

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1693/Mum/2020
(A.Y: 2012-13)

ACIT 28(2) Room No. 307, 3 rd Floor Tower No. 6, Vashi Rly Stn Complex, Vashi Navi Mumbai – 400703	Vs.	M/s Neel Siddhi Developers, 2 nd Floor, Emerald, Plot No. 195/B, Sec-12, Vashi, Navi Mumbai – 400 703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAGFN2744N		
Appellant	..	Respondent

Appellant by :	Shri Chetan M. Kacha.DR
Respondent by :	Shri Subodh Ratnaparkhi.AR

Date of Hearing	14.11.2022
Date of Pronouncement	24.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The revenue has filed the appeal against the order passed by the Commissioner of Income Tax (Appeals)-26, Mumbai passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

(1) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.3,35,08,917/- made by the A.O. on the

basis of Percentage Completion Method in respect of both the projects i.e Neel Sidhi Amarante and Neel Sidhi Vista without appreciating the fact that even though 60% of both the projects were complete & substantial advances were received, assessee did not book any profit, which is not as per the Accounting Standard AS-9 guidelines issued by ICAI"?

(2) "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in holding that the assessee has actually offered the income from the projects in subsequent assessment years i.e in the year in which the project was completed /substantially completed & there is no basis or even benefit to the Revenue in disturbing the accounting method followed by the assessee without appreciating the fact that the assessee kept on deferring declaring the income and paying taxes at its convenience even though projects were completed substantially & substantial advances were received"?

(3) The appellant prays that the order of Ld. CIT (A) on the above grounds be reversed and that of the Assessing officer be restored.

(4) The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

2. The brief facts of the case are that the assessee is a partnership firm engaged in the business of building and developing real estate property. The assessee has filed the return of income for the A.Y 2013-13 on 28.09.2012 disclosing Total loss of Rs. 4,68,421/-. Subsequently the case was selected for scrutiny and

notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and submitted the information and the case was discussed. The AO found that the assessee has undertaken several projects and one of the project being Neel Sidhi Amarante and Neel Sidhi Vista the assessee is following the project completion method for disclosing the income. Whereas the AO found that for the A.Y 2011-12 the preceding officer has discussed at length on facts and projects that the assessee should have followed percentage completion method for offering profit on project. The A.O. has relied on the order of A.Y 2011-12 and discussed at Para 4 to 5 in respect of project performance and also project civil works and determined the income/profit of the two projects based on the percentage completion method and in respect of Neel Sidhi Amarante Rs.2,81,41,436/- and similarly in respect of the second project Neel Sidhi Vista the AO has dealt at Para 5(ii) of the order and worked income of Rs.53,67,481/- and assessed the total income of

Rs.3,30,40,500/- and passed the order u/s 143(3) of the Act.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). The CIT(A) considered the grounds of appeal, submissions on the validity of assessment proceedings and projects, findings of the scrutiny assessment proceedings and the project completion method applied by the assessee. The CIT(A) has dealt on the judicial decisions and confirmed the validity of the assessment and further directed the AO to delete the addition in respect of the two projects and partly allowed the assessee appeal. Aggrieved by the CIT(A) order, the revenue has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing the Ld. DR submitted that the CIT(A) has erred in granting the relief irrespective of the fact that the assessee in earlier years has though followed the completion of contract method and the A.O. has not accepted the accounting system. Further the AO was correct in calculating the percentage profit completion method and relied on the order of the AO.

5. Contra, the Ld. AR submitted that in the earlier year appeal the revenue has challenged before the Hon'ble Tribunal and was dismissed and produced the copy of the order of the Honble Tribunal and supported the CIT(A) order.

6. We heard the rival submission and perused the material on record. The sole disputed issue envisaged by the Ld.DR that the CIT(A) has erred in granting the relief irrespective of the findings of the AO on the offering of income on percentage completion method. The CIT(A) has dealt on the facts and the judicial decisions and observed at page 9 Para 7 as under:

7. Ground Nos. 2 and 3 of the appeal are against the AOS action of adaption of "Percentage Completion Method" over the "Project Completion Method" being followed by the appellant. The Appellant had been following project completion method of accounting. During the year under consideration, the AO observed that the assessee has offered no sales for the projects Neel Siddhi Amarant and Neel Siddhi Vista, although advances have been received by the assessee. The AO relied on the Assessment Order for the A.Y. 2011-12 and held that as the assessee entered on sale agreements with the purchasers, income was to be offered under the "Percentage Completion Method".

7.1. I have gone through the submission of the assessee and the facts of the case. It is observed that in the

assessee's own case for the A.Y. 2011-12, my predecessor has passed an order on similar set of facts. The decision part of the order CIT(A)-26/IT-10091/2013-14 dated 22.10.2019 is reproduced as under -

"I have considered the submission of the appellant and also perused the assessment order. It is seen that the AO has not rejected the books of accounts of the appellant. He has not accepted the "Project Completion Method" because he is of the opinion that "Percentage Completion Method" is a better method. However, there is no estoppel against law. If a method is prescribed under law then an Appellant is entitled to follow the said method whether it is a good method or not. The jurisdictional ITAT in the case of Haware Infra Pvt Ltd v. ACIT 2013(10) TMI 833 (Mum.) has relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Manish Buildwell ITA No.928/2011 and have held that a builder has to construct and sell the premises to purchasers which take some time. It is only at the time Occupancy Certificate is received and possession is handed over that the risk and rewards are transferred to the purchasers. Further, in subsequent years the Appellant had offered profit on the said project as per "Project Completion Method" and the same stands accepted by the Assessing Officer. Therefore the decision of appellant to go for Project Completion Method is justified. Hence, respectfully following the decision of Mumbai ITAT in above case allowing the Project Completion Method and in view of the decision of AO in appellant's own case in subsequent years I direct the AO to delete the addition made by estimating income under the Percentage Completion Method and follow Project Completion Method. These ground of appeals are 'Allowed'."

7.2 I am inclined to follow the decision of my predecessor which is on similar set of facts and I do not find any reason to deviate from the same. It is imperative to analyze some relevant case laws in this regard which have also been cited by the assessee in its submission. The assessee has among others relied upon the decision of Hon'ble ITAT Tribunal, Mumbai in the case of Awadesh Builders V. Ito reported in 37 SOT 122 (Mumbai) wherein it has been held that project completion method adopted by the assessee who is a builder and real estate developer is justified instead of the percentage completion method as computed by the department. While giving this finding, the Hon. Tribunal relied upon the decisions of the Hon. Supreme Court in the case of CIT v. Bilahari Investment Pvt Ltd reported in 299 ITR 1 (SC) and in case of CIT v. Realest Builder and Services Ltd reported in 307 ITR 202, which have also been relied upon by the assessee. Further, the assessee has also placed reliance on the decision of Hon'ble ITAT Bangalore Bench in the case of Prestige Estate Projects Pvt Ltd V/S. DCIT reported in 129 TTJ (Bang) 680 wherein relying upon the decision of the Hon. Supreme Court in the case of CIT v. Bilahari Investment Pvt Ltd (supra) it is held that the assessee developer having regularly employed project completion method, which is an accepted method of accounting and the Central Government having not notified AS- 7 u/s. 145(2), the AO could not reject the accounts u/s. 145 (3) on the ground that the assessee has not followed percentage completion method of accounting. Assessee also invited attention to various other decisions in which it has been held that the assessee employing project completion method cannot be compelled to account for the profits by percentage of completion methods i.e.

1. DCIT vs. Rajesh Builders (2004) 3 SOT 0917 (ITAT Mumbai)

2. DCIT vs. Ranka Developers (2006) 6 SOT 0815 (ITAT Bangalore) In this context we may consider the decision of the Hon'ble Apex Court in the case of CIT, Delhi vs. Woodward Governor India Pvt Ltd reported in (2009) 179 Taxman 326 (SC) wherein the Hon'ble SC held that accounting standard which is continuously adopted by the assessee is supreme and needs to be presumed to be correct. The relevant extract from the order is reproduced as under-

"At this stage, we need to emphasise once again that the above system of commercial accounting can be superseded or modified by legislative enactment.

This where section 145(2) comes into play. Under that section, the Central Government empowered notify from time time Accounting Standards be followed any class assesseees or respect of class income. Accordingly, under section 209 of Companies Act, mercantile system of accounting made mandatory for companies. In other words, accounting standard which continuously adopted by assessee can superseded or modified Legislative intervention. However, but for such intervention or cases falling under section 145(3), the method accounting undertaken by assessee continuously supreme. In present batch cases, there is finding given by Assessing Officer on correctness completeness of accounts of assessee. Equally, there is finding given by Assessing Officer stating that assessee has complied with accounting standards."

I find above case laws to relevant and squarely applicable in instant case. Reliance also placed on

decision Hon'ble ITAT Ahmedabad in case Mahalaxmi Builders vs. ITO-Ward-5(4), Baroda ITA 1046/Ahd./2009 dated 09.08.2011 wherein it is that AS-7 which has been adopted by the AO in instant case modify the method accounting of assessee applicable for construction contracts construction assets such bridge, buildings, dams, pipelines, etc., and it been clearly mentioned AS-7 that applies contractors and not enters that constructing properties their own account builders and developers. The relevant part from the judgment reproduced under-

"However, AS-7 applicable construction contracts construction of such bridge, buildings, pipelines, etc., and it been clearly mentioned in AS-7 that applies contractors and not enterprises that constructing properties on their ecourt builders and developers. It mentioned in response query by ICA! that in case builders and developers, revenue recognition should be made accordance with AS-9. It further clarified that AS-7 apply when they are constructed under contract behalf of third whereas in the case appellant, facts are appellant firm itself engaged developmental construction property on its own and sold housing units. From the above, it is clear that AS-7 is applicable to the case appellant therefore, percentage completion method adopted by AO determining current year profit on the basis of declared determined under completion method 2003-04 is justified."

Further, it is pertinent to note at the AO has estimated 10% of the incremental advances received against the proposed sale of flats for the purpose of computing income from the above projects during the year under consideration. It is an undisputed fact that the advances received from the prospective customers are shown as liability on the credit side of the Balance Sheet by the assessee. These advances cannot be treated a completion

of the assessee until the risk and rewards are handed over to the purchasers of the flat. Reliance is placed on the decision of Hon'ble ITAT in the case of K. K. Khullar Vs. DCIT (2009) 116 ITD 301 (Delhi) where a similar matter of whether the these received in advance could be considered as income has been considered Me Hon'ble ITAT Delhi Bench. In the said case, the assessee was an advocate. Has receiving retainer ship fees which was shown as advance in his books of accounts. The Hon'ble ITAT after considering the matter placed reliance on the decision the Hon'ble Supreme Court in the case of CIT Vs. Shoorji Vallabh Das & Co. (1 46 ITR 144 which deals with the mercantile rt. The Hon'ble Supreme Court pointed out that The Act takes into account two points of time at d, namely the accrual of the income or its receipt. is the income. If income does not result at all, ah in book-keeping, an entry is made about a not materialize. Where income has, in fact, been n up, it remains the income of the recipient, even payable. However, where the income has not wither accrual nor receipt of income, even though in the books of account. Coming to the facts that the assessee received certain amount for Income-tax was a levy on in However, the substance of though given up, the tax m resulted at all, there is obviously an entry to that effect has been services to be performed over period of time and an amount relatable to services were shown as income on account of the tilled to receive that amount from the client in ITAT held that extent of amount pertaining to -' to the assessee. The rest of the amount was fact that the assessee services rendered only got very taken as liability to be adjusted to subsequent year as and when the services was rendered. The ITAT held that it vi in respect of such amount, no judgment to the facts of the ass. such amount was performed in for the above two projects), nor clear that the excess amount

would have to be returned in case the services were not performed in subsequent year and therefore came into existence in favour of the assessee. In assessee's case, it is quite clear that as the services wing of the Occupancy Certificate) in respect of subsequent years (A.Ys. 2013-14 and 2014-15 's came into existence in favour of the assessee. Therefore this amount did not meet the income of the assessee. Applying this (handing over of the flats after in the year under considered assessee remained a liability Accordingly, the advances received by the assessee should not be brought to tax in this year.

7.3. There is another aspect he considered. It is observed that the assessee has consistently been following Project Completion Method" of accounting since its inception. It is observed that for argument sake, it were to be accepted that the AO was correct in estimating the income of the assessee in the year under consideration from the From Siddhi Amarante and Neel Siddhi Vista, relief would also have to be granted to the assessee in respect of this amount in subsequent A.Ys. when there has actually offered the income against the assessee. In short, the entire account of the assessee advances received from would have to be recast. Considerable inconvenience to the assessee and resulting in any corresponding gain to the work for the Department as the said advances, which have already been offered to tax in a subsequent year would be brought to tax in a previous year. It is observed that there is no difference in the rate of tax in these years and therefore, such an exercise is of no utility to the assessee. The Hon'ble Courts have also deprecated such moves to alter the request amounting practice followed by the assessee over a period of time when there is no change in the rate of tax over the period. In this context, reliance may be placed on the decision of the Hon'ble Supreme Court in the case of CIT vs Excel Incls

1. (2013) 358 ITR 295 (SC) wherein the lordship observed as under, "... Third question concerning us is the year in which the assessee is required to x. There is no dispute that in the subsequent make imports and did derive benefits under the element pass book and paid tax thereon has been deprived of any tax. Whether the rate present assessment year as well as in the therefore, the dispute raised by the Revenue is effect. There was, therefore, no need for the when it was quite clear that not only was it y not have added much to the public coffers". Court in the case of CIT Vs. Nagri Mills Co. similar conclusion and the same was further part in the case of CIT vs. Shri Ram Pistons & estarcos, in view of the fact that the amount which the project was completed/substantially en consistently following this system of at there is no basis or even benefit to method followed by the assessee. this account also. The addition made of appeal no. 2 and 3 are accounting year, the assessee advance license and the de Therefore, it is not as if the Fo of tax remained the same in subsequent assessment year entirely academic or have revenue to continue with th fruitless (on merits) but also Previously, the Hon'ble Bom Ltd. 33 ITR 661 has also reiterated by the Hon'ble De Rings Ltd 220 CTR 404. has been offerred to tax in completed and the asses accounting right since its the Revenue in disturb Accordingly, the addition is accordingly deleted. 'Allowed'.

7. The Ld. AR also has brought on record the earlier year decision for A.Y.2011-12, were the revenue has filed an appeal before the Honble Tribunal and was dismissed. We consider it appropriate to refer to the findings of the Hon'ble Tribunal in the assessee own

case in ITA No. 30/Mum/2020 A.Y 2011-12 dated 28.10.2022 and observed at Para 29 to 33 read as under:

29. The Assessee is a real estate developer engaged in the business of developing housing projects in and around Navi Mumbai. The Assessee filed its return of income for AY 2011-12 inter alia declaring income under the "project completion method" for its project named "Amarante" at Kalaomboli, Navi Mumbai which had commenced on 09.03.2010. During the course of assessment, the AO rejected the "project completion method" followed by the Assessee and substituted the said method with "percentage completion method" thereby, making an addition of Rs.2,08,36,527/-.

30. Before the CIT(A), the Assessee challenged the said rejection of project completion method and consequential addition to income. The CIT(A) allowed the appeal of the Assessee upholding the validity of the Project Completion Method.

31. Before us, the Revenue has challenged the relief given by the CIT(A). The Id DR relied upon the order of the AO to submit that project completion method is not a valid method for computation of income as it defers the income for the year. On the other hand, the Id. AR supported the order of the CIT(A) and placed reliance on the authorities mentioned on page nos. 37 and 39 of the CIT(A)'s order to submit that the "project completion method" was an acceptable method. She also submitted that the Assessee

and its sister concerns have been following project completion method for several years and that project profit for "Amarante" has already been offered in the year of completion, for which a chart is appearing on page 38 of the CIT(A) order.

32. We have considered the rival arguments and perused the orders of AO and the CIT(A). The CIT(A) has in para 9.3 of his order dealt with the issue succinctly. We are accordingly, of the view that Project Completion Method consistently followed by the Assessee is a valid method for computing taxable income. Merely because percentage completion is a better method as per AO, does not make project completion method as invalid. The choice as to which accounting method to be followed is with the Assessee. Moreover, the AO has not rejected the books of accounts or invoked section 145 of the Act before rejecting the accounting method followed by the Assessee. The decision of Bombay High Court in the case of Aditya Builders [2017] 79 taxmann.com 394 (Bombay) is squarely applicable to the facts of the case here.

33. More importantly, the entire exercise is tax neutral as the Assessee has offered the income of the project under project completion method in A.Y.s 2013-14 to 2017-18 as detailed in page 38 of the CIT(A)'s order, which is accepted by the Revenue. Hence, we uphold the order of CIT (A) in this ground and dismiss this ground of the Revenue.

8. The Ld. DR could not controvert the findings of the CIT(A) and also accepted the decision of Hon'ble Tribunal for earlier year and there is no new cogent

material or information was brought on record to take a different view. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues and uphold the same and dismiss the grounds of appeal raised by the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 24.11.2022.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 24.11.2022

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai