

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF JULY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

I.T.A. NO.153 OF 2012

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R. BUILDING, QUEENS ROAD
BANGALORE.
2. THE INCOME-TAX OFFICER
WARD-11(1), C.R. BUILDING
QUEENS ROAD, BANGALORE.

... APPELLANTS

(BY SRI. K.V. ARAVIND, ADV.,)

AND:

M/S. BANJARA DEVELOPERS AND
CONSTRUCTIONS PVT., LTD.,
NO.418, I MAIN, I BLOCK
R.T. NAGAR
BANGALORE-560032.

... RESPONDENT

(BY SRI. PUKALE MANOJ DEVINDER, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT F ORDER DATED 13.01.2012 PASSED IN ITA
NO.472/BANG/2003 FOR THE ASSESSMENT YEAR 2004-05,
PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.

(I) SET ASIDE THE ORDER OF THE TRIBUNAL IN ITA NO.472/BANG/2003 DATED 13/1/2012, CONFIRMING THE ORDER OF THE APPELLATE COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD -11(1), BANGALORE.

THIS ITA COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal has under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to Assessment year 1997-98. The appeal was admitted by a bench of this Court by order dated 17.09.2012 on following substantial question of law:

- (i) *Whether the tribunal was correct in holding that the assessee could adopt completed contract method of accounts without appreciating the amendment to Section 145 of the Act w.e.f.*

01.04.1997 and applicable to the current assessment year?

2. Facts leading to filing of this appeal briefly stated are that assessee is a company carrying on the business of development of plots and construction of flats. Admittedly, the assessee company follows mercantile system of accounting and completed contract method of accounting for contracts. The assessee filed its return of income for assessment year 1997-98 on 27.11.1998 declaring the income of Rs.7,59,730/-. The aforesaid return of income was processed under Section 143(ia) and the income returned, was accepted. Subsequently, the case was selected for scrutiny and assessment was completed under Section 143(3) on 10.02.2000 by which the income was determined at Rs.7,59,730/-. Subsequently, it was noticed that assessee had received Rs.1,52,42,380/- as advance from customers pending transfer to income accounts. Thereupon a notice under Section 148 was issued. The

assessing officer by an order dated 28.03.2002 inter alia held that current profit cannot be decided by the method of book of accounting followed by the assessee and estimated the income of the assessee by applying 8% rate on the advances received by the assessee on a sum of Rs.1,52,42,380/-. Accordingly, addition was made by the assessing officer.

3. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) by an order dated 04.02.2003 inter alia held that advance of Rs.1,53,42,380/- is in fact accumulated balance of number of years (advance as on 31.03.1996 being Rs.1,44,14,057/-) that completed income for completed contracts being declared in subsequent assessment years. Accordingly, it was held that assessing officer was not justified in making an addition of 8% on total advances as on 31.03.1997 and assessing officer was directed to delete an addition of Rs.12,19,390/-. In the

result, the appeal was allowed. Being aggrieved, the revenue preferred an appeal. The appeal which was dismissed by the Income Tax Appellate Tribunal by an order dated 13.07.2005.

4. The aforesaid order passed by the tribunal was challenged in appeal before this court by the revenue. The said appeal viz., I.T.A.No.36/2006 was decided by a bench of this court vide order dated 23.09.2010. It was inter alia held that the assessment year pertains to 1997-98 i.e., subsequent to amendment to Section 145(1) of the act and the tribunal ought to have looked into the matter to ascertain whether the assessee could adopt completed contract method which is not contemplated under Section 145(1) of the Act as it refers to cash or mercantile system of accounting. The order of the tribunal was set aside and the matter was remitted to the tribunal for decision of the appeal afresh in the light of observations made in the order.

5. The tribunal by an order dated 13.01.2012 by taking note of decision of the Supreme Court in '**CIT VS. BILAHARI INVESTMENTS PVT. LTD.,'** (2008) 299 **ITR 1 (SC)** held that in the instant case the assessee was following the completed contract method consistently and the aforesaid method was accepted by the department in the past as well and therefore, there was no justification on the part of the assessing officer to change the earlier method adopted by the assessee and to determine the income on the estimate basis. Accordingly, the appeal was dismissed. Being aggrieved, the revenue is in appeal before us.

6. Learned counsel for the revenue while inviting the attention of this court to order dated 23.09.2010 passed in I.T.A No.36/2006, by a bench of this court submitted that the directions contained in the order have not been complied with. It is further submitted that assessee is in construction business and is bound to follow the percentage completion method

instead of project completion method. It is also pointed out that the aforesaid issue is covered by a decision by a bench of this court dated 09.09.2014 in favour of the revenue in case of '**COMMISSIONER OF INCOME TAX AND ANOTHER VS. THUMBAY HOLDINGS (P) LTD**'. On the other hand, learned counsel for the assessee submitted that charge of tax in the instant case pertains to previous year and not the current year and therefore, the decision rendered in the case of **THUMBAY HOLDINGS (P) LTD** supra has no application to the fact situation of the case. It is also urged that method of accounting once adopted can be followed. In support of aforesaid submission, reference has been made to decision of this court dated 10.08.2011 in I.T.A.No.29/2006.

7. We have considered the submissions made on both the sides and have perused the record. Section 145 of the Act deals with method of accounting. Section 145(1) provides that income chargeable under the head

'profits and gains of business or profession' or 'income from other sources' shall subject to provisions of sub-Section (2) be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. It is noteworthy that Section 145 came to be amended w.e.f. 01.04.1987 and has not been given retrospective operation. The supreme court in the case of **BILAHARI INVESTMENTS PVT. LTD.** supra has held as under:

"Every assessee is entitled to arrange its affairs and follows the method of accounting which the department has earlier accepted. It is only in those cases where the department records a finding that the method adopted by the assessee results in distortion a profits that the department can insist on substitution of the existing method."

8. In the instant case, admittedly the assessee is following mercantile system of accounting and as per notes to the accounts, the assessee is following

completed contract method of accounting for contracts. The aforesaid method of assessment has been accepted by the department in the past and therefore, in view of law laid down by the Supreme Court in **BILAHARI INVESTMENTS PVT. LTD.,** the Commissioner of Income Tax (Appeals) as well as the tribunal has rightly held that there was no justification on the part of the assessing officer to change the earlier method adopted by the assessee and to determine the income on estimate basis.

9. The submission made on behalf of the revenue that the directions issued by a bench of this court vide order dated 23.09.2010 in I.T.A.No.36/2006 appears to be attractive at the first blush but on careful scrutiny of the order it is evident that the tribunal has referred to the decision of this court in the case of '**CIT VS. M/S SKYTOP BUILDERS PVT. LTD., AND OTHERS**' rendered in I.T.A.No.29/2006 vide order dated 10.08.2011 as well as the decision of the supreme

court in **BILAHARI INVESTMENTS PVT. LTD.**, supra and has held that the assessee was following completed contract method which was accepted by the department in the past as well and therefore, there is no justification for the assessing officer to change the same. For the aforementioned reasons the submission made on behalf of the revenue cannot be accepted. Similarly, the contention that the controversy involved in this case is covered by decision of this court dated 09.09.2014 rendered in I.T.A.No.835-837/2008 is concerned, suffice it to say that substantial questions of law involved in the aforesaid appeals were entirely different. By reading the order of the tribunal as a whole, it is evident that the tribunal has taken note of the effect of Section 145 of the Act. Therefore, the aforesaid submission made on behalf of the revenue also does not deserve acceptance.

In view of preceding analysis, the substantial question of law framed by this court is answered against the revenue and in favour of the assessee. In the result,

we do not find any merit in this appeal, the same fails
and is hereby dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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