

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

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**ITA No. 2328/Kol/2018  
Assessment Year: 2015-16**

***Asstt. Commissioner of Income Tax, Circle - 40, Kolkata.....Appellant***  
***Vs.***

***M/s. Salarpuria Simplex Dwelling LLP.....Respondent***  
***7, Chittaranjan Avenue***  
***Kolkata - 700 072***  
***[PAN : ABUFS 2750 G]***

**C.O. No. 134/Kol/2018  
A/o ITA No. 2328/Kol/2018  
Assessment Year: 2015-16**

***M/s. Salarpuria Simplex Dwelling LLP.....Appellant***  
***7, Chittaranjan Avenue***  
***Kolkata - 700 072***  
***[PAN : ABUFS 2750 G]***

***Vs.***

***Asstt. Commissioner of Income Tax, Circle - 40, Kolkata.....Respondent***

**Appearances by:**

*Shri Dhrubajyoti Ray, JCIT, D/R, appearing on behalf of the Revenue.*  
*Shri S. Jhajharia, FCA, appeared on behalf of the assessee.*

Date of concluding the hearing : March 4<sup>th</sup>, 2020

Date of pronouncing the order : May 29<sup>th</sup>, 2020

**ORDER**

**Per J. Sudhakar Reddy, AM :-**

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals) - 12, Kolkata, (hereinafter the "ld. CIT(A)"), passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), for the Assessment Year 2015-16. The assessee has filed a cross-objection being C.O. No. 134/Kol/2018 against the appeal of the revenue in ITA No. 2328/Kol/2018.

2. The assessee is a partnership firm and is in the business of real estate development. The only issue that arises for adjudication in this appeal is whether the ld. CIT(A) was right in holding that the Assessing Officer was wrong in changing the

method of accounting of the company from, Project Completion Method to Percentage Completion Method, while computing income of the assessee.

3. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

4. The ld. CIT(A) framed the following questions of law:-

- 1) Whether the method of accounting followed consistently and regularly and accepted by the Revenue in earlier year can be disturbed by the AO.
- 2) Whether the AO has a right to re-compute/re-calculate the profit of the assessee without rejecting the books of accounts.
- 3) If the aforesaid two questions are decided against the assessee then, whether the assessee be treated as contractor and "Percentage Completion Method" (as per Accounting Standard issued by ICAI) so prescribed by it can be invoked in the assessee's case.
- 4) If the answer to Question No. 3 is affirmative, then whether the revenue so recognized and the expenses so considered by AO by treating the entire project as one is right and therefore merits of the question of computation so made by the AO.

4.1. The questions were answered by the ld. CIT(A) in the following manner:-

*"Having considered the aforesaid, I intend to first discuss and decide on Questions No. 1 & 2. Sec. 145(1) of the IT Act states that the income chargeable under the head profit and gain 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 effect from 1.4.2015 that a change has been brought about in sec. 145(2) which permits the Central Govt. to notify in the Official Gazette from time to time, the income computation a disclosure standard be followed by any class or assessee in respect of any class income, however, that change is prospective as such. However, as far as Sec. 145 is concerned, it is not open to an AO to modify the results so declared in the accounts or to reject the accounts of assessee unless he comes to a determination that notified accounting standard have not been regularly followed by the assessee. As regards the accounting standard issued by ICAI did not have a statutory recognition under the Income-tax Act although it is binding as per the Companies Act, 1956. The method of accounting followed by the appellant-assessee in the present case i.e. "Project Completion Method" is definitely one of the recognized method and has been consistently followed by it. Indeed, I find that the*

Revenue has accepted such "Project Completion Method" in the preceding assessment year i.e. A.Y 2014-15 hence the AO's attempt to invoke "Percentage Completion Method" under Accounting Standard 7 cannot be upheld in any manner. Even otherwise, I find that books of account of the appellant-assessee have not been rejected by the AO by invoking the provisions of sec. 145(3) and hence the question to answer No. 1 & 2 is in favour of the appellant-assessee and the AO's action in such regard is rejected. While adjudicating upon the aforesaid aspect I also have gone through the various aspects of Accounting Standard 7 and the "FAR" issue by the ICAI and the various judicial precedents as well. On a perusal of the Accounting Standard 7, it is very clearly mentioned that the Accounting Standard 7 does not apply Builders, Developers and hence from inception AO is on a wrong footings sir the Developer is developing the units on its own behalf and not on behalf of ultimate buyer and the ultimate buyer gets the property only when the possession of the same is handed over on completion of the project and receipt of the occupation certificate from the local authorities. Even the reliance as Hon'ble Supreme Court judgment treating the appellant as a mere contractor is misplaced since the issue in such case pertained to "employment" is "contract" and such judgment doesn't have any applicability to appellant's case.

It has also to be understood that the revenue cannot compel the assessee to choose a particular method and the option is always with the assessee to follow a method and not with the Department to follow the method of its choice and the following judgments very categorically held in such respect.

*Juggilal Kamalpat Bankers v. CIT (1975) 101 ITR 40 (All.)*

*CIT v. Smt Vimla D. Sonwane (1994) 75 Taxman 335 (Bombay)*

*CIT v. Macmillan & Co. (1958) 33 ITR 132 (SC)*

*MKB Asia Pvt. Ltd. v. CIT (2008) 167 Taxman 256 (Gauhati)*

*Fort Projects (P) Ltd. v. DC IT (2011) 63 DTR (Kol, ITAT), 145*

As far as a "contract" per se is concerned, the property always also remains with the "Contractee" and the Contractor merely performs on the impugned property whereas in the case of development of a property the Developer who has a lien of the property and the property is transferred only upon the completion of the project and the receipt of the occupation certificate. Hence, the invocation of "Percentage Completion Method" treating appellant as Contractor by the AO is flawed and cannot be upheld. While adjudicating the aforesaid issues, I also have gone through the following judicial precedents and place reliance on them.

***CIT v. Manish Build Well Pvt. Ltd. (2011) 16 taxmann.com 27 (Del)*** - Department had accepted assessee's method of accounting namely Project Completion Method in earlier year and therefore there was no justification for adopting the Percentage Completion Method in subsequent year on selective basis.

***CIT (Central), Gurgaon v. Principal Officer, Hill View Infrastructure Pvt. Ltd. (2017) 81 taxmann.com 58 (P&H)*** - Where assessee company had been consistently following Project Completion Method to compute profits in real estate business, Assessing Officer could not apply Percentage Completion

Method [In favour of assessee]

**Nandi Housing Pvt. Ltd. v. DCIT (2004) 2 SOT 395 (Bang.)** - Project Completion Method- Whether since, in instance case, it was not department's case that assessee had not followed said method in its true requirements nor department had found any mistake in method which assessee had followed from year to year, it was duty of Assessing. Officer to accept results disclosed by assessee from method of accounting adopted, which itself was a recognized method in class of business in which assessee fell-Held, yes

**H. M. Constructions v. JCIT (2003) 84 ITD 429 (Bang.)** - It could not be stated that assessee's method of accounting was prudent in as much as income was accounted for only on completion of project or near completion where revenue could be measured with certainty after providing for possible liability or Losses-Held, yes

**CIT v. DLF Universal Ltd (2017) 88 taxmann.com 500 (Del)** - Project Completion Method-Where assessee dealing in real estate was uniformly following Project Completion Method according to which only upon execution of conveyance/ sale deed, amount received from prospective buyers as advance would be treated as profit and brought to tax, possibility that in law certain flat or plot buyers could be handed over possession earlier per se would not result in any distortion to profit and could not be ground to reject said method of accounting. [In favour of assessee]

**CIT (Central), Surat v. Happy Home Corporation (2018) 94 taxmann.com 292 (Gujarat)** - Where assessee engaged in construction business, was following Project Completion Method, its income could be brought to tax only in year when sale deeds of units sold were registered even though sale deeds of units sold were registered even through sale consideration might have been received earlier from buyer – Tribunal accepted assessee's contention that since firm was following Project Completion Method for offering income to tax, same would be subjected to tax upon completion of sale, though amount may have been received earlier from buyer [In favour of assessee]

*ITO v. Matushree Builders & Developers - ITA No. 2652IMum/2016 dt. 29.11.2017*

*Haware Infrastructure Pvt. Ltd. v. ACIT - ITA No. 2642IMum/2012 dt. 4.10.2013*

*DCIT v. Friends Buildtech & Developers Pvt. Ltd. - ITA No. 2102/Del/2012 dt. 11.3.2016*

*Prestige Estate Projects Pvt. Ltd. v. DCIT (2010) 129 TTJ 680 (Bang.)*

*Hence, as observed above, I hereby conclude that the questions No. 1 & 2 so framed by me goes in favour of the appellant and the AO's action in such respect is rejected."*

5. We see no infirmity in these findings of the Id. CIT(A). Project Completion Method is a well recognised and accepted method of accounting. This method is consistently and regularly followed by the assessee since this project was undertaken and the method has been accepted by the department for the Assessment Year 2014-15 in an assessment order passed u/s 143 of the Act. The principle of consistency has to be applied. Nothing needs to be added to the detailed finding of the Id. CIT(A). The case law

discussed is appropriate. Thus, we uphold the finding of the Id. CIT(A) and dismiss this appeal of the revenue.

6. Coming to the cross-objections, these are filed only in support of the order of the Id. CIT(A).

7. In the result, appeal of the revenue is dismissed and the cross-objections raised by the assessee is dismissed as infructuous.

***Kolkata, the 29<sup>th</sup> day of May, 2020.***

***Sd/-***  
**[Aby T. Varkey]**  
Judicial Member

Dated : 29.05.2020  
{SC SPS}

***Sd/-***  
**[J. Sudhakar Reddy]**  
Accountant Member

*Copy of the order forwarded to:*

***1. M/s. Salarpuria Simplex Dwelling LLP***  
***7, Chittaranjan Avenue***  
***Kolkata - 700 072***

***2. Asstt. Commissioner of Income Tax, Circle - 40, Kolkata***

3. CIT(A)-

4. CIT- ,

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

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches