

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 3160/DEL/2016 [A.Y 2011-12]

The A.C.I.T.  
Central Circle - 07  
New Delhi

Vs.

M/s D.D. Resorts Pvt Ltd  
R/o 12, Ring Road, Lajpat Nagar  
New Delhi

PAN: AAACD 4557 E

(Applicant)

(Respondent)

Assessee By : Shri Sahil Aggarwal, Adv  
Shri Sudesh Garg, Adv

Department By : Shri Manu Chaurasiya, Sr. DR

Date of Hearing : 10.03.2022

Date of Pronouncement : 14.03.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the  
CIT[A] - 23, New dated 03.03.2016 pertaining to Assessment Year 2011-  
12.

2. The grievances of the Revenue read as under:

- "1. The order of Ld. CIT(A) is not correct in law and facts.
2. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 8,62,95,509/- done by estimating the profit on percentage completion method.
3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the A.O. had no basis for assessing the contract receipts/advances on percentage completion method.
4. On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 28,34,206/- on account of unexplained creditors.
5. On facts and circumstances of the case, the CIT(A) has erred in deleting the addition on the basis of additional evidences without making them available to the A.O. for their comments."

3. Briefly stated, the facts of the case are that the assessee has undertaken construction of the mall cum office complex in the name and style as Global Foyer at Sector -43, Gurgaon, Haryana.

4. During the course of scrutiny assessment proceedings, the assessee was asked to furnish details of sundry creditors. The assessee furnished required details and on perusal of the same, the Assessing Officer found that no confirmation has been filed in respect of M/s Service First Aircon P. Ltd and Pradhan Plumbing Systems. Proceeding further, the Assessing Officer found that in earlier Assessment Years i.e. 2007-08 to 2010-11, the Assessing Officer had made addition on account of reworking of the profit on sale recognized following percentage completion method instead of the method adopted by the assessee i.e recognizing at the time of possession is given to the customer.

5. Taking a leaf out of the findings given in earlier Assessment Years, the Assessing Officer made addition of Rs. 8,62,95,509/- under the head "Income from business and profession" and further disallowed on account of unexplained creditors Rs. 28,34,206/-.

6. The assessee carried the matter before the Id. CIT(A) and vehemently challenged the action of the Assessing Officer in re-computing the profit by adopting percentage completion method. It was strongly contended that the assessee has followed a recognized

accounting standard in light of provisions of section 145 of the Act and further drew support from the Notification No. 9949 dated 25.01.1996.

7. After considering the facts and submissions and after considering the decision of the Hon'ble Supreme Court in the case of Hyundai Heavy Industries Co. Ltd 291 ITR 482 and Bilahari Investment Pvt Ltd 299 ITR 1, the ld. CIT(A) observed as under:

"I have carefully considered the submissions of the appellant and the assessment order. In this case the only ground on which the addition has been made is the adoption of the Percentage Completion Method (PCM) by the AO against the Completed Contract Method (CCM) followed by the appellant company. From the the various judgment **CIT v. Hyundai Heavy Industries Co. Ltd.[2007]** 291 ITR 482 / 161 Taxman 191 (SC) and **CIT v. Bilahari Investment (P.) Ltd. [2008]** 299 ITR 1/168 Taxman 95 (SC) mentioned herein above wherein it has been held that "two methods are prescribed in Accounting Standard No.7. They are 'completed contract method' and 'percentage of completion method'... the same result could be attained by any one of the accounting methods.... Thus, as both the methods of accounting are recognized methods of accounting, the assessee is at liberty to choose any of the above and if any one of the method of accounting

is consistently followed by the assessee, the assessing officer cannot change the method of accounting to the "percentage of completion method" and that "the completed contract method leads to objective assessment of the results of the contract" and that the income is revenue neutral whichever method is followed by the assessee. from the conspectus of judgments mentioned herein above, the following principles can be discerned:

- In case of a building project, the Institute of Chartered Accountants of India, which is an authority on prescribing accounting standards, had prescribed accounting standard AS-7 in 1983 for accounting of income in respect of real estate projects and in terms of AS-7, which was applicable to both contractor and real estate developer, a person was free to follow either of project completion method or percentage completion method depending upon the nature of project;
- Accounting Standards 7 (AS7) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method;
- in accordance with the provisions of section 145 of the Act 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, and that the option for choosing the

system of account is with the assessee and not with the AO provided the system chosen by the assessee is consistently followed by him and such system is not a defective system, and that even a project completion method is also a recognized system of accounting;

- The real estate developer is not a pure contractor but is a seller of flats/goods. It is not mandatory for all real estate developers to follow Percentage of Completion Method as prescribed by Institute of Chartered Accountants of India under AS-7;
- neither the revised guidance notes 2012 issued by the Institute of Chartered Accountants of India nor the "Exposer Draft for Guidance Note on recognition of revenue" issued by the Institute of Chartered Accountants of India in 2011 are mandatory. It is the option of the assessee to follow either the completed contract method or the percentage completed method;
- Accounting Standard-7 or Accounting Standard-9 is not legally binding on the assessee in matters of recognizing the income of the project when the said Accounting Standard-7 and Accounting Standard-9 are not notified by the Central Board of Direct Taxes for the purpose of section 145 of the Act;
- moreover, the accounting standard AS-7 was subsequently revised and revised statements were made applicable to housing projects undertaken on or after 1-4- 2003, and as per the revised standards revised AS-7 was applicable only to a contractor, and in case of real estate developer revised AS-9 was prescribed as per which the income had to be accounted only on completion of project when the

flats were sold, i.e., when legal title passed to the buyer or when seller entered into agreement with the buyer for the sale and gave possession to the buyer under the agreement;

- in a case where the assessee has maintained complete books of account, which are duly audited by duly qualified Chartered Accountants, has also maintained its account on mercantile basis by regularly applying Project Completion Method, has also consistently followed the same method as was applied for earlier assessment years, the auditors have reported no change in method of accounting adopted by the assessee, and the department had accepted assessee's method of accounting, in earlier years, the AO has to bring 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, and in such situation the completed contract method followed by the appellant, therefore, could not be faulted with by the revenue authorities and on that basis it is neither correct nor justified to say that the accounts did not present correct and complete picture of its profits;
- Revenue cannot thrust a method of accounting on the assessee though that method is superior and therefore, substitution of method of accounting is not allowed unless, loss of revenue is made out of the project of the assessee.
-

3.2.3 The AO has follow the assessments made in the earlier AYS 2007-08 to 2010-11 and based on an erroneous interpretation and understanding of the Guidance Note 2006 of the Council of the Institute of Chartered Accountants of India, as has been succinctly explained by the appellant's AR in his submissions, concluded that the profits of the appellant company is to be computed in accordance with PCM, and adopting the statement of account submitted by the appellant for the FYs 2007-08 to 2011-12 assessed the profits at Rs.8,62,95,509/-. The total profit for the entire project completed between FY 2007-08 to FY 2011-12 has been considered at Rs.28.55 crore being the difference of total advances received up to FY 2011-12 of Rs.265.66 crore and the cost of construction of Rs.237.11 crore, and while the AO has primarily accepted the accounts of the appellant company and has not held any construction expense as bogus, he has enhanced the total profits to Rs.122.18 crore after making disallowances of interest and cost on surrender of area, thus assessing the net profit at 45.82% of the total receipts which in itself is unusual for any construction contract business.

3.2.4 As mentioned above, the AO has not brought on record any material evidence gathered as a result of search or otherwise, and in this case no evidences was found during the course of search to show that the books of account are not properly maintained by the appellant jfhe main thrust of the AO while making the addition is that the appellant is deferring the payment of taxes. However, this



allegation of the AO is devoid of merits and cannot be accepted because the appellant is consistently following a method of accounting which is recognized in real estate development business, and, therefore, there was no justification for adopting percentage completion method. On the conspectus of judgments considered herein above, u/s 145(3) of the Act the AO can reject the accounts if the assessee is not following the method of accounting consistently, and unless AO comes to a finding, on basis of material brought on record, that the profits declared is distorted or not correct, he is not empowered to change the method of accounting being followed by assessee. Respectfully following the judgments including that of the Hon'ble Supreme Court and the jurisdictional High Court, it is held that the Assessing Officer did not have any basis for assessing the contract in receipts /advances on PCM. The addition on this account is, therefore, deleted."

8. Before us, the ld. DR strongly supported the findings of the Assessing Officer. It is the say of the ld. DR that the assessee itself has been accepting percentage completion method since Assessment Year 2008-09 onwards and, therefore, should not change his accounting policies for the year under consideration.

7. Per contra, the ld. counsel for the assessee stated that the assessee had never accepted the reworking of the profit made by the Assessing Officer in the earlier Assessment Years. It is the say of the ld. counsel for the assessee that the earlier Assessment Years were framed u/s 153C of the Act and the assessee had challenged the very assumption of jurisdiction u/s 153C of the Act which has been decided in favour of the assessee by the CIT(A)/ITAT/High Court. Since the assessment order itself was quashed, there was no occasion to consider the merits of the case. Therefore, it cannot be said that the assessee has accepted the view of the Assessing Officer.

5. We have given thoughtful consideration to the rival submissions. It is true that earlier assessments were framed u/s 153C of the Act which were quashed by the appellate authorities. Therefore, we find force in the contention of the ld. counsel for the assessee that there was no occasion to dwell into the merits of the case.

6. The factual matrix clearly shows that the assessee has followed a well recognized method of accounting following a notified accounting standard u/s 145 of the Act. We, therefore, do not find any error or

infirmary in the findings of the Id. CIT(A) mentioned elsewhere. Ground Nos. 2 and 3 are accordingly dismissed.

7. Ground No. 4 relates to the addition of Rs. 28,34,206/- on account of unexplained creditors.

8. The Assessing Officer has made addition by holding that no confirmation has been filed from

(i)	Service First Aircon Pvt Ltd	Rs. 21,72,578/-
(ii)	Pradhan Plumbing Systems	<u>Rs. 6,61,628/-</u>
	Total	<u>Rs. 28,34,206/-</u>

9. Before the Id. CIT(A), it was strongly contended that the two vendors in question were old suppliers/labour contractors of the assessee. Copy of ledger account of the two parties were submitted before the Id. CIT(A).

10. After considering the facts and submissions, the Id. CIT(A) was of the opinion that the Assessing Officer never raised any questions about

the transactions with these parties, though assessments were completed u/s 153C /143(3) of the Act for preceding years as well, and that there was also no evidence whatsoever with the Assessing Officer about these suppliers being bogus and went on to delete the addition.

11. Before us, the ld. DR strongly supported the findings of the Assessing Officer and the ld. counsel for the assessee reiterated what has been stated before the ld. CIT(A).

12. Facts on record show that the two parties mentioned elsewhere are regular suppliers/contractors of the assessee and they have running account in the books of account of the assessee. The Assessing Officer has not drawn any adverse inference in so far as the transactions with these two parties are concerned. We find that the addition has been made on account of closing balance standing at the end of the F.Y. in our considered view, when the transaction throughout the year has not been doubted by the Assessing Officer there is no reason why the closing balance was added. We, therefore, decline to interfere with the findings of the ld. CIT(A). Ground Nos 4 and 5 are accordingly dismissed.

13. In the result, the appeal of the Revenue in ITA No. 3160/DEL/2016 is dismissed.

The order is pronounced in the open court on 14.03.2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]  
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: March, 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
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