

**आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'डी', अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ D ” BENCH, AHMEDABAD**

सर्वश्री एस.एस.गोदारा, न्यायिक सदस्य एवं प्रदीप कुमार केडिया, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER &**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1308/Ahd/2013  
(निर्धारण वर्ष / Assessment Year : 2009-10)

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|--|---------------------|--|
| The ITO<br>Ward-9(1)<br>Ahmedabad                            | <b>बनाम/</b><br>Vs. | Shri Rasikbhai Ambalal Patel<br>HUF<br>Majar Bungalows,<br>Nr.Star Bazar<br>Jodhpur Gam Road, Satellite<br>Ahmedabad-380 015 |
| <b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEHR 7338 L</b> |                     |  |
| (अपीलार्थी /Appellant)                                       | ..                  | (प्रत्यर्थी / Respondent)  |

|                                     |                        |
|-------------------------------------|------------------------|
| अपीलार्थी ओर से/ Appellant by :     | Shri V.K. Singh, Sr.DR |
| प्रत्यर्थी की ओर से/Respondent by : | Shri Dipak Shah, AR    |

|                                      |               |
|--------------------------------------|---------------|
| सुनवाई की तारीख / Date of Hearing    | 29/11/2017    |
| घोषणा की तारीख/Date of Pronouncement | 16 / 02 /2018 |

**आदेश / O R D E R**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the revenue against the appellate order of the Commissioner of Income Tax(Appeals)-XV, Ahmedabad [CIT(A) in short] dated 06/02/2013 arising in the assessment order passed under s.143(3) of the Income Tax

Act, 1961 (hereinafter referred to as "the Act") dated 19/12/2011 relevant to Assessment Year (AY) 2009-10.

2. The grounds of appeal raised by the Revenue read as under:-

*1a). The Ld. Commissioner of Income-Tax (Appeals)-XV, Ahmedabad has erred in law and on facts in deleting the addition of Rs.59,13,308/- out of total addition of Rs.71,38,557/- made on account of income from undisclosed sources.*

*1b). The Ld. Commissioner of Income-Tax (Appeals)-XV, Ahmedabad has erred in law and on facts to ignore the Accounting Standard-9 whereby the risk & reward of ownership has been transferred on the date of Sale deed / registered document and possession was already given on the date of Sale deed.*

*2). On the facts and in the circumstances of the case, the Ld. Commissioner of income-Tax (Appeals)-XV, Ahmedabad ought to have upheld the order of the Assessing Officer.*

3. Briefly stated, the assessee, a HUF, filed its return of income for AY 2009-2010 declaring total income of Rs.4,42,672/-. The return of the assessee was subjected to scrutiny assessment. In the course of the scrutiny assessment, the Assessing Officer (AO) on examination of A.I.R. information, found that the assessee has sold a commercial immovable property at an aggregate sale consideration of Rs.1,75,00,000/- vide sale agreement dated 11/09/2008 to the purchaser Shree Siddhi Vinayak Corporation (SSVC). The AO observed that the aforesaid sale consideration was not included in the revenue of the

assessee as per its P&L account. In response, the assessee took a stand before AO that it is not engaged in any business of construction of building either residential or commercial. The assessee further submitted that it has not obtained any registration for such construction activities with any authority and the building was constructed for own purposes. However, the sale agreement was executed to enable purchasing party to obtain loan from bank against its property. The assessee further submitted before the AO that the profit has been offered on the basis of 'work in progress' (WIP) for the year under consideration and earlier years also. The assessee has adopted percentage completion method for reporting profits from aforesaid construction. The AO found several infirmities in the submissions of the assessee. The AO observed that the major part of sale consideration was received during the year under consideration. It was noted that the assessee has shown an amount of Rs.1,23,78,000/- received from SSVV as liabilities instead of recognizing the transactions as sales. The AO also noted that the construction of the complex was already completed during the year and the entire amount of Rs.1.75 crores ought to have been recognized as sales. The AO accordingly concluded that as the sale consideration has been agreed at Rs.1.75 crores during the year and the cost of construction (WIP) of Rs.1,03,61,443/- has been incurred, the differential amount of Rs.71,38,557/- is to be treated as assessee's income for the year under

consideration which remains undisclosed. The AO accordingly added the aforesaid amount to the total income of the assessee.

4. Aggrieved, the assessee preferred the appeal before the CIT(A). Before the CIT(A), the assessee took an altogether different stand in total variance to the stand taken before the AO. The assessee submitted before the CIT(A) that it is engaged in construction activity and shown profit of Rs.5,00,672/- of W.I.P. of Rs.1,03,61,443/-. It was contended before the CIT(A) that the construction work of the project has been continued for next two years till AY 2011-12. It was submitted by the assessee that it has shown received of Rs.37,22,000/- in Financial Year (FY) 2009-10 (AY 2010-11) and Rs.14,00,000/- in FY 2010-11 (AY 2011-12) concerning the sale of the aforesaid commercial building. The assessee contended that it has only received an amount of Rs.1,23,78,000/- during the year under consideration. He further submitted that before the CIT(A) that although the sale deed was executed in favour of the purchaser SSVC during the year the work of building/project was not fully completed. The assessee further submitted that it has incurred additional expenditure in subsequent assessment years. The assessee, in essence, claimed before the CIT(A) that there were certain disputes in the completion of the construction of the property and the receipts obtained from the purchaser were only conditional and therefore did not acquire the character of income till the matter reached the finality. The

assessee also relied upon the Accounting Standard-9 issued by the Institute of Chartered Accountant of India and submitted that in view of the significant uncertainty owing to the dispute and due to conditional commitment from the buyer to make balance payment after the completion of the project, the income therefrom could not be recognized in the AY 2009-10. The CIT(A) called for the Remand Report from the AO. In the remand report, the AO *inter-alia* supported its justification for holding Rs.71.38 lakhs as an undisclosed business income. It was contended by the AO that the assessee has executed sale deed with the purchaser and also has given possession of the property coupled with the fact that major sale consideration has been received during the year under consideration. The AO accordingly contended that the assessee has completed the performance of contract as per Transfer of Property Act and therefore income accrued to the assessee during the year. In reply to the remand report, the assessee reiterated that the project was not completed and certain finishing work of the building of the project as per the understanding with the purchaser were completed in the subsequent assessment years which is vouched by additional expenditure in the next two years. It was also contended that the assessee has kept possession of certain portion of the building with it. It was further contended by the assessee that it received part of sale consideration to the extent of Rs.51.22 lakhs from the sale of the business premises which were duly recognized in subsequent assessment years and therefore double taxation

of the same receipt is not permissible in law. It was harped that sale deed was executed to facilitate the sanction of loan and the sale *per se* was not completed. The CIT(A) after objective consideration of the factual aspects in detail and after taking into account the revenue and expenditure recognized in the subsequent assessment years eliminated the effect of double taxation and consequently worked out the addition sustainable to the extent of Rs.12,25,249/- for the AY 2009-10 and Rs.11.140 lakhs relevant to AY 2011-12. Thus, the CIT(A) granted the partial relief to the assessee and sustained the addition in part as noted above.

5. Aggrieved by the partial relief granted by the CIT(A), the revenue preferred appeal before the Tribunal.

6. The Ld.DR relied upon the order of the AO and sought reversal of the relief granted by the CIT(A).

7. The Ld.AR for the assessee, on the other hand, reiterated the submissions made before the CIT(A) as noted above and contended that the CIT(A) has rightly granted the relief in the facts of the case. The Ld.AR for the assessee also submitted that the entire sale consideration has been offered in different assessment years as per the receipts and thus having regard to the AS-9 issued by ICAI, in view of the risk associated

to the assessee for completion of work as per the requirement of the purchaser, the CIT(A) has rightly concluded that the assessee has properly reported the profits arising from the sale of building as per percentage of completion method and thus no interference is therefore called for in the order of the CIT(A).

8. We have carefully considered the rival submissions and perused the orders of the authorities below. We find that the CIT(A) has analysed the facts threadbare and objectively considered the Revenue recognition by the assessee spanning over various assessment years and has given appropriate allowances for expenditure incurred in the construction activity in the various assessment years. The net profit reported by the assessee in various assessment years were also taken into account and the effect of double taxation was duly eliminated. For ready reference, the relevant operative paras of the order of the CIT(A) are reproduced hereunder:-

*“5. I have perused the facts of the case as enumerated by A.O. and as submitted by appellant. I have perused the case laws relied on by A.O. as well as appellant. After careful consideration of facts, submission and contention of both A.O. as well as of appellant, ground wise adjudication is as follows:*

*5.1. Before going for ground wise adjudication, certain facts required to be considered as follows:*

*(A) In respect of addition of Rs.71,38,557 for sale of property 'Gajraj Complex':*

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(a) The appellant constructed a commercial property at T.P. scheme No.3, P.P. No.25, Mauje-Vejalpur, Ahmedabad in the name of "Gajraj Complex". Though before A.O. it was contended that the said construction was not for business purpose but for self consumption but as per admitted position, the appellant disclosed profit as well as income from this project on the basis of percentage completion method in previous year relevant to A.Y. 2007^08 and A.Y. 2008-09.

(b) The A.O. got the information through Annual Information Return (AIR) that appellant sold this commercial complex to M/s.Shree Siddhi Vinayak Corporation on 11.09.2008 for a consideration of Rs.1,75,00,000 but appellant in the P&L account has not shown such sale consideration. This transaction and information was evidenced by a Regd. sale deed. The appellant contended that he being in need of money sold such uncompleted complex and as required by banks to extend the loan to M/s.Shree Siddhi Vinayak Corporation, as per mutual agreement said Registration of sale is made. This is to facilitate M/s.Shree Siddhi Vinayak Corporation (SSVC) to obtain the loan. It was contended that a major part of payment received in subsequent years and there was subsequent work and project was not completed during previous year. The appropriate profit on the basis of percentage completion method was shown in previous year as well as in subsequent year. The A.O. rejected appellant's argument and held that since registration had already made therefore as per transfer of property Act, ownership is transferred to SSVC and sale is affected. He therefore considered the total sale consideration of Rs. 1,75,00,000 and work in progress shown by appellant in previous year of Rs.1,03,61,443 and taken the difference of Rs.71,38,557 (1,75,00,000 - 1,03,61,443) as assessee's income (profit) for the year.

(c) The appellant submitted copies of return of income filed for A.Y. 2008-09 to A.Y. 2011-012 and submitted the details of direct expenses during such respective previous year with amount received. On verification of such detail, total receipt and total expenditure related to project for various years comes as follows:

| A.Y. | Work in progress shown in P&L A/c. | Sale consideration shown | Profit of project | Ret.of income filed / status |
|------|------------------------------------|--------------------------|-------------------|------------------------------|
|------|------------------------------------|--------------------------|-------------------|------------------------------|

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|       |              |                    |                  |     |
|-------|--------------|--------------------|------------------|-----|
|       |              |                    |                  |     |
| 07-08 | 25,05,498    | 0                  | 2,06,274         | Yes |
| 08-09 | 64,49,742    | 0                  | 3,29,749         | Yes |
| 09-10 | 1,03,61,443  | 1,23,78,000        | 5,14,672         | Yes |
| 10-11 | 87,61,308    | 37,22,000          | 3,90,133         | Yes |
| 11-12 | 87,61,308    | 14,00,000          | 3,78,125         | Yes |
|       | <i>Total</i> | <i>1,75,00,000</i> | <i>18,18,953</i> |     |

*It is therefore the appellant over a period of 5 years has shown total profit (income) from this project at Rs. 18,18,953.*

*However, the A.O. rejecting and not appreciating the appellant's consideration only considered the previous year relevant to A.Y. 2009-10 and replaced the amount received of Rs. 1,23,78,000 as shown by appellant with the total consideration as per sale deed of Rs. 1,75,00,000 and added the difference as profit i.e. income of appellant from the project.*

*(d) Further verification of such detail and analysis reflect that as against the total receipt of Rs.1,75,00,000 the cost of the project over the years was Rs. 1,33,55,662 as follows:*

| <i>A.Y.</i> | <i>Direct Expenditure in Rs.</i> | <i>Indirect Expenses in Rs.</i> |
|-------------|----------------------------------|---------------------------------|
| 07-08       | 22,93,634                        | 5,590                           |
| 08-09       | 35,26,370                        | 88,125                          |

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|           |             |           |
|-----------|-------------|-----------|
|           |             |           |
| 09-10     | 32,29,361   | 2,41,976  |
| 10-11     | 13,70,560   | 3,61,172  |
| 11-12     | 5,48,322    | 4,73,552  |
| Land cost | 12,17,000   |           |
| Total     | 1,21,85,247 | 11,70,415 |

Total cost is Rs.1,33,55,662 (1,21,85,247 + 11,70,415)

Therefore the profit from project is Rs.41,44,338  
(1,75,00,000-1,33,55,662)

While the profit declared by the appellant  
till A.Y. 2011-12 Rs.18,18,953  
Balance: Rs.23.25,385

(e) The appellant on being asked for verification submitted a confirmation from M/s.SSVC submitting that the Registration of sale deed was to facilitate them to obtain the loan. Necessary copies of loan sanction, dispute in respect of completion of project and payment made by them to appellant through bank account on different dates were also submitted. It is verified that State Bank of India, Mid Corporate branch vide letter dated 13.11.2008 informed M/s.SSVC that its earlier term loan of Rs.150 lac sanctioned by state Bank of Saurashtra is taken over by it on account of acquisition of said Bank (SBS) by SBI. A copy of letter dated 4.8.2008 from State Bank of Saurashtra (SBS) to M/s.SSVC (letter No.MCB/BC/347) was filed to evidenced that a term loan of Rs.150 lac was sanctioned to them. In the terms and conditions of this letter at Ann.I under the head 'Security' and under sub-head (i) Primary, the details of building at Survey No.24/1 and 25, P.P. No.25, TPS No.3, 14/B Sneh Sagar Co.op.Hsg. Society Ltd. Vejalpur is mentioned with total value of Rs.227.74 lac as cost is

*mentioned.*

*(f) The appellant filed a copy of Regd. deed to substantiate the cost of land at Rs.12,17,000. This deed is registered with No.AHD-4 PLD/4827/1-17/2006 where the land at Survey No.24/1 & 25 of T.P. Scheme No.3 for final Plot No.25 with Sneh Sagar Co.op.Hsg. Society Ltd. tenement No.13/B and 14/B was purchased by appellant for Rs11 lacs from Shri Merubhai R. Bharwad and Shri Matrabhai Revabhai Bharwad.*

*(g) The appellant submitted copy of sale deed of the impugned property to M<sup>rs</sup>.SSVC for Rs.1,75,00,000 Regd. with No.AHD-4-PCD/11804/2-19/2008. The details of payment i.e. receipt of appellant as per deed is as follows:*

| <i>Sr.No.</i> | <i>Amount in Rs.</i> | <i>Cheque No.</i> | <i>Dt.</i>       | <i>Bank</i>  |
|---------------|----------------------|-------------------|------------------|--|
| <i>1</i>      | <i>5,00,000</i>      | <i>88210</i>      | <i>30.5.2008</i> | <i>State Bank of Saurashtra Mid Corporate branch</i> |
| <i>2</i>      | <i>1,23,78,000</i>   | <i>097327</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>3</i>      | <i>10,00,000</i>     | <i>882104</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>4</i>      | <i>10,00,000</i>     | <i>882105</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>5</i>      | <i>10,00,000</i>     | <i>882106</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>6</i>      | <i>10,00,000</i>     | <i>882107</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>7</i>      | <i>6,22,000</i>      | <i>882108</i>     | <i>11.9.2008</i> | <i>-do-</i>  |
| <i>Total</i>  | <i>1,75,00,000</i>   |                   |                  |  |

*It is mentioned in the sale deed that the receipt for such payment was given by appellant with complete possession of building (land + construction) and rights received through isment, common facilities, common plot parking and other such rights was handed over to M/s.SSVC.*

*(h) The appellant submitted that this deal of sale undergone a dispute in respect of payment and peaceful handover. A copy of legal notice dated 20.9.2008 from the appellant to M/s.SSVC through Shri Manish K.Parmar, Advocate was filed to show that appellant was not in receipt of Rs.46,22,000 i.e. Sr.No.3 to 7 cheques as mentioned at (g) above. In reply to his notice M/s.SSVC vide letter dated 24.9.2008 through Shri Dilip D Yadav, Advocate (copy submitted) replied to appellant that there was some pending finishing work and as the same will be completed the balance payment will be made. The appellant submitted contra account from M/s.SSVC that in respect of such sale the payment was received as follows:*

| <i>S.No.</i> | <i>Amount</i>      | <i>Date</i>      | <i>Bank</i>  |
|--------------|--------------------|------------------|--|
| <i>1</i>     | <i>5,00,000</i>    | <i>21.8.2008</i> | <i>State Bank of Saurashtra-Cheque No.882101</i>   |
| <i>2</i>     | <i>1,23,78,000</i> | <i>11.9.2008</i> | <i>SBS-Loan transfer</i>                           |
| <i>3</i>     | <i>6,22,000</i>    | <i>30.5.2009</i> | <i>SBS-Ch.No.882108</i>                            |
| <i>4</i>     | <i>10,00,000</i>   | <i>5.1.2010</i>  | <i>SBS-Ch.No.882105</i>                            |
| <i>5</i>     | <i>10,00,000</i>   | <i>2.2.2010</i>  | <i>SBS-Ch.No.992107</i>                            |
| <i>6</i>     | <i>10,00,000</i>   | <i>25.3.2011</i> | <i>Ahmedabad Distt.Coop.Bank Ltd. Ch.No.277401</i> |
| <i>7</i>     | <i>4,00,000</i>    | <i>31.3.2011</i> | <i>ADC-Ch.No.277402</i>                            |
| <i>8</i>     | <i>4,00,000</i>    | <i>2.9.2011</i>  | <i>ADC-Ch.No.277405</i>                            |

|   |          |           |                  |
|---|----------|-----------|------------------|
| 9 | 2,00,000 | 13.2.2012 | ADC-Ch.No.277412 |
|---|----------|-----------|------------------|

*The appellant filed copy of bank account No.66028339837 of M/s.SSVC at State Bank of India, Law garden branch and copy of account No. 1258 at ADC, Manas Complex to evidence that such payment received from M/s.SSVC as credited on such date in M/s.SVC account.*

*(i) The appellant get the Building use Permission from the ADDA on 08.04.02209 vide No.04251 on the basis of approval of development permission dated 28.02.2006 vide No.PRM/54/12/64/3251.*

*(j) The appellant filed copy of Accounting Standard(AS) 9, with specific discussion under the head 'Revenue Recognition' to justify the method of accounting followed by appellant as 'proportionate completion method.' In this regard, copy of guidance note on recognition of Revenue by Real Estate Developers issued by the council of the Institute of Chartered Accountants of India was also filed where at para 11 it is mentioned that -*

*"For determining whether it is not unreasonable to expect ultimate collection, a seller should consider the evidence of the buyer's commitment to make the complete payment. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time all significant risks and rewards of ownership are transferred to the buyer, revenue recognition is postponed to the extent of uncertainty involved. For example, when the aggregate of the payment received, including the buyer's initial down payment, or continuing payment by the buyer, provide insufficient evidence of the buyer's commitment to make the complete payment, revenue is recognized only to the extent of realization of the consideration provided other conditions for recognition of revenue are satisfied."*

*(k) From the above discussion following conclusion can be drawn:*

*(a) The appellant constructed a commercial building not for his own use but for sale and shown the profit as well as income following Accounting standard AS-9 on the basis of 'proportionate completion'<sup>1</sup> method. On the basis of work*

*in progress, profit and income were shown in it previous year relevant to asstt.year 2007-08 & 2008-09 though there was neither booking nor any sale.*

*(b) During the previous year relevant to A.Y. 2009-10, through a registered deed, a sale was affected of the said complex for a consideration of Rs. 1,75,00,000 but the appellant considered only Rs. 1,23,78,000 as amount received and shown profit on the basis of work in progress accordingly. The appellant in subsequent year shown further receipt out of such Rs. 1,75,00,000 and incurred expenditure and shown income for A.Y. 2010-11 & A.Y. 2011-12. The evidences of payment reflect that though as per sale deed there was no encumbrances to property and all the payments through cheques of various amounts totaling to Rs. 1,75,00,000 l/vas received by appellant, there was dispute and only Rs.1,28,78,000 was realized during A.Y. 2009-10, while Rs.26,22,000 were realized in A.Y. 2010-11, Rs.14,00,000 were realized in A.Y. 2011-12 and finally Rs.6,00,000 in A.Y. 2012-13. It is worth noting here that though appellant realized Rs.1,28,78,000 in previous year, it has shown only Rs.1,23,78,000 i.e. Rs.5,00,000 though realized but not taken into account by appellant.*

*(c) The appellant started the construction of commercial complex vide development permission dated 8.2.2006. The Building Use permission was received vide AUDA certificate dated 08.4.2009. It is therefore, the building as commercial complex with the approved plan was completed in all respect before 8.4.2009. This is because as per settled legal procedure the AUDA on receipt of application visit & inspect the building and then grant Building use permission. The notices issued for completion of furnishing work seems to be in respect of some finishing change as requested by M/s.SSVC being the said complex was to be used as Hotel as evident from the records of 'term loan' sanctioned by SBI to M/s.SSVC. This change may be negotiated with overall price of Rs.1,75,00,000 and therefore considering the need between M/s.SSVC and appellant, upon mutual understanding such sale deed with complete details of payment was made on completion of project but a part payment was withheld by M/s.SSVC to get such work.*

*(d) The A.O. completely overlooked the fact that appellant had already shown some profit from this project following 'proportionate completion method.' The A.O. worked out the difference between Rs.1,75,00,000 and work in progress*

*of Rs.1,03,61,443 for making addition of Rs.71,38,557 which inter-alia has profit shown by appellant of Rs.5,36,023 (2,06,274 + 3,29,749) shown already by appellant in A.Y. 2007-08 and A.Y. 2008-09 resulting in double taxation of same amount. Further the A.O. overlooked the cost incurred in the form of direct expenditure of Rs.19,18,882 (13,70,560 + 5,48,322) and indirect expenditure of Rs.8,34,724 (3,61,172 + 4,73,552) by the appellant in subsequent year on such project to realise the receipt of Rs.1,75,00,000. Even if the method of computing profit as project completion method as taken by A.O. is considered, the profit so derived by A.O. of Rs.71,38,557 is in excess by such expenses though related to project i.e. expenditure of Rs.27,53,606 though incurred in subsequent years but required to be considered in working of profit since related to same project which was sold for sale consideration of Rs.1,75,00,000 as taken by A.O.*

*(e) Considering the total receipt of Rs.1,75,00,000 and total cost of Rs.1,33,55,662, the resultant profit from the project comes to Rs.41,44,338. Out of this, the appellant in five years i.e. from A.Y. 2007-08 to A.Y. 2011-12 has shown less profit by Rs.23,25,385.*

*(B) .....*

- (a) ...*
- (b) ...*

*5.2. Now coming to adjudication of various grounds, the same is as follows:*

*(a) Ground No.1 is against the total income assessed at Rs.90,90,890 against the returned income of Rs.4,42,672. This will be considered while adjudicating grounds against independent additions.*

*(b) 1. Ground No.2 is against the addition of Rs.71,38,557 as income from undisclosed source. In fact as discussed in detail above, the A.O. computed the difference between total sale consideration of Rs. 1,75,00,000 for the sale of 'Gajraj Complex' and work in progress as appearing in the books for the addition. I am partly inclined with the appellant's contentions that A.O. totally overlooked the facts that appellant following the 'proportionate completion*

*method' for accounting its profit and had already shown some profit in earlier years which A.O. has not considered. Considering the fact that Registered sale deed describe the details of various cheques for the consideration of Rs. 1,75,00,000 and the building use permission (BU) dated 08.04.2009, I am inclined with the contention of the A.O. that the project got completed as on 31.3.200. However, as evidenced from various legal notices and part of the sale consideration received in subsequent year, it is beyond doubt that the building so sold was to be utilized as Hotel, the purchaser asked from appellant for extra work or change of some finishing at the time of negotiating total sale consideration of Rs.1,75,00,000 and therefore not only the Registered sale deed were made to facilitate M/s.SSVC to get loan from bank but despite the project was completed with BU permission, such modification were pending and the same were completed by appellant in subsequent year. It is therefore, appellant is not correct to contend that project was not completed till previous year relevant to A.Y. 2011-12 when he received the complete payment. In fact project was completed during previous year and following mercantile system of accounting by appellant the profit on account of sale of project has to be considered except the profit of extra work/finishing work which was a part of total consideration of Rs.1,75,00,000 and completed by appellant in subsequent year. The appellant's contentions about following Accounting standard AS-9 is partly correct on the fact that one in real estate development is free to follow 'proportionate completion method.' Further in reference to recognition of revenue, the assessee is guarded against any encumbrances and payment as mentioned by appellant. But, in the case of appellant the facts are totally different. AT the time of Registration of property there was no doubt about any suspicion foi\* realization of money since details of cheques as given by purchaser is there and appellant not contended that any of such cheque deposited got bounced and appellant taken action against that. The Regd.deed already mentioned that such cheques were taken in possession by appellant and receipt for the same with clear peaceful possession of building was given by appellant to M/s.SSVC. It is only on account of some finishing work, there was mutual dispute related to that part which led to withholding the balance amount. Such mutual understanding and dispute is reflected by the fact that in subsequent year the appellant received amount not with the same cheques as mentioned in sale deed but from different cheques of M/s.SSVC. On the contrary, the appellant as against the receipt of*

*Rs.1,28,78,000 (Rs.5,00,000 + R.1,3,78,000) received during previous year has shown only Rs.1,23,78,000.*

*2. The other important fact to this ground therefore shifts to computation of profit by A.O. at Rs.71,38,557 for which as already discussed, I am inclined with the appellant that the same is not fully correct. On the basis of the facts that (i) appellant already disclosed the part profit in earlier years and (ii) complete transaction spread over in five years (iii) the total consideration as well as total cost, the real profit thereby income from the project comes to Rs.41,44,338 (iv) the appellant in five years shown total profit of Rs.18,18,953 (v) the appellant's books of accounts are audited and A.O. has not rejected such books of accounts as well as accounting system before making such addition and (vi) the A.O.'s approach will result into cascading effect for earlier and subsequent year for the income returned by appellant, I am of the view that such addition is not based on proper facts and method. A held by me that Regd. sale deed for the 'Gajraj Complex' was a composite deed of the project as well as changes/finishing in some particular manner for which total consideration of Rs.1,75,00,000 was paid. It is in this regard, firstly I reject the books of accounts of appellant u/s.145 of the Act since the same is not reflecting the correct profit. After this, I adopt the following method to compute such profit for the previous year.*

*(a) Total cost in the form of direct expenditure and indirect expenses incurred by appellant upto 31.3.2009 as follows:*

| <i>A.Y.</i>      | <i>Direct Exp. in Rs.</i> | <i>Indirect exp. in Rs.</i> | <i>Total</i>       |
|------------------|---------------------------|-----------------------------|--------------------|
| <i>07-08</i>     | <i>22,93,634</i>          | <i>5,590</i>                | <i>22,99,224</i>   |
| <i>08-09</i>     | <i>35,26,370</i>          | <i>88,175</i>               | <i>36,14,495</i>   |
| <i>09-10</i>     | <i>32,29,361</i>          | <i>2,41,976</i>             | <i>34,71,337</i>   |
| <i>Land Cost</i> | <i>12,17,000</i>          | <i>-</i>                    | <i>12,17,000</i>   |
|                  |                           |                             | <i>1,06,02,056</i> |

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(b) The total sale consideration received by appellant till 31.3.2009 is Rs.1,28,78,000 i.e. Rs.5,00,000 vide cheque No.882101 of State Bank of Saurashtra dated 21.8.2008 and loan transfer of Rs.1,23,78,000 dated 11.9.2008.

(c) The profit from the project = (b) – (a)  
  
= 1,28,78,000 – 1,06,02,056  
= 22,75,944

(d) Total profit already declared by appellant

|              |                    |
|--------------|--------------------|
| A.Y. 2007-08 | Rs.2,06,274        |
| A.Y.2008-09  | <u>Rs.3,29,749</u> |
|              | Rs.5,36,023        |

(e) The balance profit to be considered in the previous year relevant to A.Y. 2009-10 is (d) - (c) i.e. 17,39,921 (22,75,944 - 5,36,023).

(f) The balance consideration received by appellant till 31.3.2012 out of Rs. 1,75,00,000 are as follows:

|  |                  |
|--|------------------|
| (i) During previous year 2009-10       |                  |
| Cheque No.882108 of SBS.dtd.30.5.2009  | 6,22,000         |
| Cheque No.882105 of SBSdtd.5.1.2010    | 10,00,000        |
| Cheque No.992107 of SBS dtd. 2.2.2010  | <u>10,00,000</u> |
|  | <u>26,22,000</u> |
| (ii) During previous year 2010-11      |                  |
| Cheque No.277401 of ADC dtd.25.3.2011  | 10,00,000        |
| Cheque No.277402 of ADC dtd. 31.3.2011 | <u>4,00,000</u>  |
|  | <u>14,00,000</u> |
| (iii) During previous year 2011-012    |                  |
| Cheque No.277405 of ADC dtd.2.9.2011   | 4,00,000         |
| Cheque No.277412 of ADC dtd.13.2.2012  | 2,00,000         |

(g) *As against such receipt, the appellant incurred following expenses:*

| <i>Previous year</i> | <i>Direct expenses In Rs.</i> | <i>Indirect expenses In Rs.</i> | <i>Total</i>     |
|----------------------|-------------------------------|---------------------------------|------------------|
| <i>2009-10</i>       | <i>13,70,560</i>              | <i>3,61,172</i>                 | <i>17,31,732</i> |
| <i>2010-11</i>       | <i>5,48,322</i>               | <i>4,73,552</i>                 | <i>10,21,874</i> |
|                      | <i>!</i>                      | <i>Total</i>                    | <i>27,53,606</i> |

*(h) The profit out of such renovation / extra work considering that there was dispute between appellant and M/s.SSVC in respect of payment and therefore M/s.SSVC released the fund only after verification and to the extent of percentage of such work completed in that year for which appellant has shown profit following proportionate method of completion of contract in A.Y. 10-11 & A.Y. 11-12. But it is beyond doubt that such renovation / extra work was totally completed by 31.3.2011 and on mercantile system of accounting, the appellant should have booked the profit for such work in the previous year relevant to A.Y. 11-12. The working of such profit therefore is as follows:*

*(i) Total receipt in F.Y. 2009-10, 10-11 and subsequently is of Rs.46,22,000 (26,22,000 + 14,00,000 + 6,00,000).*

*(ii) Total expenditure for such work is of Rs.27,53,606.*

*(iii) The profit from such work is Rs. 18,68,394 (46,22,000- 27,53,606)*

*(iv) The appellant already accounted profit in A.Y. 10-11 & A.Y. 11-12 for an amount of Rs.7,68,258 (3,90,133 + 3,78,125).*

*(v) The deficiency of profit to be considered in A.Y. 2011-12 is Rs.11,00,140 (18,68,394-7,68,254).*

3. *It is therefore, at the place of blanket addition made by the A.O. of Rs.71,38,557, the addition for following two years over and above the returned income as shown by appellant is required to be made.*

(i) *Previous year 08-09*

*Relevant to A.Y. 09-10 Rs.17,39,921*

*Less: Rs. 5.14.672 (Already shown in Ret.of income)*

*Rs.12,25.249*

(ii) *Previous year 10-11 Rs.11.00.140(credit of Rs.378125 already considered) Relevant to A.Y. 11-12*

*Total Rs.23.25.389*

4 *It is therefore the A.O. is directed to delete the balance addition of Rs.59,13,308 (71,38,557 - 12,25,249) as far as impugned asstt.year is concerned. He is further directed to add / increase the income of previous year relevant to A.Y. 2011-12 by Rs.11,00,140. It is therefore the appellant gets part relief.”*

9. A perusal of the order of the CIT(A) clearly shows that the CIT(A) has taken into account all aspects relevant for determination of accrual of income in various assessment years. The revenue has not been able to point out any substantive error in the process of reasoning of the CIT(A). The CIT(A) has taken into account the fact of substantial receipts during the year as well as the consideration received and reported in subsequent assessment years. Suffice to say that the CIT(A) has correctly analyzed the facts involved and has come to a justifiable conclusion. We find that all material aspects have been examined. The CIT(A) has also taken into account the fact that the local authority has granted building use

permission immediately after the end of the FY 2009-10 (AY 2009-10) on 08/04/2009. The effect of the AS-9 was also appreciated by the CIT(A) as reproduced above. We find no infirmity in the conclusion drawn by the CIT(A). Therefore, we decline to interfere.

10. In the result, appeal of the revenue is dismissed.

**This Order pronounced in Open Court on 16 / 02/2018**

Sd/-  
(एस.एस.गोदारा)  
न्यायिक सदस्य  
( S.S. GODARA )  
**JUDICIAL MEMBER**

Sd/-  
(प्रदीप कुमार केडिया)  
लेखा सदस्य  
( PRADIP KUMAR KEDIA )  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 16/ 02/2018

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad