IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2092 OF 2013

The Commissioner of Income Tax -9
Mumbai .. Appellant
v/s.

M/s.Pursarth Trading Pvt. Ltd ..Respondent

Mr.Ashok Kotangale i/b Padma Divakar, for the appellant.
Mr.Vipul Joshi, for respondent.

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.
DATED : 29th FEBRUARY, 2016.

P.C.

. This Appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 23rd January 2013 passed by the Income Tax Appellate Tribunal (ITAT). The appeal relates to Assessment Year 2005-2006.

2. The Revenue has urged the following question of law for our consideration.

> *"whether on the facts and in the circumstances of the case, the ITAT was justified in deleting the addition of Rs.73.88 lacks made by the Assessing Officer on application of percentage completion method of accounting in view of revised AS-7 ?"*

3. The question as raised does give rise to a substantial question of law and by consent of the parties, the question as framed is taken up for final disposal as the issue is within a narrow compass in the context of the facts.

4. The grievance of the Revenue is that although the impugned order of ITAT records the Revenue's contention that " the Revenue is of the opinion that as per revised AS-7 (accounting standard), assessee should follow only recognized method of percentage completion method and not the project completion method, which is no longer recognized w.e.f. 01.04.2003", it has not rendered any finding on the same. On examination of the impugned order, we find that the contention on behalf of the Revenue is correct.

5. The impugned order has proceeded to dismiss the Revenue's appeal before it on other ground namely project completion method adopted by the respondent – assessee has been accepted in the earlier and subsequent assessment years by the Revenue. Further the Assessing Officer has while substituting the project completion method by percentage completion method has not discharged its onus that substitution is necessary as the accounting method adopted distorts the correct facts. Besides, the Revenue in a subsequent Assessment Year has brought this very amount to tax on adoption of project completion method adopted by the assessee. Prima facie, the above findings of the ITAT on other issues appear to be justified. However, the issue which remained to be considered by the ITAT was the applicability of revised AS-7 and the consequences thereof as it is effective from 01st April 2003.

6. In view of the fact that the ITAT has not rendered its opinion/finding on the question which was urged by the Revenue before it, it would be appropriate that the impugned order is set aside and restored to the file of the ITAT for a fresh disposal. It is made clear

that all the contentions of both the sides are kept open to be urged before the ITAT.

7. Appeal is disposed of in the above terms. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**