

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.4352/Del/2015, A.Y. 2009-10

ACIT, Central Circle-15, New Delhi	Vs.	M/s. Soul Space Project Ltd., E-23/B-1, Extn., MCIE Mathura Road, New Delhi-110044. PAN : AAJCS7736F
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C.O. No 454/Del/2015, A.Y. 2009-10  
( ITA No.4352/Del/2015, A.Y. 2009-10)

M/s. Soul Space Project Ltd., E-23/B-1, Extn., MCIE Mathura Road, New Delhi-110044. PAN : AAJCS7736F	Vs.	ACIT, Central Circle-15, New Delhi
Appellant		Respondent

Revenue by	Ms. Kajal Singh, Sr. DR
Assessee by	Sh. Rohit Jain, Adv, Sh. Deepesh Jain, CA & Sh Shaurya Jain, CA

Date of hearing:	12.01.2023
Date of Pronouncement:	16.01.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The appeal has been filed by the Revenue against order dated 13.04.2015 in Appeal No. 319/13-14/CIT(A)-29 assessment year 2009-10 passed by Commissioner of Income Tax (appeals)-29, New Delhi (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.')

in regard to the appeal before it arising out of assessment order dated 30/12/2012 u/s 143(3) of the Income Tax Act, 1961 passed by DCIT, Circle-17, New Delhi (hereinafter referred to as the Assessing Officer or 'AO'). Cross Objection has been filed by the assessee.

2. Assessee filed return of income of Rs. 61,58,155/- and during the assessment proceedings, Ld. AO had reassess the income while disagreeing with the percentage of completion method (POCM) followed by the assessee for its construction projects at Bikaner and Mohali. Ld. AO followed the assessment principles of its predecessor for A.Y. 2007-08 and 2008-09. Ld. CIT(A) however, allowed the appeal with following relevant findings in para 8 :-

*"8. I have gone through the above submissions of the appellant and have considered facts and evidences on records.*

*The contention of the appellant is that as per Accounting Standard AS-7 they were following POCM and as per this method the income triggers on the fulfillment of following 2 conditions namely:-*

- a) *when substantial risk and reward related to ownership are transferred in favour of customer and*
- b) *35% or more of the development cost/construction cost incurred.*

*It is seen that both (AO as well as appellant) have claimed to use the POCM as per AS-7 in declaring the profit from Mohali project. On one hand, the AO has mentioned in his order that profit has accrued at the project completion level of 33.558% but, on the other hand appellant claim that since the percentage completion was less than 35%, hence POCM does not get*

*trigger, therefore no income has accrued in the year under consideration.*

*It is pertinent to mention here that an identical issue was there in assessment year 2007-08 in case of recognition of revenue by following POCM method as per AS-7 in Bikaner Project. I have given detailed finding vide order dated 14.10.2014 in appeal no. 318/13-14, as to how the POCM should be followed and worked out.*

3. The revenue is in appeal raising following grounds and the assessee also filed cross objections :-

**ITA No. 4352.Del.2015**

1. *“The Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts of the case in deleting the addition of Rs. 1,61,35,135/- made on account of profit from Bikaner Project.*

2. *The ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts of the case in deleting the addition of Rs. 77,77,157/- made on account of Profit from Mohali Project.*

3. a) *The order of the Ld. CIT (Appeals) is erroneous and not tenable in law and on facts.*

b) *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

**C.O. No. 454.Del.2015**

*“1. That the additions/disallowance made by the Assessing Officer by passing the assessment order under Section 143(3) are illegal, bad in law & without jurisdiction.*

*Re: Addition of assumed, presumed and deemed assessable profits from Bikaner and Mohali Projects.*

2. *That the CIT(A) erred on facts and in law in not accepting method of accounting and accounting policies adopted by the appellant in respect of Bikaner and Mohali projects accounting for recognizing the revenue and cost thereof.*

2.1 *That the CIT(A) erred on facts and in law in upholding without any basis and justification for presuming the sale value of the Bikaner Land as Rs. 201.61/- per sq. feet (Estimated) against the actual sale value for the plot to plot evidenced by proper, authentic and legal documents, wherein no defect/deficiencies/ in correctness have been found.*

2.2 *That the CIT(A) erred on facts and in law in upholding without any basis and justification for presuming the sale value of the Mohali Project as Rs. 4,450/- per sq. feet against the actual sale value for the flat to flat*

*evidenced by proper, authentic and legal documents, wherein no defect/deficiencies/ in correctness have been found.*

*The respondent craves leave to add, alter, amend or vary the above grounds of cross objection at or before the time of hearing.*

4. Heard and perused the record.
5. In the course of hearing Ld. AR stated at Bar about not pressing the Cross-objections accordingly same are disposed of not pressed.
6. Next, although Ld. Sr. DR defended the orders of Ld. AO but could not be rebut the submission by the Ld AR that in the assessee's own case for the next assessment years 2010-11 and 2011-12 income offered on POCM, as consistently adopted by the assessee over the years has been accepted and scrutiny assessment have been completed. The copies of the assessment order for the assessment year 2010-11 dated 04.03.2013 and 2011-12 dated 19.12.2013 are available at page no. 322 to 325 of the paper book.
7. As with regard to previous years 2007-08 and 2008-09, to the present assessment year 2009-10, the co-ordinate Bench vide ITA no. 193.Del.2015 and ITA No. 1849.Del.2015 had set aside the assessments while allowing the cross objections of the assessee. Though the co-ordinate Bench had not entered into merits of the matter, the fact remains that prior period assessments where POCM was not accepted, no more stands. Thus, the ends of justice require to follow the rule of consistently. More so when the issue is revenue neutral. Consequently, **the appeal of the revenue is dismissed.**

**Order pronounced in the open court on 16<sup>th</sup> January, 2023.**

**Sd/-  
(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

*Date:-16 .01.2023*

*\*Binita, SR.P.S\**

**Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI