

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 920/JP/2019
निर्धारण वर्ष / Assessment Year :2015-16

Deputy Commissioner of Income Tax, Circle-4, Jaipur.	बनाम Vs.	M/s Tirupati Builders & Developers, F-114, Venkateshwara Tower, Central Spine, Vidhyadhar Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No.: AAFT 6450 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Runi Paul (Addl.CIT-DR)
निर्धारिती की ओर से / Assessee by: Shri Rajiv Sogani (CA)

सुनवाई की तारीख / Date of Hearing : 03/09/2020
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2020

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the revenue against the order of Id.CIT(A)-2, Jaipur dated 25/04/2019 for the A.Y. 2015-16 in the matter of order passed U/s. 143(3) of the Income Tax Act, 1961 (in short, the Act). Following grounds have been taken by the revenue:

- "1. Whether in the facts and circumstances of the case and in law, the Id. CIT(A) is justified in deleting the addition of Rs. 1,74,70,288/-.*
- 2. Whether in the facts and circumstances of the case and in law, the Id. CIT(A) is justified in rejecting the findings of the*

AO that percentage completion method is the correct method for revenue recognition by the assessee.

3. *Whether in the facts and circumstances of the case and in law, the Id. CIT(A) is justified in rejecting the findings of the AO that the assessee has not complied with the provisions of AS-7 and AS-9.*
4. *The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."*

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic. Rival contentions have been heard and record perused. The facts in brief are that the assessee is in the business of Real Estate/Developer. It follow AS-9 in so far as recognition of revenue is concerned and follow AS-7 i.e. percentage completion method to work out the profits at the end of each financial year as the project spreads in series of financial years. During the course of assessment, the AO concluded that the assessee had failed to maintain its accounts in a manner which could present 'true and fair picture' of its accounts and financial transactions, thereby contravening the provisions of Sec. 145(2) of the Act. Further, the AO held that the assessee by following project completion method had not declared complete and correct profits and at the same time by not following AS-9 & AS-7, which tantamount to not following AS-1 as per Section 145(2) of the Act, therefore, the books did not represent true and fair picture and

thus, the AO rejected the books of accounts u/s 145(3) of the Act and percentage completion method was applied for the year under consideration. Accordingly, the AO made addition of Rs. 1,74,70,288/- and added to the total income of the assessee for the year under consideration.

3. By the impugned order, the Id CIT(A) allowed the appeal of the assessee by holding that *"assessee is regularly following project completion method, Assessing Officer estimating income on percentage completion method is incorrect. It is further seen that the Assessing Officer in fact even not applied the percentage completion method correctly. He treated entire advances received as income which is incorrect. Considering all these facts, the addition made is deleted."*

Against which, the revenue is in further appeal before the ITAT

4. We have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the course of assessment proceedings, it was submitted before the AO that the assessee firm, being a Real Estate Developer, recognized its revenue consistently, on a year-on-year basis, by following the accounting policy as stated hereinbefore. However, in his opinion, Percentage Completion Method was to be preferred over Project

Completion Method. Thus, the AO held the entire amount of advance, of Rs. 2,36,70,288, received by the assessee firm, from its customers, to be considered as part of the revenue for the relevant previous year. The AO noted the fact that out of the total such advance, received by the assessee firm, Rs. 62,00,000 was refunded to the customer in subsequent period.

5. We found that the assessee firm was engaged in the business as a Real Estate Developer. Thus, Accounting Standard – 7, on Construction Contracts, issued by Institute of Chartered Accountants of India, was not applicable on the assessee firm. AS-7 is only applicable to Construction Contractors and not to Real Estate Developers. Similar to the year under appeal, assessee firm in the preceding years, as well as in the subsequent years, recognized its revenue, on a consistent basis, at the point of time when the sale deed was registered or final payment received and possession of the property was handed over to the buyer, whichever was earlier. These facts have not been disputed by the AO, during the assessment proceedings.

6. We also found that irrespective of the stage of completion of the project, revenue from the project was recognized by the assessee firm, during FY 2012-13, of Rs. 59,55,000, by following the aforementioned

accounting policy. Such method, for recognition of revenue, was even accepted by the AO, while passing order under Section 143(3) of the Act in the case of the assessee firm for A.Y. 2013-14 (F.Y. 2012-13). Moreover, Percentage Completion Method for recognition of revenue, till the F.Y. 2015-16 (A.Y. 2016-17), was not mandatory/compulsory to be followed by the assessee. It is only with effect from F.Y. 2016-17 (A.Y. 2017-18), that Percentage Completion Method has been made compulsory for the Real Estate Developers, that too for projects commencing on or after 01.04.2016, by way of introduction of Income Computation and Disclosure Standards (ICDS - III), relating to Construction Contracts.

7. Since the assessee firm has been consistently following the same accounting policy for recognition of revenue, which has even been accepted in the past, therefore, there is no justification, on the part of the Id. AO to disturb the accounting policy adopted and thereby apply Percentage Completion Method for the relevant previous year. **Hon'ble Supreme Court** in the case of **Bilahari Investment (P.) Ltd.[2008] 168 TAXMAN 95 (SC) (CLC – Page 6)** held that, *".....In the past, the Department had accepted the completed contract method and because of such acceptance, the assessees, in these cases, have followed the same method of accounting, particularly in the context of chit discount. Every*

assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted..."

8. In view of the above discussion, we do not find any infirmity in the order of the Id. CIT(A) in holding that the assessee was consistently following the project completion method and income has been properly estimated accordingly. Accordingly, we uphold the order of the Id. CIT(A).

9. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 14th September, 2020.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 14/09/2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The DCIT, Circle-4, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Tirupati Builders & Developers, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 920/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar