

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "H", MUMBAI  
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA No. 2500/Mum/2014 (Assessment Year- 2010-11)**

ACIT-16(2), Matru Mandir, 2 <sup>nd</sup> Floor, R.No. 206, Tardeo Road, Mumbai-400007	<b>Vs.</b>	M/s. Kalpavruksha Developers 8221, Parekh Market, Mama Parmanand Marg, Mumbai-400004 <b>PAN: AAGFK2907E</b>
(Appellant)		(Respondent)

Revenue by	:	Shri M.C. Omi Ningshen (DR)
Assessee by	:	Shri K. Gopal with Ms. Neha Paranjape (AR)
Date of hearing		05.07.2018
Date of Pronouncement		19.09.2018

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee under section 253 of Income Tax Act (the Act) is directed against the order of Id. Commissioner (Appeals) dated 29<sup>th</sup> January 2014 for Assessment Year 2010-11, which in turn arises from the Assessment Order passed by Assessing Officer under section 143(3) dated 26<sup>th</sup> of March 2013. The assessee has raised following ground of appeal:

- (i) Whether on the facts and circumstances of the case and in law, the learned Commissioner (Appeal) was justified in deleting the addition on account of total sales of flats of the assessee based on the statement of estimated profit at the time of survey action on 18 January 2010.
- (ii) Whether on the facts and circumstances and in law, learned Commissioner (Appeal) was justified in deleting the addition by citing the case of CIT versus Bilahari Investment Private Ltd 299 ITR 1(SC), wherein the issue was of adoption of accounting method profit or

profit showing method and in Hawara Infrastructure Private Ltd versus ACIT, Mumbai wherein the issue was rejection of project completion method by the Assessing Officer unlike present case.

- (iii) Whether on the facts and circumstances and in law, learned Commissioner appeal was justified in deleting the addition of an assessee has accepted that it was following percentage completion method and the amount of work in progress as per balance-sheet of the assessee has to be offered for taxation as per percentage completion method.

2. Brief facts of the case are that the assessee is engaged in the business of building construction and developer, filed its return of income for Assessment Year 2010-11 on 30<sup>th</sup> September 2010 declaring total income at Rs. 9,76,03,100/-. The assessment was selected for scrutiny. The Assessing Officer during the assessment proceeding observed that in the survey proceeding carried out at the premises of the assessee on 18 January 2010, the assessee offered total income of Rs. 82,08,000/- from Kemps Corner project and Rs. 8,27,11,588/- from Prabhadevi project for taxation. On going through the balance-sheet as on 31 March 2010, the Assessing Officer noted that the sales of flat at Camp Corner was Rs. 29,04,50,000/- which implied that sales of Rs. 19,92,50,000/- was made in between 18 January 2010 to 31<sup>st</sup> March 2010. This was in addition to the sales reported on the date of survey, on which no consequent profit was declared. The Assessing Officer issued show cause notice to the assessee as to why the estimated profit on Rs. 19,92,50,000/- should not be taken as per additional income and taxed at estimated profit @ 9%. The assessee filed its reply dated 20.03.2013 and contented therein that

that the total sales at Camp Corner is at Rs. 29.04 crore including the amount of Rs. 19.92 crore which has been proposed to be treated as “addition income”. The aggregate amount received against the above sales is Rs. 5.81 crore only. The outstanding receivable against the above cells is Rs.23.23 crore. The contention of the assessee was not accepted by the Assessing Officer holding that the assessee could not satisfactory explain the enhance income therefore the Assessing Officer estimated 9% profit on sales of Rs. 19,92,50,000 /-. On appeal before Id. Commissioner (Appeals) the entire addition made by Assessing Officer on estimated basis was deleted. The Id. Commissioner (Appeals) deleted the addition on estimated basis holding that the assessee has made shown suo-moto declaration and ready to pay the tax on estimated income and no further addition was justified. Aggrieved by the order of Id. Commissioner (Appeals) the revenue has filed present appeal before us.

3. We have heard learned Departmental Representative (‘DR’) for the revenue and learned Authorised Representative (AR) of the assessee and perused the material available on record. The learned DR for the revenue supported the order of assessing officer. The learned DR further submits that assessee has claimed percentage completion method. The Assessing Officer made the addition on the basis of statement recorded during the survey action and added 9% of work in progress. The learned

Commissioner (Appeals) deleted the addition without appreciating the fact that the assessee offered estimated profit at the time of survey.

4. On the other hand the learned AR of the assessee supported the order of Id. Commissioner (Appeals). The learned AR of the assessee further submits that during the assessment year only 9% work was completed. In the year 2011- 12 only 12.5% work was completed. During Assessment Year 2012-13 only 30% work was completed and during assessment year 2013-14 only 55% work was completed. The Id. Commissioner (Appeals) appreciated the facts and granted relief to the assessee. The Assessing Officer in assessment year 2010- 11 in the assessment order passed under section 143(3) made no addition in respect of Project at Camp Corner. Similarly, the assessment order for assessment year 2012- 13 was passed under section 143(3), and no addition in respect of project at Camp Corner was made. The Assessing Officer further in assessment year 2013-14 passed assessment order under section 143(3) and no addition in respect of project at Camp Corner was made. The learned AR of the assessee placed copies of assessment orders of all these Assessment Years. The learned AR for the assessee submits that the order passed by Id. Commissioner (Appeals) does not suffer from illegality or infirmity and needs no interference.
5. We have considered the rival submissions of the parties and have gone through the orders of authorities below. The Assessing Officer made the

addition on his observation that in the survey proceeding carried out at the premises of the assessee on 18 January 2010, the assessee offered total income of Rs. 82,08,000/- for taxation. On going through the balance-sheet as on 31 March 2010, the Assessing Officer noted that the sales of flat at Camp Corner was Rs. 29,04,50,000/- which implied that sales of Rs. 19,92,50,000/- was made in between 18<sup>th</sup> January 2010 to 31<sup>st</sup> March 2010. The Assessing Officer was of the view that the sales reported on the date of survey, on which no consequent profit was declared. Therefore, the Assessing Officer issued show cause notice to the assessee as to why the estimated profit on Rs. 19,92,50,000/- should not be taken as per additional income and taxed accordingly at estimated profit @ 9%. The assessee filed its reply dated 20.03.2013 and contented therein that that the total sales at Camp Corner is at Rs. 29.04 crore including the amount of Rs. 19.92 crore which has been proposed to be treated as “addition income”. The assessee further contended that the aggregate amount received against the above sales is Rs. 5.81 crore only. The outstanding receivable against the above sales is Rs.23.23 crore. The contention of the assessee was not accepted by the Assessing Officer holding that the assessee could not satisfactory explain the enhance income, therefore, the Assessing Officer estimated 9% profit on sales of Rs. 19,92,50,000/-. During the first appeal before Id. Commissioner (Appeals) the assessee contended that during the survey action the

assessee declared estimated profit of Rs. 8 2.08 crore from Camps Corner project which is in conformity with the statement recorded under section 131 of the act. The assessee had estimated the profit though it was not required to declare any profit considering the applicable amount accounting standard and accounting policies and the stage of completion of project. The percentage of work completed as in the balance sheet till 31<sup>st</sup> March 2010 was approximately 9% only. It was further explained that the Assessing Officer has treated the sales as additional income and has further proceeded to estimated net profit on the alleged additional income at a flat rate of 9% and proceeded to make the addition of Rs. 1.79 crore. The assessee also explained that the assessee has received only Rs. 5.81 crore and remaining are receivable in the subsequent years upon completion of Aquarius stage of construction. The learned Commissioner (Appeals) after considering the contention of the assessee concluded that the construction of Camps Corner project was completed only 9% and that the assessee was not obliged to estimate any profit for the year in respect of said project. However, the assessee suo-moto made a declaration and that he was ready to pay tax on estimated income of Rs. 8 2.08 lakhs being 9% of sales of Rs. 9.12 crore and no further addition is justified. We have noted that the Id. Commissioner (Appeals) also examined the work in progress in subsequent assessment year till the assessment year 2013-14 and concluded that only 55% of work was

completed till the end of Assessment Years 2013-14. The learned Commissioner (Appeals) further concluded that as per Accounting Standard-7 (AS-7) when outcome of construction contract cannot be estimated reliably, revenue should be recognized only to the extent of contract cost incurred of which recovery is probable. Further, as per Accounting Standard in transaction involving sales of goods, performance should be regarded as being achieved when all significant risk and rewards of ownership has been transferred to the buyer and the seller retains no effective control. The Commissioner (Appeals) while relying upon the decision of Hon'ble Apex Court in CIT vs. Bilahari Pvt. Ltd. (supra) wherein it was held that in the percentage completion method, periodic recognition of income is attain in order to reflect current performance. The amount of revenue recognized under this method is determined by reference to the stage of completion. The Id. Commissioner (Appeals) further relied upon the decision of Hon'ble Delhi High Court in CIT vs. Manish Buildwell Pvt. Ltd. in ITA No. 928 of 2011 dated 15.11.2011, wherein it was held that AS-7 issued by Institute of Chartered Accountants of India recognized the position that in case of construction contracts, the assessee can follow either project completion method or percentage completion method. We have noted that the assessee has been following percentage completion method which has not been disputed by Assessing Officer. The Assessing Officer merely

relied upon the disclosure made by assessee upto the date of survey. We have further noted that the assessee has suo-moto made a declaration that he is ready to pay tax on estimated income of sale being 9%. We have further noted that the Assessing Officer passed the assessment order in Assessment Year 2011-12, 2012-13 & 2013-14 and no addition on account of profit for Camp Corner Project was added. Considering the fact that no estimated addition was made by Assessing Officer in assessment order in Assessment Year 2011-12, 2012-13 & 2013-14, no estimated addition was justified for the Assessment Year under consideration. Hence, the ground of appeal raised by Revenue is having no legal force.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 19<sup>th</sup> day September 2018.

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**  
 Mumbai; Dated 19/09/2017  
 S.K.PS

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**