

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **Income Tax Appeal No.398 of 2009 (O&M)**

The Commissioner of Income tax-I, Chandigarh	... Appellant
Versus	
M/s. Punjab Information & Communication Technology Corporation Ltd.	... Respondent

2. **Income Tax Appeal No.399 of 2009 (O&M)**

The Commissioner of Income tax-I, Chandigarh	... Appellant
Versus	
M/s. Punjab Information & Communication Technology Corporation Ltd.	... Respondent

3. **Income Tax Appeal No.292 of 2010 (O&M)**

The Commissioner of Income tax-I, Chandigarh	... Appellant
Versus	
M/s. Punjab Information & Communication Technology Corp. Ltd.	... Respondent

4. **Income Tax Appeal No.293 of 2010 (O&M)**

The Commissioner of Income tax-I, Chandigarh	... Appellant
Versus	
M/s. Punjab Information & Communication Technology Corp. Ltd.	... Respondent

5. **Income Tax Appeal No.279 of 2011 (O&M)**

The Commissioner of Income tax-I, Chandigarh	... Appellant
Versus	
M/s. Punjab Information & Communication Technology Corp. Ltd.	... Respondent

Date of Decision: 18.01.2023

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA**

Argued by: Ms. Gauri Neo Rampal, Senior Standing Counsel,
for the Income Tax-appellant.

**Income Tax Appeal No.398 of 2009 (O&M)
and other connected appeals**

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2023:PHHC:037968-DB

Mr. Pankaj Jain, Senior Advocate,
with Mr. Sachin Bhardwaj, Advocate,
for the respondent.

MANISHA BATRA, J.

1. By this order, a bunch of 5 appeals viz., Income Tax Appeal No.398 of 2009, Income Tax Appeal No.399 of 2009, Income Tax Appeal No.292 of 2010, Income Tax Appeal No.293 of 2010 & Income Tax Appeal No.279 of 2011 is being disposed of. The questions of law involved are common in all these appeals and these appeals are with regard to assessment years 2003-04, 2004-05, 2005-06, 2006-07 & 2007-08 respectively. The common issue raised in these appeals is with regard to the deletion ordered by the Income Tax Appellate Tribunal, Chandigarh (for short 'Tribunal') qua disallowances/additions made by the assessing officers during the above mentioned years. The facts have been extracted from Income Tax Appeal No.398 of 2009.

2. The brief facts are that the respondent-assessee company was engaged in the business of development and sale of industrial plots and sheds. It had filed return of income for the assessment year 2003-04 on 31.10.2003 declaring total taxable income for the relevant year along with carried forward losses. The return was processed. On scrutiny, notice under Section 143 (2) was issued on 07.10.2004. After seeking relevant details and information from the respondent, its assessment for the concerned year was finalized. It was observed that the assessee had treated the money received by sale of plots/sheds as capital receipt and had not accounted for the closing stock of plots/sheds due to which revenue on these accounts was

not ascertainable. The respondent-assessee was asked to clarify the facts and in response thereto, it was submitted by the respondent that it was following **project completion** method and would be accounting the excess of receipts over expenses in the year of completion. The assessee had also not done separate addition of interest amount of Rs.1.78 crores in computing the amount of excess receipts over expenditure. However, the assessee clarified that the interest accrual had already been adjusted in computing the excess of receipts over expenditure. It was also found that the respondent had debited an expense of Rs.4,30,000/- as contribution to Udyog Sahayak which was a body constituted to facilitate the promotion of industries and the contributions made to the fund which were utilized for purchase of capital items, renovation, furnishing etc. of office bearers of the Committee. Those expenses not being revenue expenses were disallowed. The income of the respondent-assessee was re-computed and penalty proceedings under Section 271 (1) (c) of the Income Tax Act, 1961 (for short 'the Act') were ordered to be initiated separately against it.

3. Feeling aggrieved against the order of assessment dated 20.12.2005, the respondent-assessee had filed appeal under Section 143 (3) of the Act before the Commissioner of Income Tax (Appeals), Chandigarh (for short "CIT (A)") who vide order dated 09.11.2006, allowed the appeal of the assessee and deleted the disallowances so made. It was now the turn of the revenue to feel aggrieved by the order of CIT (A) who filed appeal before the Tribunal challenging the deletion of disallowances/additions made by the assessing officer. The revenue, however, remained unsuccessful before the Tribunal who while affirming the order of CIT (A)

dismissed the appeal of the revenue. Still not satisfied, the revenue has approached this Court by filing the instant appeal. The appellant-revenue has raised the following substantial questions of law for consideration:-

- i) Whether on the facts and in the circumstances of the case, the ITAT was right in law in upholding the order of the CIT(A) that the excess of receipts over expenditure and the interest accrued were not chargeable to tax in view of the accountancy method followed by the assessee?
- ii) Whether on the facts and in the circumstances of the case the ITAT, was right in law in upholding the order of the CIT(A) in deleting the addition made on account of Udyog Sahayak Expenses treating them as of being capital in nature, even though one of the contributories (PSIDC) of the Udyog Sahayak Expenses had admitted that some of the expenses were of capital in nature?

4. Learned counsel for the revenue has emphatically argued that the orders passed by the CIT (A) and the Tribunal are not sustainable and are liable to be set aside. The assessing officer had duly observed on the basis of the audit report that against receipt of an amount of Rs.12.40 crores on account of sale of plots/sheds, an expenditure of Rs.9.54 crores only was shown to be incurred on development of plots/sheds. The said amount and the interest of Rs.1.78 crores as accrued on the receipt amount, was wrongly treated as capital receipt. The assessing officer had rightly observed that the 'project completion method' could not be accepted as correct method of

accounting since the assessee was required to reflect the receipts/expenses on the basis of percentage of project completed during the year. She further argued that the orders passed by the CIT (A) and the Tribunal deleting the additions made on account of Udyog Sahayak Expenses by treating them as capital income were also not sustainable. It is stressed that the Tribunal could not have dismissed the appeal without having considered these issues and it has been urged that the impugned order of Tribunal is not sustainable and is liable to be set aside.

5. As against the above, learned counsel for the respondent-assessee submitted that the impugned order called for no interference. The CIT (A) while exercising powers of revision had taken the view that the assessee had rightly followed the project completion method. This view could not be treated as erroneous or pre-judicial to the interest of revenue. He further argued that the amounts which were deposited with the assessee were only in the form of “deposit” or “advance” and income at its hands, as the services against the said advances were yet to be provided which could be rendered by the assessee only in the subsequent years and as such, the income qua those receipts would accrue only in those years.

6. Learned counsel for the respondent further emphasized that the amounts deposited with the assessee were only receipts and the taxable income would be only after deduction of expenses, which were to be incurred by it in the succeeding years. He, therefore, urged that the observations made by the authorities below that the additions as made by the assessing officer were not in accordance with method of accounting followed by the assessee which was consistent and the amount of

expenditure treated by the assessing officer as of capital nature was liable to be disallowed and these observations did not deserve to be interfered with. To fortify his arguments, learned counsel for the respondent-assessee has placed reliance upon the authorities cited as **Principal of Commissioner of Income Tax v. Salarpuria Simplex Dwelling LLP**, (2022) 216 DTR Judgments; **Commissioner of Income Tax Chennai v. Bilahari Investment (P) Ltd.**, (2008) 4 Supreme Court Cases 232; **Calcutta Company Ltd. v. Commissioner of Income Tax, West Bengal**, AIR 1959 SC 1165; **Rakesh Shantilal Mardia v. Deputy Commissioner of Income Tax**, (2012) 254 CTR 0338; **Commissioner of Income Tax v. Unique Mercantile Service (P) Ltd.**, (2015) 122 DTR Judgments 277; **Snesh Resort Pvt. Ltd. v. DY.C.I.T.**, Tax Appeal No.113 of 2004 decided by High Court of Gujarat on 18.11.2014 & **Commissioner of Income Tax and another v. Dinesh Kumar Goel**, (2011) 239 CTR 0046.

7. We have heard learned counsel for both the parties at considerable length and have given due deliberations to the contentions raised by them. The respondent-assessee company is admittedly engaged in the business of development and sale of industrial plots and sheds. During the assessment year 2003-04, it had admittedly received an amount of Rs.12.40 crores. The said amount and the interest accrued thereon amounting to Rs.1.78 crores was being treated by the respondent assessee as capital receipts whereas the expenditure on development of plot/sheds was claimed to be Rs.9.54 crores. The assessee had submitted that since it was following project completion method, therefore, excess of receipts qua expenses would be accounted for by it in subsequent years i.e. in the year of

completion. The assessing officer had not accepted the method of accounting by way of “project completion method”. The CIT (A) had, however, observed that the project completion method was accepted method of accounting for the purpose of the respondent. The Tribunal had affirmed the order passed by CIT (A). Now it is to be considered by us as to whether the method of accountancy as followed by the assessee and as accepted by the authorities below was the correct method or not? In this context, it would be relevant to refer to Section 145 of the Act which deals with the method of accounting and states that in case of business income, inter alia, the same is to be computed in accordance with the cash and mercantile system of the company. Sub-Section 2 of this Section, authorizes the Central Government to notify from time to time Accounting Standards to be applied by any class of assessees or in respect of any class of income. The expression “Accounting Standards” within the meaning of Section 211 of the Companies Act means the standards of accounting recommended by the ICAI constituted under the Chartered Accountants Act, 1949. A conjoint reading of the above provisions shows that the companies reflecting income under the head “business or profession” are required to follow the Accounting Standards prescribed. The Government of India has notified the Accounting Standards by way of publication of notifications. Accounting Standards-1 as notified in a notification issued in exercise of powers under Section 145 (2) of the Act on 29.05.1996, relates to disclosure of accounting policy. It puts an obligation on the assessee to disclose all significant accounting policies adopted in the preparation and presentation of financial stages. As per this standard the term “Accrual” refers to the assumption that

revenues and costs are accrued i.e. recognized as they are earned or incurred “and not as money is received or paid” and recorded in the financial statements of the period to which they relate. As such the term “accrual” relates to revenue earned or cost incurred meaning thereby that unless the expenses are incurred, cost in respect thereof cannot be treated as accrued and unless the revenue is earned, it is not accrued. Reference in this regard can be made to **Dinesh Kumar Goel's** case (Supra), wherein the High Court of Delhi was dealing with the case of assessee who was running an institute for coaching students. Total fees of entire course of duration of about two years, was initially taken at the time of admission of the students. It was observed that such amount would only remain a “deposit” or “advance” and it could not be said that the whole fee had become due at the time of deposit. While taking note of the well established proposition of law that the income might accrue to an assessee without actual receipt of the same and if the assessee acquired a right to receive the income, it could be said to have accrued to him though it might be received later on, on being ascertained, it was held that such income was to be treated as advance.

8. Reference can further be had to **Bilahari Investment (P) Ltd.'s** case (Supra), wherein the Hon'ble Apex Court had observed that the income made by the business during the period can be measured only with the revenue earned during such period is compared with the expenditure incurred for earning that revenue. The revenue is recognized only when the services are actually rendered. If the services are partially rendered, revenue is to be shown proportionate with the degree of completion of services.

9. So far as the method of accounting by way of 'project

completion method' is concerned, the same was discussed by Hon'ble Apex Court in **CIT v. Hyundai Heavy Industries Co. Ltd.**, (2007) 210 CTR (SC) 178, wherein it was observed that there was a concept in accounts which was called the concept of Contract Accounts. Under that concept, two methods existed for ascertaining profit of contract namely, 'Completed Contract Method' and 'Percentage of Completion Method' to the rules of recognition of cost and revenue dependent on the method of accounting. It was held that the project completion method is well recognized and accepted method of accounting. Such method is suitable for any developer who has to deliver completed product to the buyer. Similar question was raised in **CIT v. Manish Build Well (P) Ltd.**, (2011) 63 DTR (Del) 369, which was whether the assessing officer had wrongly held that the determination of income by the respondent therein on completion of its projects amounting to deferment of payment of taxes which was assessable annually under the existing tax law of the land? The said question was answered in favour of the assessee; and in **Salarpuria Simplex Dwelling LLP's** case (Supra) wherein the assessee was engaged in the business of development of property and entered into a development agreement whereby as a developer, it had started construction and developed a residential plot. With regard to the tax, it had been following the "projection completion method". While framing assessment, it was held that the assessee was a mere contractor and it ought to have adopted percentage completion method. The findings as given by the assessing officer were reversed by the Tribunal by holding that the method of accounting, namely, the project completion method that was followed by the assessee and had

been accepted by the department, was the well recognized method. By applying the principle of consistency, the appeal of the revenue had been dismissed; and in **Rakesh Shantilal Mardia's** case (Supra), wherein the issue was as to whether interest income should be taxed on accrual basis in year of allotment of debenture itself and whether it could be taxed on spread over basis. The Hon'ble Supreme Court observed that the interest income having arisen on difference between purchase price of debentures and redemption price after six years had to be calculated on spread over basis and not on accrual basis in the year of allotment. Further in **Unique Mercantile Service (P) Ltd.'s** case (Supra), the assessee-Company which was engaged in the business of providing facility cards to the members on payment of prescribed fees which was called membership fees and was a non-refundable and one time fee, had received membership fees from cardholders and membership varied between 1 to 15 years. It was held by Gujarat High Court that revenue was to be shown proportionate to the degree of completion of the service and, therefore, the assessee was justified in spreading over the amount of membership fees and expenses.

10. On applying the principles of law as enunciated in the cases cited above to the present case, it emerges that admittedly and undisputedly the respondent-assessee company was applying "project completion method". The observations made by the assessing authority that such method could not be accepted, had no basis. It was also observed by the CIT (A) as well as the Tribunal that the same method was followed consistently by the assessee during the previous assessment years. The CIT (A) had passed a detailed order while considering various decisions rendered by the

Apex Court as well as different High Courts including this Court. The Tribunal affirming the order passed by CIT (A) had observed that the principle of consistency was to be applied in the case. It is certainly not open to an assessing officer to reject the accounts of assessee under Section 145 of the Act, unless he comes to a conclusion that notified accounting standards had not been regularly followed by such assessee. As such, the assessee could not be compelled to adopt completion method for one particular year on selective basis as in our considered opinion, that would certainly amount to distorting the computation of the true profits and gains of the business. It was open to the assessee to follow either project completion method or percentage completion method. In **Bilahari Investment (P) Ltd.'s** case (Supra), it was observed by the Hon'ble Supreme Court that the recognition/identification of income under the Act was attainable by several methods of accounting. The same result can be attained by any one of the accounting methods. Under completed contract method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to P&L 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, 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 by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of the contract. The Apex Court had

affirmed the decision of the Tribunal by observing that no finding was recorded by the assessing officer that completed the contract method distorted the profit of a particular year. Rather it was observed that the entire exercise was revenue neutral and, therefore, it was held that it was only in those cases where the department recorded a finding that the method adopted by the assessee resulted in distortion of profits, that the revenue could compel substitution of some other method.

11. On perusal of the entire record, it is explicit that in the instant case, no observation had been recorded by the assessing officer that the project completion method as followed by the assessee would result in deferment of the payment of taxes which are to be assessed annually under the Act. Hence in our opinion, the assessee could follow either project completion method or percentage completion method and the CIT (A) and the Tribunal had rightly considered that the method of accounting followed by the assessee was consistent and the addition made by the assessing officer was not in accordance with the same and hence was not correct and committed no error in giving direction to delete the same. Therefore, the findings recorded by the authorities below on this point do not warrant any interference and are affirmed.

12. With regard to the Udyog Sahayak Expenses, the assessing officer had disallowed 50% of such expenses. The CIT (A) had observed that the expenditure under that head had been incurred by the assessee for furtherance of business or for industrialization of the State and hence, they were of revenue nature. The Tribunal had concurred with the same. The Udyog Sahayak is admittedly a body constituted by PSIDC, the respondent-

assessee and some other corporations to facilitate the promotion of industries. It is not in dispute that the contributions made to these funds are utilized for purchase of capital items, renovation, furnishing etc. of office bearers. As such, the expenses incurred on this account cannot be treated as business expenditure and are revenue expenses and, therefore, the findings by the authorities below on this point also do not deserve to be disturbed. In these circumstances, we are inclined to hold that no such substantial question of law arises in these cases which requires consideration and there is no merit in the appeals filed by the revenue. Accordingly, all the appeals are dismissed.

13. Miscellaneous application(s), if any, also stand disposed of.

(RITU BAHRI)
JUDGE

18.01.2023
manju

Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE

Yes/No
Yes/No