

**IN INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE
SHRI M BALAGANESH, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 4808/Del/2019
Asstt. Year: 2014-15

DCIT, Central Circle, Ayakar Bhawan, Sec-12, Karnal, Haryana Pin 132001	Vs.	Reliable Realtech Pvt. Ltd. C/O NK Jain Adv. Naya Bazar, Bhiwani Haryana Pin 127021 PAN AADCR4203L
(Appellant)		(Respondent)

Assessee by:	Shri Gautam Jain, Advocate Shri Lalit Mohan, CA
Department by:	Shri P.N. Barnwal, CIT DR
Date of Hearing:	23.11.2023
Date of pronouncement:	09.02.2024

ORDER

PER ASTHA CHANDRA, JM

The appeal filed by the Revenue is directed against the order dated 20.03.2019 of the Ld. Commissioner of Income Tax (Appeals) -3, Gurgaon (**"CIT(A)"**), pertaining to Assessment year (**"AY"**) 2014-15.

2. The Revenue has raised the following grounds:-

- “1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of 24,32,00,000/- by applying percentage of completion method (AS-9).
2. It is prayed that the order of Ld. CIT(A) be set aside and that of the AO be restored.”

3. It is a search case.

4. The assessee company is a real estate developer. It has been developing a township namely 'Antriksh Heights' sector-84, Gurgaon. Search under section 132 of the Income Tax Act, 1961 (**the "Act"**) was conducted on 05.02.2014 at the business and residential premise of the assessee and its group cases. The assessee e-filed its return for AY 2014-15 on 31.03.2015 declaring loss of Rs. 17,07,932/-. Statutory notices under section 153A/143(2)/142(1) along with questionnaire were served upon the assessee which were duly complied with. The Ld. Assessing Officer (**"AO"**) found that the assessee has not shown any income from the Project. In the notes to the account of the assessee it is mentioned that sale of land/flat is recognised when the possession of the land/flat is handed over to the buyer and company has adopted Project Completion Method for revenue recognition. In his statement recorded on 07.03.2014 under section 132(4) of the Act Shri Shiv Kumar Garg, main promoter of the Group stated that though substantial booking have been received in respect of the project but the income will be accrued on the basis of final sale of project on Project Completion Method.

4.1 During assessment proceedings the assessee was show caused as to why income be not determined on the basis of Percentage of Completion Method. The assessee filed reply on 31.03.2016 which is reproduced in para 3.5 at page 4-5 of assessment order. The gist of the reply has been mentioned by the Ld. AO in para 3.6 of the assessment order. The Ld. AO referred to the guidance note issued by the Institute of Chartered Accountants of India (ICAI) regarding "Accounting of real estate transactions, 2012". In para 3.8 of the assessment order the Ld. AO gave reasons for not accepting the reply of the assessee. In para 3.9 the Ld. AO stated interalia that the developer works as a contractor who is completing the construction of the unit for the customer at the agreed terms in respect of quality, specifications and consideration after signing of agreement to sell.

The Ld. AO arrived at the conclusion that Percentage of Completion Method is applicable to the assessee and calculated the income of the assessee at Rs. 24.32 crores and added the same to its income. Accordingly, the assessment was completed at Rs. 24,14,92,070/- on 30.03.2016 under section 143(3) r.w. 153A(1)(b) of the Act.

5. Aggrieved, the assessee appealed. The Ld. CIT(A) deleted the impugned addition by observing and recording the following findings:-

"5.1.1 The facts of the case as drawn out are as follows:-

- (a) *The appellant company is engaged in real estate development and derives its income from actual sale and transfer of property.*
- (b) *In all previous years, the appellant company has adopted AS-9 ie. the Project Completion Method, recognition of revenue and whatever expenses were incurred were debited to work-in-progress account.*
- (c) *The appellant has been filing return of income since AY 2008-09 following the Project Completion Method.*
- (d) *The appellant obtained the license from DTCP-Haryana and on that basis the construction work was started.*
- (e) *It has been stated that the cost of construction has been capitalized as regards the flats construction of which is yet to be completed and no conveyance deed or possession has been executed or possession has not been handed over.*
- (f) *The AO has stated that field enquiries revealed that 58.48% of expected revenue has accrued upto 31.03.2014, whereas 78% of cost has been incurred.*
- (g) *The AO has made an addition of Rs. 24,32,00,000/- for all the years till date by applying Project Completion Method' during the year under consideration.*

5.1.2 The following judicial pronouncements dwell upon the issue under consideration and are reproduced as under:-

- (i) ***The Hon'ble Delhi High Court had examined the applicability of the Completed Contract Method vis-à-vis POCM method in the case of Paras Buildtech India Pvt. Ltd. reported in 382 ITR 630 and held as under:-***

"4. The background to the filing of the present appeals is that the Appellant Assessee is engaged in the business of real estate as a developer. The Assessee either purchases land in its own name or gets the power of attorney from the land owner in case the property is owned by another party so as to carry out activities of development on the land in terms of a collaboration agreement. The Assessee enters into agreements to develop and sell overall projects in terms of sharing with the owner. It enters into contracts with various buyers and receives sums by way

advance for booking or reserving flats/shops/areas. On completion of the project, the Assessee hands over the possession of the flats booked to the respective customers/buyers along with the execution of the sale/conveyance deed.

5. It is stated that the Assessee regularly follows Accounting Standard (AS) 9 issued by the Institute of Chartered Accountants of India (ICAI). In this method, revenue is recognized as and when significant risk and reward of ownership/title is transferred. All sums received for the construction project till such time are treated as advances and shown as liability. All expenses incurred in the construction are accounted for in the stock in trade and/or block of buildings and are reflected as such in the balance sheet of the Assessee.

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8. The AO however rejected this contention and held that AS-7 is applicable to the Assessee. The AO held that the Assessee was acting as a contractor. It was held that significant risks and rewards of ownership had been transferred by the Assessee to buyers when the agreements to sell were entered into with them. The books of account of the Assessee were rejected under Section 145 of the Act and its profits were computed by applying the AS-7. The AO added a sum of Rs. 1,56,88,100 to the Assessee's declared income by applying the percentage completion method. Apart from this the AO disallowed certain other sums including the sums on account of depreciation and under Section 14A of the Act. The income of the Assessee was determined at Rs. 2,28,68,559/- as against the declared income of Rs. 57,75,159/-.

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16. At the outset, it is required to be noticed that the ITAT has in the impugned order dated 17th February, 2015 in ITA No. 4316/Del/2010 upheld the finding rendered by the CIT (A) that the Assessee was only a developer and not a contractor. This finding is significant because, as noticed hereinbefore, the agreements entered into by the Assessee are only on the basis that it is a developer. The Assessee has throughout been contending that it is not a contractor. This finding has been accepted by the Revenue inasmuch as it has not filed any appeal against the impugned order of the ITAT.

17. The other significant aspect is that the Assessee has been able to make good its plea regarding treatment of the sum received by it as advance in its books of accounts. The balance sheets filed by the Assessee, copies of which are enclosed with the memorandum of Appeal, do bear out the fact that the cost of construction is capitalized as regards the flats the construction of which is yet to be completed, and no conveyance deed has been executed or possession has not been handed over. The Assessee's balance sheet dated 31st March, 2005 discloses under the sub-head 'Inventory' under the head Current loans and advances' a sum of Rs. 7,09,93,957. The explanatory Schedule 4 describes the said figure as 'Stock and inventory, It is also stated in Item No. 1 (b) of Schedule 19 in the Notes to the Accounts forming part of the final audit statement as under:-

"(b) Revenue Recognition

Sale of building:

(i) When building is ready to be delivered -

Sale is booked in the books of accounts on the date of possession agreed upon or on the date of sale if the sale deed is executed before the date of possession agreed.

(ii) When the building is not ready to be delivered-

Sale is booked on the date of the building transferred and possession handed over.

The income and expenditure are accounted for on accrual basis revenue of sale of offices/shops etc is recognized on signing of title deeds. All sums received till then for the construction project are treated as advances and shown as liability."

18. Section 145 (1) of the Act states that the income chargeable under the heads 'Profits and gains of business or profession' shall be computed in accordance with either cash or mercantile system of accounting "regularly employed by the Assessee". It is only with effect from 1st April 2015 that a change has been brought about in Section 145 (2) which permits the central government to notify in the Official Gazette from time to time the income computation and disclosure standards to be followed by any class of Assesses or in respect of any class of income. That change is prospective and in any event does not apply to the case on hand.

19. The settled legal position as far as Section 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an Assessee unless he comes to a determination that notified accounting standards have not been regularly followed by the Assessee. As pointed out by the CIT (A) in the order dated 2nd July, 2010, the AS of the ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956. The method of accounting followed by the Assessee in the present case ie. project completion method was certainly one of the recognized methods and has been consistently followed by it.

20. In Commissioner of Income Tax v. Bilahari Investment P Ltd. (2008) 299 ITR 1 (SC) it was observed as under:

"Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such method. Similarly, the percentage of completion method is another such method.

Under the completed contract method, the revenue is not recognized until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract.

On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under the method determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.

The above indicates the difference between the completed contract method and the percentage of completion method."

21. In the present case, there was therefore no good reason for the ITAT to have reversed the finding of the CIT (A). The only reason given in the impugned order of the ITAT is that 'risks and rewards' of ownership were transferred to the buyers who had paid the booking advance amounts and in some cases these rights were transferred to third parties. However, this does not in any manner affect the treatment of the said amounts in the books of the Assessee. As noted hereinbefore, the expenses of construction were not debited to the P & L account of the Assessee. It was shown as cost of construction or block of buildings. It is only as and when a conveyance deed was executed or possession delivered that the receipt was shown as income. The explanation added by way of Notes to the Accounts was not taken note of by the ITAT when it came to the conclusion that the percentage completion method should apply to the Assessee.

22. The other aspect that appears to have escaped the attention of the ITAT is that the Assessee offered to tax in the subsequent FY the amounts received and therefore there was no actual loss to the revenue. In similar circumstances, the Supreme Court in CIT v. Excel Industries Limited 2013 ITR 295 (SC) **observed that the dispute if any raised at the instance of the Revenue would be at best academic. The stand of the Assessee in the present case also finds support in the decision of the Gujarat High Court in CIT-IV v. Shivalik Buildwell (P) Ltd. (2013) 40 taxmann.com 219 (Gujarat). It was held that the Assessee in that case, who was a developer, was entitled to book the amount received as an income booking advance as income on transfer of the property. Till then the advance booking amounts could not be treated as his trading receipt. The High Court recognized that the Assessee in that case was entitled to apply the project completion method in terms of the applicable AS.**

23. This Court too has by order dated 7 th January 2015 in ITA 111/2014 (CIT v. SABH Infrastructure Ltd.) held likewise, after noticing the decisions of the Supreme Court in CIT v. Bilahari Investment P. Ltd. (supra) and the order dated 15th November 2011 in ITA No. 928 of 2011 (CIT v. Manish Buildwell Pvt. Ltd.). 24. For the aforementioned reasons this Court answers question (a) as far as AY 2005-06 is concerned in the negative, i.e. favour of the Assessee and against the Revenue."

(ii) Furthermore, the Delhi Bench of Tribunal in the case of DCIT vs. M/s Sabh Infrastructure Ltd. in ITA 4572/Del/2009 and 2813/Del/2010 dated 20.4.2012 held as under:

"9. We have carefully considered the submissions and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) has given a finding that assessee company falls under the category of real estate developer and not a construction contractor. In that view of the matter, clearly AS-9 issued by the ICAI is applicable to the assessee and AS-7 is applicable to the construction contractor. Further it is seen that assessee has been consistently following this method of accounting in the previous years since long and it has not been disturbed. Moreover, we find that method of accounting adopted by the assessee is an accepted method of accounting. In this regard, assessee has placed reliance upon the following cases laws which are also relevant (1) C.I.T. vs. Manish Buildwell Pvt. Ltd., Delhi High Court, in ITA No.

928/2011 dated 15.11.2011. In para 8 & 9 of this decision, the Hon'ble Jurisdictional High Court has expounded as under:-

"8. It is well settled that the project completion method is one of the recognized methods of accounting. In Commissioner of Income Tax and Another vs. Hyundai Heavy Industries Co. Ltd. (2007) 291 ITR 482 (SC) the Supreme Court held as follows:-

"Lastly, there is a concept in accounts which is called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely "completed contract method" and "percentage of completion method". To know the results of his operations, the contractor prepares what is called a contract account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No. 7. They are "completed contract method" and "percentage of completion method".

This view was reiterated by the Supreme Court in Commissioner of income Tax vs. Bilahari Investment P Ltd. (2008) 299 ITR 1 (SC) with the following observations:

"Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such method. Similarly, the percentage of completion method is another such method. Under the completed contract method, the revenue is not recognized until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract. On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under the method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract. The above indicates the difference between the completed contract method and the percentage of completion method." (underlining ours)

9. After the above judgements of the Supreme Court it cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the Income Tax Act. Accounting Standards 7 (AS7) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method. In view of the judgements of the Supreme court (Supra), the findings of the Commissioner of Income Tax (Appeals), upheld by the Tribunal, does not give rise to any substantial question of law. Further, the tribunal has also found that there was no justification on the part of the assessing officer to adopt the percentage completion method for one year (the year under appeal) on selective basis. This will distort the computation of the true profits and gains of the

business. For these reasons, we are of the view that no substantial question of law arises. We, therefore, decline to admit question nos. 2 and 3."

9.1 Assessee has further placed reliance upon the decision of the ITAT, Mumbai Bench in the case of ACIT vs. Sheth Developers Pvt. Ltd. in ITA No. 3777/Mum/2010 dated 16th December, 2011. In this case Tribunal has held that it is established legal position that the assessee can follow any recognized method of accounting on the condition that the same method is to be followed consistently. The assessee in this case has followed project completion method which is one of the prescribed methods. The assessee was offering incomes on the completion of building itself whether the flats are sold or not completely. We do not find any reason to disturb the assessee's method of accounting which was being consistently followed from assessment year 2000-01 onwards and was also accepted in other years. 9.2 Assessee has further placed reliance upon the ITAT, Mumbai Bench decision in the case of Haware Construction Pvt. Ltd. vs. ITO in ITA No. 5601/Mum/2009 vide order dated 5.8.2011. In this case it was held that assessee is regularly following the project completion method and has offered the income in the year of completion of project. There was no reason as to why the same should be rejected and percentage completion method should be followed.

10. In the background of the aforesaid discussion and precedents and case laws, it is apparent that project completion method is established method of accounting which the assessee has been following consistently from the preceding so many years and the same has never been disturbed by the Revenue. Under the circumstances, in the background of the aforesaid discussion and precedents, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals). Accordingly, we uphold the same."

- (iii) **It is stated that aforesaid order of the Tribunal was accepted by the revenue, as no appeal was preferred by the revenue. Again for the subsequent assessment years, learned Assessing Officer adopted the same approach, and learned CIT(A) and Hon'ble Tribunal (ITA No. 478/Del/2013 and 480/Del/2013 dated 31.7.2013) following the aforesaid order of Tribunal, rejected the application of AS-7 for recognition of revenue and upheld the application of project completion method for recognition of revenue. Against the aforesaid order of the Tribunal dated 31.7.2013, revenue preferred an appeal before the Hon'ble High Court of Delhi and Hon'ble High Court dismissed the appeal of the revenue vide its judgment dated 07.01.2015 in ITA No. 111/2014 and 113/2014 by holding as under:**

"The brief facts are that the assessee is engaged in real estate development and derives its income from actual sale and transfer of property. For this purpose, it purchases land including built up property which it subsequently demolishes and develops in the layout township and after which the residential units are sold. In all previous years, the assessee had adopted AS-9, i.e., the project completion method whereby the consideration received on actual sales was shown in its books and claimed as income. Apparently, in a of Inc previous detailed order, the ITAT sanctioned this method and field it to be applicable to the business of the assessee, for AY 2006-07 and 2007-08. The CIT (A) had, for the years in question in these appeals, considered the decision of the ITAT for those years (ITA Nos. 4572/del/09 and 2813/del/2010 dated 20.4.2012. In the said decision of the ITAT, the previous judgment of this Court in CIT v. Manish Buildwell Pvt. Ltd. (ITA 928/2011) decided

on 15.11.2011, was relied upon. Likewise, the Supreme Court ruling in CIT v. Belahari Investments Pvt. Ltd., (2008) 299 ITR 1, to this effect which discussed both the percentage completion and the project completion methods, and noted its difference were considered. In Manish Buildwell (supra) it was held that it cannot be said that project completion method would result in deferment in payment of taxes which are to be assessed annually. The ITAT in these circumstances held in relation to the assessee/respondent that the adoption of the project completion method is an established method of accounting. In these circumstances, without there being any rationale or new development, the Revenue could not have concluded that the project completion method was not appropriate for the assessee. Consequently, it is held that no substantial question of law arises for consideration. The appeals are accordingly dismissed." (Emphasis supplied)

- (iv) Further following the aforesaid judgement, Hon'ble Tribunal in its order dated 24.02.2016 in ITA No. 5809/DEL/2013 has held as under:***

5. In view of above we are incline to hold that the Hon'ble High Court has upheld that conclusion of the ITAT that the adoption of PCM is in establish method of accounting and without there being any rationale or new development in the fact and circumstances of the case as well as without bringing out any defect on record in the accounting procedure adopted by the assessee, the revenue could not have concluded that the project completion method was not appropriate for the assessee. Hence, order of Hon'ble High Court is also applicable in favour of the assessee to the present case pertaining to AY 2010-11 and accordingly sole ground of the revenue being devoid of merits is dismissed in the result appeal of the revenue is dismissed.

- (v) The aforesaid judgment of High Court has further been followed by the Hon'ble Tribunal in the case of ITO vs. K. Sahni Bros. Pvt. Ltd. in ITA No. 782/Del/2011 dated 31.3.2015, wherein Hon'ble Tribunal has held as under:***

"8. After considering the arguments of both the sides and the facts of the case in relation to the addition of Rs.7,10,94,646/-, we do not find any infirmity in the order of the learned CIT(Appeals). The fact that the assessee has consistently followed the same method of accounting of income in all the earlier years as well as the succeeding years, has not been disputed by the Revenue. Thus the facts remains that the assessee has always been accounting for the sale proceeds of the portions sold by it as income in the year when oner of income the possession is given and the registered sale deeds are executed. This method of accounting of income stands accepted in the hands of the assessee u/s 143(3) in the earlier as well as succeeding years. On these facts the A.O. is not justified in adopting the percentage completion method for one year (the year under appeal) only on selective basis. Infact this will distort computation of the true profits and gains of the business. Further same income will be assessed again in the hands of the assessee in the year when sales have been declared in the subsequent years and assessments have been framed u/s 143(3) of the Act which is not tenable in law. It is further seen that percentage completion method as sought to be applied by the A.O. for computing the income of the assessee by not accepting the method of accounting of income declared by the assessee, is also not prescribed u/s 145/145A of the Income Tax Act, 1961 and therefore also there is no justification for the Assessing Officer to insist that the assessee ought to have applied only percentage completion method. For this proposition we derive further support from the orders of Delhi Bench of ITAT in the

cases of Sabh Infrastructure Limited for assessment year 2006-07 to assessment year 2009-10 decided by the Co-ordinate 'G' Bench at Delhi. It has been held in the case of the above company for assessment year 2006-07 and 2007-08 in ITA No. 4572/Del/2009 and 2813/Del/ 2010 that where the assessee was a Real Estate Developer and not a construction contractor, AS7 was not applicable. Even in the case of Sabh Infrastructure Limited (supra) the assessee recognised revenue at the time of execution of sale deed through which significant risks and rewards of owner of the property were transferred to the buyer and the same was stated to be in accordance with AS-9 issued by ICAI and that the advance received from buyers of the flats was shown as advances from customers. The ITAT in this case found that the method of accounting adopted by the assessee is an accepted method of accounting and placed reliance for this proposition on the judgement of Hon'ble Delhi High Court in the case of CIT vs. Manish Buildwell Private Ltd. in ITA No. 928/2011 dated 15.11.2011. This order of the ITAT was followed by it in assessment year 2008-09 and 2009-10 also and the appeal of the Revenue in the Hon'ble Delhi High Court against the order for assessment year 2008-09 and 2009-10 was also dismissed vide order of the Hon'ble Delhi High Court dated 7th January 2015 in ITA No. 111 and 113 of 2014 wherein the judgement of Hon'ble Delhi High Court in the case of CIT vs. Manish Buildwell Private Ltd. as well as the judgement of Hon'ble Supreme Court in the case of Belahari Investments Private Ltd. (299 ITR 1) were relied on to hold that it cannot be said that project completion method would result in deferment of taxes which are to be assessed annually and that the same was an established method of accounting. Thus the orders of the ITAT in the case of Sabh Infrastructure Private Ld have been upheld by the Hon'ble jurisdictional Delhi High Court also. On these facts and circumstances, even in the case of this assessee no infirmity is found in the order of the learned CIT (Appeals) deleting the addition of Rs.7,10,94,646/- as there was no justification for the Assessing Office to discard the consistently followed method of accounting selectively only for one year to make the impugned addition. This has infact resulted in assessment of same income in the hands of the assessee twice, which is not tenable in law. Therefore the order of the learned CIT (Appeals) on this issue is upheld and the ground of appeal raised by the Revenue is dismissed.

- (vi) From the aforesaid, what is apparent is that Completed Contract Method is a well recognized method and has been judicially accepted in the context of developer to recognize income even on consideration of erstwhile Accounting Standard-7 issued by ICAI and Guidance Note on account for real estate contracts issued by ICAI.**

5.1.3 Further, to appreciate the issue in hand, assessee the provisions of section 145 of the Act, read as under:

"145. (1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources shall subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income.

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

Section 145 of the Act prescribes that business income shall be computed in accordance with "cash or mercantile system of accounting regularly employed by the assessee". The choice of method of accounting is with the assessee and unless conditions prescribed in section 145(3) are satisfied, profits have to be computed in accordance with the method of accounting followed by the assessee:

i) 33 ITR 182 (SC) CIT v. McMillan & Co.

ii) 53 ITR 122 (SC) CIT v. A. Krishnaswami Mudaliar and Others

Section 145(2) of the Act provides that the Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income. It is therefore submitted that unless an accounting standard is notified by the Central Government, same is not binding on an assessee, and hence same cannot be ground for rejecting the method of accounting on the ground that accounting standards as notified under sub-section (2), have not been regularly followed by the assessee.

*Under section 145(2) of the Act, 1961, Central Government has notified two accounting standards Le. AS-1 and AS-2 vide notification no. SO 69(E), dated 25-1-1996. It is submitted that apart from the aforesaid accounting standards, no other accounting standard has been notified by the Central Government for the purpose of section 145(2) of the Act. Reliance is placed on the order of the Tribunal in the case of **Prestige Estate Projects (P.) Ltd. vs. DCIT reported in 129 TTJ 680 (Bang)** wherein the assessee-company was a real estate developers. It maintained its account by adopting completed contract method of accounting. According to the Assessing Officer, it was mandatory for the assessee to follow percentage completion method for recognition of revenue as per the provisions of AS-7. He, accordingly, calculated the profit of the assessee by following percentage completion method of accounting, on the aforesaid facts, Hon'ble Tribunal held as under:*

"3.17. As per section 211(3A) of the Companies Act, P&L a/c and balance sheet of the company is to comply with the Accounting Standard, As per proviso to section 211(3C), standards of accounting specified by the ICAI are to be deemed to be the Accounting Standards until the Accounting Standards are prescribed by the Central Government under section 2.1.1 (3C) of the Companies Act. Thus, the companies are required to follow the Accounting Standards as prescribed by the ICAL In case such Accounting Standards are not followed then action can be taken against the company. However, section 211(3B) also mentions that when the P&L a/c and the balance sheet of the company do not comply with the Accounting Standards then such companies shall disclose in its P&L. a/c and balance sheet, the following, namely

(a) the deviation from the Accounting Standards;

(b) the reasons for such deviation; and

(c) the financial effect, if any, arising due to such deviation. Thus the Companies Act provided for the deviation from the Accounting Standard also. When the assessee company is required to follow the Accounting Standard as prescribed by ICAI, then naturally it has to take into account the replies given by the Institute for the expert committee on the queries raised by

the companies. We had already pointed out that the learned Authorised Representative has filed opinion of the expert committee in respect of applicability of revised AS-7 to an enterprise undertaking construction activities on their own account as a venture of commercial nature. The assessee undertakes construction activity for those persons to whom it intends to sell the super-built area along with undivided share of land in a project which it is developing as a developer. Hence, the assessee is not a construction contractor and revised AS-7 was considered as not applicable. The assessee in view of the opinion given by the expert committee felt that it is not required to follow the revised AS-7 for the assessment year under reference.

3.18. It is true that AS-7 has not been specified by the Central Government under section 145(2) of the IT Act. Hence, the AO could not have rejected the accounts under section 145(3) on the ground that the assessee has not followed the prescribed method accounting. As per section 145(1), income is to be computed in accordance with system of accounting regularly employed by the assessee. The assessee was employing regularly the project completion method and the project completion method is an accepted method of accounting. The Bangalore Bench as well as the jurisdictional High Court have accepted that project completion method as an accepted method of accounting."

Thus since Guidance note is not notified by the Central Government for the purpose of section 145(2) of the Act, as such, such a guidance note is not binding for the purpose of section 145 of the Act. Apart from the aforesaid, Assessing Officer has not pointed out any fault to the method of accounting regularly followed by the appellant but stated that method adopted by the appellant does not reflect the true state of affairs and is not in accordance with the prevailing Accounting Standards, as such, rejection of method of accounting regularly followed by the assessee is wholly erroneous and unsustainable in law.

Considering the facts of the case, it is clear that the appellant is a builder and not a contractor. It has been pointed out that in view of the stipulations of the agreement in the case, it cannot be said that significant risks and rewards on ownership had been transferred to buyers prior to execution of the sale deed.

The appellant stated that it has consistently followed the Project Completion Method and it has been accepted by the Department in the earlier years. The Principle of Resjudicata' is applicable to the case of the appellant as enunciated by the Hon'ble Supreme Court in the case of the Excel Industries (358 ITR 295).

Hon'ble Delhi High Court while examining the applicability of the completed Method v/s POCM Method in the case of Paras Build Tech India Pvt. Ltd. 382 ITR 630 has held as under:-

- (i) Section 145(1) of the Act stated that income chargeable under the head 'Profit and Gains of Business or Profession' shall be computed in accordance with either cash or mercantile system of accounting 'regularly employed by the assessee'. It is only with effect from 1 April 2015 that a change has been brought about in section 145(2) which permits the Central govt. To notify in the official Gazette from time to time the income computation and disclosure standards to be followed by any class of assesses or in respect of any class of income that change in prospective and in any event does not apply to the case in hand.*
- (ii) The settled legal position as far as section 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an assessee unless he comes to a*

determination that notified accounting standards have not been regularly followed by the assessee.

- iii) The Accounting Standards of ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956.*
- (iv) The method of accounting followed by assessee in the present case, i.e. Project Completion Method was certainly one of the recognised methods and has been consistently followed by it.*

Considering the facts and judicial decisions on this issue, the addition of Rs. 24,32,00,000/- made by the AO is therefore deleted."

6. The Revenue is dissatisfied and is before the Tribunal and both the grounds relate thereto.

7. Ld. DR relied on the order of the Ld. AO. He drew our attention to para 3.7 and 3.8 of the assessment order and submitted that the Ld. AO has applied Percentage Completion Method relying on the Guidance Note of ICAI. The Ld. DR also submitted that the reply of the assessee to the show cause has not been accepted and the Ld. AO gave reasons therefore. He submitted copy of decision of Hon'ble Supreme Court in which SLP filed by the Revenue has been granted against the decision of Hon'ble Rajasthan High Court reported in PCIT vs. Panchsheel Colonizers (P) Ltd. (2019) 111 taxmann.com 460 (SC)

8. The Ld. AR submitted that the assessee has consistently followed the Project Completion Method which has been accepted by the department in earlier years. The 'Principle of Resjudicata' applies to the case of the assessee. The project is still going on. He pointed out that no incriminating material was found during search so as to disturb the method of accounting consistently followed by the assessee. The Ld. AR stated that the Ld. CIT(A) followed the decisions of Hon'ble Delhi High Court in Paras Buildtech India Private Limited vs. CIT 382 ITR 630 (Del) and in CIT vs. Sabh Infrastructure Ltd. in ITA No. 111/2014 and 113/2014 (Del) dated 07.01.2015. The Ld. AR placed the following propositions for our consideration:-

- “i) No real income much less Accrual of Income - regard must be had to the substance of the transaction rather than to its mere form*
- ii) That the completed contract method is a recognized method and is in accordance with Accounting Standard-9 issued by ICAL*
- iii) That a method of accounting adopted by the tax payer consistently and regularly cannot be discarded by the departmental authorities on the view that he should have adopted a different method of keeping of accounts or of valuation*
- iv) That method employed by assessee is 'Revenue Neutral'- It cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the Income Tax Act.*
- v) That Guidance Note on Accounting for Real Estate Transactions (Revised 2012) duly recognizes application of AS-9 in respect of real estate developer also ICDS-III is not applicable in respect of real estate developer.*
- vi) Income Computation and Disclosure standards' (ICDS) notified by Central Government in exercise of power under section 145(2) cannot override binding judicial precedents of provisions of Act or Rules framed thereunder.*
- vii) Reliance on Accounting Standard-7 is misconceived.*
- viii) That guidance note on recognition of revenue by real estate developers is not binding.”*

In support of each of the proposition several precedents have been relied upon.

9. We have given careful thought to the submission of the parties and perused the records. It is not in dispute that the assessee company is in the business of real estate as stated by the Ld. AO in the last sentence of para 2 of the assessment order. It is also admitted by the Ld. AO that notes to the account of the assessee mentioned that sale of land/flat is recognised when the possession of the land/flat is handed over to the buyer and company has adopted Project Completion Method for revenue recognition. In his statement recorded under section 132(4) of the Act during search the main

promoter Shri Shiv Kumar Garg stated on 07.03.2014 that though substantial bookings have been received in respect of Antriksh Heights project but the income will accrue on the basis of final sale i.e. on Project Completion Method. It is observed that during assessment proceedings it was submitted by the assessee that it obtained the license from DTCP Haryana. On that basis the construction was started and following the Project Completion Method for recognition of revenue and whatever expenses were incurred were debited to work in progress account. The project is not yet completed and all expenditure were carried forward as WIP and this method of accounting was found to be acceptable to the department. The factual matrix of the case narrated by the Ld. CIT(A) in para 5.1.1 of his appellate order reveals that the assessee has been filing return since AY 2008-09 following consistently the Project Completion Method. The Ld. AR contended that even in search no incriminating material has been found so as to disturb the method of accounting consistently followed by the assessee. Nothing convinced the Ld. AO as he was prompted to take a different view based on the Guidance Note issued by ICAI regarding "Accounting of real estate transactions, 2012" (read with AS-9). The Ld. AO has referred the said Note in para 3.7 of assessment order. We have looked into it. Para 5.1 thereof says that the Percentage Completion Method should be applied where the economic substance is similar to construction contracts and para 5.2 says that this method is applied when the outcome of the project can be estimated reliably. None of these features is attributable to the facts of the assessee's case.

10. The Ld. CIT(A) has recorded the finding that the assessee is a builder and not a contractor and that in view of the stipulations of the agreement it cannot be said that significant risks and rewards on ownership had been transferred to buyer prior to execution of the sale deed. It is stipulated in the agreement to sell that no property during construction shall stand transferred or deemed to be transferred to the allottee(s) and the apartments under construction shall continue to be sole property of the owner and it is

only the duly completed apartment there in the property that shall be transferred on registration of the Apartment in his name. The Ld. AR's contention is that the assessee has neither conflicted Guidance note on Accounting for Real Estate Transactions (Revised 2012) while following Project Completion Method for revenue recognition nor ICDS-III is applicable to the assessee. These contentions of the assessee could not be refuted by the Revenue.

11. The Ld. DR mentioned the decision of Hon'ble Rajasthan High Court in PCIT vs. Panchsheel Colonizers (P) Ltd. (2019) 111 taxmann.com 459 (Raj.) wherein Hon'ble High Court upheld Tribunal's order that in case of assessee, engaged in the business of real estate development, addition could not be made by the Ld. AO on the basis of Percentage Completion Method. The Ld. DR pointed out that against the said decision SLP filed by the Revenue has been granted by the Hon'ble Supreme Court which is reported in PCIT vs. Panchsheel Colonizers (P) Ltd. (2019) 111 taxmann.com 460 (SC). It may be stated that although SLP has been granted, it is open to the Hon'ble Supreme Court to revoke or withdraw the leave, in limine, either suo moto as held in Govindrajulu Mudaliar (A) vs. CIT (1958) 34 ITR 807 (SC) or on objection taken later, if on later consideration the Hon'ble Supreme Court holds that leave ought not to have been given as held in India Aluminium Co. Ltd. vs. CIT (1961) 43 ITR 532 (SC).

12. The Ld. CIT(A) has followed the decisions of Hon'ble Delhi High Court in Paras Buildtech India Private Limited vs. CIT (supra) and Sabh Infrastructure Ltd. (supra). We do not find any reason to interfere with the decision of the Ld. CIT(A). We uphold it and reject appeal of the Revenue being without any substance.

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

Order pronounced in the open court on 9th February, 2024.

sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER

Dated: 09/02/2024

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	