

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'B' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.599/PUN/2022
(A.Y. 2015-16)

S.S. Group, 9, Siddhivinayak, M.G. Road, Near Golibar Maidan, Pune-411 001	vs	ACIT, Central Circle-1(3), Pune
PAN: AAIAS 9707 K		
Appellant		Respondent

Assessee by	:	Shri Suhas Bora, CA
Revenue by	:	Shri Ajay Kumar Kesari, DR
Date of hearing	:	26/09/2023
Date of pronouncement	:	05/10/2023

O R D E R

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of Commissioner of Income Tax (Appeals)-11, Pune (for short, 'CIT(A)'), dated 30.05.2022 for A.Y.2015-16 as per the following grounds of appeal:-

"1. The Id CIT(A) erred in confirming the order of the AO making the additions on completing the assessment u/s 143(3) r.w.s.153A when no incriminating documents were found during the course of search regarding the issue involved in the assessment only on the ground that the present assessment falls in the category of abated assessment and failed to consider the fact that no any such document have been relied on while completing the assessment or making the additions and as such the assessment completed u/s 143(3) r.w.s.153A is bad in law.

2. The Id CIT(A) has erred in confirming the action of the AO in applying the percentage completion method for revenue recognition for the year under consideration on the ground that the appellant firm through its managing partner had

agreed to follow the said method during search operation and had filed its return of income for A.Y.2016-17 by following percentage completion method and the Id AO cannot follow two different methods of accounting for recognizing the revenue for A.Y.2015-16 and A.Y.2016-17 in respect of the same project as he was completing the assessment for both the years simultaneously without appreciating the facts of the case and disregarding the submissions given by the appellant.

3. The learned CIT(A) erred in confirming the action of the AO in applying the same method of accounting for A.Y.2015-16 and A.Y.2016-17 on the ground that the appellant has failed to point out and specific mistake or fault of the AO in applying AS-7 for computing the income, as all the figure adopted by the AO were supplied by the appellant during assessment proceedings and the appellant had not raised any dispute or that computation disregarding the submissions given by the by the appellant.

4. The Id CIT(A) on confirming the action of the AO failed to appreciate the following that:

- a. The advances received from the flat owners cannot be treated as taxable business income unless and until the transaction is complete in all respect.*
- b. The addition made to the total income of the appellant is incorrect as the AO has not considered the fact that the final completion certificate is not received and possession of the flat was not handed over to the flat holder and thus the income is not taxable.*
- c. In the Return of Income for A.Y.2016-17, the appellant had offered these receipts as business income for the project.*

5. The Id CIT(A) further erred:

- a. In rejecting the contention of the appellant that income accrues to the appellant on the date of possession of flat given to the buyer.*
- b. In treating the share in booking amount received on sale of flat by the appellant as business receipt, disregarding the fact that such receipts are contingent receipts and not the income till the time the possession is not handed over to the buyer.*

6. The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

2. At the time of hearing, Id. counsel for the assessee submitted that they are not pressing ground No.1. Having heard his submission, ground No.1 is dismissed as not pressed. The only effective grounds are ground Nos.2 to 5 while ground No.6 is general in nature.

3. In ground Nos. 2 to 5, the grievance of the assessee, in nutshell, is that all along the assessee has been following 'Project Completion Method' adopted by the assessee, however, in the relevant year i.e. A.Y. 2015-16, there was a search action and during the said course of search, statement of Managing Partner Shri Rajesh Sakla was recorded u/sec. 132(4) of the Act and in that statement, he admitted that company will adopt 'Percentage Completion Method' from F.Y. 2015-16 relevant to A.Y. 2016-17. However, the AO held that even for the relevant A.Y.2015-16, the correct method should have to be Percentage Completion Method and not the Project Completion Method for revenue recognition and deriving the profit for the year under consideration and accordingly added Rs. 1,12,43,693/- to the total income of the assessee.

4. Now coming to the detailed analysis of facts on the entire issue. The assessee is a builder and developer and has been following Project Completion Method of accounting for the purposes of revenue recognition. There was a search action at the business premises of Siddhivinayak Group at Camp, Pune and a statement of Managing

Partner Shri Rajesh Sakla was recorded u/sec. 132(4) of the Act on 01/09/2016. The relevant questions and answers of this statement have been reproduced by the Assessing Officer (AO) in the assessment. In answer to question No.9, the assessee has stated that they are following Project Completion Method. Thereafter, in answer to question No.10, Shri Rajesh Sakla stated that he was not aware of the Percentage Completion Method and, therefore has not paid any advance tax for F.Y. 2015-16 relevant to A.Y. 2016-17 though there was net profit of Rs. 12,54,84,333/- in 04 projects that they have undertaken. Thereafter, he had declared that as the income for F.Y. 2015-16 relevant to A.Y. 2016-17 in respect of those 04 projects, he would include the said income while filing the return of income, since due date of filing the return was still there, and then he promised that he would include the said amount over and above the other income for F.Y. 2015-16 relevant to A.Y. 2016-17 following Percentage Completion Method. However, the AO, at para 10 of his order, observed that Shri Rajesh Sakla Managing Partner of the assessee group had admitted, in his statement recorded u/sec. 132(4), to recognize the revenue as per Percentage Completion Method, but, the assessee had failed to offer the income and recognize revenue on sale of flats following Percentage Completion Method for the year under consideration. We have already seen in answer to question No.10, the Managing Partner Shri Rajesh Sakla had admitted that they would adopt the said Percentage Completion Method from F.Y. 2015-16

relevant to A.Y. 2016-17, but not for the year under consideration i.e. A.Y. 2015-16 for which already Project Completion Method has been adopted. Therefore, there is an apparent discrepancy in the finding of the AO, where as per answer to question No.10, the said Managing Partner of the assessee group had admitted to adopt Percentage Completion Method from A.Y. 2016-17, but at para 10, the AO had wrongly stated that such Managing Partner Shri Rajesh Sakla has admitted to adopt Percentage Completion Method for the year under consideration and this observation is therefore not correct. Finally, at para 14, the AO adopts Percentage Completion Method for recognition of Revenue and profits for the year under consideration and adds Rs. 1,12,43,693/- to the returned income of the assessee.

5. The Id. CIT(A) had upheld the findings of the AO vide para 13 of his order by observing that the action of the AO in applying Percentage Completion Method for A.Y. 2015-16 cannot be faulted with specially when the assessee himself has agreed to follow the same during the course of search operation and has filed return of income for A.Y. 2016-17 by following Percentage Completion Method. Again this observation of the Id. CIT(A) cannot be termed as valid interpretation within the ambit of the Act since if the assessee has agreed and filed return following Percentage Completion Method for A.Y. 2016-17, then adopting the same Percentage Completion Method, addition cannot be made for A.Y. 2015-16 when already assessee has adopted the Project

Completion Method and when no distortion or ambiguity in arriving at profit by applying such Project Completion Method has been pointed out by Department for the year under consideration. We observe from the Guidance Note on Accounting for Real Estate Transactions (Revised 2012) which is guidance note for accounting treatment in case of real estate developers and builders, therein both the standard of accounting i.e. Project Completion Method and Percentage Completion Method can be adopted and there is no binding obligation on such developers and builders to adopt only a particular method of accounting while recognizing the revenue and profit elements for the year under consideration. We further find that in A.Y. 2013-14 in case of the assessee, order dated 24/04/2018 assessment completed u/sec. 143(3) r.w.s. 153A of the Act, Department has accepted the Project Completion Method adopted by the assessee. That, further for A.Y. 2014-15 also, in assessee's case, order dated 24/04/2018 assessment completed u/sec. 143(3) r.w.s 153A of the Act and again the Department has accepted the Project Completion Method adopted by the assessee. The point noted is that in both these assessment years, the date of order is the same i.e. they were passed on the same date and by the same AO. That, again assessment for the present year i.e. A.Y. 2015-16 also has been passed by the same AO, when he has accepted Project Completion Method for A.Ys. 2013-14 and 2014-15 then he should have brought out distinctly any mistake or fallacy or distortion caused to the profits by adopting Project Completion Method

and therefore insisting to apply the Percentage Completion Method. But the AO has not given any such findings. Shri Rajesh Sakla, Managing Partner of the assessee group in answer to question No.10, in the statement recorded u/sec. 132(4) of the Act, has declared to follow Percentage Completion Method from A.Y. 2016-17. Even the Id.AR submitted that they have shown their profit in the return of income filed for A.Y. 2016-17 by adopting the Percentage Completion Method and have paid due taxes thereon. We do not find that the Revenue has brought out any case to make such addition in the hands of the assessee for A.Y.2015-16 for recognizing the profit adopting Percentage Completion Method. At least, there has to be some kind of ambiguity or distortion of arriving at the profit element through Project Completion Method so for the Department to say that only Percentage Completion Method is the correct way to arrive at the correct profit. The Department has not brought out any defect in arriving at the profit element in case of the assessee for A.Y. 2015-16 while adopting the Project Completion Method. In absence of pointing out any such disparity or distortion in the profit element arrived at by the assessee while adopting the Project Completion Method for the year under consideration, the Revenue cannot impose on the assessee to adopt only the Percentage Completion Method for the year under consideration for determining the profit. That, further, Id.DR, has placed strong reliance on the findings of the AO as well as the Id.CIT(A). However, on the question from the Bench that when the

Department has accepted the Project Completion Method for A.Ys. 2013-14 and 2014-15, then on what ground the Department is imposing the Percentage Completion Method on the assessee for A.Y. 2015-16, to this Id.DR could not provide any answer. He could not justify the stand taken by the AO also, where the AO has written in his order that the Managing Partner of the assessee has agreed to adopt Percentage Completion Method for the year under consideration but in fact as per the declaration and statement recorded u/sec. 132(4), the Managing Partner had categorically stated for adopting Percentage Completion Method from A.Y. 2016-17 onwards and not for the present assessment year. The Id.DR also could not demonstrate from the findings of the AO as well as the Id. CIT(A) as to where distortion or ambiguity, if any, has taken place while determining the profit of the assessee for the current assessment year while adopting Project Completion Method, for which the Department is imposing the Percentage Completion Method on the assessee and making the addition in this year. We take guidance from the decision of the Hon'ble Supreme Court in the case of *CIT v. Bilahari Investment (P) Ltd.* [2008] 299 ITR 01 (SC) wherein the Hon'ble Court has observed and held as follows:-

19. In the judgment of the Bombay High Court in Taparia Tools Ltd. (supra) it has been held that in every case of substitution of one method by another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessee is relevant. In the present case, there is no finding recorded

by the AO that the completed contract method distorts the profits of a particular year. Moreover, as held in various judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme spread over a period of time.

20. As stated above, we are concerned with assessment years 1991-1992 to 1997-1998. In the past, the Department had accepted the completed contract method and because of such acceptance, the assessee, in these cases, have 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, the Department can insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure, is revenue neutral. Therefore, we do not wish to interfere with the impugned judgment of the High Court.

As per this judgment of the Hon'ble Supreme Court, the rule of law in adopting the accounting standard in case of builder and developer is absolutely clear and precise, so that it is only in those case where the Department records a finding that the method adopted by the assessee results in distortion of profit, the Department can insist on substitution of the existing method. Reverting to the facts of the present case before us there is no reason recorded by the AO nor the Id. CIT(A) that the Project Completion Method which the assessee has adopted for recognition of revenue and the profit elements distorts the profits for the year under consideration. In absence of any such finding either by the AO or by the Id. CIT(A), the Department therefore cannot insist the assessee to substitute the Percentage Completion Method in place of Project Completion Method which the assessee has

adopted for the year under consideration. There is another decision by Hon'ble Karnataka High Court where their Lordships have observed when the Department has accepted in the previous years, in the light of guidance note applicable to developers a certain method of accounting and the profit arrived at is revenue neutral, then in such scenario, the substantive question of law has to be answered in favour of the assessee and against the Revenue. The relevant part of the judgment in the said case of *CIT v. M/s. Prestige Estate Projects Pvt. Ltd.* [2020] TaxCorp (DT) 82901 (HC-Kar.) is extracted as follows:-

"In the instant case, the Tribunal has rightly held that in case of revised AS-7 is to be applied, then the opening inventories is also to be valued as per revised AS-7. In fact, the revenue had accepted the method of accounting adopted by the assessee for the previous years and in the light of guidance note provided that AS-7 is applicable to real estate developers, assessee itself has changed the method of accounting and for the subsequent years.

It has changed from Project Completion Method to Percentage Completion Method in the subsequent year and as such, there is revenue neutral in the assessment year in question. Hence, for the reasons aforesaid, we answer the substantial question of law No.1 in the affirmative i.e., in favour of the assessee and against the revenue."

Therefore, in the case of the assessee for A.Y. 2015-16 when the Department has not pointed out any distortion in the profit arrived at for the year under consideration by adopting Project Completion Method, then the Revenue arrived at has to be revenue neutral and the Department cannot insist on the assessee to adopt Percentage Completion Method. More so, because the Revenue has already accepted Project Completion Method for the assessee for the previous consecutive A.Ys. 2013-14 & 2014-15. We are of the considered view,

therefore, on examination of the facts and circumstances and as per the judicial pronouncements placed on record that the addition made in the case of the assessee is unjustified unwarranted and invalid in the eyes of law. We set aside the order of the Id. CIT(A) and direct the AO to delete the addition from the hands of the assessee. Ground Nos. 2 to 5 are, therefore, answered in favour of the assessee and against the Revenue.

6. In the result, appeal of the assessee is partly allowed.

Order pronounced in open Court on 05th October, 2023.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 05th October, 2023

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "B" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.