

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 1738 OF 2013

Commissioner of Income Tax-15 ..Appellant
Vs.
M/s Aditya Builders ..Respondent

....
Mr. A.R. Malhotra a/w N.A. Kazi, Advocates for Appellant.
Mr. Sanjiv M. Shah, Advocate for Respondent.
....

**CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 14 SEPTEMBER 2015**

P.C.:

This appeal filed under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 6 February 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal').

2. The Assessment Year involved is A.Y. 2007-08.
3. The revenue has raised following questions of law for our consideration:

(1) Whether, on the facts and the circumstances of the case, the Tribunal was justified in law in holding that the assumption of jurisdiction u/s. 263 of the Act, by the CIT is not valid and that

the assessee has not committed any legal error by uniformly and consistently following 'Project Completion Method' when he should have followed 'Percentage Completion Method' as per Accounting Standard 9?

(2) Whether, on the facts and the circumstances of the case, the Tribunal was justified in law in not appreciating that the order passed by the assessing officer in this case is prejudicial to the interest of the Revenue as the assessee has not recognized revenue as per Accounting Standard 9 from its Link Corner Project which was 88.78% complete in which case, the assessing officer should have recognized the revenue from this project?"

4. The respondent-assessee is engaged in construction of commercial and residential premises. For the subject Assessment Year 2007-08, the respondent filed return of income declaring income of Rs.1.51 crores. The Assessing Officer also in the course of assessment noticed that the respondent-assessee was undertaking two construction projections namely Link Corner Project and Gym View Project following the Project Completion Method of accounting. Further the Gym View Project was completed in the

subject Assessment Year and its profits were offered to tax. The Assessing Officer completed the assessment under Section 143(3) of the Act on 13 July 2009 determining the total income at Rs.1.58 crores.

5. On 27 March 2012, the Commissioner of Income Tax (the 'Commissioner') in exercise of his powers of revision under Section 263 set aside the order dated 13 July 2009 of the Assessing Officer and directed him to recompute the income of the respondent-assessee in respect of Link Corner Project by applying the Percentage Completion Method. However the profits disclosed by applying the Project Completion Method in case of Gym View Project was not disturbed.

6. Being aggrieved, the respondent-assessee filed an appeal before the Tribunal. The Tribunal by the impugned order held that the respondent-assessee has been consistently following the Project Completion Method over the years. Further in respect of the two projects which arise for consideration in the subject assessment year, the respondent was following the Project Completion Method

in respect of both the projects. The Commissioner while seeking to revise the order of the Assessing Officer has not disturbed the adoption of Project Completion Method in respect of Gym View Project and merely sought to replace the Project Completion Method by Percentage Completion Method in respect of Link Corner Project. Further, the impugned order relied upon the settled position of law that the method of accounting cannot be thrust upon the assessee and where the assessee has been consistently following a particular method of accounting, the same cannot be lightly disturbed. Moreover, the issue relating to the appropriate method of accounting is a debatable issue and thus the Commissioner would have no jurisdiction under Section 263 of the Act to direct application of one particular method of accounting in preference to another. In the above view, the Tribunal set aside the order of the Commissioner dated 27 March 2013 passed in exercise of power of revision under Section 263 of the Act.

7. Mr.Malhotra, learned Counsel for the revenue submits that in any case, as the project was substantially completed and the Project Completion Method ought to have followed. Otherwise he

supports the order of the Commissioner of Income Tax in exercise of powers under Section 263 of the Act.

8. We find that the revenue has accepted the Project Completion Method in respect of Gym View Project of the respondent-assessee. Further as recorded by Commissioner in his order dated 27 March 2012, the respondent-assessee has offered to tax the income earned on Link Corner Project by following the Project Completion Method in respect of subsequent assessment year i.e. A.Y. 2008-09. It is a settled position of law that where the revenue has accepted a particular method of accounting over several years, the same is not to be lightly substituted unless the revenue is able to show that the same distorts the profit for a particular year. As held by the Apex Court in UCO Bank Vs. CIT 240 ITR 355, the choice of method of accounting is of the assessee. The respondent-assessee has chosen/adopted the Project Completion Method of accounting and has been consistently following it over the years. It is not open to the revenue to reject a method because according to the Assessing Officer another method is preferable. In view of the above settled position, no fault can be found with the

impugned order of the Tribunal. Moreover, the most appropriate method of accounting to correctly reflect the true financial statement is a matter of opinion and debate. Issues of debate are not amenable to Revisional jurisdiction under Section 264 of the Act.

9. So far as the alternative submission made by Mr. Malhotra viz. the Link View Project should have also been brought to tax under the Project Completion Method is concerned, the same does not arise for our consideration as Commissioner in his order dated 27 March 2012 has specifically directed adoption of Percentage Completion Method of accounting to subject the income arising on Link Corner Project to tax. In any view of the matter, the profits on Link Corner Project has been offered to tax and accepted in the subsequent Assessment Year i.e. A.Y. 2008-09. In fact, this Court in CIT Vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681 (Bom), has observed as under:

“We have often wondered why the IT authorities, in a matter such as this where the deduction is obviously a permissible deduction under the IT Act, raise disputes as

to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the asst. yr. 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the asst. yr. 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.”

10. Accordingly, the questions raised for our consideration do not give rise to any substantial question of law.

11. Hence, appeal dismissed. No order as to costs.

[G.S. KULKARNI, J]

[M.S. SANKLECHA, J.]

CERTIFICATE

Certified to be true and correct copy of the original signed
Order.