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

**INCOME TAX APPEAL NO. 808 OF 2015**

Principal Commissioner of Income Tax-29
Mumbai .. Appellant

v/s.

NathpaJhakri Joint Venture .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Sanjiv M. Shah for the respondent

**CORAM : M.S. SANKLECHA &**
**RIYAZ I. CHAGLA J.J.**

**DATED : 12th FEBRUARY, 2018.**

**P.C.**

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th September, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2002-03.

2. The Revenue has urged the following substantial questions of law for our consideration :

*(i) Whether in law and on the facts of the instant case, the Tribunal was justified in holding that the disputed amounts*

*credited as project receipts to the profit and loss account cannot be subjected to tax ?*

*(ii) Whether in law and on the facts of the instant case, the Tribunal was justified of the joint venture, following the completed method of accounting wherein holding that the retention money received by the company cannot be subjected to tax ?*

*(iii) Whether in law and on the facts of the instant case, the Tribunal was justified of the joint venture, following the mercantile system of accounting that prior years expenditure be allowed as deduction in the subject Assessment Year ?*

3. **Regarding question nos. (i) and (ii) :-**

(a) We find that the impugned order of the Tribunal has restored the issues raised herein to the Assessing Officer for a fresh consideration. Mr. Pinto, learned Counsel appearing for the Revenue states that consequent to the restoration, the Assessing Officer has already passed an order dated 2nd March, 2015 in favour of the Revenue.

(b) In the above view, these questions became academic and do not give rise to any substantial question of law. Thus, not entertained.

**4. <u>Regarding question no.(iii) :-</u>**

(a) The respondent assessee is following the completed contract method. Therefore, the respondent assessee claims that his contract was completed in the subject assessment year and income was offered to tax after deduction of expenditure incurred over the entire period of the contract.

(b) It is not disputed by the Revenue before us that the respondent assessee has followed the completed contract method of accounting. In view of the aforesaid fact the Tribunal has allowed the expenditure which was incurred and revenues earned in the earlier years during the progress of the contract as they are taken into account in the subject assessment year to determine its profits.

(c) In fact, as rightly pointed out by Mr. Shah, learned Counsel appearing for the respondent assessee, this manner / method of determining profits stands concluded by the decision of the Supreme Court in ***Commissioner of Income Tax Vs. Bilahari Investment P. Ltd. 299 ITR 01*** wherein it has been observed as under :-

> *"15. 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 method. The completed contract method is one such method. Similarly, the percentage of completion method is another such method.*

> *16. Under the completed contract method, the revenue is not recognised until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract."*

(d) In the above view, the question no.(iii) does not give rise to any substantial question of law. Thus, not entertained.

5. The appeal is dismissed. No order as to costs.

**(RIYAZ I. CHAGLA, J.)** **(M.S. SANKLECHA, J.)**