IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH, AGRA

BEFORE SHRI SUDHANSHU SRIVASTAVA JUDICIAL MEMBER AND DR. MITHA LAL MEENA, ACCOUNTANT MEMBER

ITA No. 289/Agra/2017
(ASSESSMENT YEAR: 2012-13)

Income Tax Officer, Ward,1(1)(5), Aayakar Bhawan, Agra **(Appellant)**	Vs..	M/s Shanti Constructions, UG-13, Shanti Madhuvan Plaza, Delhi Gate, Agra (PAN: AAUFS3185N) **(Respondent)**

Revenue by:	Shri Sunil Bajpai CIT DR.
Assessee by:	Sh. Pradeep K. Sahgal, Adv. & Sh. Utsav Sahgal, C.A.

Date of Hearing	19.02.2019
Date of Pronouncement	16.05.2019

ORDER

Per Dr. M. L. MEENA, AM.

This appeal filed by the revenue is directed against the order dated 28.03.2017 passed by the Commissioner of Income Tax, (Appeals)-1, Agra, [herein after referred to as "the CIT(A)"], in the matter of assessment passed under section 143(3) of the Income Tax Act, 1961 for Assessment Year 2012-13 by the Income Tax Officer, ward 1,(1)(5), Agra(In short "the AO").

2. The grounds of appeal raised by the revenue are as follows:

"1. That the Ld. CIT(A) has erred in law and on facts in accepting the appeal of assessee on the ground of rejection of books u/s 145(3) of the IT Act.

2. That the Ld.CIT(A) has erred in law and on facts in deleting the addition of Rs.3,24,93,594/- and Rs.15,56,866/- without appreciating the fact that the project completion method has no existence since 01.04.2003.

3. That the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.50,10,000/- without appreciating the fact that assessee could not establish the genuineness of advance to customers and letter issued for verification were received back unserved.

4. That the order of Ld. CIT(A)-1, Agra being erroneous in law and on facts deserves to be quashed and that of the Assessing Officer deserves to be restored.

5. That the appellant craves leave to add or alter any or more ground or grounds of appeal as may be deemed fit at the time of hearing of appeal."

3. Facts in brief, as stated by the lower authorities are that the AO the assessee partnership firm ("the assessee" in short), has been engaged in the business of real estate and construction of buildings for past several years, assessed total income of Rs. 3,94,62,580 u/s 143(3) of the Income Tax Act, 1961 ("the Act" in short) as against returned income shown by the assessee of Rs. 1,12,120. The AO has observed that the assessee did not produce bills/vouchers before him for ascertaining the accuracy and correctness of the books of account; that it did not furnish evidence regarding closing stock; that it could only furnish the photocopy of confirmations of advances received from customers and that the assessee is following project completion method and not percentage completion method. The AO also observed that the project completion method has no existence at all since 01.04.2003 and laid emphasis on revised AS-7 introduced by the ICAI (Institute of Chartered Accountants of India) in 2002 and accordingly on that basis the accounts of construction business should

be prepared from AY 2002-03 onwards. Thus, the AO rejected the books of account maintained and determined the business profit of the assessee at Rs.3,24,93,594 during the assessment year by sales of assuming constructed area of 4,500 sq. yards by way of adopting value for the purpose of stamp duty and further made addition of Rs.15,56,866 with respect to closing work in progress on estimate basis of 15% and by considering advances of Rs.50,10,000 from customers as bogus advances.

4. In the appeal preferred by the respondent assessee before the ld. CIT(A)-I, Agra, where it was granted relief by the ld. CIT(A) with the findings that there exists no rationale of rejecting the books of account by application of provisions of section 145(3) of the Act; that the assessee is in the business of real estate since March, 2003 and there is no dispute about the fact that it has been maintaining its books of account in compliance to the project completion method consistently; that the AO's finding that the assessee has not disclosed any sale in this year or the earlier years is wrong on facts and that that the AO's assertion that Project Completion method is not legal method of computation of income for AY 2012-13 is incorrect in the light of the facts and judicial precedent cited by the assessee. On perusal of the assessment folder the CIT(A) noted that the assessee has regularly attended the assessment proceedings and books of account as well as other details were being produced before the AO, and in the assessee's own case in the assessment proceedings for AY 2014-15, the AO has accepted the project completion method and profit shown therein by the assessee and accordingly he has deleted the additions of Rs.3,24,93,594 and Rs.15,56,866. Further with regard to addition of Rs.50,10,000 for bogus advances from customers the ld.CIT(A) deleted such addition by holding that the advances from customers shown by the

appellant as on 31.03.2012 were all old balances and no part of it was received during the impugned year and thus, he did not find any reason to support the action of the AO to add this amount to assessee's income. The relevant para of the impugned order is reproduced hereunder.

> *"6.2 I have carefully considered the appellant's submission, facts of the case and the legal position in this regard.*
>
> *I find that the A.O. has rejected the appellant's books of account on the ground that bills and vouchers and the basis/evidences of/for valuation of closing stock was not produced by it during the assessment proceedings. Other reasons pointed out by the A.O. for applying the provisions of section 145(3) to the appellant's case are that it did not furnish satisfactory confirmations from the customers who had advanced money to it as also "the details e.g. estimated cost, estimated sales, etc. to calculate the profit as per percentage completion method." The A.O. has stated in the impugned order that that the appellant was "required" to declare profit every year in compliance to the percentage completion method and it has not shown any sales either in the impugned year or in any earlier year. The A.O. has explained in the same vein that the project completion method has lost its legal existence since 01.04.2003 and therefore the appellant's books of account do not reflect the correct profit earned by it during the year.*
>
> *6.2.1 Having considered the appellant's submission on grounds no. 1 to 3, I have reached to the conclusion that there exists no rationale of rejecting the appellant's books of account. It is an old assessee in the business of real estate since March, 2003 and there*

is no dispute about the fact that it has been maintaining its books in compliance to the project completion method consistently. The A.O.'s finding that it has not disclosed any sale in this year or the earlier years is wrong on facts. The A.O.'s\assertion that the project completion method is not a legal method of computation of income for A.Y. 2012-13, is not supported by facts and judicial precedents cited by the appellant in his submission. Further, I also find from a perusal of the assessment folder that the appellant had regularly attended the assessment proceedings on nine dates and books of account as well as other details were produced before the A.O. The alleged non-compliance mentioned by the A.O. on the part of the appellant relates to the last date of hearing i.e. 31.03.2015 and the order sheet entry for it does mention that there was a genuine reason for not producing the bills and vouchers again on that date. Another important fact to note in this context is that the A.O. has accepted the (project completion method and profit shown thereby by the appellant in the appellant's assessment proceedings for A.Y. 2014-15.

Hence, in light of the above facts, I am inclined to accept the appellant's arguments against the application of the provisions of section 145(3) of the Act to its case and estimation of its income at the enhanced figure of Rs. 3,79,05,714/-.

7.2 Having considered the appellant's submission and examining the facts of the case, I find that the advances from customers shown by the appellant as on 31.03.2012 were all old balances and no part of it was received during the impugned year. Under these

circumstances, I do not find any reason to support the action of the AO to add this amount to its income."

5. Apropos Ground Nos.1 and 2, the learned DR relied upon the assessment order and contended that the Ld. CIT(A) has erred in accepting the appeal of the assessee on grounds of rejection of books of account U/S 145(3) of the Act as well as in deleting the additions of Rs.3,24,93,594 and Rs.15,56,866 without appreciating the fact that the project completion method has no existence since 01.04.2003. He submitted that the assessee should have declared profit on percentage completion method because according to AS-7, revised in 2002 with effect from 01.04.2003 the `Completed Contract method' or `Project Completion method' have been scrapped. He contended that when the project period is more than 12 months, for the purpose of accuracy in computation of profit the percentage completion method is preferred over project completion method as per the ICA guidelines in the case of builders. For this purpose, he relies on "CIT vs. Realest Builders & Services Ltd.", (2008) 22 (I) ITCL 73 (SC): where *it was held that-*

"…….in cases where the department wants to tax an assessee on the ground of the liability arising in a particular year, it should always ascertain the method of accounting followed by the assessee in the past and whether change in method of accounting was warranted on the ground that profit is being under-estimated under the impugned method of accounting. If the assessing officer comes to the conclusion that there is under-estimation of profits, he must give facts and figures in that regard and demonstrate to the court that the

impugned method of accounting adopted by the assessee results in under-estimation of profits and is therefore rejected. Otherwise, the presumption would be that the entire exercise is revenue neutral."

6. Per Contra, the Ld. Counsel of the respondent assessee while addressing to Grounds 1 and 2 raised by the revenue, placed his reliance upon the order of the Ld. CIT(A) and drew our attention to the written submissions dated 23.03.2017contending, inter alia, that:

(APB, Pages 117 to 122)

"1. a) That the assessee partnership firm (hereinafter referred to as `the assessee') was constituted on 11th March, 2003 by instrument of partnership of even date and since then it is carrying on the business of builders and promoters under the name and style of M/S Shanti Constructions, Agra.

b) That the assessee had voluntarily filed its return of income relevant to A.Y.2012-13 declaring total income of Rs.1,12,120 against which the assessment was completed on total income of Rs.3,79,05,714 in ex-parte manner by ignoring the facts and past established history of its case and by completely brushing aside the submissions made, material/evidences placed on records and books of accounts, bills, vouchers and other records produced in support of the declared income. The assessment being made on mere guess work and in most illogical manner therefore the same is unjust and liable to be annulled.

c) That the various observations made by the learned AO and allegations levelled by him in the assessment order are false, contrary to the facts of the assessee's case and material/evidences placed before him and the high pitched abnormal/irrational additions have been solely based upon his wrongly drawn unilateral inferences, subjective opinion and for theoretical consideration, which being incorrect, unjust and irrational, thus are unsustainable.

d) That it is categorically submitted that the assessee had made proper compliance to each and every notice issued and queries by the learned AO and such

facts are evident from the assessee's case records and thus the various allegations levelled by the learned AO are totally incorrect, false and have got no legs to stand.

e) That the income and book results declared by the assessee are fully supported with reference to the complete and correct books of accounts, bills, vouchers and other records, which were duly produced before the learned AO during the course of assessment proceedings and the learned AO could not point out any defect therein, thus the same should have been accepted. Further the assessee has computed the income chargeable under the head 'Profit and gains of business or profession' strictly in accordance with the method of accounting consistently employed by it since the inception of business and by following the accounting standard applicable over its case and there being no deviation from the method of accounting consistently employed by the assessee since the inception of business, which has always been accepted by the revenue in past and subsequently even in the scrutiny assessment relevant to A.Y.2014-15 which has been completed U/S 143(3) of the Act vide order dated 23rd December, 2016 therefore the learned AO has erred both in law and on facts in rejecting the books of accounts and thereafter estimating abnormally high income solely on conjectures, surmises and wild guess.

2. a) That the learned AO while rejecting the books of account and thereafter estimating the income of the assessee has assigned various arbitrary and unjust reasons for such unwarranted action in para 3 at pages 2 & 3 of the assessment order. In fact after considering the facts, explanation and clarification submitted hereunder, your Honour will be able to irrestibly conclude that the reasons assigned for rejection of books of account do not exist and even they are contrary to the facts of the assessee's case.

b) That the assessee is submitting hereunder the facts, explanation and clarification with regard to various allegations levelled by the learned AO at para 3 pages 2 & 3 of the assessment order for rejecting books of account and thereafter estimating the income of the assessee :-

A] 1. No bills and vouchers produced by the assessee and thus the correctness and accuracy of the books could not be ascertained.

Such allegation is contrary to facts of assessee's case. In fact the assessee has maintained complete and correct books of account which are duly

supported by bills, vouchers and other records, which were duly produced before the learned AO during the course of scrutiny assessment proceedings, who could not point out any defect therein. Such facts are borne out and established from the following documents/material:-

a) First para at page 1 of the assessment order U/S 143(3) of the I.T.Act dated 31.03.2015 whereat learned AO has observed as under:-

" ..... In response to these notices U/S 143(2) and 142(1), Shri Pradeep Sahgal, Advocate/AR of the assessee, attended from time to time and filed written submissions and details. The Books of Account were produced and test checked. The assessee filed the required information which is placed on record after verification. The case was discussed with him."

b) Page 3 of written submissions dated 27.01.2015 (page 87 of paper compilation)

c) Page 2 of written submissions dated 30.03.2015 (page 96 of paper compilation).

d) From the perusal of order sheet it is evident that on 31.03.2015 the AR of the assessee duly apprised the learned AO that though books of account, bills, vouchers etc. were produced during earlier hearing but as Mr. Krishan Murari Khandelwal, C.A. on account of time barring matter(s) is occupied in his prefixed professional engagement thus these could not be produced on even date.

2. No evidence regarding the valuation of closing stock has been furnished by the assessee.

Such allegation is also contrary to the facts of the case of the assessee. In response to query no.5 at page 3 of written submissions dated 13.10.2014 (page 81 of paper compilation) and in response to query no.1(g) at page 2 dated 27.01.2015 (page 13 and 86 of paper compilation) the assessee duly apprised about the method of valuation of closing stock and furnished details of such closing stock and value thereof. The bills/vouchers in support of valuation were also produced.

3. Confirmations of advances of customers was not done to the satisfaction of the AO. In this regard the letters sent were returned back and the assessee could furnish only photocopy of confirmations which can't be relied upon.

Such allegation is completely contrary to the facts and evidences furnished. In fact though all the advances from customers aggregating to Rs.50,10,000 were old and had simply opening old balances brought forward from earlier year but then also the assessee, during the course of assessment proceedings furnished the following documents/evidences in support thereof:-

a) Complete details of advances from customers duly mentioning their names and addresses in response to query no.4 at page 2 of written submissions dated 19.12.2014 (page 83 of paper compilation).

b) In response to query no.2 at page 1 of written submissions dated 27.03.2015 (page 88 of paper compilation).

c) In response to query 2 – 3 pages 2 – 4 of written submissions dated 30.03.2015 (pages 96 to 98 of paper compilation)

d) Details regarding advances from customers relevant to F.Y.2011-12 alongwith copy of account and their identity and address proof (pages 47 – 78 of paper compilation).

4. Despite several reminders the assessee failed to furnish the details eg. Estimated cost, estimated sales etc to calculate as per percentage completion method.

Such allegation is completely contrary to the facts of the case of assessee and evidences placed on records. Though the assessee a builder and developer, since inception of its business, was regularly and consistently following project completion method but in compliance to query raised by the AO had duly furnished estimated cost of project, estimated sale price, details of direct expenses and indirect expenses, opening and closing work in progress which is evident from query no.5 page 3 written submissions dated 13.10.2014 (page 81 of paper compilation), Query no.5 page 2 written submissions dated 19.12.2014 (page 83 of paper compilation), Query no.1(d),(e) and (f) page 2 of written submissions dated 27.01.2015 (pages 2 to 4 and 86 of paper compilation), Query 3(b)() page 3 of written submissions dated 27.03.2015,

Query 1(a),(b),(c) pages 1 – 2 and Query 6 page 4 of written submissions dated 30.03.2015 (pages 5,6,95,96 and 98 of paper compilation).

5. The asessee is following "Project Completion Method' and not "Percentage Completion Method".

That during the course of assessment proceedings the assessee in response to query no.5 at page 2 of written submissions dated 19th December, 2014 (page 83 of paper compilation), in response to query no.3 at pages 3 to 6 of written submissions dated 27th March, 2015 (pages 90 to 93 of paper compilation), in response to query nos.7, 8 & 9 at pages 5 to 8 of written submissions dated 30th March, 2015 (pages 99 to 102 of paper compilation) had duly apprised the learned AO that it since the inception of business has been consistently following mercantile system of accounting and it has adopted project completion method as specified in accounting standard-9 (AS-9) because it is a builder and promoter and accordingly the revenue has been recognized at the time when sales take place i.e. when the seller transfers to the buyer all significant risk and reward of ownership and the seller retains no effective control of real estate transferred to a degree usually associated with its ownership.

B] That it has also beeen wrongly alleged that the assessee has not shown any sale neither before nor in this year.

In fact the complete details of 12 shops sold during F.Y.2010-11 ie. A.Y.2011-12 for Res.96,50,000 showing sl.no., shop no., name and address, area sold, date of sale and sale amount was duly filed before the learned AO. The same is filed at page 3 of present paper compilation. Further assessee during the course of assessment duly filed computation of total income, audit report U/S 44AB of the Act, audited balance sheet, Profit & Loss A/C etc., wherefrom the fact that such sale of shop of Rs.96,50,000 and profit arising therefrom were duly accounted for was evident, were placed on record, before AO. These are filed at pages 14 to 38 of present paper compilation.

Similarly the assessee had furnished the complete details of one shop sold during F.Y.2011-12 i.e. A.Y.2012-13 for Rs.7,50,000 and one shop sold during F.Y.2012-13 i.e. A.Y.2013-14 for Rs.10,00,000 showing sl.no., shop no., name and address, area sold and sale amount before the learned AO, the same is filed at page 4 of the present paper compilation. Further during the course of assessment proceedings

the assessee duly filed computation of total income, balance sheet and Profit & Loss A/C relevant to A.Yrs. 2012-13 and 2013-14 wherefrom the fact that sale of such shops and profit arising therefrom has been duly accounted for. These are furnished at pages 7 to 12 and 43 to 46 of the present paper compilation.

C] i) That the AO opined that the assessee should have declared profit on percentage of completion method because according to him after AS-7 has been revised in 2002 with effect from 01.04.2003, the 'completed contract method' or the 'project completion method' have been scrapped. While according to the assessee since it is not a contractor but a developer, thus, AS-7 is not applicable to its case, it had to be taxed as per AS-9. AS-7 is not notified by Central Govt. U/S 145(2) of the Act. AS-7 is applicable only in case of contractors and not on builders and developers. Therefore, AS-7 is not applicable on assessee, who is a real estate developer and not a contractor.

ii) That in fact AS-7 prior to its revision was applicable to both contractors as well as builders and real estate developers and according to it completion of contract method was accepted. The revised AS-7 in the year 2002 only applies to contractors and does not apply to builders and real estate developer. W.e.f. 01.04.2003 AS-9 i.e. project completion method is applicable to builders and developers and accordingly since the inception of business the assessee is regularly and consistently following project completion method.

iii) a) That Hon'ble Punjab & Haryana High Court in case of CIT Vs. Principal Officer Hill View Infrastructure (P)Ltd. (2016) 384 ITR 451 has held that *the assessee has been consistently following one of the recognized method of accountancy i.e. project completion method for computation of its income. In the absence of any prohition or restriction under the Act for doing so, it cannot be held that approach of the CIT(A) and tribunal deleting addition made by AO by applying percantage completion method was erroneous or illegal in any manner so as to call for interference by this Court.*

b) That the Hon'ble Gujarat High Court in case of CIT-IV Vs. Shivalik Buildwell (P) Ltd. (2013) 40 taxmann.com 219 has held that *if as per the acounting standard available, the assessee was entitled to claim the entire income on completion of the project and if such accounting standard was accepted by the revenue in the*

earlier years, in the present year, the Assessing Officer could not have taken a different stand.

c) That the Hon'ble ITAT Mumbai Bench `A' in case of Aditya Builders Vs. CIT (Admn) (2013) 39 taxmann.com 178 has held that *where assessee had been consistently following project completion method in respect of his two projects, Commissioner was not justified in directing AO to compute income of assessee from one project by applying percentage completion method.*

d) That the Hon'ble ITAT Ahmedabad Bench `D' in case of ACIT, Circle 2(2), Baroda Vs. National Builders (2012) 22 taxmann.com 55 has held that *in case of assessee, a contractor cum developer, revenue from development of a commercial complex has to be determined in terms of AS-9 guidelines.*

e) That the Hon'ble ITAT Chandigarh Bench in case of Hill View Infrastructure (P)Ltd. (2015) 55 taxmann.com 356 has held that *where assessee was following project completion method consistently from year to year which was accepted by department also and no defect was pointed out therein, same could not be rejected.*

f) That the Hon'ble ITAT Jaipur Bench in case of Krish Infrastructure (P) Ltd. Vs. ACIT, Central Circle, Alwar (2013) 35 taxmann.com 38 has held that *it is not mandatory for all real estate developers to work out their profits by following percentage of completion method as prescribed by Institute of Chartered Accountant of India under AS-7. Therefore, where assessee, a real estate developer, maintained its accounts on mercantile basis by regularly applying project completion method, there was no justification in rejection of its accounts by application of provisions of section 145(3) of the Act.*

iv) a) That it is vehmently submitted that when AS-7 has not been specified by Central Government under section 145(2) of the Act, AO could not have rejected accounts under section 145(3) on the ground that assessee has not followed method of accounting prescribed in AS-7, more so when the assessee is a builder and promoter and it has consistently followed project completion method in accordance with AS-9.

b) That section 145(1) of the Act states that the income chargeable under the heads 'Profit and Gains of business or profession', shall be computed in accordance with either cash or mercantile system of accounting regularly employed by

the assessee'. It is only from 1st April, 2015 that a change has brought about in section 145(2) of the Act which permits the Central Government to notify in the Official Gazette from time to time the income computation and disclosure standard, to be followed by a class of assessee or in respect of any class of income. Such change is prospective and in any event does not apply to the case on hand.

v) a) That the settled legal position as far as section 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an assessee unless he comes to a determination that notified accounting standard, have not been regularly followed by the assessee. The accounting standard of the Institute of Chartered Accountant of India did not have any statutory recognition under the Act although it is binding under the Companies Act 1956. The method of accounting followed by the assessee in the present case i.e. project completion method is certainly one of the recognized methods and has been consistently followed by it and therefore the provision laid down under section 145(2) of the Act have been misapplied over the assessee's case. In this regard the assessee wishes to invite your attention the judgement of Hon'ble Delhi High Court in the case of Paras Build Tech India (P) Ltd. Vs. CIT reported in (2017) 80 taxmann.com 335 (Delhi High Court)

In view of the facts and circumstances of the assessee's case, considering entire conspectives of the case in the light of peculiar facts, it can be irrestibly concluded that various allegations levelled by learned AO for rejecting books of account are contrary to the facts and false. It is neither proper nor justified to hold that the books of account maintained by the assessee did not present true and complete picture of its accounts and financial transactions. It is a case where accounts are complete and correct method of accounting and accounting standard has been regularly followed. True and correct profit of the business of the assessee could be deducted from such books of account. Thus the AO was not capable to change method regularly adopted by the assessee from project completion method to percentage completion method on irrelevant considerations. The provision of section 145(3)of the Act are not attracted on assessee's case. It is prayed that book results declared by the assessee be kindly accepted."

(APB, Pages 123 – 124)

"a) That from the perusal of page 3 of the assessment order, it is evident that the learned AO after rejecting books of account has arbitrarily estimated the income of the assessee from business of Rs.3,24,93,594 and further estimated net profit of Rs.15,56,866 by arbitrarily adopting net profit rate of 15% on work in progress by getting unnecessarily overinfluenced by unlawfully conducted enquiry on the back of the assessee, the outcome of which was never confronted/informed to the assessee for rebutal. Further learned AO while estimating the income of business at Rs.3,24,93,594 has adopted wrong figure of constructed area, saleable area, area sold and unsold area and sale price of Rs.18,000 per meter, stated to be market value as per stamp value, though neither provisions laid down under section 50C nor under section 43CA (inserted w.e.f. 01.04.2014) were applicable over assessee's case.

b) That the learned AO has wrongly presumed that 4500 sq.mt. area sold for Rs.6,77,26,260 during the year under consideration though as stated in foregoing para 92.90 sq.mt. area was sold for Rs.7,50,000 in A.Y.2012-13 (year under consideration) and the assessee has duly declared the relevant sale and profit there from in its return of income. It is settled law that if AO wants to use any material collected by him which is adverse to the appellant, then appellant must be given a chance to make submissions thereon. The principles of natural justice are violated if any adverse order is made on an appellant on the basis of the material not brought to his notice. If AO proposes to make an estimate in disregard of the evidence, oral or documentary, led by the appellant, he should in fairness disclose to the appellant the material on which he is going to found that estimate. He must communicate to the appellant the substance of the information proposed to be utilized to such an extent as to put the appellant in possession of full particulars of the case he is expected to meet and to further give an ample opportunity to meet it.

The Hon'ble Supreme Court in the case of Dhakeswari Cotton Mills Ltd. Vs. Commissioner of Income-tax (1954) 26 ITR 775 has held that "*the Assessing Officer is free to make enquiries at the back of the assessee but, if the material/evidence collected is sought to be used against the assessee, thus reasonable opportunity for rebuttal must be provided. The AO's failure to do so has resulted in miscarriage of justice and has thus violated the principles of natural justice*."

The Hon'ble Patna High Court in case of Motipur Zamindari Co.Prviate Ltd.and Another Vs. Agricultural Income Tax Officer, Muzzaffarpur reported in (1972)

83 ITR 778 has held that "*Assessing authorities are not bound by technical rules of evidence but if they want to use any material which is adverse to the assessee, then the assessee must be given a chance to make his submissions. The principles of natural justice are violated if an adverse order is made on an assessee on the basis of material not brought to his notice. Where assessment was made based on local enquiry and investigation and the assessee was not given an opportunity to be heard, the assessment was liable to be quashed."*

The Hon'ble Supreme Court in the case of Kishinchand Chellaram Vs. Commissioner of Income-tax, Bombay City-II reported in (1980) 125 ITR 713 has held that *"evidence to be used against assessee not shown to the assessee is inadmissible unless the opportunity to controvert has been given to the assessee*."

The Hon'ble Supreme Court in the case of Sales Tax Officer, Ganjam, and Another Vs. Uttareswari Rice Mills reported in (1973) 89 ITR 6 has held that *"if any officer is in possession of material which he proposes to use against the assessee, then the officer must before using the material bring it to the notice of the assessee and give him adequate opportunity to explain and answer the case on the basis of such material."*

The Hon'ble High Court of Jammu & Kashmir in the case of International Forest Co. Vs. Commissioner of Income-tax reported in (1975) 101 ITR 721 has held that "*even if it be taken that the Income-tax authority not bound by strict rules of evidence, any report could not be referred to and relied upon unless it had not only invited the attention of the assessee to the passages on which it intended to rely but had also given an opportunity to the assessee to explain those passages and to adduce evidence against the truth of the recitals contained therein."*

The Hon'ble Supreme Court in the case of C. Vasantlal and Co. Vs. Commissioner of Income-tax reported in (1962) 45 ITR 206 has held that *"if ITO desires to use the material so collected to facilitate assessment from private enquiry, the assessee must be informed of the material and must be given an adequate opportunity of explaining it."*

The Hon'ble Kerala High Court in the case of Capricorn Shopping Complex Vs. Income Tax Officer reported in (1996) 218 ITR 721 has held that *"if any document is relied on against an assessee to assess him to higher rate of tax, such document shall be disclosed to him and it cannot be withheld."*

c) That the allegation of the learned AO that actually entire project has been handed is contrary to the facts of assessee's case. In fact out of saleable area of 4054.98 sq.mts. consisting of 16 shops and 3 halls, only area of 1333.76 sq.mts. consisting of 14 shops could be sold and as the remaining area of 2721.22 sq.mts. comprising of 2 shops and 3 halls could not be sold, has been leased out on 17th April, 2014. Relevant lease deeds are filed.

d) That the learned AO has further erred both in law and on facts in making addition of Rs.15,56,866 towards alleged net profit by applying 15% rate on work in progress which is unjust.

e) That in the light of past established history of assessee's case, method of accounting and accounting standard adopted since the inception of business, the book results declared by the assessee be kindly accepted."

7. The Ld. AR further submitted that the assessee has purchased a plot of land measuring 4500 sq. yards situated at Gate No. 629, Mauza Kakreta, Surajbhan Compound, Near Sikandara, Teh. & Distt. Agra vide registered deed dated 5th May, 2003 (APB, page 1); that on this plot of land it has constructed a commercial complex styled as `Shanti Plaza' having saleable area of 4054.98 Sq. Mts. consisting of 16 shops and 3 halls; that in the Asst. Year 2011-12, it has sold 1147.96 Sq. Mts. area consisting of 12 shops and declared profit in the return for AY 2011-12 (APB pages 14 to 38), and in the impugned AY 2012-13 the assessee has sold 92.90 Sq. Mts. area consisting of 1 shop and declared profit in the return of income for Asst. Year 2012-13 (APB pages 7 to 12); that in Asst. Year 2013-14 it has sold 92.90 Sq. Mts. area consisting of 1 shop and declared profit in return of income for AY 2013-14 (APB pages 13 to 46) and that the remaining area of 2721.22 Sq. Mts. consisting of 2 shops and 3 halls has been leased out as per lease agreement dated 17th April, 2014 (APB, pages 184 to 274) and therefore, the allegation of AO that the assessee

has neither shown any sale in the preceding years nor in this year and the assessee had sold area of 4500 Sq.Ft. during AY 2012-13 is itself contrary to the facts of the case.

8. The Ld. Counsel relied on the Hon'ble Apex Court in the case of "*CIT vs. Hyundai Heavy Industries Co. Ltd.", [2007] 291 ITR 482/161 Taxman 191 (SC)* where it was that: -

> *"Lastly, there is a concept in accounts which called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "completed contract method" and "percentage of completion method". To know the results of his operations, the contractor preparers what is called a contract account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of cost are revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No. 7. They are "completed contract method" and "percentage of completion method". Thus, as both the methods of accounting are recognized methods of accounting, the assessee is at liberty to choose any of the above and if any one of the method of accounting is consistently followed by the assessee, the assessing officer cannot change the method of accounting to the "percentage of completion method."*

9. Further, He referred to the Hon'ble High Court of Punjab and Haryana in the case of "Commissioner of Income-tax v. Haryana State Industrial Development Corporation Ltd.", (326 ITR 640) that while following the

principle of consistency as laiddown by the Apex Court in the case of Radhasoami Satsang *v. CIT* [1992] 193 ITR 321 (SC) and *Municipal Corporation of City of Thane* v. *Vidyut Metallics Ltd.* [2007] 9 RC 521; [2007] 8 SCC 688 observed that

> *"……..the stand of the assessee respondent was not controverted when it had claimed that methodology adopted in the assessment years in question was consistent with the past. Moreover, there was no change in the circumstances in respect of the assessment years in question requiring the Assessing Officer to depart from the aforesaid methodology which has been accepted in the past"*.
>
> *"…….we find that the Tribunal has taken a correct view by applying the principle of consistency. It has rightly placed reliance on the judgment of the hon'ble Supreme Court rendered in the case of Radhasoami Satsang v. CIT [1992] 193 ITR 321 (SC). The hon'ble the Supreme Court in that case had negated the argument regarding application of principles concerning res judicata to the income-tax proceedings. It was observed that where a fundamental aspect permeating through different assessment years has been found as a fact one way or the other and the parties had allowed that position to be sustained by not challenging that order then it would not at all be appropriate to permit that position to be changed in a subsequent year. The aforesaid view has been widely accepted, followed and applied by the hon'ble Supreme Court in various judgments including the*

judgment rendered in the case of Municipal Corporation of City of Thane v. Vidyut Metallics Ltd. [2007] 8 SCC 688."

10. The Ld. AR also submitted that section 145(1) of the Act states that *income chargeable under the head "Profit and Gains of business and profession" shall be computed in accordance with either of mercantile system of accounting 'regularly employed by the assessee'. It is only w.e.f. 1st April, 2015 that a change has been brought about in section 145(2) of the Act which permit the Central Govt. to notify in the official Gazette from time to time the income computation and disclosure standard, to be followed by any claim of the assessee or in respect of any claim. Such change is prospective and, in any event, does not apply to the case of the assessee.*

11. Heard. We find that the issue in question, before us, is to decide whether there is any merit in rejection of books of account of the assessee by the AO and the applicability of method of accounting in the case of the assessee i.e. project completion method of accounting as adopted by the assessee vis a vis percentage completion method of accounting as held to be applicable by the revenue.

12. The Ld. AO has mentioned in his assessment order that the assessee did not produce any bills or vouchers or evidences regarding the valuation of stock during the course of assessment proceedings owing to which books of account of the assessee were rejected by him. However, the Ld. AR in this regard, while drawing our attention to APB pages 87 and 96 of his paper book, which are replies dated 27.01.2015 and 03.03.2015 filed by the assessee before the AO, stating therein that the assessee has produced books of account/bills/vouchers and other records maintained

and produced by it before the AO which has not been denied by the AO. This is evident from Para 1st at page 1 of the assessment order itself where AO has observed as follows:

> *" ..... In response to these notices U/S 143(2) and 142(1), Shri Pradeep Sahgal, Advocate/AR of the assessee, attended from time to time and filed written submissions and details. The Books of Account were produced and test checked. The assessee filed the required information which is placed on record after verification. The case was discussed with him."*

13. Further, the Ld. CIT(A) at para 6.2.1 of the impugned order has held that

> *"….Further, I also find from a perusal of the assessment folder that the appellant had regularly attended the assessment proceedings on nine dates and books of account as well as other details were produced before the A.O. The alleged non-compliance mentioned by the A.O. on the part of the appellant relates to the last date of hearing i.e. 31.03.2015 and the order sheet entry for it does mention that there was a genuine reason for not producing the bills and vouchers again on that date."*

14. Considering the factual matrix of the case, where the AO himself has confirmed production of books of account and other details before him, there seems no reason for the AO to hold that no books of account or bills/vouchers or evidences for the impugned year were produced before him. Moreover, when the revenue could not bring before us any contrary material against the view held by the Ld. CIT(A)

in the impugned order, the rejection of books of account of the assessee is uncalled for and this question is answered against the revenue.

15. As regards to the adoption of project completion method of accounting by the assessee, it is seen that the assessee's business came into existence from 11.03.2003 and since then it has been consistently following project completion method of accounting. The Ld. AR has contended that the assessee has never deviated from such method of accounting since the inception of the business and that the revenue had also accepted project completion method and profit shown by the assessee during the assessment proceedings for AY 2014-15 in assessee's own case which also finds mention in para 6.2.1 of the order passed by Ld. CIT(A). It is well settled that the project completion method is one of the recognized method of accounting and as the assessee has consistently been followed such recognized method of accounting thus in the absence of any prohibition or restriction under the act for doing so, it can't be held that the decision of the CIT(A) was erroneous or illegal in any manner. The judgement in the case of "CIT vs. Realest Builders & Services Ltd.", (Supra) relied by the ld. DR on method of accounting is rather in favor of the assessee and against the revenue in the peculiar facts of the present case.

16. From computation of income and factual matrix of the case, it is evident that the AO has committed error in estimation of profit from sale of shops by wrongly adopting area sold to be 4,500 sq. yards as against 92.90 sq. mts. of actual sales which has been demonstrated by the Ld. AR before

us (APB, Pgs. 1 to 4). We also find merit in the argument of the Ld. AR that during the impugned year under consideration only one shop measuring 92.90 sq. mts. was sold for Rs. 7,50,000 as against sale of Rs. 6,77,26,260 wrongly worked out by the AO in his order.

17. In the above view, we do not find any merit and substance in the submissions of the revenue. Under the circumstances and following the various judgments relied upon by the Ld. AR, the additions of Rs.3,24,93,594 and Rs. 15,56,866 made by the AO has been rightly deleted by the Ld. CIT(A). As such, we do not find any infirmity in the order of the Ld. CIT(A) on this issue and therefore, ground nos. 1 and 2 of the departmental appeal are dismissed.

18. In Ground no. 3, the department has challenged order of the Ld. CIT(A) regarding deletion of the addition of Rs. 50,10,000 made by the AO because the assessee could not establish the genuineness of advances from customers as the letters issued for verification were received back unserved.

19. The Ld. DR relied upon the order of the AO and contended that the Ld. CIT(A) has erred in deleting the addition of Rs.50,10,000 made by the AO though the assessee could not establish the genuineness of advances from customers.

20. On the other hand, the Ld.AR while placed his reliance upon the order of Ld. CIT(A) (APB, Pg. 125) contending, inter alia, that-

> "a) That as stated in foregoing para during the course of assessment proceedings the assessee has placed on records

and/or produced before the learned AO various evidences/material in support of advances of Rs.50,10,000 received from customers, in the light of which genuineness of these accounts were beyond doubt established.

b) That in fact in the accounts relating to advances from customers there were simply old credit balances which were brought forward from earlier years and during the year under consideration no fresh credit/addition made therein therefore in view of well settled principle of law laid down on the basis of various legal pronouncements no addition was called for with regard to advances received from customers aggregating to Rs.50,10,000. In this regard the assessee wishes to invite your Honour's kind attention to the following authoritative decisions: -

1. M/S KULDIP INDUSTRIAL CORPN. Vs. INCOME TAX OFFICER (1987) TAXATION 84(4) - 96 (Chandigarh Bench)

HELD: - *No addition could be made with regard to credit balances brought forward from earlier assessment years.*

2. KAILASH RICE MILLS Vs. INCOME TAX OFFICER (1983) 32 CTR (Trib.) 18 (Chd.)

HELD:- *Unexplained cash credits appearing in the account books on the date prior to the date of commencement of the previous years could not be assessed as the income of assessee*.

3. INDERJEET Vs. INCOME TAX OFFICER (1982) 14 TTJ 489 (Del.)

HELD :- *The opening balance of the capital which was the closing balance of the capital in earlier business could not be treated as income from undisclosed source.*

4. JAGTAR SINGH Vs. INCOME TAX OFFICER
(1999) 65 TTJ 476 (Del)

HELD :- *Where assessee's statement of affairs for past years are available on records genuineness of brought forward capital cannot be doubted.*

It is prayed that your Honour kindly delete the arbitrary and unjust addition of Rs.50,10,000 treating advances received from customers as bogus."

21. The Ld.AR further filed a paper book (APB pages 47-48, 83,88-89 and 96-98) to support his contention that assessee had furnished complete details and documents to substantiate the genuineness of advance of Rs.50,10,000 from the customers, which had simply opening old balances in their accounts in the impugned year and therefore, the Ld. CIT(A) has rightly deleted arbitrary and unjust addition of Rs.50,10,000.

22. We find that the assessee in fact has not taken any advances from customers during the impugned assessment year but these were old balances brought forward from previous assessment years which is supported by the copies of ledger accounts of the advances received from customers. Considering the facts of the case and the various judicial precedents relied upon by the assessee, it is a trite principle of law that addition of Rs.50,10,000 regarding credit balances brought forward from earlier assessment years cannot be made.

23. We do not find merit in the ground raised by the revenue in respect old credit balances of Rs.50,10,000 and therefore we upheld the order of

the CIT(A) and thus ground number 3 of the departmental appeal is also dismissed.

24. Ground No.4 is consequential and Ground No.5 is general in nature, thus require no adjudication.

25. In the result, the appeal filed by revenue is dismissed.

Order pronounced in the open court on 16/05/2019.

Sd/-	**Sd/-**
(SUDHANSHU SRIVASTAVA)	**(DR. MITHA LAL MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

**AKV/DOC*

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT AGRA