

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 822/JP/2013
निर्धारण वर्ष/Assessment Year : 2009-10.

Asst. Commissioner of Income Tax, Circle-2, Jaipur	बनाम Vs.	M/s Shakuntalam Colonizers Pvt. Ltd.,103-104, Geetanjali Tower, Ajmer Road, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No. AAKCS2988N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : P.C Parwal (CA)
राजस्व की ओर से / Revenue by: Mukesh Verma (CIT)

सुनवाई की तारीख / Date of Hearing : 7.02.2017.
घोषणा की तारीख / Date of Pronouncement : 28.02.2017

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is directed against the order of Id. CIT (A)-I, Jaipur dated 01/08/2013 pertaining to A.Y. 2009-10. The assessee has raised the following grounds of appeal :-

- "1. (i) Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in deleting the addition of Rs. 3,50,18,617/- made by the AO after invoking the provisions of section 145 (3) since the assessee has not maintained its books on percentage completion method prescribed by the institute of Chartered Accountants,India.
(ii) Whether one the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in ignoring the fact that by following project completion method assessee has not followed the accounting standards prescribed in AS-9 and AS-7 which tentamounts to not following AS-1 provided in sec. 145(2) of the I.T.Act"
2. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in ignoring the act that the assessee was

not maintain stock register & certain expenses were not supported by bills & therefore rejection of books by the AO was justified.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) was justified in holding that the average selling price of plots taken by the AO at Rs. 1750/- Sq. yards is not correct, despite the fact that the AO has considered the various plots sold during the year by the assessee and worked out the average selling price of plots."

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment was framed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). While framing the assessment, the AO observed that assessee was following project completion methods. In the opinion of the Assessing Officer, the assessee should have followed the percentage completion method and the proceeded to apply the percentage completion methods. Thereby, the AO computed net profit for the assessment year 2009-10 of Rs. 57,34, 529/- and proceeded to make addition of Rs.3,50,18,617/-. Aggrieved by this, the assessee preferred an appeal before the Ld. CIT(A), who after considering the submission allowed the appeal. The Ld. CIT(A) after considering the various judicial pronouncement, held that the assessee who is admittedly a colonizer and real estates developers is not bound to follow percentage of completion method and the same cannot be imposed on it by the assessing officer. Now, revenue aggrieved by the Ld. CIT (A) has preferred the present appeal.

3. The Ld. Departmental Representative supported the orders of the Assessing Officer and submitted that the Ld. CIT (A) was not justified in deleting the addition by applying percentage completion method. He relied on the Judgment of Hon'ble

Supreme Court rendered in the Case P.M Mohammed MeeraKhan Vs. Commission of Income Tax ,Kerela ,73 ITR 735(SC).

4. On the contrary, Ld. Counsel for the Assessee supported the order of Ld. CIT(A) and submitted that there is no illegality into the order of Ld. CIT(A) as the issue is no more res-integra as the Hon'ble Supreme Court in the case of CIT Vs. Bilahari Investment Private Ltd. 299 ITR 1 (SC) has decided the issue. The reliance is also placed on the judgment of the hon. Delhi High Court in the case of Paras Buildtech India Pvt. Ltd. Vs. Commissioner of Income Tax and another, 382 ITR 630 (Delhi).

5. We have heard the rival contention and perused the material available record and gone through the order of the authorities below. The Hon'ble Delhi High Court under the identical facts in the case of Paras Buildtech India Pvt. Ltd. Vs. Commissioner of Income Tax and another held that it is a settled legal position as per section 145 of the Act that it is not open to A.O. to reject the account of assessee unless he gives to determination that notified accounting standards have not been regularly followed by the assessee. It is further observed by the Hon'ble Court that as pointed out by the CIT(A) in order dated, 2 July, 2010 as ICAI did not have any statutory recommendation under the Act that it was binding upon the company under the Act of 1956, the method of accounting followed by the assessee. In the present case the assessee is following project completion method certainly one of the recognized methods and has been constantly followed by it. In view of the aforementioned binding judicial precedents, we do not see any reason to interfere into the order of Ld. CIT (A), the same is hereby upheld.

6. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on: 28/2/2017.

Sd/-
(भागचन्द)
(BHAGCHAND)

लेखा सदस्य/Accountant Member
Jaipur

Dated:- 28/2/2017.

POOJA

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

1. The Appellant. The ACIT Circle-2, Jaipur
2. The Respondent –M/s Shakuntalam Colonizers Pvt. Ltd., Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 822/JP/2013)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar