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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgement delivered on:08.02.2017

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ITA 452/2016, CM APPL. 26465/2016

PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL)

..... Appellant

Through: Mr. Sanjay Kumar and Mr. Dileep
Shivpuri, Advocates.

versus

M/S A2Z MAINTENANCE & ENGINEERING SERVICES LTD.,

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

S. RAVINDRA BHAT, J. (Open Court)

1. The Revenue in this appeal under Section 260A of the Income Tax Act, 1961 ('the Act') is urging that the ITAT fell into error in holding that Section 263 of the Act was invoked erroneously in the circumstances of the case.

2. The Assessee is engaged in the constructions business. For Assessment Year 2007-08, it had reported its transactions in its return which were accepted in scrutiny assessment under Section 143(3) of the Act. The A.O. noted that the Assessee provided maintenance services such as housekeeping, security services, etc. and it accepted the returned income without any disallowance. Later the CIT(A)

issued notice under Section 263 of the Act alleging that ₹11.98 crores was shown as deferred revenue income by changing the method of accounting as per Accounting Standard (AS) -7, and it has resulted in lowering of profit. The CIT(A) finally made an order revising the assessment as erroneous and prejudicial to the revenue, and remitted the matter for consideration to the A.O. The ITAT allowed the assessee's appeal. The ITAT concluded that the invocation of Section 263 of the Act was not warranted in the circumstances of the case. Its discussion on this aspect is in paragraphs 11 & 14 of the impugned order. On merits, it examined the applicability of AS-7 for the given year and concluded as follows:

“15. The next issue for our consideration is that whether the assessee consistently followed the same Accounting Standard (AS-7) through subsequent Assessment Years. When we analyse written submissions of the assessee placed before the CIT dated 26.3.12 available at pages 207 to 211 of the assessee's Paper Book, it is clear that in column 'E' page 3, it has been explicitly mentioned that the audited accounts filed for the financial year ending on 31.3.08, 31.3.09, 31.03.10 & 31.3.11, it is clear that the assessee has followed the same system of revenue recognition i.e. AS-7 in all the subsequent Assessment Years. It was also submitted on behalf of the assessee that as per Assessment orders passed u/s 143(3) of the Act on 29.10.10 for Assessment Year 2008-09 and on 13.5.2011 for 2009-10, the Assessing Officer has accepted the returned income of the assessee wherein the Revenue has been booked in accordance with the changed method of accounting i.e. AS-7. In view of these submissions, the Id. DR could not show us

that the assessee did not follow AS-7 in the subsequent Assessment Years and in view of the documents submitted by the assessee pertaining to subsequent Assessment Years i.e. annual accounts and assessment orders for Assessment Year 2008-09, 2009-10, it is amply clear that the assessee consistently followed AS-7 for recognition of revenue which was changed w.e.f. 1.4.2006.

16. It is relevant to mention that the assessment proceedings were completed under Section 143(3) of the Act on 15.12.2009 and the CIT issued impugned order u/s 263 of the of the Act on 12.3.12 and impugned order was passed on 27.3.12 and entire proceedings of issuance of notice and passing order were completed within 15 days time. We further observe that in response to the show cause notice u/s 263 of the Act, the assessee filed detailed written submissions spread over 5 pages on 26.3.12 along with a Paper Book and the CIT has only considered arguments of the learned counsel of the assessee in regard to assessee's letters dated 20.10.09 and 30.10.09 and after reproducing the contents of these letters, the CIT jumped to record his conclusion without any deliberation on the detailed written submissions and Paper Book of the assessee.

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It is also relevant to mention that the CIT has not given any findings on the issue of consistency in following the AS-7 in the subsequent Assessment Years and when he is issuing notice on 12.3.12 and passing orders on 23.12.12, it is obvious that the copies of the annual accounts for the year ending on 31.3.07, 31.3.08, 31.3.09, 31.3.10 and also copies of the assessment orders for Assessment Year 2008-09 and 2009-10 (supra) were part of assessment records and if the same

were taken into consideration in the light of submissions and contentions of the assessee in response to notice u/s 263 of the Act, then the CIT could have noticed that the assessee is following AS-7 not only in the Assessment Year under consideration viz. 2007-08, but the same was consistently followed in the subsequent Assessment Years for recognising revenue from Engineering Business Segment wherein the assessee company has followed percentage completion method as prescribed under AS-7 issued by ICAI for the accounting contractors. At the cost of repetition, we may also point out that the assessee furnished letters dated 20.10.09 and 30.10.09 showing the cause of change of method of recognition of deferred revenue as per AS-8 instead of AS-9 along with detailed contract wise working which was considered by the Assessing Officer while passing the impugned assessment order. It is also pertinent to mention that there was a specific query from the Assessing Officer during assessment proceedings vide order sheet entry dated 20.10.09 and 30.10.09 along with relevant details.”

3. This Court notices that the ruling of the ITAT is largely based upon the recognition of AS-7 in the given facts and circumstances of the case and that in fact the matter had received scrutiny by the A.O. at the stage of the original assessment. Besides, this Court in *Paras Buildtech India Pvt. Ltd. v. Commissioner of Income Tax* (2016) 382 ITR 630 (Del) had noted that this method is a known and recognised method of accounting, and was approved as a proper one. The Court had also relied on *CIT v. Bilahari Investment Pvt. Ltd.* (2008) 299 ITR 1 (SC).

4. Having regard to the factual findings of the ITAT, the Court is of the opinion that no substantial question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 08, 2017/acm

