosed. There is no disclosure by the assessee or by the auditors of the accounting policy based on which the assessee recognised revenue. In the written submissions before the Assessing Officer, it was submitted as follows:-

<i>Project Name</i>	<i>Start Date</i>	<i>No. of Plots</i>	<i>Approx Value</i>	<i>Stage of Completion</i>	<i>Advance received</i>
<i>Ambika Garden</i>	<i>07/07/2003</i>	<i>507</i>	<i>8,61,90,000</i>	<i>75%</i>	<i>3,47,57,946/-</i>
<i>Abmika City</i>	<i>10/07/2005</i>	<i>191</i>	<i>3,24,70,000</i>	<i>45%</i>	<i>2,65,35,144/-</i>
<i>Remy Park</i>	<i>18/12/2006</i>	<i>496</i>	<i>8,92,80,000</i>	<i>20%</i>	<i>2,97,80,570/-</i>
<i>Abmika Valley</i>	<i>03/06/2007</i>	<i>507</i>	<i>9,12,60,000</i>	<i>10%</i>	<i>41,83,664/-</i>

The estimated cost of completion was projected as follows:-

<i>Ambika Garden</i>	<i>Rs.7,63,98,500/-</i>
<i>Abmika City</i>	<i>Rs.2,96,34,500/-</i>
<i>Remy Park</i>	<i>Rs.8,66,48,000/-</i>
<i>Abmika Valley</i>	<i>Rs.8,80,01,000/-</i>

3. The Assessing Officer at para 11 held that, the assessee has adopted percentage completion method to recognize revenue but has committed fundamental errors with regard to 1) *Stage of completion*, 2) *estimated revenues that could be earned from the project*, 3) *estimated costs to complete the project*. Hence, he rejected the computation of income by the assessee.

He computed the revenue as follows:-

<i>Project Name</i>	<i>Estimated total Revenue</i>	<i>Estimated total cost</i>	<i>Excess of Revenue over total cost</i>	<i>Stage of completion</i>	<i>Profit</i>
<i>Ambika Garden</i>	<i>8,61,90,000</i>	<i>7,63,98,500</i>	<i>97,91,500</i>	<i>75%</i>	<i>73,43,625</i>
<i>Ambika City</i>	<i>3,24,70,000</i>	<i>2,96,34,500</i>	<i>28,35,500</i>	<i>45%</i>	<i>12,75,975</i>
<i>Remy Park</i>	<i>8,92,80,000</i>	<i>8,66,48,000</i>	<i>26,32,000</i>	<i>20%</i>	<i>5,26,400</i>
<i>Ambika Valley</i>	<i>9,12,60,000</i>	<i>8,80,01,000</i>	<i>32,59,000</i>	<i>10%</i>	<i>3,25,900</i>
				<i>Total</i>	<i>94,71,900</i>

4. Aggrieved, the assessee carried the matter in appeal.

5. Before the Id. First Appellate Authority, the assessee submitted that the Assessing Officer has not accepted the contention of the assessee that substantial risks and rewards of the ownership are transferred to the buyer, only when the plots are registered and possession of such plot is in the handed over, because, as per the agreement with the plot purchasers, they are entitled to cancel their bookings and take their money back after making part of their payment, if such

plot purchasers are not satisfied with the progress of the project or for any other reason. Hence, it was submitted that the risk of not getting instalments and cancellation of agreements is always there. The assessee had asked the Assessing Officer to accept the amount of revenue at Rs.22,73,714/-, which is the actual amount of revenue recognized on sale of 9 plots in the place of 7.5 per cent of advances from customers recognised as revenue in the books. The assessee pleaded that recognizing sale of the 9 plots is as per the accounting standards laid down in AS-9 by the ICAI for revenue recognition and that the corresponding cost of Rs.13,04,350/-, has to be allowed as a deduction. The assessee contended before the Id. CIT(A) that the Assessing Officer's finding that the assessee company had the intention of following percentage completion method of revenue recognition is factually incorrect as there are significant uncertainties in revenues. The Id. CIT(A) observed as follows:-

"On perusal of the earlier year's profit and loss account and the balance sheet, it is observed that the advances from the customers and the project WIP were taken into balance sheet and the revenue in the profit and loss account was recognized only to the extent and with respect of those plots only which were sold and registered in the name of respective buyers i.e. where the significant risks and rewards of the ownership are transferred. Simultaneously, the corresponding costs of those plots charged to the profit and loss account by transferring the same from project WIP. This was done by the appellant company in the very first year i.e. A.Y. 2004-05 when the first project was started. Thereafter, from A.Y. 2005-06 to A.Y. 2007-08, the appellant company neither recognized the revenue nor charged the cost to the P&L account because no further sale of plots was made and no significant risks and rewards of the ownership were transferred in these years. The direct costs were added to the WIP and further installments received were added with existing amount of advances from the customers and both these accounts were taken to the balance sheet of the respective years. It is observed that whenever there was cancellation of bookings, the booking amount was refunded to the plot holder after deducting the cancellation charges and the

refunded amount is reduced from the amount of advances from the customers. The cancellation charges are credited to the profit and loss account as 'other income'. In this manner, though, not specifically stated in the accounts but the appellant company has adopted accounting standard AS-9 and the revenue was recognized only when significant risks and rewards of the ownership were transferred. 'It is observed that the said' system was accepted by the AO in the earlier year' while completing the assessment u/s 143(3) of the Act for A.Y. 2005-06, dated 31.12.2007. During the year under appeal the appellant company had sold and registered 9 plots in favour of respective buyers. In other words the appellant had transferred the significant risks and rewards of ownership with respect to those nine plots. On perusal of assessment records it is observed that in the course of assessment proceedings the company filed details of sale of these 9 plots. As per the accounting policy followed by the appellant up to A.Y. 2007-08, the company was required to recognize the revenue of nine plots and the corresponding cost of 9 plots was required to be charged in the profit and loss account. But, the appellant company deviating from its earlier policy of revenue recognition, recognized the revenue @ 7.5% of the total advances from customers as on 31.03.2008 and charged 7.5% of project WIP to the profit and loss account."

5.1. Thereafter, he observed that the assessee deviated from his consistent accounting policy and chose to recognise revenue @ 7.5 per cent as advance from customers. He came to the conclusion that neither the assessee nor the Assessing Officer had followed the accepted standard accounting principles of recognizing income. Thereafter, he concluded that the Assessing Officer was not correct in computing the profits by adopting percentage completion method and that too on the basis of estimated figures. He directed the Assessing Officer to compute income by recognizing revenue on sales of 9 plots at Rs.22,73,714/- and corresponding costs of Rs.13,04,350/-.

5.2. Aggrieved, the revenue is in appeal before us.

6. After hearing rival contentions, we find that the assessee has no clarity as to the manner in which he proposed to recognise the revenue. *Ad-hocism* has been a way of recognizing revenue year after year. Admittedly, the basis of recognizing revenue by the assessee during the year was percentage completion method. To that extent, the assessee has no case. The Id. CIT(A), while rejecting both the revenue recognition done by the assessee as well as the Assessing Officer devised a method of revenue recognition and directed that the same be adopted. He has made a statement that the assessee never intended to follow completion of percentage method, for the purpose of recognizing revenue This in our view is a sweeping statement. Before us, the assessee filed copies of the financial statement for a number of years. From a perusal of the same, we find that the auditors in their report, have mentioned the basis of revenue recognition. This is evident from the notes to the accounts which were audited by them for the various Assessment Years.

6.1. For the year ending 31st March, 2005, no amount has been recognised as income but for the year ending 31st March 2004, an amount of Rs.3,85,937/-, was recognised as income, details of which is not furnished in the annual accounts. Accounting policies of the company have not been mentioned by the auditors in these annual accounts. In the Assessment Year ending 31st March, 2006, under the note to accounts it is stated as follows:-

“Revenue Recognition. Since no transfer of land has taken place during the year no revenue has also been recognised during the same period”

For the year ending 31st March, 2007, the same has not been given. For the year ending 31st March, 2009, there is no note on revenue recognition. Sales of Rs.1,09,58,809/-, was recognised. The basis is not stated for the year ending 31st March, 2011, the method of accounting followed is not specified. Same is the case with the accounts for the year ending 31st March, 2012. A generalized statement is made, which reads as follows:-Financial statements are prepared in accordance with the principles laid down by the ICAI.

Similar is the position with all other accounting years. This is of no use as it does not give any details.

7. While so, the Id. CIT(A) has come to a conclusion that the assessee should follow a particular method of recognizing income and directed the Assessing Officer to compute the same accordingly. We do not know whether the assessee has followed such a system either in the past or in the future accounting years. As already stated neither the assessee nor the auditors have any clarity whatsoever, on this issue of revenue recognition. They are not making generalized statements without any consistency. Thus the entire issue requires a *de novo* examination. The decision taken will have to be applied consistently for all the Assessment Years. As the entire exercise lacked clarity, we deem it proper to restore the issue to the file of the Assessing Officer, for fresh adjudication, in accordance with law. Guidance may be taken from the decision of the ITAT Jaipur Bench in the case of *M/s Vastukar Township Pvt. Vs. DCIT being ITA No. 105/JP/2017, Assessment Year 2012-13* and *M/s Shakuntalam Colonisers v. ACIT being ITA No. 172/JP/2017, Assessment Year 2011-12*, order dt. 22/12/2017.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Kolkata, the 31st day of January, 2018.

Sd/-

[S.S. Viswanethra Ravi]
Judicial Member

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Dated : 31.01.2018
{SC SPS}

Copy of the order forwarded to:

**1. D.C.I.T. Circle-11, Kolkata
Aayakar Bhawan
P-7, Chowringhee Square
Kolkata – 700 069**

**2. M/s. Abmika Allied Services Pvt. Ltd
265, Parnasree
24 Pgs (S)
Kolkata – 700 060**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches

