

IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.674/PUN/2024  
निर्धारण वर्ष / Assessment Year: 2017-18

|                       |     |   |
|-----------------------|-----|---|
| ACIT, Circle-5, Pune. | Vs. | Sangam Press Private Limited,<br>17-B, Sangam House,<br>Sangam Press Road,<br>Pune- 411038.<br>PAN : AACCS5995B |
| Appellant             |     | Respondent  |

Revenue by : Shri Ajay Kumar Keshari  
Assessee by : Shri C. H. Naniwadekar

Date of hearing : 10.09.2024  
Date of pronouncement : 25.10.2024

**आदेश / ORDER**

**PER SATBEER SINGH GODARA, JM:**

This Revenue's appeal for assessment year 2017-18 arises against the Commissioner of Income Tax (Appeals)-12, [in short the "CIT(A)"] Pune's Din and Order No.ITBA/APL/S/250/2023-24/1060642739(1), dated 08.02.2024, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :-

*“1) On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting addition of Rs.7,57,32,042/- made being profit on advances received from customers during the financial year 2016-17 or prior years as revenue on sale of flats /shops of the financial year 2016-17.*

*2) On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in not appreciating the fact that the assessee, having executed the sale agreements and having received 100% of the consideration in most of the cases, the condition 'transferring 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' laid down in AS-9 stood fulfilled in the case and therefore, the assessee was obliged to recognize its income in terms of the said AS-9 issued by ICAI.*

*3) On the facts and in the circumstances of the case and in law, the Id. CIT(A) was not justified in not appreciating that with the insertion of Section 43CB with retrospective effect from 1.4.2017, profits and gains arising from construction contract and service contracts were to be determined on the basis of percentage completion method only and therefore, assessee was mandatorily obliged disclose its income relating to the real-estate business by following the Percentage Completion Method.*

*4) The appellant craves leave to add, amend, or alter any ground(s) of appeal at the time of hearing before the Hon'ble Tribunal.”*

3. Both the learned representatives next invite our attention to the CIT(A)'s lower appellate discussion reversing assessment findings assessing assessee's advances of Rs.7,57,32,042/- received from the customers, as it's taxable income of the relevant previous year, as under :-

*“3.2 I have gone through the facts of the case, the Assessment Order, the legal and factual submission made by the Appellant during*

*assessment as well as appellate proceedings are the grounds of appeal are decided as under.*

*Vide these grounds of appeal the appellant has pleaded that the AO has erred in making addition of Rs.7,57,32,042/- to the total income and in observing that the appellant has deliberately postponed the sales of flats even after receiving 100 percent of the total consideration. The appellant has further submitted that the AO has failed to appreciate the revenue recognition policy of the appellant and the submission that the impugned sales are taxable in FY 2017-18 (A.Y.2018- 19). The appellant has submitted that the AO has not appreciated the fact that in the year under consideration all the details to determine the area to be sold. cost to be incurred etc. were not available before the end of the year. The appellant has further argued that the AO has failed to appreciate that revenue is not required to be recognized in the year under consideration and thus the estimating GP at the rate 20 percentage i.e. at Rs. 7,57,32,042 (20 percentage of advance of Rs. 37,86,60,213) without any basis is not proper.*

*3.3 The appellant has made a further submission vide letter dated 18.01.2024 wherein it is explained that for the A.Y. 2016-17 and 2018-19 the case was selected for scrutiny and the then AO accepted Project Completion Method opted by the appellant. Further, the appellant contended that the AO did not adopt the percentage completion method which is one of the two methods available rather he assessed income on 'ad hoc basis'. The relevant portion of the said submission is as under.*

#### *5.PROTECT COMPLETION METHOD ACCEPTED IN A.Y. 2016-17*

*The first scrutiny notice was received A.Y. 2016-17 and wherein the specific query was raised for accounting for practice adopted in the assessment proceedings. After various submissions against query raised, the Project Completion Method was accepted in speaking order by AO u/s 143(3) of the I.T act. The order is already filed before your honour earlier [Copy of the Assessment order enclosed]*

*6. During the year under appeal, the scrutiny notice received and questionnaire was issued, very short time was given. The main objection raised by AO was regarding the project completion method adopted. In spite of making submission along with the various judgments, the A.O rejected "Project Completion Method". After this rejection, the AO did not adopt the percentage completion method which is alternate method. However, he applied 20% of amount of the total booking advances received and assessed the Income. Even this method is also not percentage completion method which is one of the two methods available to appellant. He assessed Income*

on "ad hoc basis" as can be observed from the assessment order.

7. During the year 2017-18, the possession of the first flat was given in the month of June 2017. Therefore, the appellant offered Income in the A.Y. 2018-19 from the project.

8. Double Addition - The appellant had already offered Income from the construction project in A.Y. 2018-19 and onwards the A.O. was aware of the same at the time of assessment proceedings. In spite of the same, he made estimate of income of Rs. 7,57,32,042/- and this is nothing but double addition. The appellant offered total Income of Rs. 15.93 Crore from the project in A.Y. 2018-19.

9. The various judicial judgements given in our detailed submission support the case of the appellant. There, the main summary of all the judgements is that once particular method is adapted and constantly followed in all the years, the same cannot be rejected.

#### *Prayer*

The appellant has consistently followed Project Completion Method for the project which is option available as per Law and accordingly offered the profit of the project in A.Y. 2018-19 when the project completed. The appellant prays that the assessment made be cancelled as income estimated by the A.O. is already offered to tax in A.Y. 2018-19 and which has been assessed u/s 143(3) of the I.T. Act by his successors. There is no loss to the revenue when your honour cancel the order of the A.O."

3.4 In continuation of the submission the appellant filed further submission on 23.01.2024, the same is reproduced below.

"1. The assessee was running printing press at Pune and due to residential and commercial establishment coming around, the appellant removed printing press and decided to convert and construct residential CUM commercial complex.

2. The project was started in the year 2011-12 and it was for 19 units. The 1st Commencement Certificate [CC] was received on 31.12.2012.

3. There is a difference between a contractor and a property builder.

The contractor is a person hired by a developer/builder to construct the property at a fixed price contract or cost-plus contract. Generally, he does not have an ownership right or right to sale the property build by him. His revenue is fixed and paid on the basis of work completed by him.

*The builder is a person who builds the property arranges for necessary permissions and is overall in charge of the project. He is entitled to sell the property/flats/shops, etc. His revenue is not fixed. There may be case where no unit is sold/part unit is sold in under -construction period.*

*4. The assessee company is developing the property themselves and is not a contractor. The project was started since 2011 and plans revised in 2014, 2016 & 2017 due to change in regulations and FSI. Due to this the company is unable to calculate the estimated costs for the purpose of computing revenue on % completion method.*

*5. Due to above, the company followed Project completion method. Kindly refer to the notes to accounts para e - Revenue recognition.*

*“Revenue from sale of shops and residential units is recognized when all the significant risk and rewards of ownership have been transferred to the buyer and the company retains no effective control on such units transferred to a degree usually associated to the ownership and cost of such units incurred or to be incurred can be measured reliably i.e. on completion/substantial completion of the project.”*

*6. We hereby reproduce the Expert Advisory Committee notes para 10 and 11 of AS 9 which states as below:*

*"10. Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.*

*11. 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*

*(it) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods."*

*The Expert Advisory Committee is of the view that revenue should be recognized by the company in respect of its housing projects only when the conditions in respect of sale of goods as aforesaid are satisfied.*

*ACCOUNTING PRACTICE AND COMPUTATION OF INCOME CONSIDERED BY THE INCOME TAX OFFICERS IN SCRUTINY ASSESSMENTS.*

7. *The company in the AY 2016-17 has followed the project completion method and Assessment was completed without any variance vide order dated 23.12.2018. Similarly for AY 2018-19 the assessment was completed on 23.04.2021 without any variation. In both the above cases, the methodology adopted by the assessee company is accepted and no variation was made.*

8. *However in scrutiny assessment for AY 2017-18, the Assessing officer disturbed the methodology and estimated 20% of advances received as income without any basis.*

9. *We would like to draw your attention that section 43CB which mandates following of percentage completion method as per ICDS III was introduced by Finance Act 2018 w.r.e.f. 01.04.2017. When referred to ICDS III, the transitional provisions specifies that contracts commenced on or before the 31st day of March, 2016 but not completed by the said date, shall be recognised based on the method regularly followed by the person.*

10. *In the present case, the assessee is following Project completion method from beginning year 2012-13 and the income from the same is accepted in Assessment for AY 2016-17 and AY 2018-19 u/s 143(3) by the same office of A.O.*

11. *However in AY 2017-18, the AO differed from the stand the estimated the income on conjecture and surmises.*

12. *Even if the stand of the AO is accepted, it will lead to double taxation as the income is offered in subsequent years. The income assessed in AY 2017-18 should be allowed as an deduction in AY 2018-19 and following years whenever the assessee company has offered the Income for taxation. Thus the whole exercise of re-assessing the income will be revenue neutral.*

13. *The Hon'ble Bombay High Court in the case of CIT vs. Tata Iron & Steel Co. Ltd. (106 ITR 363) held that when the method of accounting followed by the assessee company cannot be said to be an unreasonable method, and that in such a case, even if a better method could be visualized, the method consistently followed is to be accepted.*

14. *In the case of CIT v. Bill Hari Investment Ltd. (299 ITR 1, the Hon'ble Supreme Court has held as follows:*

*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.*

*15. In the case of Unique Enterprises v/s ITO - ITA No.5109/Mum/2008, IT AT Mumbai held that the Accounting Standard (AS) 1 - 'Construction Contract' (revised) issued by the Institute of Chartered Accountants of India (ICAI) is applicable only to contractors and not to builders and real estate developers. Accordingly, the Project Completion Method followed by the taxpayer for recognising revenue in the books of accounts cannot be regarded as an unreasonable. Further, the tax department cannot change the method of accounting as any change would be a tax neutral. The ITAT while passing the above order has relied on the various judgements of High Court and Supreme Court [Copy attached].*

*Prayer: -*

*In view of the above, kindly delete the addition made by the A.O. on merits and also to save from the double taxation levied by the A.O."*

*3.5 I have carefully considered the facts of the case and rival contentions. On perusal of the same it has been noticed .that the AO has made this addition by estimating gross profit on the proposed sale of flats/shops in respect of which, revenue has been recognized by the assessee on possession of the flats/shops to the customers after completion of construction when flats/shops become ready for occupation and total consideration is received from the customers. The AO has treated the appellant, who is a builder, as contractor and held that the percentage of completion method should have been applied to the case of the appellant. This contention of the AO for applying percentage completion method is not found to be proper.*

*3.6 The AO has held that provisions of IND-AS- 9 are applicable to the case of the appellant. However, on perusal of the copy of the said Accounting Standard, it is evident that Revenue in the case of real estate should be recognized when 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 with ownership. However, in the appellant's case it is worth mentioning here that the sale deed is not executed. Therefore, the appellant retains control over the property. It is evident from the sale deed that rights to terminate the agreement of sale were vested with the purchaser. There was no conclusive transferring of significant risk rewards to the purchaser. Therefore, contention of the AO that IND-AS is applicable to the case of the appellant deserves to be rejected.*

*3.7 The AO has also held that the significant risks and rewards in respect of the impugned flats were transferred to the appellant on entering into agreements for proposed purchase of flat. This*

*contention of the AO is also incorrect as unless, the premises are sold and handed over to the customer, it cannot be said that significant risk and rewards in respect of the impugned flats were transferred. The possession of the flats/shops was transferred only after receiving completion certificate received from the Municipal Corporation. The cost of work carried out by the appellant in F.Y. 2017-18 and 2018-19 are Rs.15.20 crores and 13.34 crores. From the above, it is clear that the work was not completed in respect of apartments/shops for which entire agreed amount was received.*

*Further, the income under the Income-tax arises after deducting from gross revenue the expenses incurred or likely to be incurred. But in the present case, estimating the income only when the advance is received is incorrect on the part of the AO. The commencement certificates issued from time to time change the area under construction. Thus, the appellant was not certain in respect of the cost to be incurred in the project. The terms and conditions mentioned in the agreement to sale also support the contention of the appellant. Therefore, this contention of the AO is also rejected.*

*3.8 The appellant has consistently been following the method of recognizing revenue on sale and possession of the premises to the customers after receiving total sale consideration. This method has been regularly followed by the appellant and same has been accepted by the department in earlier years. It is settled law that the method of recognizing revenue which is regularly followed by the assessee and accepted by the department in earlier years cannot be rejected unless, it does not show true and fair profits. Further, the method of recognizing revenue regularly followed by the appellant is an acceptable method, which has been recognized by the Income-tax department and the same is also accepted as an acceptable method of accounting by various courts. The above proposition of law is supported by following decisions relied upon by the appellant.*

- i) CIT Vs. Bilahari Investment(P) Ltd. Dated 27.02.2008(SC)*
- ii) CIT V.s Tata Iron and Steel Co. Ltd. [1977] 106 ITR 363(Bom)*
- iii) Shapoorji Pallonji and Co. (Rajkot) P. Ltd. V ITO [1994] 49 ITD 479(Bom)*

*3.9 The appellant has also pointed out that if the stand of the AO is accepted, it will lead to double taxation as the income is offered in subsequent years. Therefore, there is no loss to the Revenue. The contention of the appellant of the non-applicability of percentage of project completion method is supported by following decisions.*

- i) CIT v. Advance Construction Co. P Ltd. [2005] 275 ITR 30 (Guj)*
- ii) CIT v. Triveni Engineering and Industries Ltd. [2011] 336 ITR 374 (Delhi)*

iii) *Shree Nirmal Commercial Ltd. (193 ITR 694) (Bombay High court)*

iv) *Champions Construction Co. (5 ITD 495) (ITAT Mumbai)*

v) *ITO v. W.D, Estates (P.) Ltd. [1993] 45 ITD 473 (Bom.)*

3.10 *Further, the contention of the appellant that the percentage of project completion method is not applicable to the facts of the case under appeal is also supported by AS-7, AS-9, Revised Guidelines of 2012 issued by ICAI and also copies of agreements to sale the flats. The terms and conditions of the agreement do not in any way suggest that risks and rewards were transferred to the customers on entering into agreement for proposed sale of flat.*

3.11 *The contention of the appellant that the AO is not justified in applying percentage of project completion method is found to be acceptable and is also supported by various judicial pronouncements and material relied upon by the appellant.*

3.12 *In view of the above facts and discussion, I am of the considered view that the AO is not justified in making addition of Rs.7,57,32,042/- and hence the same is deleted. Grounds Nos. 1 & 2 are, thus, allowed.”*

This leaves the Revenue aggrieved.

4. Learned CIT-DR’s first and foremost argument before us quotes the relevant accounting standard AS-9 to reiterate the Revenue’s stand that the Assessing Officer herein had rightly adopted percentage than project completion method to assess the impugned advances in assessee’s hands. The assessee on the other hand invites our attention to the above AS-9 (at pages 144 – 156 in the paper book) wherein clause 2(i) makes it clear that “This statement does not deal with the following aspects of revenue recognition to which special condition apply (i) Revenue arising

from construction contracts". We thus see no merit in the Revenue's instant first plea seeking to invoke AS-9 in very terms.

5. The Revenue's 2nd substantive ground submits that section 43CB of the Act also gets attracted in assessee's case for the purpose of revenue recognition w.r.e.f. 01.04.2017, attracting percentage completion only. We note that section 43CB itself envisages revenue recognition in light of the "income computation and disclosure standards/ICDS" notified u/s 145(2) of the Act, which in turn, take us to "ICDS-3" containing not only clause 9 that "contract revenue shall be recognized when there is reasonable certainty of its ultimate collection" but also clause 22.2 in the nature of "Transitional Provisions" making it explicitly clear that only the regular method followed ought to be adopted for revenue recognition relating to construction contracts commenced on or before 31.03.2016 and not completed upto this clinching date, as the case may be.

6. Learned counsel at this stage highlights the point that the assessee's impugned residential project admittedly commenced prior to the said cut of date and had not attained completion upto 31.03.2016. This being the assessee's clinching case, we hold that neither AS-9 nor section 43CB r.w.s. 145(2) r.w. ICDS-3, apply

and therefore the CIT(A)'s impugned findings deleting the impugned addition stand upheld.

7. The assessee's remaining arguments *inter alia* quoting lack of reasonable certainty of the impugned advances for the purpose of revenue recognition as per Chainrup Sampatram vs/ CIT (1953) 24 ITR 481 (SC) and that its projects stood completed much later and the department has itself accepted the very book results in preceding and succeeding assessment years and the corresponding sale deed getting executed thereof, stand rendered academic once we have rejected the Revenue's twin arguments in principle.

8. This Revenue's appeal is dismissed.

Order pronounced on this 25<sup>th</sup> day of October, 2024.

**Sd/-**  
**(R. K. PANDA)**  
**VICE PRESIDENT**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 25<sup>th</sup> October, 2024.

*Sujeet*

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-12, Pune.
4. The Pr. CIT/CIT concerned.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.