

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'A' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Vikas Awasthy (Judicial Member)]**

ITA No.1696/Mum/2019
Assessment Year: 2010-11

M/s. Abode Builders & Developers Pvt. Ltd., **Appellant**
*114-A, Veena Beena Shopping Centre, Guru Nanak Road,
Bandra (W), Mumbai 400093 [PAN: AADCA2191C]*

Vs.

Income Tax Officer 9(1)(1) **Respondent**
Mumbai.

Appearances:

Vijay Mehta *for the appellant*

Brajendra Kumar *for the respondent*

Date of concluding the hearing: : September 09, 2021

Date of pronouncement : September 09, 2021

ORAL ORDER
(Dictated in the open Court)

Per Pramod Kumar, VP:-

1. By way of this appeal, the assessee-appellant has challenged correctness of the order dated 28.10.2018 passed by the learned CIT(A)-20, Mumbai in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2010-11.

2. The first ground of appeal the assessee has raised the following grievance:-

1. In the facts and circumstances of the case and in law, the learned CIT(A) erred in confirming Rs. 5,14,93,250/- as profit from the project on the basis of percentage completion method.

3. When this appeal taken up for the hearing Shri Vijay Mehta, learned counsel for the assessee pointed out that the Assessing Officer has followed percentage completion method in this case. Our attention invited to the assessment order wherein it was pointed out that the percentage completion so far as the present year is concerned 81% as set out by the Assessing Officer in paragraph 6 (page 2 of the assessment order). Learned counsel then pointed out that in the assessment year 2008-09 also the percentage of completion was exactly the same. Our attention was invited to the relevant observations in the assessment order for the assessment year 2008-09 which was placed in the paper book filed before us. It was then pointed out that so far as in the assessment year 2008-09 is concerned the assessee has already availed settlement of dispute under the Vivad se Vishwas Scheme 2020, for the departmental appeal filed before the Tribunal. Our attention was also invited to the order dated 15.03.2021 passed by a co-ordinate bench wherein the settlement of dispute under the Vivad se Vishwas Scheme 2020, was taken in the record. Learned counsel then submits that the implication of the matter being settled under the Vivad se Vishwas Scheme 2020, in respect of the departmental appeal for the assessment year 2008-09, is that the departmental stand regarding taxability for the assessment year 2008-09, is accepted by the assessee. Accordingly, once under the percentage completion method the completion level at 81% has been accepted by the Assessing Officer for 2008-09 which is, by percentage completion method is accepted by the assessee and tax is paid thereon, nothing survives for taxation in this assessment year. It is in this backdrop the learned counsel submits that on account of assessee having settled the matter under the Vivad se Vishwas Scheme 2020, for the assessment year 2008-09 in which the percentage completion level was exactly the same as it is in the present case, the stand of the Assessing officer for brining in further amount of Rs. 5,14,93,250/- to tax is unsustainable in law. We are, thus, urged to delete the same. He further emphasis that undisputedly so far as the income from 81% project completion is concerned it has been brought to tax in the assessment year 2008-09.

4. Learned Departmental Representative does not dispute the factual elements embedded in the arguments of learned counsel. He, however, rather dutifully relied upon the orders of the authorities below and defends the same.

5. Having regard to rival contention and having regard to the factual position that the percentage completion of the project so far as in the present year its concern is admittedly 81% and the fact that the profits attributable to percentage completion at 81% profits of which have already been brought to tax in the assessment year 2008-09, which is now conceded by the assessee by settling the matter under the Vivad se Vishwas Scheme 2020, we are of the considered view that nothing further remains to be taxed in the present assessment year. We, therefore, deem it fit and proper to direct the Assessing Officer to delete the impugned additions of Rs. 5,14,93,250/- .The assessee gets the relief accordingly.

6. Ground no. 1 is thus allowed.

7. In the second ground of appeal the assessee has raised the following grievance:-

2. The learned CIT(A) erred in confirming Rs. 1,56,192/- being income from maintenance and other charges under the head "Income from other sources".

8. Learned counsel for the assessee submits that his limited point in this regard is that once this income has been brought to tax as income from other sources to that extent the entry is required to be reversed for the purposes of completion of work in progress. Once again the learned Departmental Representative does not dispute the claim of the assessee in principle and leaves the matter give us. The plea is indeed well taken. Once the amount has been brought to tax in the hands of the assessee, there cannot be any justification for not reversing the same so far as the completion of work in progress. We, therefore, direct the Assessing Officer to give this consequential relief to the assessee.

9. Ground no.2 is thus allowed, in the limited terms indicated above.

10. No other grounds of appeal was pressed before us.

11. In the result, the appeal is allowed in the terms indicated above. Dictated and pronounced in the open court today on the 09th day of September 2021.

Sd/-
Vikas Awasthy
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 09th day of September 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai