IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 828 of 2007

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE KS JHAVERI SD/-

and

HONOURABLE MR.JUSTICE G.R.UDHWANI SD/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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MANJUSHA ESTATES PVT. LTD.....Appellant(s)

Versus

THE INCOME TAX OFFICER....Opponent(s)

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Appearance:

MR MANISH J SHAH, ADVOCATE for the Appellant(s) No. 1

MR KM PARIKH, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE G.R.UDHWANI

Date : 12/08/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

By way of this appeal, the assessee has challenged the order dated 12/01/2007 passed by the tribunal in ITA No.3520/Ahd/2003 for the assessment year 2001-02 whereby the appeal of the assessee came to be dismissed confirming the order passed by the CIT (A).

2. While admitting this appeal following question of law was arisen for consideration:

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in rejecting the project Completion Method which was followed consistently by the assessee and instead applying work-in-progress method and taxing 80% thereon as net profit?"*

3. Learned Counsel for the appellant has contended that the Tribunal has erred in rejecting the Project Completion Method which has been consistently followed by the assessee and instead taxing the net profit as 8% on the further construction done during the year.

3.1 Learned Counsel has further contended that the tribunal has not appreciated the fact that Project Completion Method is a well known and well accepted method of taxing the income of the business of building construction and thus has committed error in rejecting the same and instead restoring to taxation on the basis of work-in-progress.

3.2 Learned Counsel has also contended that the tribunal has not considered the fact that method which was followed by the assessee in the earlier year as also in later years and thereby rejecting the method in an intermediate year creates a chaotic condition in the assessment files of the assessee.

3.3 In support of his contentions, learned Counsel has placed reliance on the decision in case of ***Commissioner of Income-tax-IV v. Shivalik Buildwell (P.) Ltd. [2013] 40 taxmann.com 219 (Gujarat)*** and placed reliance upon the following paragraphs:

> *"3. On the revenue's appeal, the Tribunal confirmed the view of CIT (Appeals), however, on slightly different ground, namely, that the assessee being a developer of the project, profit in his case, will arise on transfer of title of the property and receipt of any advances or booking amount cannot be treated as trading receipt of the year under consideration. The Tribunal further noted that such method of accounting followed by the assessee had been accepted by the revenue in earlier years. The Tribunal was, therefore, of the opinion that the Assessing Officer's decision to reject the book results during the year under consideration was not justified.*
>
> *4. We are of the opinion that the Tribunal committed no*

error. If as per the accounting standard available, the assessee was entitled to claim the entire income on completion of the project and if such accounting standard was accepted by the revenue in the earlier years, in the present year, the Assessing Officer could not have taken a different stand and that too, without hearing the assessee."

3.4 Attention of this Court was also invited to a decision of this Court in case of ***Commissioner of Income-tax-V v. Umang Hiralal Thakkar [2014] 42 taxmann.com 194*** and placed reliance upon the following paragraphs:

"4.2. From the perusal of the order passed by the learned CIT(A) while deleting the addition of Rs.1,66,70,811/-, it appears that in para 10.4 and 10.5, learned CIT (A) has observed as under:

"10.4.In the present case, it is not the Assessing Officer's case that the appellant is not reporting or under reporting its income. In fact, I find in the subsequent assessment year i.e. A.Y. 2007-08, the appellant has disclosed substantial income from the projects undertaken in the business proprietary concerns viz. M/s. Neelkanth Enterprises, M/s. Ghanshyam Enterprises and M/s. Swaminarayan Enterprises. In the subsequent year i.e. A.Y 2007-08 the profit declared from the projects run by these three proprietary concerns ranges from 43% to 46%. The Supreme Court in the case of Sanjeev Woolen Mills vs. CIT, supra, has clearly held that to attract the proviso to Section 145(1) of the Act, the Assessing Officer should be of the view that the accounts are correct and complete but the method employed is such that the income cannot be property deduced therefrom. The choice of method of accounting regularly employed by the assessee lies with the assessee but the assessee would be required to show that he has followed the chosen method regularly. The department is bound by the assessee's choice of method regularly employed unless by this method, the true income, profit or gain cannot be arrived at. The assessee's regular method would not be rejected as improper merely because it gives the assessee the benefit in certain years or that as per the Assessing Officer, the other method would have been more preferable. If the method adopted does not afford true picture of profit, it would be rejected, but then such rejection should be based on cogent evidence and should be done with caution.

10.5.In the present case, the appellant has declared substantial profits on the basis of project completion method in the subsequent years. In construction, the project completion method and percentage completion methods, both have also been recognized by the CBDT in the instruction No.4 of 2009 dated 30.9.2009. Therefore, the Assessing Officer is not considered justified in bringing to tax the profit of Rs.1,66,70,811/- in the year under consideration, particularly when such profits have already been offered to tax by the appellant in the AY 2007-08. The addition of Rs.1,66,70,811/- are directed to be deleted."

4.3. It is also required to be noted that while passing the impugned judgment and order, learned ITAT has heavily relied upon the decision of the Coordinate Bench Tribunal in the case of Vraj Developers (supra) passed in ITA No. 19/AHD/2008, in which, the Coordinate Bench, has held as under:

"5. The Ld. D.R supported the order of the Ld. A.O and the L.D A.R of the assessee supported the order of Ld. CIT(A) and also placed reliance on Bangalore Bench of the Tribunal in the case of Nandi Housing (P) Ltd. Vs. DCIT (2003) 80 TTJ 750 (Bang), wherein Tribunal followed decision of the Karnataka High Court in the case of Khoday Distillers Ltd., in ITRC Nos. 19 to 21 of 1993. This, it is observed that the issue which requires our adjudication is that the income in the instant case is to be computed as per system of accounting followed by the assessee or as per accounting followed by the assessee or as per accounting standard AS-7 for the purpose of charging of income tax. We find that the issue is to be decided in accordance with the provisions of section 145 of the Act shows that the business income which is assessable under the Income Tax Act is to be computed in accordance with the consistent system of accounting followed by the assessee unless such system, of accounting is defective and / or from such system of accounting, profit cannot be deduced. Thus, in our considered opinion, the option for choosing the system of account is wit the assessee and not with the Ld. A.O provided the system chosen by the assessee is consistently followed by him and such system is not a defective system. In our considered view, provisions of AS-7 cannot override the provisions of Section 145Jn so far as the computation of business income under the Income Tax Act for the purpose of determining income is concerned. In the instant case, we find that the Ld.A.O has brought no material on record to show that the system of accounting adopted by the assessee for the year under appeal was not consistently followed by the assessee or the system adopted was a defective system. In our considered view, even a project completion method is also a recognized system of accounting. Simply the Institute of Chartered Accountants of India has recommended percentage completion method does not mean that project accounting or the same is a defective system of accounting. The ld. CIT (A) has recorded a finding after perusing the assessment records of the subsequent years that the assessee has offered for taxation its income in the subsequent year as per the consistent system of accounting followed by the assessee. The Ld. D.R could not point out any error in the above finding of Ld. CIT(A). In view of the above discussion, we do not find any error in the order of the Ld. CIT(A) and therefore, the same is upheld and the appeal of the Revenue is dismissed".

4.4. It is reported that the decision of the Appellate Tribunal in the case of Vraj Developers (Supra) has attained the finality as the said decision is not challenged by the department before Higher Forum. In view of the above and more particularly, when it has been found that the assessee is consistently following accounting system of percentage completion method, which is permissible and accepted by ICAI and CBDT with respect to construction work, it cannot be said that the learned Appellate Tribunal has committed any error and / or illegality, which call for the interference of this Court. We see no reason to see to interfere with the impugned judgment and order passed by the learned Tribunal. We are in complete agreement with the view taken by the learned ITAT as well as learned CIT (A) deleting the addition of Rs.1,66,70,811/- which was made by the Assessing Officer on rejecting the accounting system on percentage completion method followed by assessee. No question of law much less any substantial question of law arise in the present appeal. Hence, present appeal deserves to be dismissed and is accordingly dismissed.”

3.5 After making aforesaid submissions, learned Counsel for the assessee has contended that the issue raised in this appeal may be answered in favour of the assessee – appellant.

4. On the other hand, learned Counsel for the department has contended that the order passed by the tribunal is just and proper and this Court may not interfere with the same since the tribunal has considered the relevant material placed before it. He has also contended that the AO has gone into the details and thereafter observed in paragraph No.16 which reads thus:

“16. That in the case of contracts, one need not wait till the contract was completed in order to ascertain the income and that it is open to revenue to estimate the profit on the basis of receipts in each year of construction although the contract was not complete. Thus, in the case of assessee also substantial work has been completed and receipts were more than the valuation of WIP. Further, in subsequent year the assessee has

transferred the WIP into finished stock but not shown as sales. This is nothing but the assessee followed tax deferment scheme on the palliation of completed contract method which is fact not correct and true. Under the circumstances and totality of facts, it is clear that the profit shown in books of accounts is not correct and completed, therefore, I have no alternative but to invoke the provisions of Section 145 (3) of the Act to reject the book result of the assessee and determine the income at 10% of total gross receipts allowance. It is mentioned here that in preceding year, the construction work carried out was very nominal, the advances received in earlier year are considered for revenue recognition in current year. The assessee company has collected Rs.1,10,86,447/- till end of the year under consideration from numbers including the sale of Share in land with construction upto plinth level, therefore net profit is worked out at Rs.11,08,645/- being @ 10% of receipts from members."

4.1 Learned Counsel for the department has taken this Court to Section 145(3) of the IT Act which relates to rejection of the books of accounts and contended that the CIT (A) as well as the Tribunal has rightly come to the conclusion after considering the material placed before them. After making the aforesaid submissions he has contended that the appeal may be dismissed.

5. Having heard the learned Counsel for the parties and having gone through the order passed by the authorities below, as well as, considering the

fact that the assessee has followed the method which is consistent considering the decision in case of ***Shivalik Buildwell (P.) Ltd. (supra)*** and ***Umang Hiralal Thakkar (supra)*** and therefore this Court is of the opinion that the view taken by the tribunal and CIT (A) is not correct. Since the issue involved in this appeal is identical to the decision cited by the learned Counsel for the assessee while adopting such reasons, we allow this appeal and accordingly answer the issue raised in this appeal in favour of the assessee and against the department.

(K.S.JHAVERI, J.)

(G.R.UDHWANI, J.)

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