

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER
[Through Video Conferencing]**

**ITA No.202/Del/2018
Assessment Year: 2012-13**

DCIT, Circle – 16 (2) New Delhi	Vs.	Maxworth Infrastructure P. Ltd. 303, Tower -1, Beverly Park, Plot No.2, The Jaypee CGHS Ltd., Sector-22, Dwarka, New Delhi PAN No. AAGCM7827C
(Appellant)		(Respondent)

Appellant by	Ms. Paramita M. Biswas, CIT DR
Respondent by	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA

Date of hearing	07.10.2021
Date of pronouncement	21.10.2021

ORDER

PER O.P. KANT, AM:

This appeal by the Revenue is directed against order dated 21/09/2017 passed by the Ld. Commissioner of Income-tax

(Appeals)-33, New Delhi [in short the Ld. CIT(A)] for assessment year 2012-13, raising following grounds:

“1. Whether on facts and in circumstances of the case, the Ld.CIT(A) is legally justified in deleting the addition of Rs. 10,00,65,850/- made by the Assessing Officer [the AO] following the Percentage of Completion Method (POCM) by ignoring Accounting Standard -7 (AS-7) read percentage for recognition of revenue?”

2. Whether on facts and in circumstances of the case, the Ld. CIT(A) is legally justified in allowing relief to the assessee despite the fact that principle of res-judicata is not applicable to Income Tax proceedings as each assessment year is a separate year?”

3. Whether on facts and in circumstances of the case, the Ld CIT(A) is legally justified in deleting addition by ignoring the findings of the Assessing Officer (the AO) in assessment order that the installments received by the assessee from its customers and reinvested during the year, included an element of profit also?”

4. That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal.”

2. Briefly stated facts of the case are that in the previous year corresponding to the assessment year under consideration, the assessee company was engaged in the business of building and developing housing/commercial real estate projects. For the year under consideration, the assessee filed return of income on 30/09/2012 declaring loss of Rs.1,06,69,938/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short the Act) were issued and complied with. In the assessment completed under section 143(3) of the Act on 26/02/2015, the Assessing Officer rejected the method of accounting of profit adopted by the assessee and applied percentage of completion method (POCM) and made addition of Rs.10,00,65,850/-. On further appeal by the assessee, the Ld. CIT(A) deleted the addition holding that assessee has consistently recognised the revenue at the time of the execution of the sale deeds and which has been accepted by the Department not only in earlier years, but in subsequent years also. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us the parties appeared through videoconferencing facility. The assessee filed a paperbook containing pages 1 to 225.

4. All the grounds raised by the Revenue are in relation to the addition of Rs.10,00,65,850/-invoking percentage of completion

method by the Assessing Officer, which has been deleted by the Ld. CIT(A).

5. Brief facts qua the issue in dispute are that the assessee received revenue from sale of residential/commercial units to the customer and accounted the same as advances received from the customers. The expenditure related to units debited by customers was accounted as capital work in progress and debited in the profit and loss account at the time of completion of the project and giving hand over to its customers. The entire revenue from sale of such units has also been recognised at the time of sale and handing over of the unit to customers. According to the Assessing Officer, in view of guidance note issued by the Institute of chartered accountant of India (ICAI), revenue from booking of units by the customers should be recognised following percentage of completion method (POCM) applicable to construction contract. The learned the Assessing Officer following the POCM method of revenue recognition, computed addition of Rs.10,00,65,850/-as under:

Particulars	Amount (in Rs.)	Amount (in Rs.)
ESTIMATED PROJECT COST	77,17,99,380*	
Total Sale consideration of Project	92,61,59,256	
Estimated gross profit on completion @20%		15,43,59,876
% of work completed		65%*
Cost incurred upto 31.03.2012 as per amount capitalized in 'WIP'	24,83,40,366	
Advances/sales recognized 31.03.12	50,02,70,019	

Estimated recognition of gross profit till the end of current financial i.e., 2011-12 [65% of gross receipts]		10,00,65,850
Less: Administrative, depreciation & other expenses claimed as per ROI		<u>36,96,923</u>
Estimated Net profit		
Profit till the end of financial year under consideration		9,63,68,927
as per PCOM as the assessee company has not offered any income before. (Gross advances received from customers)		
Add : Income from other source		NIL
Total income		9,63,68,927

6. Before the Ld. CIT(A), the assessee filed a detailed submission and stated that 'completed contract method' is a recognised method in accordance with Accounting Standards-9 issued by the ICIA. Further submitted that assessee has been consistently following the method of completed contract and which has been accepted by the Revenue. The assessee relied on the decision of the Hon'ble Delhi High Court in the case of **Paras buildtech India private limited versus CIT reported in 382 ITR 630, DCIT Vs M/s Sabh infrastructure Ltd dated 07/01/2015 (ITA No. 111/2014 and 113 /2014), CIT Vs Manish Buildwell private limited reported in 245 CTR 397** and other decisions. The assessee filed a chart of completed contract method followed consistently and recognised by the income tax department as under:

A.Y.	Comulative Advances (Rs.)	Sale(Rs.)	Method of accounting followed	Assessment u/s.
2011-12	14.79	Nil	Completed contract method	143 (1)
2012-13	50.03	Nil	Completed contract method	Under appeal
2013-14	97.54	Nil	Completed contract method	143 (1)
2014-15	111.77	Nil	Completed contract method	143 (1)
2015-16	33.96	96.62	Completed contract method	

7. The assessee also pointed out that it was not engaged in construction, instead engaged in development of residential units and therefore Accounting Standard AS-7 is not applicable in the case of the assessee. In view of the submission of the assessee, the Ld. CIT(A) accepted 'completed contract method' of the assessee observing as under:'

"4.7 I have perused the order of assessment and the submissions made by the appellant alongwith the material placed on record. The appellant company is engaged in the business of building and developing housing commercial projects. In the assessment order, the AO has held that the appellant should have recognized revenue based on the percentage completion method, following Accounting Standard 7 for construction contracts and Guidance Note on recognition of revenue by real estate developers issued in June, 2006 by the Institute of Chartered Accountants of India (ICAI). The AO has held that as per the agreement to sell, the

appellant was to complete the construction within 15 months of the date of MCD approval. The AO has considered the date of MCD approval and worked out the proportionate completion of construction from the date of approval to the end of the previous year under consideration. In this manner, the AO has computed the revenue that should have been recognized and accordingly made addition to income. The appellant has argued that the revised AS-7 is applicable to contractors and not to builders or developers and since the appellant is a developer, the revised AS-7 is not applicable. The appellant stated that it has recognized revenue at the time of execution of sale deed and this is a consistent accounting method followed by it in all years. The appellant also stated that under the method of accounting followed by it, there is no loss to the revenue since it is declaring revenue after execution of the sale deed and as such, the whole exercise is revenue neutral. In this regard, the appellant placed reliance on several judicial decisions including the decision of the Hon'ble Supreme Court in Excel Industries Ltd. 358 ITR 295. The appellant stated .that the accounting method followed by it was supported by several judicial decisions, and also the opinion given by the expert advisory committee of the Institute of Chartered Accountants of India and the guidance note issued by the Institute on accounting for real estate transactions.”

8. Further, following the decisions cited by the assessee, the Ld. CIT(A) deleted the addition holding as under:

“4.10 Considering the facts, it is clear that the appellant is a builder and not a contractor. The appellant has pointed out that in view of the stipulations in the agreement in this case, it cannot be said that significant risks and rewards on ownership had been transferred to buyers prior to execution of the sale deeds. The appellant stated that it has consistently recognized revenue at the time of execution of the sale deeds and this method has been accepted by the department in not only the earlier years, but also in the subsequent years and the AO has not given any justification for deviating from the stand consistently taken by the

appellant and accepted by the Revenue. On the contrary, the Assessing Officer's finding that principle of resjudicata has no application on income tax proceedings is contrary to settled position of law as enunciated by the Apex Court in the case of Excel Industries (supra). The appellant stated that the dispute essentially related to a timing difference and income from these properties has already been shown in A.Y. 2015-16 when the sale deeds were executed and possession handed over. In the assessment order, the AO has not brought any material on record to controvert the contentions of the appellant. Considering the facts and judicial decisions on this subject, the addition made by the AO is not sustainable in law and is deleted."

9. Before us, the Ld. DR relied on the order of the Assessing Officer, whereas the Ld. Counsel of the assessee relied on the order of the Ld. CIT(A).

10. We have heard rival submission of the parties and perused the relevant material on record. The issue in dispute in the instant case is regarding method of revenue recognition followed by the assessee as against the method applied by the Assessing Officer. The contention of the assessee is that it is following consistently "completed contract method" for recognising revenue from booking of residential units in the real estate project, but in view of the Assessing Officer the revenue should be recognised following percentage of completion method. The assessee's method of accounting has been summarized in submission before the Ld. CIT(A), relevant part of is reproduced as under:

8.4 It is further submitted that since the appellant is a developer and not a contractor as such, it recognizes income only when possession is handed over and sale deed is executed. Since the inception of the

appellant firm, any amounts received against booking are credited to account "Advances against booking" similarly all expenditure for purchase of land, seeking sanctions from the concerned authorities, developing the land in accordance with those sanctions, all types of expenses incurred on construction, i.e. capital expenditure incurred for getting prelaunch or post launch bookings including were debited to Work in progress. Thus neither, advances received on booking of flats were treated as revenue nor expenditure incurred was claimed as an revenue expenditure till the sale of flats started, i.e., transfer of apartments was made. In fact, the appellant had capitalized the cost of construction and reflected the cost of construction as project in progress and as such, the adverse inference drawn is patently misconceived, misplaced and wholly untenable.

8.5 In nutshell, it is submitted that since appellant is a developer and not a contractor and is recognizing revenue as and when sale deed is executed and possession is handed over and till that time advances received against booking are credited to account "Advances against booking" similarly all expenditure for purchase of land, seeking sanctions from the concerned authorities, developing the land in accordance with those sanctions, all types of expenses incurred on construction, i.e. capital expenditure incurred for getting prelaunch or post launch bookings including were debited to Work in progress, as such, AS-7 is per-se in applicable and hence addition made by the learned AO deserves to be deleted.

8.6 It is further submitted that in the instant case, learned AO has proceeded to compute the income of the appellant by applying Accounting Standard-7 which was originally issued by Institute of Chartered Accountant of India in the year 1983. That section 145(2) of the Act provides that the Central Government may notify in the Official Gazette from time to time accounting standards to be followed by any class of assesseees or in respect of any class of income. It is therefore submitted that unless an accounting standard is notified by the Central Government, same is not binding on an assessee, and hence same cannot be ground for

rejecting the method of accounting on the ground that accounting standards as notified under sub-section (2), have not been regularly followed by the assessee. It is submitted with respect that under section 145(2) of the Act, 1961, Central Government has notified two accounting standards i.e. AS-1 (relating to disclosure of accounting policies) and AS-2 (relating to disclosure of prior period and extraordinary items and changes in accounting policies) vide notification no. SO 69(E), dated 25-1-1996. It is submitted that apart from the aforesaid accounting standards, no other accounting standard has been notified by the Central Government for the purpose of section 145(2) of the Act. It is therefore submitted that and despite the fact that AS-7 was in existence when the aforesaid notification was issued, same was not notified by the Central Government for the purpose of section 145(2) of the Act, as such, such an accounting standard cannot be held to be binding for the purpose of section 145 of the Act and as such the finding of the learned AO that AS-7 is mandatory from 01.04.2003 is legally misconceived. In fact in the case of PARAS BUILDTECH INDIA PRIVATE LIMITED (Supra), Hon'ble High Court has held that AS-7 of the ICAI did not have any statutory recognition under the Income Tax Act, 1961 although it was binding under the Companies Act, 1956.

8.7 It is most humbly submitted that even otherwise if provisions of ASH is read holistic ally, it would be seen that AS-7 cannot be applied in case of real estate developer as ASH is applicable only in the case of construction contractor in whose case the estimated cost of project is estimated with reasonable certainty even at the start of construction and. revenue of the construction is also predetermined at the very start of the construction whereas in the case of real estate developer both the components cannot be determined till the unit is ultimately sold to the ultimate customer. That AS-7 defines the contract revenue as under:

10. Contract revenue should comprise:

(a) the initial amount of revenue agreed in the contract; and

(b) variations in contract work, claims and incentive payments:

- (i) to the extent that it is probable that they will result in revenue; and*
- (ii) they are capable of being reliably measured.*

8.8 It is submitted that in the case of real estate developer, contract revenue is not determined at the start of development of real estate project. As such, in the case of real estate developer, neither the outcome of a units/spaces can be estimated reliably nor the cost associated with the same can be estimated with reasonable certainty, hence contract revenue and contract costs associated with the construction contract cannot be recognized as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date. It is submitted that assessee recognizes its income on the basis of consideration received in respect of the sales made in respect of area sold and computes its income in accordance with the provisions of section 145(1) of the Act. It is submitted that in the case of the appellant since it is selling the flats developed/constructed by it as such, in the case of the appellant revenue can be recognized only when the registered sale deed is executed as in the case of sale of flats all significant risks and rewards of ownership are transferred to the buyer and the appellant retains no effective control on the flats transferred to a degree usually associated with ownership, only when the sale deed is executed, as such, method of recognizing revenue by the appellant is perfectly valid and same does not require any interference, and hence approach of the learned AO in applying AS-7 is liable to be rejected.

11. In view of the above, it is evident that accounting standard AS-7 relied upon by the Assessing Officer is applicable strictly in the case of construction contracts only.

12. Further , the Ld. CIT(A) has followed binding precedent of the jurisdictional High Court in the case of Paras buildtech India

private limited (supra);Sabh infrastructure Ltd (supra) and Manish Buildwell P. Ltd (supra). Further, the assessee is following consistently this method of revenue recognition in prior years as well as in subsequent years and which has been accepted by the revenue and thus rule of consistency also demand that in the year under consideration the assessing officer is not justified in deviating the consistent approach of the Department. In view of above, we do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly we uphold the same. The grounds of the appeal of the revenue are accordingly dismissed.

13. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 21.10.2021.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated:21.10.2021

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation:	21.10.2021
2.	Date on which the draft of order is placed before the Dictating Member:	21.10.2021
3.	Date on which the draft of order is placed before the other Member:	21.10.2021
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	21.10.2021
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	21.10.2021
6.	Date on which the final order received after having been signed/pronounced by the Members:	21.10.2021
7.	Date on which the final order is uploaded on the website of ITAT:	21.10.2021
8.	Date on which the file goes to the Bench Clerk	21.10.2021
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	