

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

INCOME TAX APPEAL NO.452 OF 2016

Acc Real Estate & Developers ... Appellant

V/s.

Asstt. Commissioner of Income Tax ... Respondent

Mr.Rohan Deshpande i/by Mr. Mihir Naniwadekar for the Appellant.

Mr.Sham Walve for the Respondent.

**CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.**

DATE : NOVEMBER 19, 2018.

P.C. :

1. Assessee has filed this appeal against the judgment of the Income Tax Appellate Tribunal dated 24th July, 2015.

2. Following questions are presented for our consideration.

“1. Whether on the facts and in the circumstances of the case, the ITAT erred in holding that the assessee-appellant could not have followed cash system of accounting for Hadapsar project, without appreciating that the method of accounting

followed by the assessee was fully permissible in law?

II. Whether on the facts and circumstances of the case, the ITAT ought to have held that the amount of Rs.10 crore did not accrue in AY 2007-08 in view of the facts that:(a) the relevant transactions could be completed only after the repeal of the Urban Land Ceiling Act, which repeal took place after the relevant year ;(b) s.2(47) relied on by the AO was admittedly not applicable as the present case was not one of transfer of capital assets; and (c) under the relevant agreements, the amount of Rs.10 crore did not at all fall due in the previous year relevant to AY 2007-08?”

3. Brief facts are as under:-

Appellant-assessee is the partnership firm. The issue pertains to the Assessment Year 2007-08.

4. The assessee is engaged in the business of land development. As part of the business the assessee has entered into an agreement for development of land with the owners thereof, ad-measuring 31 acres situated at Hadapsar, for total consideration of Rs.4.75 crores on 29th November, 2004. Thereafter, on 12th October, 2006 assessee executed a Deed of Assignment assigning all its rights and interest in respect of the said land in favour of one M/s Sahastrajeet Reality Private

Limited for consideration of Rs.12.44 crores.

5. For the Assessment Year 2007-08 the assessee offered a sum of Rs.2.44 crores by way of tax, crediting such sum to its profit and loss account. The balance of Rs.10 crores was received during the period relevant to the Assessment Year 2008-09 and 2009-10 and was offered to the tax as its business income. The assessee contended that for the said project the assessee had followed the cash system and offered the income to tax on actual receipt basis.

6. The return of the assessee for the said Assessment Year 2007-08 was taken in scrutiny by Assessment Officer. He taxed the entire income during the said year on accrual basis. Assessee challenged the order before the Commissioner(A). Such appeal was dismissed. After which appeal of the assessee was also dismissed by the Tribunal.

7. In this context, the above noted questions have been raised by the assessee in the present tax appeal. Learned counsel for

the assessee argued that there is no prohibition for the assessee following mercantile system or project completion system in one project and the cash method of accounting in the another. Learned counsel further argued that the land in question was within the purview of Urban Land Ceiling Act. Such Act was abolished in the State of Maharashtra only with effect from 29th November, 2007. On the date of assignment, therefore, no rights accrued in favour of assignee. It was, therefore, that once the Urban Land Ceiling Act was abolished, the parties executed a sale deed in favour of the purchaser in which the assessee was the confirming party. Learned counsel further submitted that in any case the entire income was offered to tax though in later years.

8. On the other hand, the learned counsel for the Revenue contended that Tribunal has given cogent reasons. The assessee cannot take advantage of its own wrong by claiming that the transaction of the assignment was invalid and that no income accrued to the assessee by virtue of such arrangement.

9. It is undisputed that the assessee except for the project in

question had been following the mercantile system of accounting. The Tribunal has recorded that the assessee has been regularly following mercantile system of accounting and that there has been no change in the method of accounting. Further, for the rest of the projects also the assessee made no change in its accounting system. In other words, it was only for the limited purpose of the present project that the assessee adopted the cash system.

10. Sub-section 1 of Section 145 of the Income Tax Act, 1961 provides that income payable under the head “profit and loss account of business” and income from other source shall subject to the provisions of Sub-section 2 be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. In terms of this provision, therefore, the choice of the assessee would be either of following mercantile or cash system of accounting. The assessee, however, cannot choose to follow mercantile system for all other projects and make a departure only for one of the projects by changing the system of accounting. The Tribunal, therefore, correctly held

this issue against the assessee.

11. We, therefore, hold that the assessee was bound to follow the mercantile system of accounting and offer the income to tax on the basis of accrual and not actual receipts. The assessee, however, argued that the assignment under which such accrual arose itself was invalid and therefore, it cannot be stated that accrual of income crystallized till the Urban Land Ceiling Act was repealed and sale deed was executed. There are many shortcomings of this contention of the assessee. Firstly, the assessee had claimed to have acquiesced certain rights in the property in question by way of assignment. Further, even when the Urban Land Ceiling Act was still in force, such rights the assessee desired to pass on to the assignee for which the deed of assignment was executed. The assessee had never questioned such deeds. In fact, once ULC Act was repealed, such arrangement was finalised.

12. Further, whatever be the nature of the agreement and accrual of rights in favour of the purchaser of the land or the

assignor or the assignee the assessee never argued that its right to receive the consideration was under jeopardy. Under the assignment agreement itself there was specific mention of transfer of rights in the property in lieu of which the assignee would pay agreed sum to the assessee.

13. In the result, Tax Appeal dismissed.

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)

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