

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.105/CTK/2024

(निर्धारण वर्ष / Assessment Year : 2015-2016)

Bhuvana Projects Private Ltd. Flat No.908, Bhuvana Pride, Ranasinghpur, Odisha	Vs	DCIT, Corporate Circle, Bhubaneswar
PAN No. :AAECB 3452 A		

(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
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निर्धारिती की ओर से /Assessee by	:	Shri P.R.Mohanty, Advocate
राजस्व की ओर से /Revenue by	:	Shri S.C.Mohanty, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	29/08/2024
घोषणा की तारीख/Date of Pronouncement	:	29/08/2024

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order dated 24.01.2024 passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, in DIN & Order No.ITBA/NFAC/S/250/2023-24/1060081750(1) for the assessment year 2015-2016, on the following grounds of appeal :-

- 1. That the impugned Appellate Order by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Income Tax Department, Govt. of India is bad in law and without application of mind.*
- 2. That the Ld. CIT(A) has erred in confirming the order of the Assessing Officer assessing the taxable income of the assessee based on percentage completion method without considering the consistent method of actual performance adopted by the assessee since its inception declaring the income for the year. The application of AS 7 to arrive at the income is notional and hypothetical in nature which cannot override the books of accounts maintained by the assessee and therefore, assessing a high pitch income against the returned loss of the assessee is not tenable in the eyes of legal standing and therefore, the same should be quashed and the income*

returned by the assessee be upheld on the facts and circumstances of the case.

3. *That the assessing officer has referred to the provisions applicable to construction industry as per Para 3 of the Order, but the assessee is not in the business of construction activity. The assessee is engaged in the business of real estate in developing the land into residential units by construction and development and sells it to the prospective buyers in a phased manner. Proper accounting is being done for the expenses incurred in the project and gradually the same is being brought to revenue against the flats sold. Considering the revenue based on percentage completion methods will be detrimental to the assessee as the sale of residential units are market driven and takes time to sell. Unlike construction activity, where a contract is awarded to the company with a certain fixed revenue and which is certain to be received after the closed of the project. But in case of real estate business, the revenue can not be assured when the project is completed and the company has to make lot of efforts to sell the completed project. So, it is not justified to adopt AS - 7 for revenue recognition for the real estate cases and the Ld AO has not justified in adopting the same principle in the present case and so also the confirmation of the CIT(A) is not legally tenable and the same should be deleted and the return filed by the assessee with the returned loss should be allowed on the facts and circumstances of the case.*
4. *That the Appellant craves the leave of the Hon'ble Bench to add, alter, amend, modify, substitute, delete and/or rescind all or any of the grounds of appeal, submit written submissions, paper book and such other facts and figures before or at the time of final hearing of the case, if necessity so arises.*

2. Since all the grounds are roving around the issue of application of percentage completion method as against the project completion method adopted by the assessee, therefore, for the sake of convenience, all the grounds are taken together for deciding the present appeal.

3. Brief facts of the case are that the assessee is a private limited company engaged in the business of development of real estate project. The case of the assessee was selected for limited scrutiny for the following reason :-

- i. Large other expenses claimed in the profit and loss account.

4. The AO while completing the assessment during the examination of the expenses was of the view that the assessee has recognized its revenue by following the project completion method whereas it should have been followed percentage completion method and thereafter by invoking the provisions of Section 145(3) of the Act, the AO recomputed the income of the assessee by applying percentage completion method and addition of Rs.1,56,35,310/- was made to the income declared by the assessee.

5. Before us, Id. AR of the assessee submitted that it is the third year of business where the assessee was carried out its construction activity of development of residential housing project which was started construction in the year 2012-2013. In preceding assessment years in the return of income filed by the assessee declared cost of construction as work-in-progress and losses were claimed towards other expenses. In the year under appeal, the assessee has brought forward the work-in-progress from the preceding year and the cost incurred during the year was added in the work-in-progress and was taken over to the subsequent assessment year by following the project completion method. Since no sale agreement was executed nor any possession was given to any buyer, therefore, no revenue was recognised during the year under appeal. The assessee has consistently followed the accounting principle where the income has been recognised on project completion method. The Id. AR submitted that the ICAI vide its Press Release dated 20.07.2018 also specified that project application is the best method to

compute revenue in the case of real estate transactions. The said Press Release is placed in the paper book at pages 154 to 157. He further submitted that the assessee by following the project completion method has filed its return of income for all the subsequent years till completion of the project in the year 2021-2022 and copies of the financial statements for A.Y.2016-2017 and 2017-2018 were also placed before us. As per Id. AR, returns filed in all the other years were accepted by department and were processed u/s.143(1) of the Act, where income declared following the project completion method stood accepted. Ld. AR also relied upon the judgments of the Hon'ble Rajasthan High Court at Jaipur in the case of Unique Builders and Developers, rendered in ITA No.23 of 2013, dated 19.05.2017 and following other cases which are as under :-

- i) *Copy of the decision of the Calcutta High Court in the case of PCIT Vs. M/S. SALARPURIA SIMPLEX DWELLING LLP in ITA No.ITAT/45/2022 and IA No. GA/2/2022 decided on Dt.26/07/2022.*
- ii) *Copy of the decision in Hi-tech Estates & Promoters Pvt. Ltd. Vs. Pr. CIT-1, Bhubaneswar (ITAT, Cuttack) in ITA NO.391/CTK/2018 decided on Dt. 20/07/2020.*
- iii) *Copy of the decision Development Private Bangalore) in ITA Dt.27/01/2023. in M/s. Corporate Leisure & Property Limited Vs. DCIT, Bangalore (ITAT No. 1006/Bang/2022 decided on*
- iv) *Copy of the decision in M/s. Parth Developers Vs. Pr. CIT-1, 296-319 Indore, (ITAT, Indore) in ITA No. 419/Ind/2022 decided on Dt.28/07/2023.*
- v) *Copy of the decision in DCIT, Karnal Vs. Reliable Realtech Pvt. Ltd. (ITAT, Delhi), in ITA No. 4808/De1j2019 decided on Dt.09/02/2024.*

6. Ld. AR, therefore, pleaded that the income of the assessee should be computed by following the project completion method as the principle

of consistency also say that once a view has been taken on a particular method of accounting then the said view has to be followed to avoid any multiplicity and confusion in the process. For this, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of Radhaswami Satsang, reported in 193 ITR 321 (SC). He, thus, prayed for the deletion of the addition made by the lower authorities.

7. On the other hand, Id. Sr. DR supported the order of the lower authorities and submitted that in this year the assessee has completed construction of more than 65 percent and major part of the revenue was collected in the shape of the advances. The accounting standards also provides that the income should be taxed in the year to which pertains. He then vehemently supported the order of the lower authorities and further submitted that the Institute of Chartered Accountant of India has issued a guidance note on this issue and also suggested by the expert advisory committee of ICAI with regard to standard for real estate developer. It was stated that for real estate developer percentage completion method should be adopted. He, therefore, prayed for the confirmation of the orders of the lower authorities.

8. In alternate, Id. Sr. DR submitted that necessary direction be given for subsequent assessment years where the returns were filed by the assessee by following project completion method and the same has been processed u/s.143(1) of the Act to compute the income for those years by percentage competition method as per law by following the procedure as per law.

9. We have considered the rival submissions and perused the material available on record. At the outset, it is seen that the case of the assessee was selected for limited scrutiny for the reason that "large other expenses claimed in the profit and loss account". While examining these expenses the method of computing the income should not be tinkered with as has been done by the AO. In our opinion, the verification of other expenses should be limited to the examination of genuineness and the allowability of the same after going through the evidences and material submitted by the assessee. However, the AO has exceeded the jurisdiction by changing the method of recognition of the revenue against which such expenses were claimed. With regard to the application of the project completion method and percentage completion method as most appropriate method for recognize revenue, it is seen that this is not the 1st year business of the assessee and the assessee had been carrying out the construction activity in real estate projects from the year 2012-2013, wherein in preceding two years had followed the project completion method according to which no revenue was recognized. In the year under appeal also as the construction work was under process and no sale deed was executed nor any possession was given to any buyer no revenue was recognised. This method of accounting is consistently adopted by the assessee in subsequent years also where the returns were filed and from the year 2016 onwards certain income was also recognized and due taxes were paid on such revenue recognized in those years. This is the solitary year where the AO has doubted the method of revenue

recognized by the assessee and made the additions by treating 64.95% of the total revenue as recognized in the year under appeal. The income declared by the assessee in subsequent year to the extent of 64.95% have been subject to tax in A.Y.2015-2016 whereas the appellant has paid the taxes on the basis of project completion method in subsequent years when the actual sale has taken place. Thus, clearly it is a case where an income is taxed twice first in the year under appeal where the AO has charged the tax on the basis of percentage completion method and secondly in those years where taxes were paid by the assessee by following the project completion method. If the AO was of the opinion that the revenue in the case of the assessee is to be recognized on the basis of percentage completion method, the necessary action should have been taken to reassess the income of all the subsequent years in due course of time which he failed to do. This action of the AO is clearly violating the principle of consistency, wherein it has been held that "Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case. The Hon'ble Supreme Court in the case of Radha Soami Satsang, laid down the principle of consistency in income tax proceedings, reported in 193 ITR 321 as under :-

"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision,

taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

10. Similar view has been expressed by the Hon'ble Supreme Court in the case of CIT Vs. Excel Industries Ltd. 358 ITR 295(SC), wherein, it has been held as under:

28. Secondly, as noted by the Tribunal, a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93, that the benefits under the advance licences or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons, none of which have been pointed out by the learned counsel for the Revenue.

11. As is observed by us in the instant case that in the preceding years and in subsequent years, the income was declared by the assessee on the basis of project completion method and accepted by the department. This is the maiden year where the income is charged to tax on percentage completion method by the AO. Thus, the consistency has not been followed by the department without providing any plausible explanation. This being so, we are of the view that the income of the assessee should be computed by following the project completion method in the given facts and circumstances of the case.

12. The Hon'ble Kolkata High Court in the case of Salarpuria Simplex Dwelling LLP in ITA No.ITAT/45/2022 and IA No.GA/2/2022 decided on 26.07.2022, wherein the Hon'ble High Court in para 12 has held as under:-

9. In the case on hand the CIT(A) as well as the Tribunal have noted the aforementioned decision and also the fact that the

method of accounting, namely, the project completion method was followed by the assessee and has been accepted by the Department and, thus, by applying the principle of consistency, the appeal of the Revenue is dismissed. Thus, we find that there is no error in the order passed by the Tribunal nor any substantial question of law arises for consideration in this appeal. Accordingly, the appeal (ITAT No. 45 of 2022) fails and is dismissed.

13. The coordinate bench of the Tribunal in the case of Hi-tech Estates & Promoters Pvt. Ltd., passed in ITA No.391/CTK/2018, order dated 20.07.2020 has also held that when the method of revenue recognition consistently followed by the assessee and accepted by the department, such method should be accepted.

14. In view of these facts, we are of the considered view that the income declared by the assessee by following the project completion method should be accepted and the additions made by the AO on the basis of the income computed by following the percentage completion method is hereby deleted. Thus, the grounds of appeal of the assessee are allowed.

15. In the result, appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 29/08/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 29/08/2024

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant-
Bhuvana Projects Private Ltd.
Flat No.908, Bhuvana Pride,
Ranasinghpur, Odisha
2. प्रत्यर्थी / The Respondent-
DCIT, Corporate Circle, Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार

/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack