

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री ए.डी. जैन न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI A.D. JAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 149/JP/2015  
निर्धारण वर्ष / Assessment Year : 2010-11

M/s Spytech Buildcon, Vth Floor, A Class of Pearl, K-48-49, Income Tax Colony, Durgapura, Tonk Road, Jaipur.	बनाम Vs.	A.C.I.T., Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEFS 2767 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 205/JP/2015  
निर्धारण वर्ष / Assessment Year : 2010-11

Dy. Commissioner of Income Tax, Circle-6, Jaipur.	बनाम Vs.	M/s Spytech Buildcon, Vth Floor, A Class of Pearl, K- 48-49, Income Tax Colony, Durgapura, Tonk Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABEFS 2767 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajiv Sogani &  
Shri Rohan Sogani (CA)  
राजस्व की ओर से / Revenue by : Shri M.S. Meena (CIT)

सुनवाई की तारीख / Date of Hearing : 08/09/2016  
उदघोषणा की तारीख / Date of Pronouncement : 14/09/2016

आदेश / ORDER

PER: A.D. JAIN, J.M.

These are cross appeals, one by the assessee and the other by the revenue, against the order dated 15/12/2014 passed by the Id CIT(A)-II, Jaipur for A.Y. 2010-11, wherein, the following effective grounds of assessee's as well as revenue's appeals have been taken:-

Grounds of assessee's appeal:-

- "1. *In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the disallowance of Rs.43,06,801/- of provision for direct expenses out of the total disallowance of Rs 5,11,50,000/- made by the Id. AO. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 43,06,801/-.*
2. *In the facts and circumstances of the case and in law the Id. CIT (A) has erred in confirming the disallowance of Rs. 43,752/- of depreciation on Cars out of total disallowance of Rs 87,504/- made by Id. AO. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs. 43,752/-.*

Ground of revenue's appeal:-

- "(i) *Whether on the facts and circumstances of the case and in law, the Id. CIT(A) was justified in deleting the addition of Rs. 4,68,43,199/- made by the AO*

*by disallowing provision of direct expenses inspite of the fact that the assessee has followed mercantile system of accounting and followed 'concept of accrual of liability.'"*

2. At the outset, the Id counsel for the assessee have stated at the bar that they do not wish to press ground No. 2 of the appeal. Rejected as not pressed.

3. As per record, the assessee firm is engaged in the business of real estate and construction of residential, industrial and commercial properties, farm houses, etc. It has constructed residential flats in the name of "Pearl Green Acres" at Paliwal Garden, Shri Gopal Nagar, Gopalpura Bypass, Jaipur. The Assessing Officer noticed that in its trading account, the assessee had debited direct expenses of Rs. 8,57,18,518/-. The details of these expenses stood furnished in Schedule-17 of the audit report. Therein, an amount of Rs. 5,11,50,000/- appeared as provision made for direct expenses. Observing that this was not an expenditure actually incurred during the year, but was merely a provision made, the Assessing Officer asked the assessee for an explanation. Having considered the reply filed by the assessee, the Assessing Officer concluded that the assessee had debited the amount of Rs. 5,11,50,000/- as "expected expenses" and had made a provision for direct expenses,

which was neither supported by the provisions of the Income Tax Act,, nor any accounting practice. The Assessing Officer, accordingly, added the amount of Rs. 5,11,50,000/- to the total income of the assessee. The Id. CIT(A) restricted the disallowance of Rs. 43,06,801/- and allowed relief of Rs. 4,68,43,199/- to the assessee.

4. Aggrieved, both the parties are before us, by way of their respective appeals.

5. The Id. CIT DR has contended that the Id. CIT(A) has erred in deleting the addition of Rs. 5,11,50,000/-, to the extent of Rs. 4,68,43,199/-, failing to consider that the assessee had followed the mercantile system of accounting and had followed the concept of accrual liability. The Id CIT DR has placed strong reliance on the elaborate findings recorded by the Assessing Officer for making the addition.

6. On the other hand, the Id counsel for the assessee has contended that once the Id. CIT(A) had accepted the liability as being an ascertained liability, he ought to have deleted the entire addition made.

7. We have heard the rival contentions of both the parties and have perused the material available on the record.

8. While making the addition, the Assessing Officer observed as follows:-

*"The above mentioned reply of the assessee has been duly considered. In this regard the assessee was required to submit the details and the basis on which the figure of expected amount of expenditure of Rs.5,11,50,000/- has been arrived. In response the assessee submitted a Chart showing the 'Details of the provision made for the expenses to be incurred'. Perusal of the said details reveals that the said details have been prepared on mere estimation, without proper justification and a reasoned base. It seems that the assessee has prepared the above mentioned details so as to suit its own requirements.*

*8. As for as allowability of such provision is concerned, it is pertinent to mention here that under the Income Tax Act, 1961, a deduction is generally allowed in respect of revenue expenditure incurred for the purpose of business, in the year in which such expenditure is incurred. However, estimated cost of meeting the warranty obligations is also allowable as deduction in the year in which such provision is made subject to:-*

*(a) If the provision is based on a scientific method that is consistently followed.*

*CIT Vs Vinitec Corporation 196 CTR 369 (Delhi HC),*

*Voltas Ltd. Vs DCIT 64 ITD 232 (ITAT, Mumbai)*

*ITO Vs Wanson (India) Ltd. 5 ITD 102 (ITAT, Pune)*

*Kevin Enterprises Vs JCIT 79 ITD 196 (ITAT, Ahmedabad)].*

*(b) If the provision is made on basis of a reasonable estimation.*

*CIT Vs Indian Transformers Ltd. 270 ITR 259 (Kerala HC)*

*(c) If the an undertaking to carry out the development work is provided in the Sale Deed/Agreement.*

*Udaipur Mineral Development Syndicate Pvt. Ltd Vs DCIT 261 ITR 706 (Raj HC)*

9. *In the instant case the assessee hardly fulfill the above-mentioned conditions. The facts of the case of Calcutta Co. Ltd. Vs CIT 3 7 ITR 1 (SC) are not identical to the present case. In case under reference the development work was to be performed under the terms of the Sale Deed within the six months from date of sale. In other words it was held that liability arising out of contract should be allowed. However, in the case under consideration no such condition has been laid-down in the Sale Deed/Contract which enforce the assessee to meet- out the particular liabilities for that the assessee has created the provision. Even no time of frame has been fixed in order to discharge the said liabilities. The provisions made by the assessee are based neither on a scientific method that is consistently followed nor on a reasonable estimation. As such, the principle laid down in the case under reference is not applicable in the instant case.*

*Moreover the assessee has created the said provision by debiting the said amount in the Profit & Loss for the year under consideration against the revenue of the current year whereas the liabilities for which provision has been made relates with the revenue which is likely to be fetched in coming future.*

*10. At a later stage of assessment proceedings the assessee furnished the details of expenditure made against the above mentioned provision of Rs. 5,11,50,000/-. Perusal of the said details reveals that the assessee has incurred expenditure of Rs.3,40,14,675/- and Rs.49,08,406/- during the A.Y. 2011-12 and 2012-13 respectively totaling to Rs.3,89,23,081/-. For the remaining amount of Rs.1,22,26,919/- (51150000 - 38923081) left out of the said provision of Rs. 5,11,50,000/- the assessee has stated as under :-*

*(i) The project is situated at the bank of Ganda Naala. During the course of development of the project, the bank of naala got damaged. It is our obligation to develop/repair the said naala. Provision of Rs. 60 Lacs (approx) was made towards this obligation. We are waiting clearance from JDA to discharge our obligation. JDA is examining environmental and other issues arising on account of development in the course of the naala. As soon as we get clearance from JDA about the way it has to be developed, we will execute the said work.*

*(ii) In support of the aforesaid contention the assessee has placed reliance over the case of Rotork Controls India Pvt. Ltd. Vs CIT (2009) 223 CTR 425 (SC).*

*12. The above-mentioned contention of the assessee has been duly examined. Surprisingly, the above-mentioned contention does not match to what the assessee has said earlier on this issue. As per the Chart submitted by the assessee on earlier occasion showing the Details of the provision made for the expenses to be incurred' in respect of the provision of Rs.5,11,50,000/-, there was no provision of repair works of ganda naala. The issue of ganda naala has suddenly arisen during the later stage of assessment proceedings just to quantify the provision made by the assessee. It is pertinent to mention here that while approving the said residential project in the year 2006 the JDA vide letter dated 19.01.2006 required the assessee to construct 'Retaining Wall ' on the said Ganda Naala. Any outflow from the said naala may damage the construction work of the aforesaid project. Hence, any prudent builder will certainly take care of the safety measures of its project before investing in the project. In the present case the assessee has first constructed the project and thereafter he planned to repair the ganda naala, which is quite unbelievable and appears to be a self-cooked story to suit the requirements of the present situation. Further, the assessee has not furnished any concrete evidence, such as details of work to be*



*performed, its measurement, material likely to be consumed and the correspondence with the JDA made in this regard, which proves its aforesaid contention.*

*13. The assessee is engaged in the business of construction. As such, the assessee better knows that 'verbal commitments' have no value in its business as well as in the eyes of law. It is worthwhile to mention that on one hand the assessee is trying to justify its stand by taking plea for providing Bisalpur water to the buyers of its project. Whereas contrary to above plea on other hand the assessee has made provision for expenses of Rs. 5,00,000/- out of the above Rs.5,11,50,000/- for digging two borewells, which is totally against to its contention. The PHED Department is taking care of Bisalpur water. The assessee has not furnished any evidence/ correspondence with the PHED in support of its claim. Moreover, in support of its claim the assessee has placed reliance over the case of Rotork Controls India Pvt. Ltd. Vs CIT (2009) 223 CTR 425 (SC). However, the claim of the assessee is not towards a warranty liability under a condition or stipulation made in the sale document imposing a liability upon the assessee to discharge its obligation under warranty. Therefore, the principle laid down in the case under reference is not applicable in the case of assessee.*

*15. Section 145 of the Income Tax Act, 1961 prescribes the method of accounting to be followed by the assessee for computing income chargeable under the head 'Profit & Gains*

*of business or profession'. Section 145(1) states that the computation would be 'in accordance with either cash or mercantile system of accounting regularly employed by the assessee'. Section 145(2) further stated that the Central Government may notify from time to time 'accounting standards to be followed by any class of assessee's or in respect of any class of income '. The mercantile system, as distinguished from the cash system brings in the concept of accrual of liability or income in the relevant previous year which is the subject-matter of the assessment. The liability is reflected even where there is no actual expenditure and likewise the income is reflected even where there is no actual receipt of money. Moreover, the accounting standards issued by the ICAI require that accounting policies must be governed by the principle of 'prudence '.*

- 16. Further, under the mercantile system of accounting in order to determine the net income of an accounting year, the revenue and other incomes are matched with the cost of resources consumed (expenses). Under the mercantile system of accounting, the matching is required to be done on accrual basis. Under the matching concept, revenue and income earned during an accounting period, irrespective of actual cash in-flow is required to be compared with expenses incurred during the same period, irrespective of actual out-flow of cash. The Matching concept is quite relevant to compute taxable income particularly in cases involving*

*deferred revenue expenditure. In the instant case, the assessee is following mercantile system of accounting. The assessee has taken into consideration the amount of expected expenditure; however, the assessee has ignored the amount of relevant revenue. As such, the assessee has failed to fulfill the requirements of matching concept. Therefore, the case of Taparia Tools Ltd. Vs JCIT (2003) 260 ITR 102 (Bom) on which the assessee has placed reliance, is of no help to the assessee. Rather the case of the assessee does not fall under the parameters laid down in the aforesaid judgment.*

*17. In the instant case, the assessee has claimed to follow mercantile system of accounting. The assessee has considered the 'concept of accrual of liability'. While considering the above concept of 'accrual of liability' the assessee has not considered the relevant revenue involved. In the instant circumstance of the case the assessee is liable to determine the accrual of revenue in consonance with the ambit of taxable income as per sec. 5 of the Income Tax Act, 1961. The assessee has not got the liberty to decide the matter of taxability on the basis of the entries which the assessee may choose to make in his account, but it has to be decided in accordance with the provisions of law [Sutlej Cotton Mills Ltd. Vs CIT (SC) 116 ITR 1]. Moreover, when the question is whether a receipt of money is taxable or not or whether certain deduction from that receipt are*

*permissible in law or not, the question has to be decided according to the principles of law and not with accountancy practice [Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs CIT (SC) 227 ITR 172j. Though in the present case the action of the assessee is neither supported with IT. Law nor the accounting principles.*

*18. During the course of assessment proceedings the assessee has stated that "out of estimated cost of work to be executed amounting to Rs. 5,11,50,000/-, the amount related to sales is as under:-*

<i>Expected Expenses</i>	<i>:</i>	<i>5,11,50,000</i>
<i>Total Build up are in Sq. feets</i>	<i>:</i>	<i>4,37,761</i>
<i>Cost of Provision per Sq. feet</i>	<i>:</i>	<i>116.84</i>
<i>Total cost of expected expenses related to sales</i>	<i>:</i>	<i>2,37,77,024/-</i>
<i>Balance Amount included in Closing Stock</i>	<i>:</i>	<i>2,73,72,976/-"</i>

*19. Perusal of the aforesaid contention of the assessee clearly indicates that the assessee is not following the 'Matching Concept'. The assessee has just taken into account the expected expenses; however, he has left the portion of relevant revenue part. The above contention of the assessee indicates that admittedly out of the total expected expenses of Rs. 5,11,50,000/-, an amount of Rs.2,73,72,976/- do not related with the revenue (sales) of the year under consideration. The assessee was well aware of the fact that the sale consideration of 108 flats sold during the year under*

*consideration is subject to certain liability. Even then the assessee booked the whole revenue in the year under consideration and made provisions for expected expenditure against the above mentioned revenue despite of the fact that part of said expected expenditure is chargeable against the revenue likely to be arise in future. The above act of the assessee is not within the abidance of Accounting Standard (AS 9) issued by the ICAI as well as the 'Matching Concept', as discussed above. It is worthwhile to mention here that for all practical purposes and for the recognition of revenue; all the conditions specified in Para 10 & Para 11 of AS-9 have to be fulfilled [Prestige Estate Projects Ltd. Vs DCIT (ITAT, Bang.) 129 ITD 342].*

20. *Further, there are two main accounting methods that the assessees engaged in the field of construction activities use to record revenue and expenses. The first is 'Completed Contract Method' and the other is 'Percentage of completion Method'. In the Completed Contract Method, only completed projects are reflected in the income statement. Costs for uncompleted projects are accumulated in an asset account called Work in Progress. Whereas, in Percentage of Completion Method revenue and gross profit are recognized each period based upon the progress of the construction. In this method revenue and expenses are recorded on an accrual basis. In other words it is the reporting of revenue from sales in the period in which are sold, regardless of*

*when the cash is received, and the reporting of expenses in the period of purchase, regardless of when payment is made. In the present case the assessee has followed part of both the above mentioned method in such a manner so as to suit its requirements. As such, the assessee has not followed the Principles of commercial accounting. Though the assessee is liable to apply the principles of commercial accounting to ascertain the Profit & Gains [CIT Vs U. P. State Industrial Development Corporation (SC) 225 ITR 703].*

*21. The assessee firm was constituted through Partnership Deed dated 04.01.2006 which was later reorganized vide the Deeds of Reorganization of Partnership dated 01.04.2006 and 13.07.2009. After the constitution of the said Partnership firm, the assessee firm commenced its first project of construction of residential flats in the name of 'Pearl Green Acres' at Paliwal Garden, Shri Gopal Nagar, Gopalpura Bypass, Jaipur.*

*The above quantitative details reveal that there is inconsistency in the revenue recognition and cost as well the arbitrary valuation of closing stock. During the year under consideration the assessee has changed the method of valuing the closing stock. The assessee cannot change its method of valuing closing stock which was followed during previous years [CIT Vs Hindustan Zinc Ltd. (SC) 291 ITR 391'].*

*23. In view of above discussions, facts and circumstances of the case, it is evident that the act of the assessee of debiting an amount of Rs.5,11,50,000/- as 'Expected Expenses ' and making a provision of above amount in name of 'Provision for direct expenses ' is neither supported by the existing provisions of Income Tax Act or accounting practice, as discussed in preparas. Therefore, the said amount of Rs. 5,11,50,000/- is hereby added to the total income of the assessee."*

9. While restricting the disallowance to Rs. 43,06,801/-, the Id. CIT(A) has held as under:-

*"2.3.1 I have perused the facts of the case, the assessment order and the submissions of the appellant. The appellant is a real estate developer. It follows the mercantile system of accounting. During the year, the appellant has sold 108 flats whereas 130 flats and 8 studio apartments remain in closing stock at the end of the year. Out of a total built up area of 4,37,761 sq. ft., the assessee has sold 2,03,506 sq. ft. during the year. In this year, the assessee has booked sales pertaining to the 108 flats sold during the year. The assessee follows the project completion method of accounting. The appellant has made a provision for direct expenses amounting to Rs.5,11,50,000/- on account of pending work relating to common facilities like lift, club house, electric substation,*

*borewell, internal roads, repairs to the ganda nalla etc. This provision has been made both with respect to the flats which have been sold as well as those residential units which have not been sold and appear in the closing stock.*

*2.3.2 The Assessing Officer has disallowed this provision on the ground that it is based on mere estimate, without proper justification or a reasonable basis. He has stated that there is no condition which enforces the assessee to carry out the said work and also that there is no time frame for completion of the said work. He has also doubted the provision made for the ganda nalla, as being an afterthought. He has strong reservations against the provision made for unsold residential units since the corresponding revenue has not been booked in this year and will be reflected only in the subsequent years. The appellant has refuted each of the above contentions.*

*2.4.1 Now each of the above issues will be discussed. The appellant firm was required to complete the pending work with respect to common facilities which has been specifically mentioned in the sale deeds executed by the appellant firm in favour of the buyers. The relevant extract of the sale deed has been reproduced in para 6 of the order u/s 143(3), in the reply of the assessee to the show cause notice. This registered sale deed creates a contractual obligation on the appellant to provide for the*



*facilities mentioned in the sale deed. The fact that no time frame has been mentioned, in the sale deed, for completing the above pending work does not free the appellant from the obligation to complete the above work. It is implied that this work should be completed in a reasonable time. Therefore, in this case, an ascertained liability accrued on the assessee on the date of the sale deed to complete the work relating to common facilities, which had to be discharged at a future date. Since, this liability was not discharged till the end of the previous year and had to be discharged at a future date, this liability had to be estimated and there was no way by which it could be determined with substantial accuracy. This liability was unconditional in so far as there was no condition which was required to be satisfied for discharging this liability. "In as much as the liability which had thus accrued during the accounting year was to be discharged at a future date, the amount to be expended in the discharge of that liability would have to be estimated in order that, under the mercantile system of accounting, the amount could be debited before it was actually disbursed. The difficulty in the estimation thereof again would not convert an accrued liability into a conditional one, because it is always open to the Income Tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case. "(Calcutta Co. Ltd. vs. CIT (SC) 37 ITR 1).*

2.4.2 *It has been held in the case Rotork Controls India (P) Ltd. vs. CIT (SC) 180 Taxman 422 that –*

*"Whether for a provision to qualify for recognition, there must be a present obligation arising from past events, settlement of which is expected to result in an outflow of resources and in respect of which a reliable estimate of amount of obligation is possible - Held, yes*

*A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: fa) an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision can be recognized. [Para 10].*

*Liability is defined as a present obligation arising from past events, the settlement of which is expected to result in an outflow of resources from the enterprise embodying economic benefits. [Para 11]"*.

2.4.3 *In the instant case, the appellant has an obligation towards his customers to complete the pending work relating to common facilities, as a result of the sale deeds. The fulfilling of this obligation would result in an out flow of resources. An estimate of this expenditure has been made by the assessee, the basis of which was given during the course of assessment proceedings. The reasonableness of this estimate will be examined in the subsequent paragraphs. Therefore, the stand of the Assessing Officer in rejecting the claim of the provision merely because it is an estimate and without a binding*

*obligation cannot be sustained in view of the facts of this case, discussed above and the principles relating to provisions which have been discussed by the Supreme Court, in the above judgments. Also, the ITAT, Jaipur has also held in the case of Shree Salasar Overseas (P) Ltd. vs. DCIT (supra) that — "Assessee, a colonizer, being bound to carry out internal development of the colony at its cost in terms of JDA regulations, the liability of the assessee to carry out the internal development work in the colony is an ascertained liability which accrued on the date of the sale of the plots and therefore, the provision for development expenses made by the assessee is allowable as deduction."*

*2.4.1. Now the reasonableness of the provision debited by the appellant in its books of accounts will be examined. As regards, the provision for the repair work of the ganda nalla which the Assessing Officer has held to be an afterthought, the appellant has stated that at the time of sanctioning the project, the Jaipur Development Authority, vide letter dated 19.01.2006 had laid a condition for building a retaining wall on the bank of the nalla for which the appellant had given an undertaking. The appellant has stated that the breakup of provision given by the assessee in the first instance during assessment proceedings tallies with the detailed breakup given subsequently on 19.03.2013, during assessment proceedings. It has been stated by the appellant that it is the entry of labour work to be done by Laxmi*

*Construction which is the provision for the ganda nalla. In view of the above, the stand of the Assessing Officer that this provision for ganda nalla is an afterthought, cannot be sustained.*

*2.4.2 The second contention of the Assessing Officer is that provision for unsold flats (amounting to Rs.2,73,72,976/-) cannot be made because there is no corresponding revenue in this year. It has been stated by the Assessing Officer that the corresponding revenue will arise only in subsequent years. The Assessing Officer has not understood the method of accounting followed by the assessee. The assessee has made a provision for pending work for both the flats sold (of Rs.2,37,77,024/-) as well as the unsold flats (of Rs.2,73,72,976/-). After including this provision (for both the flats sold as well as the unsold flats), the assessee has computed value of closing stock. Therefore, the provision for unsold flats has been included in the valuation of closing stock. The provision on unsold flats has therefore, a matching entry in the valuation of closing stock. In other words if the provision on unsold flats is to be disallowed, then the value of closing stock will also correspondingly decrease. Therefore, this provision on unsold flats of Rs.2,73,72,976/- is revenue neutral and cannot be added to the total income by disallowing it. This contention of the Assessing Officer, is therefore, without any basis.*

*2.4.3 It has been stated by the Assessing Officer, in para 10 of the order u/s 143(3) that out of the provision of Rs.5,11,50,000/-, the assessee has incurred expenditure of Rs.3,40,14,675/- in A.Y. 2011-12 and expenditure of Rs.49,08,406/- in A.Y. 2012-13. The appellant has stated that further expenditure of Rs.35,85,674/- has been incurred in A.Y. 2013- 14 and expenditure of Rs.43,34,444/- has been incurred in A.Y. 2014-15. Therefore, expenditure of Rs.4,68,43,199/- has been incurred till 31.03.2014 against the above provision. This shows that the estimate of provision made is accurate to the extent of Rs.4,68,43,199/-. Hence, the provision made is excessive to the extent of Rs.43,06,801/- which has not been spent even till 31.03.2014 i.e. four years from the end of the year in which the provision was made. Therefore, provision to the extent of Rs 43,06,801/- is considered to be excessive and is disallowed. The balance addition of Rs.4,68,43,199/- on account of disallowance of provision, is directed to be deleted. This ground is partly allowed.”*

10. Thus, the Assessing Officer held that in the sale deed/contract, no condition had been laid down, whereby the assessee could be enforced to meet out the liabilities for which, the assessee created the provision. It was observed that in the sale deed/contract, no time frame had been set for the discharge of the liabilities. However, as correctly observed by the

Id. CIT(A), despite no time frame having been fixed in the sale deed/contract for discharge of the liabilities of the assessee, it could not be said that the work was not to be taken to be required to be completed within a reasonable time. Obviously, the registered sale deed created a contractual obligation on the assessee, requiring it to provide for the facilities mentioned therein. Therefore, it cannot be said that this agreement would be an open-ended agreement. The contractual obligation of the assessee, would, without doubt, be to provide for the facilities within a reasonable time. And that being so, the liability accruing on the assessee, as rightly observed by the Id. CIT(A), was an ascertained liability.

11. The Assessing Officer observed that the provision had been created by the assessee by debiting the amount in question in the P&L account for the year under consideration against the revenue of the current year, whereas the provision related to revenue expected in future. This, however, has no prejudicial effect on the assessee. The liability having not been discharged till the end of the year, it remained to be discharged later on, and it was, therefore, that it had to be estimated, so as to enable it to be debited before actual disbursement thereof, as per the mercantile system of accounting, which was the method of accounting of the

assessee. Rather, as per actual facts on record, the project undertaken by the assessee was development/repair of Ganda Nala. Clearance from JDA was awaited by the assessee for discharge of the obligation. The JDA was undertaking examination of environmental and other issues on account of development in the course of the Nala. The Assessing Officer refused to believe this contention of the assessee. The assessee had, however, submitted the details with regard to the development of Ganda Nala. A letter received from JDA was also filed. The details and the letter, however, were not taken into consideration by the Assessing Officer.

12. The Assessing Officer observed that the provision had been made partially on verbal commitments and such provision was not acceptable. However, the Assessing Officer did not take into consideration the contractual obligation of the assessee, as cast upon it by the sale deed/contract. While holding the provision to be with regard to expected expenditure, the Assessing Officer held that an amount of Rs. 2,73,72,976/- did not relate to the revenue of the year under consideration. In this regard, it remains undisputed that as per the matching concept under the mercantile system of accounting followed by the assessee, it is the income and the expenditure for the same accounting period which have to be matched. The Assessing Officer

further observed that the assessee had partially followed the completed contract method and partially, the percentage of completion method. However, the Assessing Officer did not bring on record anything adverse to the assessee, which could support the disallowance of the provision made by the assessee in its books of account. The books of account of the assessee were duly audited. The Assessing Officer himself did not reject them too. The non-rejection of books of account by the Assessing Officer also speaks volume against the surmised and conjectural observation made in the assessment order that the assessee was inconsistent in revenue recognition and cost, as also arbitrary in valuation of closing stock. Further, the Assessing Officer did not bring anything on record to support his observation that the assessee had followed partially, the project completion method and partially, the completed contract method. Rather, as per its accounting policy regarding revenue recognition, the revenue from property development activity is recognized when significant risk and rewards of ownership in land and/or building are transferred to the customer and a reasonable expectation of the collection of the sale consideration from the customer exists.

13. In the above facts, the decision in the case of 'Prestige Estate Projects Ltd. Vs DCIT 129 ITD 342 (Bang)', was wrongly relied on by the



Assessing Officer, even though it was not applicable. Therein, the Assessing Officer was held to be justified in holding the revenue to be assessable on the percentage completion method. However, as per the facts of the present case, the assessee is not following the percentage completion method. It is following the completed contract method. Therefore, the decision in the case of 'Prestige Estate Projects Ltd. Vs DCIT', (supra), is not applicable. In the case of 'Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT (1997) 227 ITR 172 (SC)', if the accounting practice cannot be justified, it has no merit in the argument based thereon. Per contra, herein, the accountancy practice of allowability of provision made is in issue, rendering 'Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. CIT', to be nowhere detrimental to the case of the assessee and the Assessing Officer erred in misapplying the same.

14. The case of 'Sutlej Cotton Mills Ltd. Vs. CIT', 116 ITR 1 (SC) was also taken by the Assessing Officer to go against the assessee. That decision, however, has no bearing on the question as to whether or not, under the mercantile system of accounting, provision of expenses, calls for being allowed.

15. The Assessing Officer further observed that the decision in the case of 'CIT Vs U.P. State Industrial Development Corporation', 225 ITR 703

(SC), do not aid the assessee. However, where the assessee firm has regularly been following the project completion method for recognizing its revenue, as to how it is so, has not been shown by the Assessing Officer. The project completion method is, undoubtedly, a well recognize method of accounting, based on principles of commercial accounting. It has also nowhere been made out that this method is in transgression of any provision of the IT Act.

16. While restricting the disallowance to Rs. 43,06,801/-, the Id. CIT(A) has also observed that as on the date of execution of the sale deed and ascertained liability had accrued on the assessee, i.e., to complete the requisite work. Obviously, therefore, once this liability had to be discharged in future, the same had to be estimated. Also, before the Assessing Officer, the assessee had duly submitted the basis for arriving at the estimate of the provision made. Rather, the breakup of the provision qua the expenses concerning Ganda Nala, corresponded to the last figure with the breakup provided to the Assessing Officer by the assessee in the assessment proceedings. Taking note of this relevant fact, the Id. CIT(A) correctly observed that the Assessing Officer had erred in holding the provision to be just an afterthought of the assessee, raised to suit its convenience. The Id. CIT(A) also observed that the provision of Rs.

2,73,72,976/-, which provision does not stand included in the closing stock of the assessee, relating to unsold flax, was revenue neutral.

17. A similar provision for supplies on work executed on a dam, which was incomplete at the end of the revenue financial year, has been allowed by the Hon'ble Jurisdictional High Court in the case of 'Om Metals & Minerals (P) Ltd.', (2015) 373 ITR 406 (Raj). The Hon'ble High Court observed, inter alia, that if the expenditure is not paid by the close of the financial year, it deserves allowance, even in the mercantile system of accounting.

18. The decision in 'CIT Vs Vodafone Essar South Ltd.', (2015) 55 taxmann. Com 289 (Delhi) and 'CIT Vs Ansal Properties and Industries Ltd.', (2013) 352 ITR 637 (Del) are also to the same effect.

19. For the above, we do not find any merit in the objection sought to be raised by the department to the effect that since the assessee was following the mercantile system of accounting, the Id. CIT(A) was not justified in deleting the addition to the extent of Rs. 4,68,43,199/-.

20. The action of the Id. CIT(A) in having sustained the disallowance to the extent of Rs. 43,06,801/- has grievanced the assessee and the assessee has raised ground No. 1 of its appeal before us.

21. While doing so, the Id. CIT(A) has observed that the provision made is excessive to the extent of Rs. 32,06,801/-, which has not been spent even till 31/9/2014, i.e., four years from the end of the year in which the provision was made.

22. The contention of the assessee is that if the provision is based on a fair estimate of the expenditure to be incurred, which fact has been accepted by the Id. CIT(A) himself, the provision deserves to be allowed in full. It has been contended that if any amount remains unspent, it will be taxed U/s 41(1) of the Act in the subsequent year, as and when the liability to incur the expenditure ceases to exist.

23. On the other hand, the Id CIT DR has contended that the Id. CIT(A) ought to have sustained the disallowance in full.

24. Here, it is seen that in spite of the assessee following the mercantile system of accounting, the Id. CIT(A) held the provision made by the assessee to be justified. The Id. CIT(A) has held that since till 31/3/2014, there was incurrance of expenditure to the tune of Rs. 4,68,43,199/- and that the sum of Rs. 43,06,801/- remained unspent even four years from the end of the year in which the provision was made. It was on this basis, that the provision made was taken to be excessive to the extent of Rs.

43,06,801/-. The question is as to whether this action of the Id. CIT(A) is justified.

25. It remains undisputed that the provision was made by the assessee for certain expected expenditure. As such, the provision was made due to the arising of the possibility of the expenditure in futuro. This was what had prompted the estimation. Now, if the provision does not stand exhausted even four years from the end of the year in which it was made, this does not mean that the provision to that extent was ill conceived. The details of the expenditure intended were duly made available. That such incurrence of expenditure did not come about, cannot put to naught the provision which was made bonafide. The legal position remains that the amount unutilized would be available for being offered to tax in the next assessment year. The basis of the provision made has not been observed by the Id. CIT(A) to be irrational. In this regard, the decision of the Hon'ble Supreme Court in the case of 'Bharat Earth Movers Vs CIT', (2000) 245 ITR 428 (SC), which was followed by the Hon'ble Delhi High Court in the case of 'Yum Restaurants (I)(P) Ltd.', (2015) 371 ITR 139 (Del), under similar circumstances, is directly attracted.

26. Therefore, we are of the considered opinion that the Id. CIT(A) has gone wrong in sustaining the addition to the extent of Rs. 43,06,801/-. The same should also have been deleted. We order so now. Therefore, the addition of Rs. 5,11,50,000/- is deleted in toto.

27. In the result, the appeal of the department, i.e., ITA No. 205/JP/2015 is dismissed, whereas the appeal of the assessee in ITA No. 149/JP/2015 is partly allowed as indicated above.

Order pronounced in the open court on 14/09/2016.

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(ए.डी. जैन )  
(A.D. Jain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 14<sup>th</sup> September, 2016

\*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Spytech Buildcon, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 149 & 205/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar