IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 206 of 2015 (O&M)

Date of Decision: 13.8.2015

Commissioner of Income Tax (Central), Gurgaon
....Appellant.

Versus

Principal Officer, M/s Hill View Infrastructure (P) Ltd., Chandigarh
...Respondent.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.

PRESENT: Mr. Rajesh Sethi, Senior Standing Counsel with
Mr. Arun Biriwal, Advocate and
Ms. Pridhi Jaswinder Sandhu, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. Delay of 70 days in re-filing the appeal is condoned.

2. This order shall dispose of a bunch of six appeals bearing ITA Nos. 19, 206, 218, 219, 220 and 228 of 2015 as according to the learned counsel for the revenue, issues involved therein are identical. For brevity, the facts are being extracted from ITA No. 206 of 2015.

3. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 6.6.2014 (Annexure A-3) passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (hereinafter referred to as "the Tribunal") in ITA No. 561/Chd/2013 for the assessment year 2009-10, claiming the following substantial questions of law:-

a) Whether the ITAT has erred in law in deleting addition of ₹ 12,34,000/- and directing to follow recognized method of accounting to compute the profits in the Real Estate business when the guidance notes of 2006 of ICAI require accounting of income on percentage completion method?

b) Whether the ITAT has erred in law in deciding that the assessee was following particular method consistently which has been followed on year to year basis which has been accepted by the department whereas the Assessing Officer has consistently applied percentage completion method?

c) Whether ITAT has committed error in law holding that in absence of any defect pointed out by the Assessing Officer in adoption of project completion method by the assessee the percentage completion method cannot be applied when the guidance note of ICAI requires that the accounts of business of Real Estate are to be maintained by percentage completion method?

3. Briefly put, the facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee filed its return of income under Section 153A of the Act on 28.10.2007 declaring a total income at ₹ 38,343/-. A search operation under Section 132(1) of the Act was conducted at the premises of the assessee on 7.7.2009. The Assessing Officer passed the assessment order dated 21.12.2011

(Annexure A-1) by assessing the income at ₹ 30,97,620/-. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [for brevity "the CIT(A)"] who vide order dated 6.3.2013 (Annexure A-2) for the assessment years 2007-08 to 2009-10 partly allowed the appeal and deleted the addition. However, the appeal relating to the assessment year 2010-11 was allowed. Being dissatisfied, the revenue filed appeals before the Tribunal. The Tribunal vide order dated 6.6.2014 (Annexure A-3) dismissed the appeals of the revenue. Hence, the present appeals by the revenue.

4. Learned counsel for the revenue submitted that each year is a separate year and the assessee is liable to pay tax on the percentage completion method and not on the basis of project completion method. According to the learned counsel, it would not be proper to accept the project completion method for the year under consideration as the same would distort the income accrued to the assessee in the current year and the assessee by adopting such method can indefinitely defer its tax liability.

5. After hearing learned counsel for the revenue, we do not find any merit in these appeals.

6. The assessee in its reply to the query raised by the Assessing Officer had inter alia claimed that it had been consistently following method of booking of the revenue on the completion of the flat when full payment had been made to it by the person concerned and possession was delivered to him. It was pointed out that neither Accounting standard 9 (AS 9) or Accounting Standard 7 (AS 7) issued by the Institute of Chartered Accountants of India has been recognized by the Act and in such circumstances, there was no guidance or strict

procedure for adopting a particular accounting standard under the Act and it depends upon facts and circumstances of each case. In other words, the assessee was entitled to adopt Project Completion method for determining its income which was being regularly followed by it. Though the Assessing Officer had rejected the plea of the assessee, but the CIT(A) while accepting the appeal of the assessee made the following observations:-

> "It is however not the AO's case that the profits have been distorted by following the Project completion method. The impugned order is also silent as regards the position of the books of account. In other words the books have not been rejected, nor any defects pointed out. In the case of CIT vs. Bilahari Investment (P) Ltd., (2008) 299 ITR 1 SC, the Apex Court held that the completion contract method adopted by the assessee for chit discount consistently over the years, is not required to be substituted by percentage completion method. In CIT (v) Manish Buildwell (P) Ltd. (2011) 245 CTR 397 (Del), it was enunciated that project completion method is one of the recognized methods of accounting. That it cannot be said that the project completion method followed by the assessee would result in deferment of payment of taxes.
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> Therefore, considering the discussion above, I do not find any merit on the part of the AO to have worked out the income by applying the percentage

completion method."

7. The Tribunal affirmed the order of the CIT(A). It was concluded that project completion method and percentage completion method are accepted standards of accounting and the assessee has option to adopt any one of them. The relevant findings recorded by the Tribunal read thus:-

> "47. We have heard the rival contentions and perused the record. The issue arising in the present appeal before us is in relation to the method to be applied for recognizing the revenue generated by the assessee in the course of carrying on the business of real estate developers. The case of the assessee is that it is following one of the accepted accounting standards approved by ICAI for recognizing the revenue generated by it. The assessee had followed project completion method which had been consistently followed by the assessee for the preceding years also. The Assessing Officer, on the other hand, had applied percentage completion method to compute the income in the hands of the assessee. The Commissioner of Income Tax (Appeals) had allowed the claim of the assessee.
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> 48. Both the methods of accounting are i.e. project completion method and percentage completion method is accepted standards of accounting and either of the methods can be applied by the assessee. In the facts of the present case before us, the

assessee had chosen to compute its income on the basis of project completion method i.e. recognizing the income on the completion of the project and not from year to year whereas the case of the revenue was that it should account for the income as it is generated in the hands of the assessee i.e. from year to year on the basis of the work completed being relatable to the revenue generated from year to year.

49. The Hon'ble Supreme Court in CIT Vs. Bilahari Investment (P) Ltd. (supra) had held that, *"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. Completed contract method is one such method."* It was further held that *"Every assessee is entitled to arrange its affairs and follow the method of accounting which the Department has earlier accepted. It is only in those cases where the department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method."*

50. Applying the above said principles to the facts of the present case, we find that the assessee before us has been following the systematic method of accounting from year to year which has been accepted by the department and no defects have

been pointed out by the department in the method of accounting adopted by the assessee and thus, there is no reason to reject the same.

51. The Hon'ble Delhi High Court in CIT v. Manish Buildwell (P) Ltd. (supra) had held that *"it is well settled that the project completion method is one of the recognized methods of accounting. It cannot be said that the projection completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the IT Act. AS-7 issued by the ICAI also recognizes the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method."*

52. Where the assessee was following a particular method of accounting consistently, which has been accepted by the department from year to year and in the absence of any defect being pointed out by the Assessing Officer that by following such method, income had escaped assessment, we find no merit in the order of the Assessing Officer in holding that percentage completion method should be applied to the assessee for the year under consideration. It is the prerogative of the assessee to arrange its affairs in such a manner and follow any recognized method of accounting to compute its profits. In view thereof,

> we find no merit in the order of the Assessing Officer in re-computing the income in the hands of the assessee. Upholding the order of Commissioner of Income Tax (Appeals), we dismiss ground of appeal raised by the revenue."

8. The Delhi High Court in **Commissioner of Income Tax v. Manish Build Well (P) Ltd. (2011) 245 CTR 397** noted that project completion method is one of the recognized methods of accounting. It was held as under:-

> "It is well settled that the project completion method is one of the recognized methods of accounting. 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 IT Act."

9. The assessee-respondent had been consistently following one of the recognized methods of accountancy, i.e. project completion method, for computation of its income. In the absence of any prohibition or restriction under the Act for doing so, it cannot be held that the approach of the CIT(A) and the Tribunal was erroneous or illegal in any manner so as to call for interference by this Court. No substantial question of law arises. Consequently, finding no merit in these appeals, the same are dismissed.

(AJAY KUMAR MITTAL)
JUDGE

August 13, 2015 **(RAMENDRA JAIN)**
gbs **JUDGE**