

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “F” BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.3220/Del/2017
[Assessment Year : 2010-11]**

ITO, Ward-15(2), New Delhi.	vs	M/s. Rajesh Buildcon & Infrastructure Pvt.Ltd., Lodhi Road, New Delhi-.110003. PAN-AAEFP8228P
APPELLANT		RESPONDENT
Appellant by		Shri Vivek Vardhan, Sr.DR
Respondent by		None
Date of Hearing		02.08.2023
Date of Pronouncement		18.08.2023

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue is directed against the order passed u/s 143(3) of the Income Tax Act, 1961 (“the Act”) dated 06.03.2017 for the assessment year 2010-11.

2. The Revenue has raised following grounds of appeal:-

1. *“The Ld. CIT (A) has erred in law and on facts in deleting the addition of Rs. 1,72,05,979/- by considering that the assessee does not satisfy the condition required for applying the percentage completion method, whereas the same was applicable.*
2. *The Ld.CIT(A)erred in law and on facts in deleting the addition of Rs.25,82,816/- made to work in progress (WIP).*
3. *The appellant craves to be allowed to add any fresh ground(s) of appeal and /or delete or amend any of the ground(s) of appeal.”*

3. At the time of hearing, no one attended the proceedings on behalf of the assessee. It is seen from the records that no one has been attending the

proceedings since 06.10.2021. The notices sent through speed post have been returned back unserved by the Postal Authority with remark “incomplete address”. The assessee has not provided any other address to the Registry. Therefore, the appeal is taken up for hearing and being disposed off in the absence of the assessee on the basis of material available on records.

4. Facts giving rise to the present appeal are that the assessee filed return of income on 15.10.2010 through e-mode, declaring income of INR 2,62,350/-. The case was selected for scrutiny. Statutory notices u/s 143(2) and 142(1) of the Act, were issued to the assessee. In response to the notices, Ld. Authorized Representative of the assessee attended the proceedings from time to time and filed details as and when called for. The assessee company is in the business of development of real estate. During the year, the assessee had two projects; one at Haridwar and another at Jaipur. The AO was of the view that the assessee ought to have declared profit on the basis of Percentage Completion Method (“PCM”) and accordingly, offered profit for taxation in respect of Haridwar Project. Thereafter, the Assessing Officer framing the assessment vide assessment order dated 30.03.2013 u/s 143(3) of the Act, assessed the total income of the assessee at INR 1,80,74,185/- against the disclosed income at INR 2,62,350/-.

5. Aggrieved against this, the assessee filed appeal before Ld.CIT(A).

6. Ld. Sr.DR supported the assessment order and submitted that Ld.CIT(A) was not justified in deleting the addition.

7. We have heard the contention of Ld. Sr. DR on behalf of the Revenue and perused the material available on record. Ld. CIT(A) after considering the facts and submissions of the assessee, allowed the claim of the assessee by observing as under:-

4.3. "I have gone through the facts of the case. The appellant is in the business of development of Real Estate Projects. The appellant had two projects- one each at Haridwar & Jaipur. The AO applied the percentage completion method to the project at Haridwar and computed the income from that project accordingly. The appellant has contended that the AO has followed the approach as adopted for the AY 2008-09 on the directions of CIT(A) for that year. However, the order of the AO for the AY 2008-09 was set aside by ITAT vide its order dated 02.12.2015 and subsequently, the AO has finalized the assessment vide order dated 25.11.2016, in which the AO has desisted from applying the percentage completion method and has accepted the returned income of the appellant for the AY 2008-09.

4.3.1. It is further contended by the appellant that the Haridwar project of the appellant company has not taken off even as on date. In this context, the appellant has furnished the copy of the assessment order for the AY 2014-15 dated 25.11.2016 in which the AO has not applied the percentage completion method in the case of this project of the appellant. Same is the position for the AY 2012-13 in which the assessment order was passed by the AO on 04.03.2015. The appellant has also furnished the year-wise details of booking amounts received by the appellant for the Haridwar Project. A perusal of these details shows that the booking amounts are reducing every year from the FY 2009-10 till the FY 2015-16 due to the reason that the appellant is making refunds to the depositors due to the fact that the project has come to a standstill. It is also contended by the appellant that it has not been able to consolidate and acquire the land required for the project.

4.3.2. In addition, the appellant has relied upon the conditions laid down for application of percentage completion method to the Real Estate Projects as stated in the Guidance Note issued by the Institute of Chartered Accountants of India in 2012. As per this, the percentage completion method can be applied to Real Estate Projects when all of the specified conditions are satisfied. The relevant portion of the guidance note is reproduced as under:

5. Application of Percentage Completion Method

5.1 The percentage completion method should be applied in the accounting of all real estate transactions/activities in the situations described in paragraph 3.3 above, i.e., where the economic substance is similar to construction contracts. Some further indicators of such transactions/activities are:

(a) The duration of such projects is beyond 12 months and the project commencement date and project completion date fall into different accounting periods.

(b) Most features of the project are common to construction contracts, viz., land development, structural engineering, architectural design, construction, etc.

(c) While individual units of the project are contracted to be delivered to different buyers these are interdependent upon or interrelated to completion of a number of common activities and/or provision of common amenities.

(d) The construction or development activities form a significant proportion of the project activity.

5.2 This method is applied when the outcome of a real estate project can be estimated reliably and when all the following conditions are satisfied:

(a) total project revenues can be estimated reliably;

(b) it is probable that the economic benefits associated with the project will flow to the enterprise;

(c) the project costs to complete the project and the stage of project completion at the reporting date can be measured reliably; and

(d) the project costs attributable to the project can be clearly identified and measured reliably so that actual project costs incurred can be compared with prior estimates. When the outcome of a project can be estimated reliably, project revenues and project costs associated with the project should be recognized as revenue and expenses respectively applying the percentage of completion method in the manner detailed in paragraphs 5.3 to 5.8 below.

5.3 Further to the conditions in paragraph 5.2 there is a rebuttable presumption that the outcome of a real estate project can be estimated reliably and that revenue should be recognized under the percentage completion method only when the events in (a) to (d) below are completed.

(a) All critical approvals necessary for commencement of the project have obtained. These include, wherever applicable:

(i) Environmental and other clearances.

(ii) Approval of plans, designs, etc.

(iii) Title to land or other rights to development/ construction.

(iv) Change in land use

When the stage of completion of the project reaches a reasonable level of development. A reasonable level of development is not achieved if the expenditure incurred on construction and development costs is less than 25 % of the construction and development costs as defined in paragraph 2.2.

(b) read with paragraphs 2.3 to 2.5.

(c) Atleast 25% of the saleable project area is secured by contracts or agreements with buyers.

(d) Atleast 10 % of the total revenue as per the agreements of sale or any other legally enforceable documents are realized at the reporting date in respect of each of the contracts and it is reasonable to expect that the

parties to such contracts will comply with the payment terms as defined in the contracts. To illustrate-If there are 10 Agreements of sale and 10 % of gross amount is realized in case of 8 agreements, revenue can be recognized with respect to these 8 agreements."

In the case of the appellant, the appellant has not been able to acquire the land required for the project and due to various police complaints and litigations at various forums, the outcome of the project cannot be estimated at all. Further, some of the approvals and clearances required for the project have not been obtained so far.

4.3.3 In view of these facts, I am of the opinion that the appellant does not satisfy the conditions required for applying the percentage completion method and therefore, the addition made by the AO is deleted and the grounds of appeal are allowed."

7.1. Further, in respect of capitalization of expenses, Ld.CIT(A) has given a finding on facts by observing as under:-

5.3 "A perusal of the P&L account of the appellant shows that the expenses claimed pertain to the normal business expenses. Out of the total expenditure of Rs. 86,93,579/-, a sum of Rs. 61,10,763/- has already been capitalized by the appellant and a sum of Rs. 25,82,816/- is claimed in the P&L account. This sum includes the expenses related to the cost of land sold, depreciation, preliminary expenses written off and various administrative expenses incurred by the appellant for day to day running of the business. There is no reason to treat these expenses as capital expenses. The AO has not assigned any reason for capitalization of the normal business expenses. In view of this, the addition made by the AO is deleted and the ground of appeal is allowed."

8. The above findings on fact by Ld.CIT(A) is not controverted by the Revenue. Therefore, we do not see any reason to interfere the findings of

Ld.CIT(A), the same is hereby affirmed. Thus, grounds raised by the Revenue are dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18th August, 2023.

Sd/-

Sd/-

**(DR.B.R.R.KUMAR)
ACCOUNTANT MEMBER**

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI