

OD-17

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/45/2022
IA No: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -1, KOLKATA
VERSUS
M/S. SALARPURIA SIMPLEX DWELLING LLP

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 26th July, 2022

Appearance :-

Ms. Smita Das De, Adv.

Ms. Sangita Das, Adv.

... For Appellant

Mr. J.P. Khaitan, Sr. Adv.

Mr. S. Kejriwal, Adv.

Ms. Swapna Das, Adv.

Mr. Siddhartha Das, Adv.

... For Respondent

The Court : We have heard Ms. Smita Das De, learned Counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Advocate appearing for the respondent/assessee.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed

against the order dated 29th May, 2020, passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata, in I.T.A No. 2328/Kol/2018, for the assessment year 2015-16.

The revenue has raised the following substantial questions of law for consideration.

- (i) *Whether on the facts and circumstances of the case the Tribunal was justified in law to accept the accounting method followed by the assessee as accounting standard-9 (AS-9) instead of accounting standard-7 (AS-7) despite the fact that the assessing officer arrived at a conclusion finding that the assessee is a contractor and not a builder after analysing the various aspects of the business of the assessee?*
- (ii) *Whether in the facts and circumstances of the case the Tribunal was justified in law to delete the addition of Rs.5,67,14,868/- under the head "Income from Business" by accepting the assessee's accounting standard as AS-9 which is exclusively applicable for sales of goods whereas the assessee sells flats which are immovable in nature and only movable objects are treated as goods under Goods Act ?*

(iii) Whether in the facts and circumstances of the case the Tribunal was justified in law in accepting the accounting method AS-9 (Project Completion Method) instead of accounting method AS-7 (Percentage Completion Method) since the assessee is a contractor which has been proved by the assessing officer in the Assessment Order ?

We have heard Ms. Smita Das De, learned Counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Advocate appearing with Ms. Swapna Das, learned Advocate for the respondent/assessee.

The assessee is a LLP and is engaged in the business of development of property. They entered into a development agreement on 22nd March, 2010 whereby the assessee as developer had started construction and developed a residential plot. The assessee had been following the aforesaid procedure under "Project Completion Method" and showing entire advances received on account of flat booked under 'advances' and similarly all the contracts and the projects concerning expenses were shown and carried forward under "work-in-progress". The assessee contended that they had been consistently following this method which has been accepted by the Department in the assessment year 2014-15.

The assessing officer stated that the assessee's case was selected for scrutiny for the reason as to whether percentage computation method should be followed instead of project completion method followed by the assessee. The assessing officer while completing the assessment under Section 143(3) of the Act, by order dated 28th December, 2016 by placing reliance on the decision of the Hon'ble Supreme Court in **Chintaman Rao vs. State of Madhya Pradesh** reported in AIR 1958 SC 388 held that the assessee was a mere contractor and they ought to have adopted the percentage completion method as per Accounting Standard-7. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-12, Kolkata [CIT(A)]. By order dated 16th August, 2018 the appeal was allowed. The CIT(A) while considering the appeal framed three questions; firstly, as to whether the method of accounting followed consistently by the assessee can be disturbed by the assessing officer. Secondly, whether the assessee can be treated as a contractor and percentage completion method to have been followed. After taking note of the factual position, more particularly, that the assessee has been consistently following the project completion method, which was accepted by the department, the CIT(A) held in favour of the assessee and reversed the

order passed by the assessing officer. In doing so, the CIT(A) had referred to various decisions of the High Courts as well as tribunal. The revenue being aggrieved by such order, had preferred appeal before the tribunal and the assessee also filed a cross-objection seeking to sustain the order passed by the CIT(A), which, in our opinion, was unnecessary unless and until a specific issue decided against the assessee, is challenged before the tribunal.

Be that as it may, the tribunal took note of the order passed by the CIT(A) and affirmed the same and, in particular, pointed out that the principle of consistency has to be applied. In the case of **Commissioner of Income Tax, Central-1 Vs. Manish Build Well (P.) Ltd.**, reported in (2011) 16 taxmann.com 27 (Delhi) one of the substantial questions of law which was raised was whether the assessing officer wrongly held that the determination of income by the respondent therein on completion of its projects amounts to deferment of payment of taxes which is assessable annually under the existing tax law of the land. The said question was answered in favour of the assessee and against the revenue and in doing so, the Hon'ble Court referred to the decision of the Hon'ble Supreme Court in **CIT Vs. Hyundai Heavy Industries Co. Ltd.**, reported in (2007) 291 ITR 482 (SC) for the principle that the project

completion method is one of the recognised methods of accounting. The Court also noted that the said principle was reiterated by the Hon'ble Supreme Court in CIT Vs. Bilahari Investment (P) Ltd., reported in (2008) 299 ITR 1 (SC). The operative portion of the said decision reads as follows :

"Question Nos.2 and 3 are connected. They assail the decision of the Tribunal rendered in paragraph 20 of its order. An addition of Rs.28,21,000/- was made by the assessing officer on the footing that the assessee was adopting the project completion method or the completed contract method, which was not proper and the profits of the business should be computed on the basis of the percentage completion method under which the profits of the development and construction business of the assessee get assessed over a period of years, keeping pace with the progress in the construction/development of the project. The CIT(A) however held that the assessee had no reason to withhold the handing over of possession of the space to the purchaser in respect of a project which is completed and that whatever possession was not handed over to the purchaser, it was for the reason that the project was not completed. He further found that a buyer who has paid the entire sale consideration would immediately demand possession and the entire sale consideration could be received by the assessee only on completion of the project. On these facts it was noted by the CIT(A) that unless the buyer makes full payment the assessee could not hand over possession nor get the sale

transaction registered. A further finding recorded by the CIT (A) was that the impugned project was completed only in the accounting period relevant to the assessment year 2008-09 and in support of this finding, he noted that a copy of the completion/occupancy certificate was placed on the record of the Assessing Officer. He further recorded a finding that after the issue of the occupancy certificate and till the date of the assessment order, possession of almost 75% of the developed area was handed over to the buyers who made full payment and the sale deeds were also executed. Thereafter, possession of 20% of the remaining area was handed over to the buyers. The possession of the balance 5% of the developed area could not be handed over to the remaining buyers because they could not make full payment and take possession. On these findings the CIT(A) held that the allegation of the assessing officer that the assessee was adopting a method of accounting namely the project completion method, to suit its convenience to book income was baseless. A further finding recorded by the CIT (A) is that there was no manipulation in the books of accounts. So far as the method of accounting is concerned, the CIT(A) held that the project completion method is a well recognized and accepted method of accounting and was the only method suitable for any developer who has to deliver a completed product to the buyer. Ultimately the CIT(A) held as under:-

"Thus on overall perusal of the assessment order it is seen that neither any defect has been pointed out by the assessing officer in the method of accounting followed by the appellant nor any

finding has been given that true and fair profits cannot be deduced following the said method of accounting. No evidence was found during the course of search to show that the books of account are not properly maintained by the appellant. The main thrust of the assessing officer in making the addition is that the assessee is deferring the payment of taxes. But this allegation of the assessing officer cannot be accepted as the assessee is consistently following a method of accounting which is well recognized in development business and has been accepted by the assessing officer also in the other group cases. Thus the addition is hereby deleted."

The aforesaid finding of the CIT(A) was approved by the Tribunal with the observation that the department has accepted the assessee's method of accounting namely, the project completion method and therefore there was no justification for adopting the percentage completion method for one year on selective basis.

It is well settled that the project completion method is one of the recognized methods of accounting. In CIT v. Hyundai Heavy Industries Co. Ltd. [2007] 291 ITR 482 / 161 Taxman 191 (SC) the Supreme Court held as follows:-

"Lastly, there is a concept in accounts which is called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "completed contract method" and "percentage of completion method". To

know the results of his operations, the contractor prepares what is called a contract account which is debited with various costs and which is credited with revenue associated with a particular contract. However, the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No.7. They are "completed contract method" and "percentage of completion method".

This view was reiterated by the Supreme Court in *CIT v. Bilahari Investment (P.) Ltd.* [2008] 299 ITR 1/168 Taxman 95 with the following observations:

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

Under the completed contract method, the revenue is not recognized 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.

On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under this method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.

The above indicates the difference between the completed contract method and the percentage of completion method.” (underlining ours)

After the above judgements of the Supreme Court it cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the Income Tax Act. Accounting Standards 7 (AS7) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method. In view of the judgments of the Supreme Court (Supra), the finding of the CIT (A), upheld by the Tribunal, does not give rise to any substantial question of law. Further, the Tribunal has also found that there was no justification on the part of the assessing officer to adopt the percentage completion method for one year (the year under appeal) on selective basis. This will distort the computation of the true profits and gains of the business. For these

reasons, we are of the view that no substantial question of law arises. We, therefore, decline to admit question Nos.2 and 3."

In Paras Buildtech India P. Ltd. Vs. Commissioner of Income Tax, reported in (2016) 382 ITR 630 (Delhi) identical substantial question of law was raised by the assessee as to whether the tribunal was justified in setting aside the order passed by the CIT(A) and holding that the percentage completion method of accounting has to be followed by the assessee. The said application was answered in favour of the assessee in the following terms :

"19. The settled legal position as far as section 145 of the Act is concerned is that it is not open to an Assessment Officer to reject the accounts of an assessee unless he comes to a determination that notified accounting standards have not been regularly followed by the assessee. As pointed out by the Commissioner of Income-tax (Appeals) in the order dated July 2, 2010, the Accounting Standard of the ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956. The method of accounting followed by the assessee in the present case, i.e. project completion method was certainly one of the recognised methods and has been consistently followed by it."

The Court also took note of the decision of the Hon'ble Supreme Court in *Bilahari Investment (P) Ltd. (supra)* in *Commissioner of Income-Tax Vs. Principal Officer, Hill View Infrastructure (P.) Ltd.*, reported in (2016) 384 ITR 451 (P & H). Similar question arose as to whether the percentage completion method ought to have been followed by the assessee therein. The Court after taking note of the decision of the Hon'ble supreme Court in *Bilahari Investment (P) Ltd. (supra)* and that of *Manish Build Well (P) Ltd. (supra)* held that the assessee has been consistently following one of the recognised methods of accounting that is project completion method for computation of income and in the absence of any prohibition or restriction under the provisions of the Income Tax Act. For doing so it cannot be held that approach of the CIT(A) and the tribunal was erroneous or illegal in any manner so as to call for interference by Court. Accordingly, the appeal filed by the revenue was dismissed.

In the case on hand the CIT(A) as well as the tribunal have noted the aforementioned decision and also the fact that the method of accounting, namely, the project completion method was followed by the assessee and has been accepted by the Department and, thus, by applying the principle of consistency, the appeal of the revenue is

dismissed. Thus, we find that there is no error in the order passed by the tribunal nor any substantial question of law arises for consideration in this appeal. Accordingly, the appeal (ITAT/45/2022) fails and is dismissed.

Consequently, the connection application for stay IA No.GA/2/2022 also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)