

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.4445/M/2016
Assessment Year: 2011-12**

Income Tax Officer- 12(1)(3), Room No.145A, 1 st Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020 (Appellant)	Vs.	M/s. Bellor Homes and Realtors Pvt. Ltd., Shop No.1 & 2, Satyadeep CHS Ltd., Chikuwadi, Borivali (W), Mumbai - 400 092 PAN: AACCB5747Q (Respondent)
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Present for:

Assessee by : Shri Manish J Sheth, A.R.
Revenue by : Shri M.C. Omi Ningshen, D.R.

Date of Hearing : 01.03.2018
Date of Pronouncement : 15 05.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 03.03.2016 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The issue raised in ground Nos.1 & 2 is against the deletion of addition by Ld. CIT(A) as made by the AO @ 10% of Rs.31,15,62,438/- being advances received from purchasers thereby estimating a sum of Rs.3,11,56,245/- as income from project Neo Corporate Plaza.

3. The facts in brief are that the assessee was following project completion method for recognizing the revenue. The AO during the course of assessment proceedings noticed that assessee has received up to 31.03.2011 advances from various customers amounting to Rs.31,15,62,438/- against the estimated project revenue of Rs.54,12,51,702/- . The estimated cost whereof was to the tune of Rs.49,15,61,282/- and the cost already incurred was Rs.30,77,35,824/-. According to the AO, the assessee has received 57.56% of the total estimated project revenue and has also incurred a substantial amount of expenditure as against the total estimated expenditure on the project. Accordingly, a show cause notice was served upon the assessee as to why the percentage completion should not be applied to recognize the revenue from the construction activity. The written submissions filed vide letter dated 24.03.14 was rejected by the AO and finally an addition @ 10% of total advances received was made which worked out to Rs.3,11,56,245/-.

4. In the appellate proceedings, the Ld. CIT(A) deleted the addition after considering the submissions and contentions of the assessee by observing and holding as under:

“4.3 I have perused the assessment order and submissions made in this regard. It is noted that assessee is a builder. The assessee has been consistently following project completion method which was accepted by the department in other years and no addition was made on this issue. During the year under consideration the A. O. has applied percentage completion method and made addition of Rs.3,11,56,245/- to the total income of the assessee by applying percentage completion method and estimating income @10% of the advances received of Rs. 31,15,62,438/- as per the books of the assessee, to the income of the assessee. The AIR of the appellant has vehemently opposed the addition and has submitted that the assessee is regularly following this method of accounting which has been

accepted by the AO in the preceding assessment year. It is also submitted that the A.O. has changed the method of accounting without much basis and made addition which may be deleted. Referring to a number of decisions, the AR has submitted that the Revenue Authorities are not justified in rejecting the project completion method followed by the assessee by adopting the percentage completion method. In this regard it is noted that project completion method is an accepted method of accounting for builders. The assessee is regularly following this method of accounting which has been accepted by the A.O. in other years. It is an established legal proposition that an assessee can follow any recognized method of accounting and the condition is that the same method has to be followed consistently. Since the assessee in the instant case was regularly following the project completion method therefore, there is no sound reason as to why the same should be rejected and percentage completion method be followed. It is noted that Mumbai Tribunal in the case of AWADESH BUILDERS v. ITO reported in 37 SOT 122 (MUM BAI) has held that project completion method adopted by the assessee builder and real estate developer is justified instead of the percentage completion method as computed by the department. While giving this finding, the Hon. Tribunal relied on the decision of the Hon'ble Supreme Court in the case of CIT v. BILAHARI INVESTMENT (P) LTD. reported in 299 ITR 1 (SC) and decision of the Hon. Supreme Court in the case of CIT vs. REALEST BUILDERS & SERVICES LTD reported in 307 ITR 202. The Hon. Tribunal also considered AS-7 and AS-9 issued by ICAI. Since the assessee in instant case is regularly following project completion method therefore there is no on for the A.O. to reject the method of accounting regularly followed by the assessee. This view is supported by the order dt. 05.08.2011 of the Hon'ble ITAT, Mumbai in the case of **Haware Constructions Pvt. Ltd. vs. ITO, ITA 5601/Mum/2009** wherein the Hon'ble Tribunal had deleted the addition made identical issue. In view of this discussion the addition made by the Ld. A.O. of Rs.3,11,56,245/- by adopting percentage completion method as against project completion method of the assessee cannot be sustained in appeal and is directed to be deleted. Accordingly these grounds of appeal are **allowed.**"

5. The Ld. D.R. argued before the Bench that the Ld. CIT(A) has erred in deleting the deletion as made by the AO without appreciating the fact that the assessee was not recognizing the revenue despite having received substantial advances from customer and also incurring major chunk of the total expenditure. The assessee was following the project completion method consistently in order to defer the payment

of taxes and therefore AO has rightly brought to tax the income of the assessee by applying the percentage completion method. The Id AO pleaded before the bench that so being the facts, the order of CIT(A) order should be set aside to uphold the order of AO.

6. The Ld. A.R., on the other hand, submitted that the assessee is following the project completion method consistently right from the beginning which has been accepted in the past by the Revenue. The Ld. A.R contended that though the assessee has received substantial amount of advances to the tune of Rs.31,15,62,438/- as against the total estimated revenue of Rs.54,12,51,702/- but to estimate the profit on the unfinished project is against the accounting policy which is consistently followed by the assessee and accepted by the Department. Any change is not permissible at the whims and surmises of the Revenue. The Ld. A.R. strongly relied on the order of Ld. CIT(A) and prayed that the same should be upheld

7. Having heard both the sides and considered the relevant material placed before us, we find that the assessee was following the project completion method consistently which has been accepted by the revenue. However, the AO estimated the revenue on the project called Neo Corporate Plaza a commercial project on percentage completion method by reasoning that the assessee has already incurred substantial expenditure to the tune of Rs.30,77,35,824/- against the estimated project cost of Rs.49,15,61,282/- and

has received advances of Rs.31,15,62,438/- against the estimated project of revenue of Rs.54,12,51,702/-. In our opinion, when the assessee is following project completion method, the AO cannot at its discretion change the said method of percentage completion method as the law does not permit the same. In view of the said facts nonetheless the assessee has received substantial advances from the customers to the tune of 57.56% of the total estimated project revenue, the action of the AO cannot be approved. Thus, we do not find any infirmity in the order of Ld. CIT(A) and accordingly we dismiss the ground No 1 & 2 raised by the Revenue by upholding the order of Ld. CIT(A).

8. The issue raised in ground No.3 is against the deletion of disallowances of interest expenditure from income from other sources of Rs.62,53,400/- without appreciating the fact that the same is taxable under the head income from other sources and the assessee has not proved any nexus between the interest expenses and interest income. During the course of assessment proceedings the AO found that the assessee has received interest income to the tune of Rs.62,53,400/- from the loan advances made to sister concern M/s. Bellor Housing Pvt. Ltd. The AO noticed that assessee has adjusted the said income against the said interest expenditure of Rs.1,15,19,974/- and the balance interest of Rs.52,66,574/- was charged in the P & L Account which was included in the closing work in progress. However, in computation of income the assessee shown the income from interest under the head income from other sources and claimed an equal amount of

expenditure under section 57 of the Act. Thus, the income was shown at Nil. Accordingly, the AO issued a show cause notice to the assessee calling upon the assessee to explain the nexus of expenses claimed under section 57 of the Act. According to the AO the gross amount of interest expenses of Rs. 1,15,19,974/- was required to be included in WIP as against RS. 52,66,574/- made by the assessee. The AO rejected the deduction under section 57 of the Act to the tune of Rs.62,53,400/- resulting into income to that extent and the expenses claimed of the equal amount was added to be capitalized in WIP.

9. In the appellate proceedings the Ld. CIT(A) allowed the appeal of the assessee on the ground that assessee was following project completion method and the interest income was allowed to be netted against the interest expenses and remaining expenses were transferred to WIP in earlier years also.

10. The Ld. D.R. submitted before the Bench that since no nexus was established between the interest income and interest expenses, the same cannot be allowed to be netted and thus the order passed by the Ld. CIT(A) is wrong and against the facts of the case. Any wrong claim can not be allowed on the plea that similar claim of the assessee has been accepted by the department in the earlier years. Finally, the Ld. D.R. prayed that the appeal of the department on this point should be allowed.

11. The Ld. A.R., while referring to the page No.132 of the P & L Account as on 31.03.2011 submitted that the interest was shown at Rs.52,66,574/- after netting amount interest income of Rs.62,53,400/- from interest expenses of Rs.1,15,19,974/- resulting into capitalization thereof in the WIP. The Ld. A.R. submitted that this is the practice regularly followed by the assessee in the earlier years also and the same has been duly accepted by the department. Since the Ld. A.R. contended that the assessee is following the project completion method and ultimately the entire revenue would be taxed in the year of completion of project. The Id AR contended that the disallowance at this stage would result in double taxation of the interest income first by way of netting the interest in the WIP which was offered to tax in the subsequent year and second by way of disallowance by the AO of the interest expenses of the equal amount. The Ld. A.R. admitted that assessee has committed a mistake by showing the said interest income under the head income from other sources and claiming the equal amount of expenses on account of interest expenses for which a necessary affidavit was also filed which is attached at page 62 of the paper book. The Ld. A.R. submitted that in view of the system of accounting followed by the assessee the order of Ld. CIT(A) should be upheld.

12. Having heard the rival submissions of both the parties and carefully perusing the relevant materials on record as placed before us, we find that the assessee has wrongly shown the interest income under the head income from other

sources and claimed equal amount of interest expenses from the same whereas in the P & L Account filed before us the assessee has netted the amount resulting into net amount of interest being forming part of the WIP. The assessee has been following the system of accounting consistently in the past also and the same was accepted by department. Under these circumstances, we do not find any infirmity or illegality in the order of Ld. CIT(A) and accordingly the ground raised by the Revenue is dismissed.

13. The issue raised in ground No.4 is against the deletion of interest on cancellation of bookings to the tune of Rs.14,76,718/- by CIT(A) without appreciating the fact that the assessee failed to furnish the details to explain that cancellation was made due to delay in project.

14. The facts in brief are that the AO noticed that a sum of Rs.14,76,718/- was claimed by the assessee in project WIP account on account of interest on refund following cancellation of booking. The AO accordingly called upon the assessee for the commercial expediency for incurring the said expenses which was replied by the assessee by submitting that it had to pay the interest on cancellation of booking leading to refund of advances from customers due to the delay in the project. However, the AO rejected the contentions of the assessee on the ground that assessee has not furnished any details to substantiate the delay on the part of the assessee in the completion of the project and accordingly disallowed the said amount.

15. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee on this issue after considering the submissions of the assessee by observing and holding as under:

“7.3 It is noted that the claim of the assessee of Rs.14,76,718/- out of interest paid was disallowed as the assessee could not establish that the expenditure was relatable to the project being constructed by the company. It is noted from the details filed that the assessee has paid interest to Ms. Poonam S. Shah and M/s Prince Polyplast Pvt. Ltd. for the cancellation of bookings made due to delay in project. The payments were made through banking channel and are reflected in the books of accounts. The A.O. has not established that the interest was paid for any purpose other than the business and no diversion of funds has been noticed in this regard. In view of this discussion it is noted that the claim of the assessee as regards interest payment of Rs.14,76,718/- in the books of accounts is found to be in order and for this reason the disallowance made by the A.O. cannot be sustained in appeal and is directed to be deleted. Accordingly this ground of appeal is **allowed.**”

16. After hearing the rival contentions of both the parties and perusing the material on record, we find that the assessee has paid interest on the amount received by it against the booking of the property. However, the assessee could not handover the possession as promised and consequently the cancellation of couple of bookings happened due to late completion of the project and the assessee had to pay interest on the amount received by the assessee. The Ld. D.R. argued that there is no contract for payment of interest between the assessee and the customers and therefore the same cannot be allowed. Moreover, the assessee did not file any material before the AO to this effect. However, on the other hand, we find that the assessee has filed all the necessary details in respect of two parties Ms. Poonam S. Shah and M/s Prince Polyplast Pvt. Ltd. to whom the refund was made giving the details of interest and payment thereof. Under these circumstances, we are of

the view that interest payments were out of commercial expediency as the delay was on the part of the assessee for which the customers could not be penalized. Moreover, no contract is required to be entered into for the payment of said interest as the interest payment was attributed to the delay in the completion of the project which finally lead to refund of advances. Accordingly, we uphold the order of Ld. CIT(A) on this issue by dismissing the ground raised by the revenue.

17. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 15.05.2018.

**Sd/-
(C.N. Prasad)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 15.05.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.