

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

ITA No. 3129/DEL/2019
[A.Y 2015-16]

M/s Prateek Infraprojects India Pvt Ltd. Vs.
G - 50, L.G.F. Lajpat Nagar - III
New Delhi

The A.C.I.T.
Central Circle - 08

PAN: AADCT 7056 R

[Appellant]

[Respondent]

Assessee by : Shri Sanjay Agarwal, CA,
Ms. Apoorva Bhardwaj, CA

Revenue by : Shri Gaurav Pundir, Sr. DR

Date of Hearing : 15.07.2021
Date of Pronouncement : 03.08.2021

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
CIT(A)-24, New Delhi dated 11.03.2019 pertaining to A.Y 2015-16.

2. The grievances of the assessee read as under:

"1. That the Id. CIT(A) has erred in law and on facts, while confirming the addition made by the Id. AO amounting to Rs. 1,25,72,260/- on account of interest on loan paid without appreciating the submissions of the assessee. As such, the addition of Rs. 1,25,72,260/- may please be deleted.

2. That the Id. CIT(A) has erred in law and on facts, while not appreciating the fact that the Id. AO did not allow the interest on loan of Rs. 1,25,72,260/- as cost of project in the profit and loss account even after disallowing the same from the head Finance Cost considering the same as project cost. That the very reason of the Id. AO to disallow the same from finance cost head was for considering it as cost of project. That had the Id. AO allowed the consequent effect of his own actions, then there will be no change in profits of the assessee. As such, the addition of Rs. 1,25,72,260/- may please be deleted. - 42,73,310.00

3. That the Id. CIT(A) has erred in law and on facts, while confirming the addition made by the Id. A.O amounting to Rs.3,61,56,783/- after re-computing the percentage of completion without properly appreciating the submissions of assessee. As such, the addition of Rs. 3,61,56,783/- may please be deleted.....1,22,89,690.00.

4. *That the Id. CIT(A) has erred in law and on facts, while confirming the inclusion of cost of land for the purpose of computation under Percentage of completion method (POCM) without appreciating that the method of POCM as followed by assessee has been consistently followed and the guidance note on accounting for real estate transaction (revised 2012) is only recommendatory in nature. That the Id. AO had only disputed the percentage of the revenue in the concerned year rather than the total revenue recognizable by the assessee in respect of the project. That the Id. CIT(A) as well as Id. AO has failed to appreciate that the assessee has considered the proportionate revenue of the total revenue in succeeding financial years as well. As such, the addition of Rs. 3,61,56,783/- may please be deleted."*

3. Briefly stated, the facts of the case are that the appellant company is engaged in the business of real estate development since its inception. During the year under consideration, the appellant company was carrying out one project, namely, Prateek Edifice. For the purpose of revenue recognition, the appellant company followed Percentage Completion Method [PoCM], duly considering the provisions of Accounting Standards - 7 and 9. As a matter of general practice, the appellant company did not consider the cost of land for calculating the percentage of completion of project under consideration.

4. During the course of scrutiny assessment proceedings, the Assessing Officer observed that though the assessee is following PoCM, then it has to recognise its revenue as per PoCM method only, which is in line with the Guidance Note on Accounting for Real Estate Transactions. According to the Assessing Officer, the assessee cannot just follow some part of the Guidance Note as per its convenience. With these observations, the Assessing Officer rejected the contention of the assessee that the cost of project for PoCM is not acceptable.

5. The Assessing Officer further found that the assessee started recognition of revenue from A.Y 2014-15 only. According to the Assessing Officer, as per the PoCM, the assessee's project was not eligible to recognise any revenue in A.Y 2014-15. The revenue recognition by the assessee in A.Ys 2014-15 and 2015-16 can be understood from the following chart:

A.1.	Revenue from operation (Rs.)	Cost of project - change in inventories (Rs.)	Gross Profit As shown by assessee (Rs.)	Percentage of total construction cost incurred	Project eligibility for revenue recognition as per PoCM Guidance Note (when % of total construction cost incurred is more than 25%)	Gross Profit by PoCM as per the Guidance Note 2012
2014-15	55,55,66,809.00	47,47,34,730.68	8,08,32,078.32	18.26%	No	0
2015-16	72,88,84,744.5	62,81,73,659.98	10,07,11,084.52	37.09%	Yes	21,76,99,946/-
Total (till 31.03.2015)	128,44,51,553.50	110,29,08,390.66	18,15,43,163			21,76,99,946/-

6. As the Assessing Officer was of the firm belief that as per the PoCM, assessee's project was not eligible to recognise any revenue in A.Y 2014-15, the assessee should have recognised gross profit of Rs. 21,76,99,946/- in A.Y 2015-16 only, whereas as per the computation of the assessee, it has recognised gross profit of Rs. 18,15,43,163/-. After giving credit of the same, the Assessing Officer added the difference between the profit shown by the assessee and profit computed as per PoCM amounting to Rs. 3,61,56,783/-.

7. Aggrieved by this, the assessee carried the matter before the Id. CIT(A) but without any success.

8. Before us, the ld. counsel for the assessee vehemently stated that the Guidance Notes are primarily designed to provide guidance and hence the Guidance Notes are recommendatory in nature. It is the say of the ld. counsel for the assessee that the assessee is not required under law to mandatorily follow Guidance Notes on accounting for real estate transactions. It is the say of the ld. counsel for the assessee that by making addition, the Assessing Officer has made the assessee subject of double taxation of same income in different F.Ys.

9. The ld. counsel for the assessee pointed out that the assessee has considered the alleged profit in the subsequent A.Ys. The ld. counsel for the assessee drew our attention to the detailed chart of revenue recognition. It was further brought to our notice that the Assessing Officer, in F.Y. 2016-17 relevant to A.Y 2017-18, accepted the returned income under scrutiny assessment order framed u/s 143(3) of the Act.

10. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

11. We have given thoughtful consideration to the orders of the authorities below. It is true that the assessee recognised revenue in A.Y 2014-15 when the project was completed only 18.26% and as per the accounting principles read with Guidance Notes under PoCM, revenue has to be recognised after completion of 25% of the project. Revenue recognition can be understood from the following chart:

rateek Infraprojects India Pvt. Ltd.
financial Year 2014-15

Annexure - 1

FY	As per Assessee					As per AOF offered by assessee in succeeding years				
	% Completion	Revenue recognised	Cost of Project - change in inventories	Gross Profit	Accumulated Revenue recognized	% Completion	Revenue recognised	Cost of Project - change in inventories	Gross Profit	Accumulated Revenue recognized
(1)	(2)	(3)	(4)	(5=3-4)	(6)	(7)	(8)	(9)	(10=8-9)	(11)
FY 2013-14	18.27%	55,55,66,809	47,47,34,731	8,08,32,078	55,55,66,809	-				
FY 2014-15	36.86%	72,88,84,744	62,81,73,660	10,07,11,084	1,28,44,51,553	43.29%	1,48,06,31,480	1,26,29,31,534	21,76,99,946	1,48,06,31,480
FY 2015-16	54.29%	75,87,57,104	65,10,13,006	10,77,44,098	2,04,32,08,657	54.29%	75,87,57,104	65,10,13,006	10,77,44,098	2,23,93,88,584
FY 2016-17	68.32%	87,29,82,745	85,68,75,808	1,61,06,937	2,91,61,91,402	68.32%	87,29,82,745	85,68,75,808	1,61,06,937	3,11,23,71,329
FY 2017-18	77.30%	71,98,54,912	81,20,90,502	-9,22,35,590	3,63,60,46,314	77.30%	71,98,54,912	81,20,90,502	-9,22,35,590	3,83,22,26,241
FY 2018-19	93.34%	2,07,91,80,833	2,06,37,16,685	1,54,64,148	5,71,52,27,147	93.34%	2,07,91,80,833	2,06,37,16,685	1,54,64,148	5,91,14,07,074
FY 2019-20	96.49%	1,14,86,11,648	1,12,00,76,939	2,85,34,709	6,86,38,38,795	96.49%	1,14,86,11,648	1,12,00,76,939	2,85,34,709	7,06,00,18,722
Total		6,86,38,38,795	6,60,66,81,331	25,71,57,464			7,06,00,18,722	6,76,67,04,474	29,33,14,248	

Additional Gross Profit allegedly considered by Ld. AO

3,61,56,784

As such, due to the alleged action of Ld. AO, the assessee company ended up paying additional tax on Rs.3,61,56,784/-.

12. In our considered opinion, the action of the assessee company on the revenue reported by it on its project Prateek Edifice has not caused any loss to the revenue and the entire exercise is revenue neutral as the assessee has already offered complete amount of tax in the subsequent F.Y., and such completion was before passing of impugned assessment order, which is dated 29.12.2017. These facts clearly show that the Assessing Officer was well aware of the revenue

recognised by the assessee from the entire project and the taxes paid by it.

13. It would be pertinent to consider the following decisions of the Hon'ble Supreme Court and the High Court of Delhi:

"CIT vs Triveni Engg. & Industries Ltd. [2011] 336 ITR 374 (Delhi High Court),

"in the projected scenario of the instant case, the entire exercise was revenue neutral. It was a matter of record that against the provision of Rs. 1.39 lakhs, the assessee had to actually incur expenditure of Rs. 28.03 lakhs, i.e., more than the provision made. It was undisputed that the expenditure incurred by the assessee on the project was admissible deduction. The only dispute that the revenue sought to raise was regarding the year of allowability of expenditure. Considering that the assessee, was a company assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure would, in any case, be revenue neutral."

CIT vs Bilahari Investment (P.) Ltd. [2008] 299 ITR L (SC)

"In the past, the department had accepted the completed contract method and because of such acceptance, the assessee had 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. It is only in those cases where the department records a finding that the method adopted by the assessee results in distortion of profits, that the department can insist on substitution of the existing method. Further, in the instant case, it was found from the various statements produced that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure was revenue neutral. "

14. After carefully perusing the documentary evidences brought to our notice, we find that the undisputed position that emerges is that the assessee is following consistent method of accounting to recognise revenue under the project. No doubt, the assessee has not included cost of land for computation of profit under PoCM, but before completion of project, the entire revenue has been offered for taxation which also included the impugned addition made by the Assessing Officer. We, therefore, do not find any merit in the impugned addition. Considering the facts of the case in totality, we

direct the Assessing Officer to delete the addition. This ground is accordingly allowed.

15. Next grievance related to the addition of Rs. 1,25,72,260/- being interest on loan.

16. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed an amount of Rs. 1,25,72,260/- on account of interest expenses in its profit and loss account over and above the above the cost of the project. The Assessing Officer was of the firm belief that as per the Guidance Notes on Accounting for real estate transactions, the interest expenditure is part of borrowing cost which, in turn, is part of total project cost. The assessee was asked to furnish clarification as to why the interest expenses be not added to the project cost.

17. In its reply, the assessee stated that it has borrowed loan from sister concern for general purposes and paid interest to them. It was explained that since these expenses do not directly relate to the

ongoing project of the assessee, the same has not been considered as cost of the project.

18. Since no details were provided by the assessee in support of its contention, the Assessing Officer disallowed the claim of Rs. 1,25,72,260/-

19. The assessee agitated the matter before the ld. CIT(A) but without any success.

20. Before us, the ld. counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the ld. counsel for the assessee that though the Assessing Officer has considered the interest claim by the assessee as part of the project cost, but total interest expenditure has not been considered in total estimated cost of project and, therefore, it has resulted in addition of Rs. 1,22,00,768/-.

21. The ld. counsel for the assessee further contented that the Assessing Officer did not provided any final show cause notice while arriving at final amount of addition to be made.

22. Per contra, the ld. DR strongly supported the findings of the Assessing Officer.

23. We have given thoughtful consideration to the orders of the authorities below. The undisputed fact is that vide notice dated 09.11.2017, the assessee was asked to furnish clarification in respect of claim of interest. It is also not in dispute that vide letter dated 27.11.2017, the assessee has simply stated that it has borrowed loan from Prateek Infratech Pvt Ltd and M/s Prateek Buildtech India Pvt Ltd for general purposes. No supporting evidences were furnished by the assessee to substantiate its claim.

24. Vide notice dated 20.12.2017, the Assessing Officer once again asked the assessee to justify its claim with supporting evidences. In reponse to this notice, vide reply dated 26.12.2017, the assessee once again reiterated what has been stated by it vide reply dated 27.11.2017.

25. Even before us, no details/documentary evidences regarding claim of interest expenses as revenue expenditure has been furnished.

Therefore, the action of the Assessing Officer is found to be correct. Rs. 1,25,72,260/- shall remain added in total project cost. However, in all fairness, we direct the Assessing Officer to consider this enhanced project cost in total estimated cost of project. With these observations, this ground is dismissed.

26. In the result, the appeal of the assessee in ITA No. 3129/DEL/2019 is partly allowed.

The order is pronounced in the open court on 03.08.2021.

Sd/-

**[MAHAVIR PRASAD]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 03rd August, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	