

IN THE INCOME TAX APPELLATE TRIBUNAL "H"  
BENCH, MUMBAI

BEFORE SHRI VIKAS AWASTHY, JM &  
SHRI S. RIFAUR RAHMAN, AM

आयकरअपीलसं./ I.T.A. No. 605/Mum/2019  
(निर्धारणवर्ष / Assessment Year: 2014-15)

DCIT 1(2)(1), R. No. 535, AayakarBhavan, M. K. Road, Mumbai-400 020	<b>बनाम/</b> Vs.	M/s Kumar Properties Pvt. Ltd. 21, Woundboy Road, HazarimalSomani Marg, Opp-Mumbai Gymkhana, Fort, Mubmai-400 001
स्थायीलेखासं./जीआइआरसं./PAN No. AABCK8464E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

C.O. No. 14/Mum/2020  
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s Kumar Properties Pvt. Ltd. 21, Woundboy Road, HazarimalSomani Marg, Opp-Mumbai Gymkhana, Fort, Mubmai-400 001	<b>बनाम/</b> Vs.	DCIT 1(2)(1), R. No. 535, AayakarBhavan, M. K. Road, Mumbai-400 020
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	ShriDrop Singh Meena, DR
प्रत्यर्थीकीओरसे/Respondentby	:	ShriRajanVora/Shri Nikhil Tiwari, ARs

सुनवाईकीतारीख/ <b>Date of Hearing</b>	:	06.02.2020
घोषणाकीतारीख / <b>Date of Pronouncement</b>	:	08.07.2020

आदेश / ORDER

**Per S. Rifaur Rahman (Accountant Member):**

The present appeal as well as cross objection have been filed by the revenue as well as assessee are against the order of Ld. Commissioner of Income Tax (Appeals) - 14 in short referred as 'Ld. CIT(A)', Mumbai, dated 31.07.18 for Assessment Year (in short AY) 2014-15 respectively.

2. Since, the facts raised in the appeal filed by the revenue as well as C.O. filed by the assessee are identical, therefore for the sake of convenience; they are clubbed, heard and disposed of by this consolidated order. Firstly, we are dealing with appeal filed by the revenue.

3. The brief facts of the case are, the assessee filed its return of income for AY 2014 – 15 on 15.09.2014 declaring total loss at 2, 75, 34, 580/-. The return was processed under section 143 (1)

of the income tax act, 1961 (in short Act). The case was selected for scrutiny under CASS and notice under section 143(2) and 142 (1) of the act were issued and served on the assessee. In response AR of the assessee filed relevant information as called for.

4. During assessment proceeding, the assessing officer observed that assessee is following revenue recognition method on project completion basis and assessee was asked why assessee should not recognise revenue based on percentage completion method as per the guidance note issued by ICAI. In response, assessee submitted that assessee is following para 11 of accounting standard 9 issued by ICAI. The method adopted by the assessee that is project completion method, also recognised method of revenue recognition in real estate business and the guidance note issued by ICAI is not mandatory. Assessee has followed the current method of accounting consistently over the years. After considering the submissions of the assessee, assessing officer heavily relied on the guidance note issued by ICAI and observed that the project is completed 61% and assessee has already sold to the extent of 58,340 sq. ft. upto the end

of this assessment year. Accordingly, he computed the total income of the assessee based on the percentage completion method and allowed set off of brought forward losses to the extent of the profit and determined by the assessing officer i.e. Rs. 1,73,39,585/-.

5. Aggrieved with the above order, assessee preferred an appeal before Ld CIT(A). Before him, assessee made a detailed submission and after considering the detailed submissions of the assessee, Ld CIT(A) accepted the contention of the assessee that accounting standard 7 is applicable only to contractor. After revision of AS 7, real estate developers were governed by AS 9, which is applicable in general for enterprises engaged in sale of goods, rendering of services, etc. Ld. CIT(A) observed that assessee is a developer and not a contractor accordingly he accepted the method of accounting followed by the assessee consistently over the years and accordingly allowed the ground raised by the assessee.

6. Aggrieved with the above order, the revenue is in appeal raising following grounds of appeal:-

1. *"Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred In holding that it was not open to the AO to reject the accounts of the assessee u/s.145(1) of the Act where, in fact, the assessee has been regularly following mercantile system of accounting and the AO did not disturb the system of accounting?"*.

2. *" Whether in the facts and circumstances of the case and in law, the assessee was required to follow the Percentage Completion Method for its income and expenditure reporting, following the Guidance Note of the ICAI in this regard, and the Ld.CIT(A) erred in rejecting the computation of income by the AO following the same Guidance Note on accounting for Real Estate Transaction, dt. 11.02.2012, which recommends the "Percentage Completion Method"?"*

*The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.*

7. Against the above appeal, assessee also filed CO with the delay of 10 days. At the time of hearing, Ld. AR brought to our notice reasons for filing of above such cross objection belatedly.

The reason submitted by the assessee is reasonable, accordingly condoned and proceeded with the appeal.

8. Before us, Ld DR submitted that assessee is a builder and also a private company, assessee is obligated to follow accounting standard 7 issued by ICAI. He brought to our notice guidance note issued by ICAI asper which it is mandatory on the part of the assessee to follow percentage completion method. He submitted that assessee is following project completion method, which is not the right method. The ICAI has issued specific guidance note for real estate business and it is mandatory guidance note. He heavily supported the findings of assessing officer and relied on the assessment order.

9. On the other hand Ld AR submitted as below:-

*15. The Assessee is in business of construction of buildings and consistently follows project completion method for recognizing the revenue i.e. revenue is recognized once the project is completed and completion certificate is received.*

*16. During the year under consideration the Assessee was engaged in developing the residential project "Kumar Panchsheel" at Dhankwadi site in Pune. The project consists of Building 'A' having 68 flats with a total area of 67,184 sq. ft and Building 'B' for which*

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*construction was not started during the year under consideration. The completion certificate of the Building 'A' was received on 4 July 2014 i.e. in AY 2015-16.*

*17. Further, the year-wise sale summary of Building 'A' of Project Panchsheel offered to tax is tabulated as under:*

Building	Sale for AY 2014-15		Sale for AY 2015-16		Sale for AY 2016-17		Sale for AY 2017-18		Sale for AY 2018-19		Balance	
	No. of flats	Area (in sq.ft)	No. of flats	Area (in sq.ft)	No. of flats	Area (in sq.ft)	No. of flats	Area (in sq.ft)	No. of flats	Area (in sq.ft)	No. of flats	Area (in sq.ft)
A	-	-	64	63,232	1	988	2	1,976	-	-	1	988

*18. The income earned from the sale of flats in the impugned project has been offered to tax in the assessment years beginning from AY 2015-16 onwards as building 'A' was completed on 4 July 2014 i.e. AY 2015-16 following POCM.*

*19. However, the learned AO rejecting the books of accounts of the Assessee for AY 2014-15, computed total income by following percentage completion method basis Guidance Note on Accounting for Real Estate Transaction issued by ICAI dated 11 February 2012, without appreciating the fact that the income of 64 flats out of total 68 flats of Building 'A' was offered to tax by assessee in subsequent year AY 2015-16 and also accepted by the AO in assessment order passed under section 143(3) of the Act dated 13 November 2017.*

**Submission on merits**

**II. Department appeal Ground. No 1 and Assessee's CO No.1: Submission on POCM accepted by the department in the preceding years cannot be rejected**

20. The Assessee submit that since inception, the Assessee is following POCM method for revenue recognition and the same was not disturbed by the learned AO either in earlier years and in subsequent years (**copy of the assessment order of AY 2006-07 and AY 2015-16 are enclosed herein at page no. 160 to 161 and 162 to 168 of the Paper Book respectively**).

21. The details of different projects undertaken by the Assessee following project completion method for recognizing revenue are summarized as under:

<i>Project Name</i>	<i>AY of Commencement</i>	<i>AY of Completion</i>	<i>AY in which Income is first time offered to tax</i>	<i>Whether Assessment u/s 143(3) was done</i>
<i>Kumar Parag</i>	<i>AY 200 1-02</i>	<i>AY 2002-03 to 2004-05 for multiple towers</i>	<i>AY 2002-03</i>	<i>No</i>
<i>Kumar Pushkar</i>	<i>AY 2003-04</i>	<i>AY 2006-07</i>	<i>AY 2006-07</i>	<i>Yes</i>
<i>Kumar Prayag</i>	<i>AY 2005-06</i>	<i>AY 2006-07</i>	<i>AY 2006-07</i>	<i>Yes</i>
<i>Kumar Platinum</i>	<i>AY 2003-04</i>	<i>AY 2006-07</i>	<i>AY 2006-07</i>	<i>Yes</i>
<i>Kumar Panchsheel</i>	<i>Construction started in AY 2011-12*</i>	<i>AY 2015-16</i>	<i>AY 2015-16</i>	<i>Yes</i>

*'Initial commencement certificate received in AY 2003-04 which modified from time to time*

22. Thus, in view of the above, the Assessee submits that since there is no change in the facts of the case from earlier years, the method of revenue recognition consistently followed by the Assessee should be accepted.

**III. Submission on applicability of principles of AS-9 'Revenue recognition' in real estate projects as prescribed in the Guidance Note of 2012:**

23. The Assessee further wishes to submit that the Accounting standards (AS) issued by the ICAI are mandatory for the assessee to be followed. However, the Guidance notes issued by ICAI is a general guidance given for accounting purposes and is not mandatory to be followed. The Guidance Notes issued by ICAI is for better compliance and uniformity for the accounting purpose and is optional for the assessee to follow. Thereby as mentioned above, the Guidance note of 2012 issued by ICAI is not mandatory and assessee can choose any one of the prescribed method in the note.

24. Thereby, in the given case the Assessee followed the project completion method and recognized the revenue as per AS - 9 and the key conditions stated in Para 4 of the Guidance Note (**enclosed herein at page no. 141 to 159 of Paperbook**), which needs to be satisfied when revenue is recognized as per AS-9/POCM method as follows:

- a) The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;
- b) The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction;

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c) *No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales; and*

d) *It is not unreasonable to expect ultimate collection of revenue from buyers.*

*Thus, if the aforesaid conditions are satisfied, then the revenue can be recognized as per the principles of AS-9/POCM method.*

*25. Tabulated below is the summary of conditions mentioned in AS-9 and the facts of the Assessee for the project under consideration:*

<b>Sr. No.</b>	<b>Conditions</b>	<b>Facts of the case</b>
1	<i>Transferred all significant risks and rewards</i>	<i>The building was completed in AY 2015-16 and the sales deed also has been entered into with the customer during the same period. Accordingly, all the potential risks has been transferred to the customer only after the final deed in AY 2015-16.</i>
2	<i>Possession transferred</i>	<i>The possession is handed over to the customer only on receipt of completion certificate and full consideration of payment.</i>
3	<i>No uncertainty about the amount of consideration and collection of the same</i>	<i>The consideration is fixed at the time of agreement to sale. However there lies uncertainty as to the collection of the same. Hence, till the receipt of full consideration, possession is not transferred by the Assessee.</i>

*26. Further, the Income Computation and Disclosure Standards (ICDS) issued by the Government which are applicable from AY 2017-18 provides ICDS III and IV for Construction Contracts and Revenue recognition wherein only the percentage completion method is applicable. However, the ICDS are not applicable to the assessee in the current year under consideration.*

27. *In view of the above, it can be inferred that in Assessee's case, since the aforesaid conditions are prevalent, therefore the Assessee has been following the POCM method for recognition of revenue. Thus, only when the project is completed and possession is handed over to the customers, along with the receipt of full consideration, the Assessee recognizes the revenue in its books of accounts.*

28. *The Assessee has stated below the key considerations basis which the POCM method has been adopted for revenue recognition on sale of flats:*

a. *The period of construction of the projects spans over 3-5 years, and in case it may increase depending upon the size of the project, nature of project i.e. greenfield project or redevelopment project;*

b. *The construction of the project requires approval from various regulatory authorities which poses an uncertain risk for completion of the project;*

c. *Amendments to the approvals already obtained for construction of project, in case of regulatory changes or any alteration to the plan (if any) resulting from a dispute created by a third party,*

d. *Demand and supply situation prevailing in the market and other factors such as interest rates on borrowings etc.*

29. *The considerations stated above are some of the key challenges for completion of the project. In view of the aforesaid uncertain risks, the Assessee has adopted POCM method for recognition of revenue from sale of flats, as at this stage i.e. completion stage only the potential risk is mitigated and the risk and rewards related to the ownership gets transferred.*

30. *As per AS-9, revenue from sale of goods shall be recognized only when the property in the goods is*

*transferred to the buyer for a consideration i.e. with transfer of significant risk and rewards of ownership to the buyer. In the current case, this practice is followed by the Assessee i.e. only on receipt of completion certificates, flats are ready for possession and full consideration is received, then only revenue is recognized. Therefore, it is submitted that the Assessee has followed the best method suitable to its business.*

**IV. AO cannot change the method of revenue recognition to PCM where the Assessee has been consistently following the project completion method for recognition of revenue.**

*31. The Assessee submit that since inception, the Assessee is following POCM method for revenue recognition and the same was not disturbed by the learned AO either in earlier years and in subsequent years and thereby reliance is placed on the following judicial precedents:*

*In this regard, the Assessee wishes to place his reliance on the decision of the Hon'ble Delhi High Court in case of **CIT Vs. Manish Build Well Pvt Ltd Vs. CIT (2011) 245 CTR 397 (Del)** [enclosed at page no 172 to 185 of the Paper book], wherein the Hon'ble Delhi High court, following the decision of Hon'ble Supreme Court in case of **CIT Vs. Hyundai Heavy Industries Co Ltd (2007) 291 ITR 482** and in case of **CIT v. Bilahari Investment (P.) Ltd. [2008] 299 ITR 1**, has held that the project completion method is one of the recognized methods of accounting and it cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the IT Act. The relevant para of the order is reproduced below for Your Honour's ease of reference.*

*"9. After the above judgments of the Supreme Court it cannot be said that the project completion method*

*followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the Income Tax Act. Accounting Standards 7 (AST) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method"*

*33. Further, relying on the aforesaid decision of Manish Build well (Supra), the Hon'ble Punjab and Haryana High Court in case of CIT Vs. Hill View Infrastructure (P) Ltd (2013) 81 taxmann.com 58 (P&H HC) [enclosed at page no 186 to 189 of the Paper Book], has*

*held that project completion method followed by the Assessee is a correct method of revenue recognition.*

*34. The Assessee wishes to place reliance on the decision of Hon'ble Kamataka High Court in case of Rema Country Holdings Ltd. [2012] 18 taxmann.com 184 (Kamataka) wherein it is held that Project completion method is recognized method of accounting and can be followed where account books are available. The relevant extract of the same is reproduced as under:*

*"8. The Tnbunal in the case of H.M. Constructions v. Joint CIT [2003] 84 ITD 429 (Bang.) and this Court in the case of Khoday Distillers Ltd. (supra) has held that the Project Completion method is a recognized method. Once the books of account were maintained, it is the 'Project Completion method' which has to be followed."*

*35. In view of the above decisions, the Assessee wishes to submit that the project completion method is one of the recognized method of accounting which has been consistently followed by it and in the absence of any*

*restriction or prohibition under the Act for doing so, the learned AO cannot force the Assessee to follow the percentage completion method of accounting.*

*36. The Assessee wishes to place his reliance on the decision of **Jurisdictional Hon'ble Bombay High Court in case of CIT Vs. Aditya Builders (2017) 378 ITR 75 (Bom HC) [enclosed herewith at page no 169 to 172 of the Paper book]**, wherein it has been held that if the Assessee had adopted project completion method of accounting and had been consistently following it over years, it was not open to revenue to reject such method. The relevant para has been reproduced below for your Honour's reference:*

*"8..... It is a settled position of law that where the revenue has accepted a particular method of accounting over several years, the same is not to be lightly substituted unless the revenue is able to show that the same distorts the profit for a particular year. As held by the Apex Court in **United Commercial Bank v. CIT [1999] 240 ITR 355**, the choice of method of accounting is of the assessee. The respondent-assessee has chosen/adopted the Project Completion Method of accounting and has been consistently following it over the years. It is not open to the revenue to reject a method because according to the Assessing Officer another method is preferable. In view of the above settled position, no fault can be found with the impugned order of the Tribunal. Moreover, the most appropriate method of accounting to correctly reflect the true financial statement is a matter of opinion and debate."*

*37. The Assessee relies on the decision of **Hon'ble Jurisdictional Bombay High Court in case of CIT vs Millennium Estates (P) Ltd (2018) (93 taxmann.com 41) (Enclosed at page no. 190 to 193 of the Paper book)**, wherein it has been held that income with respect to sale of flats accrues when the possession is*

given and not in case where the allotment letter is being issued initially.

38. Further, the Assessee wishes to rely on the decision of Hon'ble High Court of Kerala in case of *St. Teresa's Oil Mills [1970] 76 ITR 365 (Kerala)* wherein it is held that accounts regularly maintained in course of business have to be taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable.

39. In addition to the above, the Assessee wishes to rely on the following judicial precedents wherein the rule of consistency has been upheld, and therefore it is submitted that the Ld. AO cannot change the method of revenue recognition i.e. project completion method regularly followed by the Assessee:

- *RadhasoamiSatsang vs. CIT (1992)(193 ITR 321)(SC)*
- *CIT Vs. Gopal Purohit(2011) 336 ITR 0287 (Bom)*
- *Bharat Sanchar Nigam Limited vs. Union of India (2006)(283 ITR 273)(SC)*
- *Pr. CIT vs Quest Investment Advisors (P) Ltd (ITA No 280 of 2016 dated 28 June 2018) (Bom HC) (Copy enclosed at page no 194 to 200 of the Paper book)*

40. In view of the above cited decision, the Assessee submits that it has been consistently following the project completion method of accounting for recognizing the revenue and in the absence of any restriction or prohibition under the Act for doing so, the learned AO cannot force the Assessee to follow the percentage completion method of accounting for recognition of revenue from sale of flats.

**V. Department appeal ground no. 2 and Assessee's CO No. 2: The Guidance note of 2012 is not**

*mandatory in nature and the project completion method consistently followed cannot be disturbed by the AO*

*41. The Assessee wishes to submit that the guidance note relied by the learned AO is not mandatory in nature. In this regard, the Assessee wishes to place its reliance on the decision of Hon'ble Jaipur Tribunal in case of **Krish Infrastructure Pvt Ltd Vs. ACIT (2013) 3&4 taxmann.com-38(Jaipur Trib) [Copy enclosed at page no 201 to 211 of the Paperbook]**, wherein it has been held that revised guidance note dated 11 February 2012 is not mandatory and it is the option of the Assessee to follow either completed contract method or percentage completion method of accounting. The relevant extract of the said decision is reproduced below for your Honour's ease of reference*

*"9.....It is not mandatory for all real estate developers to follow Percentage of Completion Method as prescribed by Institute of Chartered Accountants of India under AS-7. Hon'ble Delhi High Court in the case of CIT v. Manish Buildwell (P.) Ltd. by its order dated 15/1/2011 in IT A No. 928/2011 has ruled that Accounting Standard-7 issued by the Institute of Chartered Accountants of India recognizes the position that in the case of construction contracts the assessee can follow either the project completion method or percentage completion method. We also find that neither the revised guidance notes 2012 issued by the Institute of Chartered Accountants of India nor the "Exposer Draft for Guidance Note on recognition of revenue" issued by the Institute of Chartered Accountants of India in 2011 are mandatory. It is the option of the assessee to follow either the completed contract method or the percentage completed method.The completed contract method in the present case in appeal followed by the appellant, therefore, could not be faulted with by the revenue authorities*

*and on that basis it is neither correct nor justified to say that the accounts did not present correct and complete picture of its profits."*

*42. In view of the above decision, the Assessee wishes to submit that the guidance note is not mandatory in nature and it is the option of the Assessee to follow either the completed contract method or the percentage completion method. The Assessee submits that it had been consistently following the project completion method of accounting for recognizing the revenue and therefore, the learned AO cannot force the Assessee to apply percentage completion method of accounting for recognizing the revenue from sale of flats.*

**VI. If the tax rate in different years are same, the department is not justified in determining the point of year of taxation.**

*43. The Assessee also submits the alternate plea that if the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year, the exercise of determining the year of taxation by the revenue authorities is entirely academic or at best may have a minor tax effect. It is just the timing difference. In this regard, reliance may be placed on the decision of **Hon'ble Supreme Court in case of CIT vs Excel Industries Ltd [2013] 358 ITR 295 (SC) [Copy enclosed at page no 212 to 218 of the Paper book].***

*44. Further Assessee wishes to place reliance on the decision of **Hon'ble Bombay High Court in case of CIT vs Nagri Mills Co. Ltd [1958] 33 ITR 681 (Bom) [Copy enclosed at page no 219 to 220 of the Paper book]**, wherein it has been held that the question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the*

*case of income of a company, tax is attracted at a uniform rate such an exercise becomes immaterial.*

*45. In view of the same, the Assessee wishes to submit that during the year under consideration the tax rate applicable to Assessee was the same as applicable for AY 2015-16 i.e. the year in which the Assessee has offered the income to tax. Accordingly, changing the year of taxability will have neutral impact on the revenue.*

*46. In view of the above submissions of the assessee, it is humbly submitted that the learned CIT(A) order should be upheld and department's appeal should be dismissed.*

**VII. Assessee's CO No. 3 to 5 on without prejudice basis is as under:**

*47. Without prejudice to the above, the Assessee wishes to submit that if the method of accounting applied by the learned AO is upheld, then direction should be given to reduce the corresponding income from AY 2015-16 (the year of completion of project), wherein the impugned income brought to tax in current year by learned AO was offered by the Assessee in the return of income and accepted by the learned AO in the assessment order passed under section 143(3) of the Act, so as to avoid double taxation of the same income.*

*48. Without prejudice to the above, the Assessee also wishes to submit that if the method of accounting applied by the learned AO is upheld, then direction should be given to grant corresponding TDS credit of current year of Rs. 7,85,105 as appearing in Form 26AS as the same was not claimed by the Assessee in its return of income (copy of Form 26AS for AY 2014-15 enclosed herein at page no. 116 to 120 of Paper Book);*

*49. The Assessee submits that, it has not claimed any TDS credit of Rs. 7,85,105 in AY 2014-15 or AY 2015-16 and hence, the Assessee requests Your Honours to provide appropriate directions to the learned AO to grant the corresponding TDS credit in AY 2015-16 i.e. the year in which the revenue is recognized by the Assessee.*

*50. In light of the above facts, we humbly pray before Your Honours to grant the appropriate claim to the Assessee and avoid double taxing of the same income.*

*In view of the above, if department appeal is dismissed then ground no. 1 to 4 of the cross objection will become academic. However, ground no. 5 of the cross objection survives independently only to give direction to the learned AO to grant the credit of TDS as per the law.*

10. Considered the rival submissions and material on record, we notice that assessee is a real estate developer, it develops the project and sells the individual flats to the prospective buyers. We noted the submissions made by both the parties and considering the real estate business, we observe that there are different kinds of real estate businesses like:-

- a). Project is developed by the developers investing in land, develop the land and build flats and sell the same.  
(land may be owned by developer or joint venture)

b). Project is developed by the developers but the sale of flats is complete when the project is underdevelopment stage.

c). Project is developed on the land owned by other person and just develops and build the flats on contract.

11. In the above types of developments, the method of revenue recognition is selected based on the transfer of all significant risks and rewards of ownership to the buyer, seller does not retain any effective control in the ownership, when the possession will be handed over, no significant uncertainty exists regarding consideration and no unreasonableness in collection of revenue from the buyer. In the above three modules, the above said conditions will differ according to the type of real estate development the assessee intends to carry.

12. In the first type(a), all the risks, control on the property/possession, consideration is not known and reasonableness of collection will be known only when the property reasonably marketed or it is readyfor sale.

13. In the second type(b), all the risks are already passed on and only possession to be delivered, consideration is known and collection is assured.

14. In the third type (c), no development risk at all and possession is pending, consideration known and collection is assured.

15. As stated above, in the type (b) and (c), the revenue recognition will be on percentage completion method and in the project where the risk and rewards are not known, it can be recognized only on the completion method. After considering the case law on this issue, we notice that in the similar situation, the Hon'ble Delh High Court in **Manish Build Well Pvt Ltd** (supra) held that the project completion method is one of the recognized methods of accounting and it will not lead to deferment of payment of taxes which are to be assessed annually under the Income Tax Act. The Hon'ble Bombay High Court in the case of **Aditya Builders** (supra) held if the assessee had adopted project completion method of accounting and had been consistently following it over the years, it is not open to revenue to reject such

method. In the given case, we notice that assessee is consistently following the project completion method. Its risks will be passed on only when the flats are ready and rewards will be known and reasonably expected to receive when the sales and possession is handed over. Considering the business module of the assessee, it is appropriate for the assessee to follow project completion method. As we said earlier, the revenue recognition will depend upon the risks and reward module of the project undertaken by the assessee. Therefore, we are inclined to accept the submissions of the assessee and accordingly ground no 1 and 2 raised by the revenue is **rejected**.

16. The CO filed by the assessee is in support of CIT(A) order, since we have dismissed the appeal filed by the revenue, it becomes infructuous, accordingly it is also **dismissed**.

17. In the net result, the appeal filed by the revenue as well as CO filed by the assessee stands **dismissed**.

18. It is pertinent to mention here that this order is pronounced after a period of 90 days from the date of conclusion of the hearing. In this regard, we place reliance on the decision of co-

ordinate bench of this Tribunal in the case of JSW Ltd in ITA Nos. 6264 & 6103/Mum/2018 dated 14.5.2020, wherein this issue has been addressed in detail allowing time to pronounce the order beyond 90 days from the date of conclusion of hearing by excluding the days for which the lockdown announced by the Government was in force. The relevant observations of this tribunal in the said binding precedent are as under:-

*7. However, before we part with the matter, we must deal with one procedural issue as well. While hearing of these appeals was concluded on 7th January 2020, this order thereon is being pronounced today on 14<sup>th</sup> day of May, 2020, much after the expiry of 90 days from the date of conclusion of hearing. We are also alive to the fact that rule 34(5) of the Income Tax Appellate Tribunal Rules 1963, which deals with pronouncement of orders, provides as follows:*

*(5) The pronouncement may be in any of the following manners:—*

*(a) The Bench may pronounce the order immediately upon the conclusion of the hearing.*

*(b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement.*

*(c) In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a*

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*future day for pronouncement of the order, and such date shall notordinarily(emphasis supplied by us now) be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the noticeboard.*

8. Quite clearly, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble jurisdictional High Court in the case of **Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)]** wherein Their Lordships had, inter alia, directed that **“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile** (emphasis, by underlining, supplied by us now), **all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”**. In the ruled so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question then arises whether the passing of this order, beyond ninety days, was necessitated by any “extraordinary” circumstances.

9. Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. As a matter of fact, even before this formal nationwide lockdown, the functioning of the Income Tax Appellate Tribunal at Mumbai was severely restricted on account of lockdown by the Maharashtra Government, and on account of strict enforcement of health advisories with a view of checking spread of Covid 19. The epidemic situation in Mumbai being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there

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was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon'ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that **"In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown"**. Hon'ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, **"It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly"**, and also observed that **"arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020"**. It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19<sup>th</sup> February 2020, taken the stand that, the coronavirus **"should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure..."**. The term **'force majeure'** has been defined in Black's Law Dictionary, as **'an event or effect that can be neither anticipated nor controlled'** When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an **"ordinary"** period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order.

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*Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of **Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)]**, Hon'ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon'ble Bombay High Court itself has, vide judgment dated 15<sup>th</sup> April 2020, held that directed “**while calculating the time for disposal of matters made time- bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly**”. The extraordinary steps taken suomotu by Hon'ble jurisdictional High Court and Hon'ble Supreme Court also indicate that this period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words “ordinarily”, in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case. Of course, there is no, and there cannot be any, bar on the discretion of the benches to refile the matters for clarifications because of considerable time lag between the point of time when the hearing is concluded and the point of time when the order thereon is being finalized, but then, in our considered view, no such exercise was required to be carried out on the facts of this case.*

*11. To sum up, the appeal of the assessee is allowed, and appeal of the Assessing Officer is dismissed. Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the noticeboard.*

19. Respectfully following the aforesaid judicial precedent,

we proceed to pronounce this order beyond a period of 90 days from the date of conclusion of hearing.

20. Order pronounced as per Rule 34(5) of ITAT Rules and by placing the pronouncement list in the notice board on 08.07.2020.

<i>Sd/-</i> (Vikas Awasthy) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : Sr.PS. Dhananjay	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 08.07.2020
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**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**