

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 3248/Mum/2023
(A.Y. 2016-17)**

Assistant Commissioner of Income Tax – 1(2)(1) Room No. 535, 5 th Floor, Aayakar Bhawan, New Marine Line, M.K. Road, Mumbai- 400020	Vs.	Kumar Properties Private Limited, 21, Woudboy Road, Hazarimal Somani Marg, Opp. Mumbai Gymkhana, Fort – 400001 Maharashtra – 400001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABCK8464E		
Appellant	..	Respondent

**C.O. No.13/Mum/2024
(A.Y. 2016-17)**

Kumar Properties Private Limited, R. No. 535, Aayakar Bhawan, New Marine Lines, Mumbai – 400 020	Vs.	ACIT, Circle -1(2)(1) 21, Woundboy Road, Hazarimal Somani Marg, Opp. Mumbai Gymkhana For, Mumbai – 400 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AABCK8464E		
Appellant	..	Respondent

Appellant by :	Rajan Vora a/w Nikhil Tiwari
Respondent by :	P.D. Chougule

Date of Hearing	23.04.2024
Date of Pronouncement	03.05.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

The appeal filed by the revenue is directed against the order passed by the Id. CIT(A)-1(2)(1) Mumbai dated 17.12.2018. Since the appeal filed by the revenue and cross objection filed by the assessee are based on identical facts on similar issue, therefore, for the sake of convenience both these appeals are adjudicated together.

ITA No.3248/Mum/2023

- “1. Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred in holding that it was not open to the AO to reject the accounts of the assessee u/s.145(1) of the Act where, in fact, the assessee has been regularly following mercantile system of accounting and the AO did not disturb the system of accounting.
2. Whether in the facts and circumstances of the case and in law, the assessee was required to follow the Percentage Completion Method for its income and expenditure reporting, following the Guidance Note of the ICAI in this regard, and the Ld. CIT(A) erred in rejecting the computation of income by the AO following the same Guidance Note on accounting for Real Estate Transaction dated 11.02.2012, which recommends 'Percentage Completion Method.'”

2. Fact in brief is that return of income declaring total loss of Rs.94,84,268/- was filed on 04.10.2016. The return was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 11.07.2017. The assessee was following project completion method during the course of assessment proceedings. However, the AO has not accepted the project completion method on the ground that the Department has determined the income on the basis of percentage completion method for the A.Y. 2014-15 after rejecting project completion method. On query the assessee explained after referring para 11 of accounting standard 9 of revenue recognition issued by the Institute of Chartered Accountant Associate India as under:

“In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:

- (i) *the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and*
- (ii) *no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.*

In a real estate development and sale all the risks and rewards in the unit is transferred to buyer as and when possession of the same unit is given to the buyer.

Further, The ICAI has issued Guidance Note on “Accounting for Real Estate Transactions” which is not mandatory to follow as it is only a guidance note.

In view of the above the company is year on year consistently following project completion method for recognising revenue.”

However, AO has not agreed with the submission of the assessee. The assessing officer was of the view that the Guidance Note of Accounting for Real Estate Transactions issued by the council of The Institute of Chartered Accountant Associate India dated 11.02.2012 has recommended the percentage of completion method. Therefore, the assessing officer has computed the total income of the assessee to the amount of Rs.750,82,126/- after following the percentage completion method.

3. Aggrieved the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee after following the decision of ITAT, Mumbai passed in the case of the assessee itself for assessment year 2014-15 vide ITA No. 605/Mum/2019.

4. During the course of appellate proceedings before us the ld. Counsel at the outset submitted that assessee has been following the project completion method constantly since assessment year 2001-02 and issue in appeal has been decided in favour of the assessee by the ITAT, Mumbai for assessment year 2014-15 vide ITA No. 605/Mum/2019. Further the ld. Counsel has also placed reliance on

various judicial pronouncements on the proposition that assessing officer cannot change the method of revenue recognition to percentage completion method where the assessee has been constantly following the project completion method for recognition of revenue:

1. *CIT Vs. Aditya Builders (2017) 378 ITR 75 (Bom HC)*
2. *CIT vs. Manish Build Well Pvt Lid Vs. CIT (2011) 245 CTR 397 (Del)*
3. *CIT Vs Hill View Infrastructure (P) Ltd (2013) 81 taxmann.com 58 (P&H HC)*
4. *PCIT vs Salarpuria Simplex Dwelling LLP (2022) 455 ITR 712 (Cal HC)*
5. *Rema Country Holdings Ltd. [2012] 18 taxmann.com 184 (Karnataka HC)*
6. *Corporate Leisure & Property Development Private Limited vs DCIT [2023] (ITA No 1006/Bang/2022) (Bang ITAT)”*

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. During the year the assessee has developed residential project named ‘Kumar Panchsheel’ at Pune. The project was consisted of two buildings A & B. The completion certificate of the Building ‘A’ was received on 4th July i.e A.Y. 2015-16 and the Income earned from the sale of flat was offered to tax by the assessee in the assessment year 2015-16 onwards on the basis of project completion method. The project completion certificate of Building ‘B’ was received on 17th February 2017 i.e A.Y. 2017-18 and the income was offered to tax in A.Y. 2017-18. The assessee has followed the project completion method constantly which was accepted in the earlier year except the assessment year 2014-15 which has been also adjudicated in favour of the assessee by the ITAT, Mumbai as discussed supra. The assessee followed the project completion method and recognised the revenue as per accounting standard 9 after satisfying the conditions under the method as follows:

- “a The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership:*
- b. The seller has effectively handed over possession of the real estate unit to the buyer forming part of the transaction,*
- c. No significant uncertainty exists regarding the amount of consideration that will be derived from the real estate sales, and*
- d. It is not unreasonable to expect ultimate collection of revenue from buyers”*

6. The assessee has adopted project completion method for revenue recognition from sale of flat on completion basis as provided in accounting standard 9 only when the property in the goods is transferred to the buyer for consideration.

“35. As per AS-9, revenue from sale of goods shall be recognized only when the property in the goods is transferred to the buyer for a consideration i.e. with transfer of significant risk and rewards of ownership to the buyer. In the current case, this practice is followed by the Appellant i.e only on receipt of completion certificates, flats are ready for possession and full consideration is received, then only revenue is recognized. Therefore, it is submitted that the Appellant has followed the best method suitable to its business.”

7. Further we have perused the decision of ld. CIT(A) who has adjudicated the issue in favour of the assessee after following the decision of ITAT in the case of the assessee itself for AY 2014-15 vide ITA No. 605/Mum/2019. The relevant extract of the decision of the ld. CIT(A) is reproduced as under:

“5. Decision

I have perused grounds of appeal, statement of facts, assessment order passed by the AO, submissions made by the Appellant and other evidences on records

5.1. Ground 1 *being general in nature does not require any separate adjudication and hence, the same is dismissed.*

5.2 Grounds 2 and 3

Vide these grounds, the Appellant has challenged the action of the AO in computing its taxable income on the basis of percentage of completion method after rejecting the project completion method consistently adopted by the

Appellant In this regard. Appellant has made a detailed submissions in support of the contention that the AO has erred in rejecting the Project Completion Method without appreciating the fact that in the background of facts of Appellant's case, this is the correct method of arriving at profits earned and further the Appellant has been consistently following this method of accounting. The Appellant has placed reliance on a plethora of case laws in support of its contention. The Appellant has also furnished a copy of judgement of Hon'ble ITAT Bombay passed in the case of the Appellant itself wherein the Hon'ble ITAT has considered this issue and has decided the same in favour of the Appellant.

I have considered the submissions of the Appellant. I have also perused the relevant assessment order. I find that the issue raised vide the above grounds of appeal has been duly considered by the Hon'ble ITAT Mumbai and the same has been decided in favour of the Appellant. Relevant part of the decision of the Hon'ble ITAT Mumbai passed in the case of Appellant for A.Y.2014-15, ITA No.605/Mum/2019 is extracted below:

6. Aggrieved with the above order, the revenue is in appeal raising following grounds of appeal-

1. "Whether in the facts and circumstances of the case and in law, the Ld. CIT(A) erred In holding that it was not open to the AO to reject the accounts of the assessee u/s. 145(1) of the Act where, in fact, the assessee has been regularly following mercantile system of accounting and the AO did not disturb the system of accounting.

2. "Whether in the facts and circumstances of the case and in law, the assessee was required to follow the Percentage Completion Method for its income and expenditure reporting, following the Guidance Note of the ICAI in this regard, and the Ld.CIT(A) erred in rejecting the computation of income by the AO following the same Guidance Note on accounting for Real Estate Transaction, dt. 11.02.2012, which recommends the "Percentage Completion Method"?

10. Considered the rival submissions and material on record, we notice that assessee is a real estate developer, it develops the project and sells the individual flats to the prospective buyers. We noted the submissions made by both the parties and considering the real estate business, we observe that there are different kinds of real estate businesses like :-

a) Project is developed by the developers investing in land, develop the land and build flats and sell the same (land may be owned by developer or joint venture)

b) Project is developed by the developers but the sale of flats is complete when the project is under development stage.

c). Project is developed on the land owned by other person and just develops and build the flats on contract.

11. In the above types of developments, the method of revenue recognition is selected based on the transfer of all significant risks and

rewards of ownership to the buyer, seller does not retain any effective control in the ownership when the possession will be handed over, no significant uncertainty exists regarding consideration and no unreasonableness in collection of revenue from the buyer. In the above three modules, the above said conditions will differ according to the type of real estate development the assessee intends to carry

12. in the first type(a), all the risks, control on the property/possession, consideration is not known and reasonableness of collection will be known only when the property reasonably marketed or it is ready for sale.

13. in the second type(b) all the risks are already passed on and only possession to be delivered, consideration is known and collection is assured

14. In the third type (c) no development risk at all and possession is pending consideration known and collection is assured

15. As stated above, in the type (b) and (c), the revenue recognition will be on percentage completion method and in the project where the risk and rewards are not known, it can be recognized only on the completion method. After considering the case law on this issue, we notice that in the similar situation, the Hon'ble Delhi High Court in Manish Build Well Pvt Ltd (supra) held that the project completion method is one of the recognized methods of accounting and it will not lead to deferment of payment of taxes which are to be assessed annually under the Income Tax Act. The Hon'ble Bombay High Court in the case of Aditya Builders (supra) held if the assessee had adopted project completion method of accounting and had been consistently following it over the years, it is not open to revenue to reject such method. In the given case, we notice that assessee is consistently following the project completion method. Its risks will be passed on only when the flats are ready and rewards will be known and reasonably expected to receive when the sales and possession is handed over. Considering the business module of the assessee, it is appropriate for the assessee to follow project completion method. As we said earlier, the revenue recognition will depend upon the risks and reward module of the project undertaken by the assessee. Therefore, we are inclined to accept the submissions of the assessee and accordingly ground no 1 and 2 raised by the revenue is rejected"

Thus, it can be observed from the above that the Hon'ble ITAT Mumbai has held that it is appropriate for the Appellant to follow Project Completion Method Thus, respectfully following the decision of Hon'ble ITAT Bombay (supra), I decide the issues raised vide grounds of appeal at sr. no. 2 and 3 in favour of the Appellant Accordingly, I direct the AO to delete the addition made in the assessment following percentage of completion method. Grounds are, thus, allowed."

8. After considering the decision of ITAT in the case of the assessee itself as elaborated in the finding of Id. CIT(A) as supra we find that issue raised before the Tribunal in this year is similar to preceding

assessment years. It would not be appropriate for us to deviate from the view taken in earlier years without pointing out any material change in the facts and circumstances in the subsequent year. Therefore, we consider that there is nothing before us on hand to differ from the issue raised before the ITAT, Mumbai in the case of the assessee itself as discussed above so as to take a different view on this issue. Since the issue on hand being squarely covered, therefore, following the principle of consistency we don't find any merit in the ground of appeal filed by the revenue. Accordingly, ground no. 1 & 2 of the appeal of the revenue are dismissed.

C.O. No 13/Mum/2024

9. The assessee has filed the Cross Objection in support of the order of Id. CIT(A) since we have dismissed the appeal filed by the revenue, therefore the Cross Objection filed become infructuous, accordingly the same is also dismissed.

10. In the result, the appeal filed by the revenue as well as Cross Objection filed by the assessee are dismissed.

Order pronounced in the open court 03.05.2024

Sd/-
(Sandeep Singh Karhail)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 03.05.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.