

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1590/AHD/2016

नधाण वष/Asstt. Year: 2012-2013

D.C.I.T, Circle-1(1)(1), 1 st Floor, Aaykar Bhavan, Race Course Circle, Vadodara-390007.	Vs.	M/s.Darshanam Life Space Pvt. Ltd. 3 rd Floor, Platinum Complex, Subhanpura, Opp. Ganga Jamna Hospital, Vadodara-390023. PAN: AADCD2030M
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आयकर अपील सं./ITA No.1662/AHD/2016

नधाण वष/Asstt. Year: 2012-2013

M/s.Darshanam Life Space Pvt. Ltd. 3 rd Floor, Platinum Complex, Subhanpura, Opp. Ganga Jamna Hospital, Vadodara-390023. PAN: AADCD2030M	Vs.	D.C.I.T, Circle-1(1)(1), 1 st Floor, Aaykar Bhavan, Race Course Circle, Vadodara-390007.
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(Applicant)	(Respondent)
Revenue by :	Shri O.P. Sharma, CIT.D.R & Shri G.C. Dasani, Sr. D.R
Assessee by :	Shri Mukund Bakshi, A.R

सुनवाई का तारख/Date of Hearing : 27/03/2019

घोषणा का तारख /Date of Pronouncement: 30/04/2019

आदेश/O R D E R

PER BENCH:

The captioned Cross appeals have been filed at the instance of the Revenue and Assessee against the order of the Commissioner of Income Tax (Appeals)- 1, Vadodara [Ld.CIT(A) in short] vide appeal no. CAB-1/117/2015-16 dated 31/03/2016 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 24/03/2015 relevant to Assessment Year (AY) 2012-13.

The Revenue has raised the following ground of appeal.

1. *“On the facts and in the circumstances of the case in law, the "Ld.CIT(A) erred in deleting the addition made on account of advances received from customers amounting to Rs.18,11,09,217/-, without appreciating the findings of the AO that the assessee has received the amounts against the sale/work executed by it, and therefore, the amount of advances received during the year by the assessee should be brought to tax during the year under consideration.”*
2. *The appellant craves leave to add to amend or alter the above grounds as may be deemed necessary.*

The issue raised by the Revenue is that the Ld. CIT (A) erred in deleting the addition of Rs. 18,11,09,217/- made by the AO on account of advances received from customers though the said sum of advances has been received against sale/work executed during the year.

2. The facts of the case are that the assessee is a Private Limited Company and engaged in the business of Real Estate Development and Building of Housing Projects. The assessee in the year under consideration is broadly engaged in 2 different projects. The assessee for these projects is using a different method of accounting. The necessary details of the projects and accounting methods used are given below:

	Project		Method
I	In Antica (comprises 3 projects)	-	Percentage Completion Method
II	In Central Park	-	Project Completion Method

2.1 The Antica project is an old project, and the assessee has booked 459 units for sales till the year under consideration whereas the assessee commenced its central park project during the year and it has booked 218 units for sale in the year under consideration.

2.2 The assessee in respect of Antica project has offered the income in the year under consideration following the percentage completion method. However, the assessee did not offer any income in respect of central park project on the reasoning that it is following project completion method and the revenue of the same will be offered in the year in which the project will be completed substantially. As such the assessee has received an advance of Rs. 12,78,91,771/- in respect of central park project which was shown as an advance in the books of accounts as on 31st March 2012.

2.3 The assessee as a whole has received an advance of Rs. 33,44,01,899.00 in respect of both the projects as discussed above in the year under consideration. There was an opening balance of the advance of Rs. 10,63,79,547.00 and accordingly closing balance of the total advance was of Rs. 44,07,81,446/- as on 31 March, 2012.

2.4 Similarly the assessee has shown the addition in work in progress amounting to Rs. 31,60,95,398.00 in the year under consideration.

2.5 The assessee also submitted that it is making two kinds of agreement namely agreement to sale of FSI/land/unfinished flat and agreement to construction concerning the central park project. As per the assessee, both the agreements were interrelated with the ultimate object to develop and sell the flat to the customer. Therefore it recognizes the revenue in respect of central park project on completion of the entire project and other activities as detailed under:

- a. *Substantial obligation of the company attached with the project which is include in the provision of common amenities such as club house, swimming pool, garden etc.*
- b. *Transfer of all significant risks and rewards of ownership of the real estate housing unit; and*
- c. *Real Estate unit is recognized as fir for occupation by the Approving Authority.*

2.6 The assessee accordingly submitted that the flat shall be handed over to the buyer after receiving the complete payment and the completion of the project. After that, the revenue from such a project shall be offered to tax.

2.7 However, the AO observed that the assessee involved in two types of agreements with the customer, one for the sale of FSI and another agreement for construction. The agreement for construction shall come into effect only after the sale of the FSI. Accordingly, the AO was of the view that the entire sale concerning the agreement of sale of FSI should have been accounted for in the books of accounts as the transaction for the sale of the FSI is fully ascertainable.

Similarly, the AO was of the view that the assessee receives payment in proportion to the construction done concerning the agreement for

construction. Hence, if the assessee follows the percentage completion method, then the entire amount received by it should have been its income from construction.

2.8 But the assessee without any justification has used project completion method in case of central park project while in all other projects it is using the percentage completion method. Accordingly, the AO decided to use percentage completion method in respect of central park project also.

2.9 Hence the AO treated the advances for a sum of Rs. 33,44,01,899/- as income in the hands of the assessee and allow the expenses of WIP related to such receipts/advances in the manner as detailed under:

Since the advances received by the customer during the year are treated as receipts in the hands of the assessee for the year, the relevant expenses of work in progress are required to be allowed to the assessee in view of principle of natural justice. The total increase in work in progress in F.Y. 2011-12 as per the P&L Account is Rs.31,60,95,398/-. However, the work in progress is in relation to the all the flats/ duplexes constructed by the assessee during the year and the assessee did not provide details of flat wise details of WIP; therefore, the allowable WIP is calculated on the basis of the project wise list of advance received from the customers (members) provided by the assessee. As per the list submitted by the assessee project-wise booking of flats/ duplexes is as follows;

<i>Sr.No.</i>	<i>Name of the Project</i>	<i>Units Booked</i>	<i>Total Units</i>
<i>1.</i>	<i>Darshanam Cnetral Park</i>	<i>218</i>	<i>720</i>
<i>2.</i>	<i>Darshanam Antica Flats</i>	<i>221</i>	<i>256</i>
<i>3.</i>	<i>Darshanam Antiza Duplexes</i>	<i>180</i>	<i>360</i>
<i>4.</i>	<i>Darshanam Insignia</i>	<i>58</i>	<i>60</i>
<i>TOTAL</i>		<i>677</i>	<i>1396</i>

In view of the above, the allowable WIP is computed as under:

$$\begin{array}{l} \text{Units Booked} \\ \text{-----} \times \text{Change in WIP during the year} \\ \text{Total Units} \\ \\ = 677 \\ \text{-----} \times 316095398 = 153292682 \\ 1396 \end{array}$$

Therefore, as computed above, an amount of Rs.15,32,92,682/- is treated as allowable WIP (WIP in relation to booked units for which advances has been received) for the year and remaining WIP of Rs.16,28,02,716/- is treated as addition to work in progress (WIP of Rs.16,28,02,716/- is treated as addition to work in progress (WIP of un-booked units) during the year.

In view of the above, an amount of Rs.18,11,09,217/- (334401899-153292682) is added to the total income of the assessee.

2.10 Therefore the AO added a sum of Rs. 18,11,09,217/- to the total income of the assessee after allowing the WIP as calculated above from advances received.

3. The aggrieved assessee preferred an appeal before the Ld. CIT (A). The assessee before the Ld. CIT (A) submitted that it had provided various types of amenities to its customers in central park project and therefore after considering various aspects/scenarios, the management of the company decided to follow the project completion method to recognize the revenue.

3.1 The assessee also submitted that it has complied with the mercantile system of accounting as notified u/s 145(1) of the Act, and also complied with the provision of section 145(2) read with rule (1) of the accounting standards notified u/s 145 of the Act.

3.2 The assessee further submitted that the accounting standard prescribed under the Income Tax Act does not apply to it. Furthermore, the Accounting Standard 7 as prescribed by the Institute of Chartered Accountants of India is not binding on the assessee to determine the taxable profits under the Income Tax Act as the assessee is a builder/developer and is not a contractor.

3.3 However the assessee has complied with the condition specified in paragraphs 10 and 11 of Accounting Standard -9 for recognition of revenue in case of the real estate sale.

3.4 The assessee also submitted that the Revenue is bound by choice of method of accounting regularly employed by it unless the method of accounting does not reflect the true income.

3.5 Thus by complying the AS-9 as well as Guidance Notes on Accounting of the Real Estate Developers issued by the ICAI the revenue is recognized in the case of Central Park Project only when the significant risk and rewards have been transferred and all the provision of amenities as provided has been completed.

3.6 The assessee further submitted that the determination of profit of Rs. 18,11,09,217/- made by the AO should have been rejected. As such the profit shall be determined using the method of accounting consistently followed (i.e. the sales/revenue recognized in the year of sale) otherwise the same receipt shall be subjected to tax twice:

- i. In the year in which the amounts are received, and
- ii. In the year in which such receipt is recognized as revenue

3.7 The Ld. CIT (A) after considering the submission of the assessee observed that the AO has wrongly considered the entire advance received by the assessee to calculate the profit as per percentage completion method. It is because the assessee was already following the percentage completion method in respect of Antica project. As such the issue under consideration was only limited to Central Park Project where the assessee was following project completion method.

3.8 The Ld. CIT (A) accordingly observed that if the contention AO is accepted then the net profit margin of the assessee comes to 33.45% in comparison to net profit margin claimed and accepted by the AO as 11.62% in assessment framed u/s 143(3) of the Act in the immediate preceding A.Y. 2011-12. Accordingly the Ld. CIT (A) rejected the profit determined by the AO.

3.9 The Ld. CIT (A) during proceedings further observed that the assessee received the total sum of advances of Rs. 12,78,91,771/- against the central park project during the year. But the assessee had entered into an agreement to sell only for 64 units during the year and received a sum of Rs. 4,41,05,974/- against the agreement with the customers. As such the balance amount of Rs.8,37,85,797/- represents the amount received from the parties with whom there was no agreement made. Accordingly the Ld. CIT (A) was of the view that the total amount of Rs. 4,41,05,974/- should be considered as turnover to calculate the profit by applying the net profit rate as disclosed in its P&L account for the F.Y. 2011-12, i.e. 13.72%. Thus the Ld. CIT (A) accordingly calculated the net profit of Rs. 56,39,740/- by taking the net profit rate of 13.72% on the turnover of Rs. 4,41,05,974.00. Thus the ground of appeal of the assessee is partly allowed.

4. Being aggrieved by the order of the Ld. CIT (A), both the Revenue and the assessee are in appeal before us. The Revenue is in appeal before us against the deletion of the addition for the amount of Rs. 18,11,09,217.00 only. On the other hand, the assessee is in an appeal against the confirmation of the addition for Rs. 56,39,740.00.

The relevant ground of appeal raised by the assessee reads as under:

1. *(a) The Ld. CIT(A)-1, Baroda has erred in law and in facts in rejecting the method of accounting adopted for recognizing revenue from Darshanam Central Park Project developed and constructed by the appellant being that of sale of unit completion method.*
(b) The Ld. CIT(A)-1, Baroda has further erred in law and in facts in holding that the appellant ought to have followed the same method of accounting for recognizing revenue for different projects and that different methods could not be followed.
(c) The Ld. CIT(A)-1, Baroda has further in law and in facts in holding that the revenue to be recognized for the year under consideration would be Rs. 4,11,05,574/- and that profit from such revenue is to be determined @ 13.72% resulting into an income of Rs. 56,39,740/-.
(d) The Ld. CIT(A)-1, Baroda ought to have accepted the regular method of accounting as followed by the appellant.

5. The Ld. DR before us submitted that the assessee should have adopted uniform method of accounting in respect of all the projects.

6. On the other hand the Ld.AR before us filed a paper book running from pages 1 to 23 and made submission as detailed under:

1. There is no bar on adopting different method of accounting for different projects ó CIT vs. Umang Hiralal Thakkar ó 42 taxmann.com 194 (Gujarat) [Page No. 42 ó 46 of the compilation filed at the time of hearing on 27.03.2019]

2. The agreement for sale and construction agreement are coterminous executed on the same day. On combined reading, it would be clear that the right and ownership in the property is not completed till the construction is completed and possession is handed over ó Refer Clause 2, Page 4, clauses 1, 2, 5, 6 & 8 ó Pages 9-12 (Paper Book filed on 20.03.2019).

In the circumstances, Unit Sale Method adopted is proper.

3. The method adopted by the appellant is accepted by the Ld. A.O. in the following assessment years:

A.Y.	Assessed u/s.	Page No.
2013-14	143(3)	65-70
2014-15	143(3)	71-75
2016-17	143(1)	-

(Page Nos. Referred are of the compilation filed at the time of hearing on 27.03.2019)

4. The appellant has offered the income, as per the method regularly followed, in the A.Y. 2016-17 to A.Y. 2018-19. The preponement by adoption of different method is tax neutral. The addition is sustained would amount to double taxation. The particulars of advances received and revenue recognized in these years is as per the enclosed chart below.

(Rs. in Crs.)

A.Y.	Advances	Revenue recognized
2011-12	0.30	-
2012-13	12.49	-
2013-14	23.45	-

2014-15	38.50	-
2015-16	29.13	-
2016-17	45.83	89.47
2017-18	44.91	95.46
2018-19	34.17	46.13

5. Reliance is placed on the order of the Honøble Indor Tribunal in the case of Ashoka Hi-Tech Builders Pvt. Ltd. vs. DCIT ó 96 taxmann.com 547 which has considered various judgments of the Honøble SC and High Courts for the following proposition:

a) Assessee is free to employ his own method of accounts and that it shouldbe consistently followed.

- Investment Ltd. vs. CIT 77 ITR 533 (SC)
- CIT vs. Krishna Swami Mudaliar 53 ITR 122 (SC)
- CIT vs. Advance Construction Co. Pvt. Ltd. 275 ITR 30 (Guj.)

b) Project Completion / Unit Sale Method is a recognized method.

- Manjusha Estates Pvt. Ltd. vs. ITO 393 ITR 644 (Guj.)
- CIT vs. Hill View Infrastructure Pvt. Ltd. 384 ITR 451 (P&H)
- Manish Buildwell P. Ltd. 204 Taxman 106 (Del.)
- CIT vs. Bilahari Investment Pvt. Ltd. 299 ITR 1(SC)
- CIT vs. Hyundai Heavy Industry Co. Ltd. 291 ITR 482

Further reliance is also placed on the following:

- CIT vs. Happy Home Corporation ó 94 taxmann.com 292 (Gujarat)
- CIT vs. DLF Universal Ltd. ó 88 taxmann.com 500 (Delhi)

c) Mere postponement of tax as a result of method employed by the assessee cannot be viewed adversely so long as the method is regularly and consistently employed.

- CIT vs. Excel Industries Ltd. 368 ITR 295 (SC)

6. The Guidance Note issued by the ICAI is only recommendatory and not mandatory (refer page 62 ó Para 13 of the compilation filed at the time of hearing on 27.03.2019).

7. Sec. 145 does not prescribe any method of accounting. It only contemplates completeness and correctness of accounts to be regularly employed.

8. Even Sec. 43CB introduced by Finance Act 2018 w.r.e.f. 01.04.2017 for the purpose of computation of income from construction and service contracts also is clarified to be not applicable to Real Estate Developers by the CBDT by a Circular No. 10/2017 dated 23.03.2017 ó Question No. 12 (refer page 64 of the compilation filed at the time of hearing on 27.03.2019).

Both the parties before us relied on the order of the authorities below as favorable to them.

7. We have heard the rival contentions and perused the materials available on record. The issue in the instant case relates whether the assessee can follow a different method of accounting for different projects. The assessee broadly is engaged in 2 different projects namely Antica and central park projects.

The assessee has further subdivided Antica projects into the 3 projects. But the assessee in respect of all the projects was following percentage completion method other than central park project. The assessee during the year has commenced central park project consisting of 20 towers and 720 flats in aggregate. The assessee considering the size of the project, market conditions, availability of the buyers and the financial constraints etc, decided to use the project completion method in respect of central park project. Therefore the assessee did not enter into any sale/conveyance deed in respect of central park project during the year.

7.1 However, the AO was of the view that the assessee should use only the percentage completion method for all the projects. Accordingly, the AO treated the advances of Rs. 33,44,01,899/- shown by the assessee as a liability in its balance sheet as the income of the assessee for the year under consideration. The AO further adjusted the amount of work in progress shown by the assessee in its balance sheet in proportion to the number of the units booked for sale by the assessee. Accordingly, the AO added the sum of Rs. 18,11,09,217/- to the total income of the assessee.

7.2 Regarding the working done by the AO to determine the income, we note that it suffers from certain infirmities. It is beyond doubt that the assessee was using percentage completion method for its all projects except central park project where the assessee was following project completion method. Thus the AO to apply the percentage completion method should have taken only the amount of advances of Rs. 12,78,91,771/- pertaining to the central park project for working out the profit as per the percentage completion method. But the AO has wrongly taken the entire advances including the

projects where the assessee was following percentage completion method. Therefore at the threshold the working made by the AO to determine the profit in respect of central park project following the percentage completion method is erroneous.

7.3 We also note that the Guidance Note issued by the ICAI is only recommendatory in nature and not mandatory. Thus the assessee is not under the obligation to follow such method of accounting mandatorily.

7.4 The other point for the consideration arises that there is no bar under the statute to use a different method of accounting for its different projects. The requirement of the provisions of section 145 of the Act is that the assessee should have followed the method of accounting regularly and it should be capable of reflecting true and fair profit of the company. As such the AO has not pointed out any defect in the method of accounting used by the assessee regularly.

7.5 We find support and guidance from the judgment of Honøble Gujarat High Court in the case of CIT v/s Umang Hiralal Thakkar reported in 42 taxmann.com 194 wherein it was held as under:

“It is required to be noted that the assessee is consistently following accounting system of project completion method. It is not disputed that the accounting system on project completion method is recognized and even approved by the CBDT. Merely because, another firm/concern, in which, the assessee might be concerned as a partner and/or proprietor is following another accounting system, i.e., on percentage completion method, it cannot be said that the assessee could not have followed the accounting system of project completion method.

It is reported that the decision of the Appellate Tribunal in the case of Vraj Developers (supra) has attained the finality as the

said decision is not challenged by the department before Higher Forum. In view of the above and more particularly, when it has been found that the assessee is consistently following accounting system of percentage completion method, which is permissible and accepted by ICAI and CBDT with respect to construction work, it cannot be said that the learned Appellate Tribunal has committed any error and / or illegality, which call for the interference of this Court. We see no reason to see to interfere with the impugned judgment and order passed by the learned Tribunal. We are in complete agreement with the view taken by the learned ITAT as well as learned CIT(A) deleting the addition of Rs.1,66,70,811/- which was made by the Assessing Officer on rejecting the accounting system on percentage completion method followed by assessee. No question of law much less any substantial question of law arise in the present appeal. Hence, present appeal deserves to be dismissed and is accordingly dismissed.

7.6 It is also important to note that the Revenue in the subsequent A.Y. 2013-14 and 2014-15 has accepted the method of accounting in respect of central park project for project completion method in the assessment framed under section 143(3) of the Act. Therefore we are of the view that the principle of consistency needs to be applied in the given facts and circumstances in view of the judgment of Honøble Supreme Court in the case of Radhasoami Satsang v/s Commissioner of Income-tax reported in [1992] 60 Taxman 248 (SC).

7.7 We also find the support and guidance from the judgment of the Honøble Apex court in the case of CIT Vs. Bilhari Investment Pvt. Ltd. reported in 299 ITR 1 wherein it was held as under:

“19. In the judgment of the Bombay High Court in Taparia Tools Ltd.'s case (supra) it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there

is no finding recorded by the Assessing Officer that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme spread over a period of time.”

There was no defect pointed out by the AO in the method of accounting regularly employed by the assessee in determining the profit.

7.8 We further note that the assessee has offered the income using the project completion method in the A.Y. 2016-17 to 2018-19 in respect of the advances shown by the assessee in the year under consideration. The relevant details have already been elaborated in the preceding paragraph. Thus the further addition to the total income of the assessee in the year under consideration will lead to double addition of the same income.

7.9 Similarly, we also disagree with the methodology adopted by the Ld.CIT (A) in determining the profit in respect of those units where the assessee entered the agreement for sale after applying the net profit rate disclosed by the assessee in the year under consideration. It is because the assessee was using project completion method in respect of central park project and no defect was pointed out by the Ld. CIT (A) in respect of the method used by the assessee. Moreover, the assessee following the project completion method has already offered the income in respect of central park project in the subsequent assessment year as discussed above. Therefore the addition in any manner in the year under consideration will lead to double addition of the same income. Accordingly, we reverse the order of the Ld CIT

(A) to the extent of the addition confirmed by the Id. CIT-A for Rs. 56,39,740.00. Accordingly, the ground of appeal of the Revenue is dismissed, and the ground of appeal of the assessee is allowed.

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

Coming to ITA 1662/AHD/2016 an appeal by the assessee

The assessee has raised the following grounds of appeal:

2. (a) *The Ld. CIT(A)-1, Baroda ought to have held that the impugned assessment order dated 24.03.2015 being unverified and unsigned by the Assessing Officer deserved to be quashed and held as invalid.*

(b) The Ld. CIT(A)-1, Baroda has further erred in law and in facts in holding that the signing of the Notice of Demand u/s. 156 annexed with the assessment order would validate the assessment and even if the assessment order remained unsigned and unverified would not vitiate the validity of the assessment.
3. (a) *The Ld. CIT(A)-1, Baroda has erred in law and in facts in rejecting the method of accounting adopted for recognizing revenue from Darshanam Central Park Project developed and constructed by the appellant being that of sale of unit completion method.*

(b) The Ld. CIT(A)-1, Baroda has further erred in law and in facts in holding that the appellant ought to have followed the same method of accounting for recognizing revenue for different projects and that different methods could not be followed.

(c) The Ld. CIT(A)-1, Baroda has further in law and in facts in holding that the revenue to be recognized for the year under consideration would be Rs. 4,1 1,05,574/- and that profit from such revenue is to be determined @ 13.72% resulting into an income of Rs. 56,39,740/-.

(d) The Ld. CIT(A)-1, Baroda ought to have accepted the regular method of accounting as followed by the appellant.

4. *The Ld. CIT(A)-1, Baroda has erred in law and in facts in upholding the action of the Ld. A.O. in the addition of Rs. 1,17,322/- being the amount of employees' contribution of P.P. and E.S.I.C. paid beyond the due dates prescribed under the respective Acts.*

Your appellant craves liberty to add, alter, delete or substitute any of the grounds of appeal herein above contained.

The assessee in the first ground of appeal has challenged the validity of the assessment framed under section 143(3) of the Act on the ground that the assessment order was not signed.

8. The learned AR at the outset argued the validity of the assessment framed under section 143(3) of the Act. But it was expressed from the bench during hearing that to decide this technical issue/ground of appeal of the assessee, reference to the original assessment records was essential. After that the learned AR suo moto did not press the impugned technical ground of appeal. Therefore we dismissed the same as not pressed.

The 2nd issue raised by the assessee is that the learned CIT (A) erred in rejecting the method of accounting used by it for recognizing the revenue and accordingly restricted the addition to 56,39,740.00.

9. At the outset, we note that the impugned issue raised by the assessee has already been adjudicated by us along with the appeal filed by the Revenue in ITA No. 1590/AHD/2016 vide paragraph number 7 of this order in detail. Hence respectfully following the same, the ground of appeal of the assessee is allowed.

The last issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of 1,17,322.00 on account of delay in the payment of employees contribution of PF and ESIC.

10. The learned AR for the assessee at the outset fairly conceded that the issue is covered against the assessee by the Honøble Gujarat High Court in the case of CIT vs. GSTRC reported in 41 taxmann.com 100. Therefore we dismiss the ground of appeal of the assessee.

In the result, the appeal filed by the assessee is partly allowed.

11. In the combined result the appeal filed by the Revenue is dismissed, and the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 30/04/2019 at Ahmedabad.

**-Sd-
(RAJPAL YADAV)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

(True Copy)
Ahmedabad; Dated 30/04/2019
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