

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

T.C.A.Nos.161 to 164 of 2017

Principal Commissioner of Income Tax
Central I
No.108, Mahatma Gandhi Road,
Chennai 600 034. ...Appellant in all the TCAs.

Vs.

M/s.Santha Build-Tech India Pvt. Ltd,
T.S.64, SIDCO Industrial Estate,
Guindy, Chennai. ...Respondent in all the TCAs.

Common Prayer:

Appeals filed under Section 260-A of the Income Tax Act, 1961, against the order dated 29.04.2016 passed in I.T.A.Nos.2309/Mds/ 2013, 2310/Mds/2013, 949/Mds/2015 and 950/Mds/2015 respectively, by the Income Tax Appellate Tribunal, Madras "C" Bench against the order of Commissioner of Income Tax, Appeals, Chennai-18, dated 28.1.2015 in ITA No.224/14-15, ITA.223/14-15; against Commissioner of Income Tax (A)(C)-II, Chennai dated 30.09.2013 in I.T.A.No.36,37 & 39/13-14 and arising out of the Assessment orders of The Deputy Commissioner of Income Tax, Central Circle-III(1), Chenna-34, dated 30.03.2013; in PAN/GIR No.AACCS 9327 respectively.

For Appellant : Ms.R.Hemalatha

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

These are appeals pertaining to Assessment Years (AY) 2007-08, 2009-10, 2010-11 and 2011-12.

2.These appeals have been filed under Section 260 A of the Income Tax Act, 1961, (in short, the Act), whereby, challenge is laid to the judgment and order dated 29.04.2016, passed by the Income Tax Appellate Tribunal (in short, the Tribunal).

3.The Revenue is aggrieved by the fact that the Tribunal has sustained the method of accounting followed by the Assessee as against the one reflected in the orders passed by the Assessing Officer.

3.1.To be noted, the Assessee has followed the method of accounting, which is referred to as "Project Completion Method" whereas, the Revenue seeks to profess that it ought to have followed the "Percentage of Completion Method".

4.It is not disputed before us, by the learned counsel for the Revenue that the Assessee has been consistently being following the 'Project Completion Method'.

4.1.It is also not disputed before us, by the learned counsel for the Revenue that the Assessee is a developer and not a contractor and that the project is not complete in as much as the flats have not been constructed.

4.2.Furthermore, the learned counsel for the appellant also concedes that the Judgment of the Tribunal i.e., Mumbai Bench, in the matter of Awadhes Builders Vs. ITO, (2010) 37 SOT 122 (Mum), has not been challenged by the Revenue in any superior Court.

5.We may, however, record that it is the contention of the learned counsel for the Revenue, that on facts, the said judgment of the Tribunal is distinguishable.

5.1.It is, in this regard, that the learned counsel for the appellant seeks to bring to our notice, the fact that the land on which, the building i.e., flats had to be constructed has been transferred to the prospective owners of the flats, albeit, on a pro rata basis.

6.The learned counsel for the appellant says that as against a sum of Rs.1,05,30,703/- shown as work in progress on 31.03.2007, the Assessee has received towards advance from its customers, a sum of Rs.2,89,08,177/-.

6.1.It is stated by the learned counsel that, it is, in this background, that the Assessing Officer while passing the order dated 30.03.2013, pertaining to Assessment Year 2007-08 has calculated the income of the Assessee at the rate of 8% of the cost of construction, which was quantified, as Rs.1,05,30,703/-.

6.2. Accordingly, we are informed that an amount equivalent to Rs.8,42,456/- was added to the income of the Assessee by adopting 'Percentage of Completion Method' qua, the Assessee.

6.3. This method of accounting, as is indicated above, stands replicated by the Assessing Officer in the other Assessment Years.

7. The Assessee, being aggrieved, had preferred appeals with the Commissioner of Income Tax (Appeal) (in short, CIT(A)), qua, each of the Assessment Years, which were rejected. In other words, the method adopted by the Assessing Officer was sustained by the CIT(A).

7.1. The Tribunal, however, via the impugned order, based on the appeals preferred by the Assessee, reversed the view of the Authorities below.

8. In arriving at its conclusion, the Tribunal has made the following observations in paragraphs 5 and 7 of the impugned order. For the sake of convenience, the same are replicated hereafter:

"5. We have heard rival contentions, perused the materials on record and gone through the orders of authorities below. The main dispute in this case is for computation of profits, whether "Project Completion Method" adopted by the assessee is correct or "Percentage of Completion Method" adopted by the Assessing Officer is correct to determine the revenue and costs of a project. Both the Assessing Officer and the id. CIT (A) have observed that the Project Completion Method adopted by the assessee has no existence at all since 01.04.2003. We find that before the id. CIT (A), the assessee has relied on various decisions including the decision in the case of Unique Enterprises v. ITO [2010-TIOL-737-ITAT-Mum] for the assessment year 2005-06, wherein, it was held that the Accounting standards (AS) 7 - Construction Contract (revised) issued by the Institute of Chartered Accountants of India (ICAI) is applicable only to the contractors and not to builders and real estate developers. Accordingly, the project completion method followed by the tax payer for recognizing revenue in the books of accounts cannot be regarded as unreasonable. Further, the tax

department cannot change the method of accounting. Despite not controverting the decisions of the Mumbai Benches of the Tribunal in the case of Unique Enterprises v. ITO (supra), the Id. CIT(A) could not distinguish as to what was the revenue loss by following the Project Completion Method adopted by the assessee. The assessment order is very cryptic and not given complete facts and figures to demonstrate the impugned method of accounting adopted by the assessee results in underestimation of profit and therefore, the Assessing Officer and the Id. CIT(A) rejected the method adopted by the assessee.

7. Thus, in our opinion, profits in the case of a trade adventure/project may be determinable in each year without waiting for the whole adventure/project to be finally completely, yet there is also another method of accounting for profits of the adventure/project referred to as "completed project" method of accounting, which too is a recognized method, which the assessee has been following consistently. It may be quite relevant to observe here that one needs be consciously aware that the profits of each year being determinable at the year end is one thing and that the profits of each year are essentially to be determined at the end of each year is another thing. The mere fact that there does exist a method of accounting for profits of each year is no justification for rejecting an equally recognized method of accounting whereby the profits of the adventure/project are determined when the whole adventure/project is completed; being consistently followed by an assessee, without suffering from an infirmity/ defect calling for a rejection of the same for the reason that true/fair profits of the adventure/project being not deducible thereby. The Assessing Officer having not drawn any finding that the accounts of assessee suffer from any defect nor that from the method of accounting followed by assessee, true/correct profits of assessee cannot be deduced and the assessee having been following the "completed project" method consistently, which being a recognized method

of accounting, the assessee's method of accounting cannot be rejected nor is there any justification for estimating assessee's profits of the year from the assessee's business activity of building construction by resorting to applying of percentage of profit to the work-in-progress of the year."

(emphasis is ours)

8.1. Being aggrieved, the Revenue, as indicated at the outset, has preferred the instant appeals.

9. Ms. Hemalatha, who appears for the Revenue, says that since the title in the underlying land has already been transferred, on a pro rata basis, to the prospective owners of the flats, the method adopted by the Assessing Officer ought to have been sustained by the Tribunal.

9.1. It is also the submission of the learned counsel that the said method is realistic and therefore, brings to fore for the purposes of assessment, the income of the Assessee for the relevant assessment year.

10. We have heard the learned counsel for the Revenue.

11. According to us, as indicated right at the outset, it is not disputed by the Revenue that the Assessee has been consistently following the 'Project Completion Method', for accounting its income.

11.1. It is also, not disputed before us, by the learned counsel for the Revenue that, except for the assessment years in issue, the said method of accounting has not been assailed by the Revenue.

11.2. There is no dispute that the project has not been completed as yet.

12. Therefore, having regard to the aforesaid circumstances, in particular, that the method of accounting followed by the appellant is a recognised method of accounting, which has not led to escapement of income, we see no reason to interfere with the impugned judgment and order of the Tribunal.

12.1. According to us, as indicated by the Tribunal, the method of accounting is reasonable and recognised, and therefore, requires no interference by this Court.

12.2. In our view, no question of law, much less a substantial question of law, arises for our consideration.

13. Accordingly, the appeals are dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

pri/kv

To

1. The Income Tax Appellate Tribunal,
Madras 'C' Bench.
 2. The Commissioner of Income Tax (Appeals),
Chennai 600 018.
 3. The Deputy Commissioner of Income Tax,
Central Circle-III-(1), Chennai 600 034.
 4. The Principal Consumer of Income Tax,
Central-I, No.108, Mahatma Gandhi Road, Chennai-35.
 5. The Assistant Registrar Income Tax,
Appellate Tribunal, Rajaji Bhavan,
3rd Floor Besant Nagar, Chennai-90.
 6. The Commissioner of Income Tax (A) (C)-II, Chennai-34.
- + 1 cc to Mr.T.R. Senthilkumar, Advocate Sr.20341

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SKS (CO)
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