

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 105/JP/2017
निर्धारण वर्ष/Assessment Year :2012-13

M/s Vastukar Township Pvt. Ltd., G 3-4, Geetanjali Tower, Ajmer Road, Sodala, Jaipur	बनाम Vs.	DCIT Circle-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCV1577C		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 119/JP/2017
निर्धारण वर्ष/Assessment Year :2012-13

ITO, Ward-2(1), Jaipur	बनाम Vs.	M/s Vastukar Township Pvt. Ltd., 710-A, Rani Sati Nagar, Ajmer Road, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCV1577C		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 172/JP/2017
निर्धारण वर्ष/Assessment Year :2011-12

M/s Shakuntalam Colonisers Pvt. Ltd., 103-104 Geetanjali Tower, Ajmer Road, Jaipur	बनाम Vs.	ACIT, Central Circle-2 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKCS2988N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 106/JP/2017
निर्धारण वर्ष/Assessment Year :2012-13

M/s Vastukar Colonisers Pvt. Ltd., G 304, Geetanjali Tower, Ajmer Road, Sodala, Jaipur	बनाम Vs.	DCIT Circle-2, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCV1576D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आयकर अपील सं./ITA No. 120/JP/2017
निर्धारण वर्ष/Assessment Year :2012-13

ITO, Ward-2(1), Jaipur	बनाम Vs.	M/s Vastukar Colonizers Pvt. Ltd., C-477, Nirman Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCV1576D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से/ Revenue by: Shri R.A.Verma (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 22/12/2017
उद्घोषणा की तारीख/Date of Pronouncement: 22/12/2017

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are cross appeals filed by the respective assessees and revenue against the orders passed by Id. CIT (A)-1, Jaipur involving similar fact pattern and identical questions relating to recognition of revenues. Hence, all these appeals were taken up for hearing together and are being disposed off by this consolidated order.

2. At the outset, the Id. AR submitted that the matter relating to Vastukar Township in ITA No. 105/Jp/2017 & 119/Jp/2017 for A.Y. 2012-13 may be taken as a lead case. With the consent of both the parties, the matter pertaining to Vastukar Township has been taken as a lead case for the purpose of present discussion and adjudication of the issues that have been raised before us. In this case, the respective grounds of appeal taken by the assessee and the Revenue are as under:-

Assessee's grounds of appeal (ITA No. 105/Jp/17)

"1. The Id. CIT(A) has erred on facts and in law in determining the gross profit in respect of the sale for which registry has been executed at Rs. 1,17,80,367/- as against gross profit of Rs. 1,17,24,318/- declared by the assessee and thus confirming the addition of Rs. 56,049/-.

2. The Id. CIT(A) has erred on facts and in law in confirming the action of the AO in holding that revenue on percentage completion basis should be recognized in respect of advance received from the customers where such advance is more than 10% of the consideration even when the conditions of revenue recognition are not satisfied and thereby determining the income in respect of such advance at Rs. 1,73,71,778/- "

Revenue's grounds of appeal (ITA No. 119/Jp/17)

"(1) Whether on the facts and circumstances of the case and in law, the Id. CIT(A) has erred in reducing profit from Rs. 2,29,91,672/- to Rs. 1,17,80,367/- from sale proceeds without appreciating the facts of the case.

(2) Whether on the facts and in the circumstances of the case and in law the Id. CIT(A) has erred in estimating profit of Rs. 1,73,71,778/- from sale proceeds in absence of any substantial evidence to prove the claim of incomplete work."

3. All these grounds of appeal relates to recognition of revenues by the assessee company which is engaged in development of township project in collaboration with M/s Shakuntalam Colonizers Pvt. Ltd. and M/s Vastukar Colonizers Pvt. Ltd. During the course of assessment proceedings, the Assessing officer, on perusal of records, observed that the assessee follows "percentage completion method" but recognises only part of the sales as "revenue" and no income is offered for tax in respect of the amount of "advance received from customers". He therefore, issued a show cause as to why provisions of section 145(3) should not be applied and why the profits should not be determined by applying "percentage completion method" as per Accounting Standards issued by ICAI.

4. In response to the show-cause, the assessee vide letter dated 22.03.2015 submitted that the accounting policy followed by the assessee is given in Schedule 11 of the Audited Financial Statement and the same is in accordance with Paras 10 and 11 of AS-9 issued by the Institute of Chartered Accountants of India (ICAI) as well as Guidance Note on Accounting for Real Estate Transactions issued by the ICAI. It was submitted that by following the consistent accounting policy, sales for the year are recognised at Rs.2,11,38,286/- as against the sale proceeds of Rs.4,50,18,026/- and no sales is recognised against the

advance/booking amount of Rs.4,44,28,514/- received from customers.
The sales and the corresponding expenditure recognised in the profit and loss account is as under:-

Particulars	Amount (Rs)	Amount (Rs)
Direct expenses (including Cost of Land) till 31.03.2012		3,27,65,943
Less:- Cost incurred on Unapproved Land	8,70,501	
Purchase Cost	86,603	
Registry Cost		
Conversion Cost	<u>1,52,333</u>	<u>11,09,437</u>
Actual Cost incurred till 31.03.2012 on approved Area (A)		3,16,56,506
Expenditure to be incurred in future (B)		<u>3,75,69,614</u>
Total Cost of Project (C=A+B)		<u>6,92,26,120</u>
Percentage of work completed (D=A/C*100)		45.73%
Projected Sales revenue of the project (E)		15,63,59,936
Sales proceeds realised till 31.03.2011 (F)	94,28,079	
Sales proceeds realised during the year (G)	<u>4,50,18,026</u>	
Total Sales realisation up to 31.03.2012		5,44,46,105

(H=F+G)		
Sales to be recognised till date (I=H*D)	2,48,98,204	
Sales already recognised till 31.03.2011	<u>37,59,918</u>	
Sales to be recognised in the current year (J)		2,11,38,286
Unearned Revenue to be carry forward in next year (K=H-I)		2,95,47,901
Percentage of cost (L=C/E*100)		44.27%
Total expenditure to be booked against the total sales (M=L*I)		1,10,23,323
Expenditure already booked till 31.03.2011 (N)		<u>16,09,355</u>
Expenditure to be booked against Current year sales (O=M-N)		<u>94,13,968</u>
Profit (J-O)		<u>1,17,24,318</u>

5. The AO however didn't find the submission of the assessee as acceptable, he rejected the books of accounts of assessee and calculated profit on the sales as per the registered sale deeds and on advance received from customers by giving the following findings:-

In case of booking of revenue out of receipt in respect of sale of plots as per registered sale deeds

6. The Guidance Note issued by the ICAI specifically states that the revenue recognition in respect of real estate developers/builder should be as per provisions of AS-9 which requires the following three conditions to be fulfilled before revenue is to be recognised:-

- i) The seller has transferred to the buyer all significant risk and rewards of ownership and the seller retain no effective control of the real estate to a degree usually associated with the ownership.
- ii) No significant uncertainty exists regarding the amount of consideration that will be derived from real estate sales.
- iii) It is not unreasonable to expect ultimate collection.

In case of sale of plots through registered sale deed, it is amply clear that the entire ownership has been transferred to the buyer. Hence, there is no justification for not recognising the entire receipts from such sales as revenue as all the three conditions mentioned above have been unequivocally fulfilled to the satisfaction of both – seller as well as buyer. The AO also drawn reference to assessee's submission dated 22.03.2015 wherein it was admitted that "where transfer of legal title is a condition precedent to the buyer taking on the significant risks and rewards of ownership and accepting significant completion of the seller's obligation, revenue should not be recognised till such time legal title is validly transferred to the buyer." Hence, sale proceeds received

during the year amounting to Rs.4,50,18,026/- are considered and gross profit on such sales of Rs.4,50,18,026/- was computed at Rs.2,29,91,672/- as under:-

Working of profit in respect of registered sale deeds	Amount (Rs)
Registry of sales made	4,50,18,026/-
Less: Sales already booked till 31.03.2011	37,59,918/-
Sales to be recognised during the year (A)	4,12,58,108/-
Less: Corresponding cost (44.27% of the sales to be recognised i.e., 44.27% of Rs.4,12,58,108/-) (B)	1,82,66,436/-
Profit on above (C=A-B)	2,29,91,672/-
<u>Working of cost percentage</u>	
Total Projected Cost	6,92,26,120/-
Total Projected Sales	15,63,59,936/-
Percentage of Cost	44.27%

In case of booking of Revenue on "Advance received from customers"

7. The assessee follows mercantile/accrual system of accounting. Income is said to be received when it reaches the assessee. When the

right to receive income become vested in the assessee, it is said to accrue or arise. Income may accrue to an assessee without actual receipt of the same. If the assessee acquires a right to receive the income, the income can be said to have accrued to him though it may be received later on. Further, it is not only necessary that the assessee must have contributed to its accruing or arising by rendering services or otherwise, but also he must have acquired a debt in his favour. A debt must have in existence and he must have acquired a right to receive the payment. Unless and until his contribution or parenthood is effective in bringing into existence a debt or a right to receive the payment, it cannot be said that any income had accrued to him.

8. From the terms and condition of the plot buyer agreement, it is clear that income has accrued/ arisen to the assessee in lieu of the sale of plots to the customer. The customer is very much bound by the payment schedule and the assessee is entitled to receive the payments as per the agreement. Once the booking amount is received by the assessee, the said plot is booked in the name of customer and the assessee is obliged to receive the payment as per the payment schedule and the customer also is obliged to honour the payments in instalments (if any). So, both the parties are bound by the contract and the income is said to have accrued to the assessee and hence chargeable to tax.

9. It is not essential that only when the transaction is complete in terms of units being ready for occupation and possession is handed over to the customer that the income is accrued to the assessee. In

present case, assessee acquired the right to receive it as per the terms and conditions of the agreement.

10. It is immaterial as to how the assessee has shown a particular receipt in the books of account. Even if assessee has shown the receipt to be in form of advance that does not bind the AO to examine the actual nature of receipt in light of surrounding circumstances and referred to the decision of the Hon'ble Supreme Court in case of Sulej Cotton Mills 116 ITR 01 for the proposition that the way the entries are made by the assessee in the books of accounts is not determinative of the question whether the assessee has earned any profit or suffers any loss.

11. The word "advance" conveys the idea of furnishing, tending or offering something which may be returned in the same form. The forfeiture clause (clause 6(a)) in the terms and conditions of plot buyers agreement itself suggest that the product/unit has been sold and if the customer fails to make full payments subsequently, the earnest money would be forfeited along with delayed payment interest. Had the receipt been in the form of advance by the assessee it would have been returned to the customer in the same form. So, the above receipts do not partake the character of an advance.

12. It was held by the AO that substantial advance booking amounts have been received from customers over and above the title already devolved to the customers. As seen from the computation of percentage of work completed, the assessee has completed nearly 50%

of the project. Hence, no significant uncertainty in case of real estate sales, since normally the amount of consideration is specified in the agreement, no significant uncertainty exists regarding the amount of the consideration that will be derived from the sales. The assessee and other constituent companies have acquired land which is being sold as such, after development of roads and other basis amenities, significant risks and rewards devolve to the customer once he pays a substantial amount against the agreed amount/consideration of the plot.

13. In view of above, he concluded that assessee has not declared complete and correct profits and has not followed AS-9 & AS-7 which tantamount to not following AS-1, as per Section 145(2). Therefore, he rejected the books of accounts u/s 145(3) and applied percentage completion method and computed the income on advance received from customers as under:-

Working of profit on advance received from customers	Amount (Rs)
Advance received from customer as on 31-03-2012	4,44,28,514
Percentage of work completed (45.73%) (D)	2,03,17,159
Less: Cost @ 44.27% (E)	89,95,131
Profit (F=D-E)	1,13,22,028

Findings of the Id CIT(A)

14. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A). The Id. CIT(A) stated that it is clear from the Guidance Note issued by ICAI that the revenue is to be recognised when the seller of the goods has transferred to the buyer the legal title in the plots, however, if the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership or title of plots, revenue is to be recognised by applying Percentage Completion Method as explained in AS-7, Construction Contracts. In the instant case, the assessee has completed only 45.73% of development work till 31.03.2012 and even though it had executed sale deeds, it still has to execute the devevlopemnt work in respect of these plots also for which sale deeds have been executed. Accordingly, he held that Percentage Completion Method is also to be applied in respect of plots for which sale deeds have been executed and calculated the profit at Rs.1,17,80,367/- as under:-

Particulars	%	Amount (in Rs.)
Sales deed executed		5,44,46,105/-
Work completed/Revenue to be recognised	45.73	2,48,98,204/-
Revenue already recognised		<u>37,59,918/-</u>
Revenue for the year		2,11,38,286/-
Percentage Completion Method Cost	44.27	93,57,919/-
Profit		1,17,80,367/-

15. With respect to the advance received from customers, the Ld. CIT(A) stated that assessee has not recognized any revenue on account of advances received from customers whereas AO has computed the profit by applying percentage completion method in respect of advance received from customers. However, as per the guidance note, revenue is to be recognized with reference to the entire amount of sales consideration for which plot buyer's agreement were executed as the significant risks and rewards of ownership has been transferred to the buyer at the time of executing the agreement. Accordingly, the Ld. CIT(A) worked out the gross value of the receipt in respect of plots where advance is received and on such gross receipt, he applied percentage completion method to work out the profit at Rs.1,73,71,778/-, calculated in the following manner:-

a) Share in the gross value of the advance from customer:-

Particulars	Gross Value	Received	Total no. of plots
Advance from Customer (for all the three companies)	41,47,07,734	23,21,99,169	1402
Less: Advances where receipt is less than 10%	6,03,22,432	12,14,340	185
Advance to be considered for Bifurcation in all the three companies	35,43,85,302	23,09,84,829	
Share in Gross Value in the ratio of Advance shown in the financial statements			
Shakuntlam Colonizers P Ltd.	25,98,61,932	16,93,75,433	
Vastukar Colonizers P Ltd.	2,92,78,084	1,90,83,165	
Vastukar Township P Ltd.	6,81,63,838	4,44,28,514	

b) The income as per PCM on the above advance from customer works out as under:-

Gross Advance from Customer	6,81,63,838/-
Percentage of work completed (45.73%)	3,11,71,323/-
Less: Cost %= 44.27% (B)	1,37,99,545/-
Profit (A-B)	1,73,71,778/-
Profit computed by the AO	1,13,22,028/-
Difference	60,49,750/-

Accordingly, the Ld. CIT(A) enhanced the income by Rs.60,49,750/-.

16. The relevant detailed findings of the Id CIT(A) are as under:

"(viii) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that the AO has in effect applied Project Completion Method where sale deeds have been executed and Percentage Completion Method on account of advances received from the customers whereas the appellant has applied Percentage Completion Method in respect of sale deeds executed by it, however, it has not applied Percentage Completion Method to the amount of advances received by it from customers i.e. no revenue was recognized in respect of advances received from customers.

(ix) As per the Guidance Note on Recognition of Revenue by Real Estate Developers, Revenue from sales or service transactions should be recognized when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of

ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and

no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods.

(x) Further, as per the Guidance Note, the point of time of which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. In case of real estate sales, the events, such as, transfer of legal title to the buyer or giving possession of real estate to the buyer under an agreement for sale, usually, provide an evidence to the effect that all significant risks and rewards of ownership have been transferred to the buyer. It may, however, be noted that in case of real estate sales, the seller usually enters into an agreement for sale with the buyer at initial stages of construction. This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of all the following conditions which signify transferring of significant risks and rewards even though the legal title is not transferred or the possession of the real estate is not given to the buyer:

- (a) The significant risks related to the real estate have been transferred to the buyer; in case of real estate sales, price risk is generally considered to be one of the most significant risks.*

(b) The buyer has a legal right to sell or transfer his interest in the property, without any condition or subject to only such conditions which do not materially affect his right to benefits in the property.

(xi) Once the seller has transferred all the significant risks and rewards of ownership to the buyer and other conditions for recognition of revenue specified in paragraphs 10 and 11 of AS 9 are satisfied, any further acts on the real estate performed by the seller are, in substance, performed on behalf of the buyer in the manner similar to a contractor. Accordingly, in case the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership, revenue is recognized by applying the percentage of completion method in the manner explained in AS 7, Construction Contracts.

(xii) It may be mentioned that as per para 24 of AS-7 'Construction Contract' the recognition of revenue and expenses by reference to the stage of completion of a contract is often referred to as the Percentage Completion Method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. This method provides useful information on the extent of contract activity and performance during a period.

(xiii) It is noted from the assessment order that the AO has taken into account the entire amount of sale deeds executed till 31.03.2012 (Rs. 4,50,18,026/-) minus the sale deeds executed till 31.03.2011 (Rs. 37,59,918/-) i.e. Rs. 4,12,58,108/- and after deducting direct cost at Rs.

1,82,66,436/- (@ 44.27% of Rs. 4,12,58,108/-), computed the profit of the appellant of Rs. 2,29,91,6721-. It is clear from the Guidance Note that the revenue is to be recognized when the seller of the goods has transferred to the buyer the legal title in the plots, however, if the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership or title of plots, revenue is to be recognized by applying the percentage of Completion Method in the manner explained in AS 7, Construction Contracts. In the instant case under consideration, the appellant has completed only 45.73% of development work till 31.03.2012 and even though it had executed sale deeds, it still has to execute the development work in respect of those plots also for which sale deeds has been executed. Therefore, percentage of completion method is also to be applied in respect of plots for which sale deeds has been executed.

Thus, in view of the above discussion, the profit by applying percentage completion method on account of sale deeds executed by the appellant is determined at Rs. 1,17,80,367/- against Rs. 2,29,91,672/- determined by the AO and Rs. 1,17,24,318/- declared by the appellant."

"3.2.1(i) It is a matter of fact that the appellant has not recognized any revenue for the year under consideration on account of advances received from customers whereas the AO has taken into account the amount received from customers and computed the profit of the appellant company at Rs. 1,13,22,028/- by applying Percentage Completion Method. It may be mentioned here that as per the Guidance Note, the terms and conditions of the agreement entered into between

the seller and the buyer is an important piece of evidence to the effect that all significant risks and rewards of ownership have been transferred. It would be appropriate to reproduce the relevant terms and conditions of the 'Plot Buyer's Agreement' executed with the buyers as under:-

"4. That at present there is no subsisting notification, or order by the State Government or any other Government or Local Authority regarding acquisition or requisition or otherwise for taking over of the area in which the plot is located. In case any such development happens or takes place hereafter, the same shall be at the cost and risk of the Buyer who will be bound to carry out and implement all the terms of this Agreement, including payment of the outstanding instalments and will also thereafter be entitled to receive the compensation paid by the Government or Local Authority in respect of the plot. The Promoter shall not be responsible or liable in any manner whatsoever on account of any such development.

5. That the Buyer agrees that, if as a result of any legislation, order, rule or regulation made or issued by the Government or any other Competent Authority or if any matter, issue relating to such approvals, permission, notices, notifications by the Competent Authority (ies) become subject matter of suit/writ before a competent Court or force majeure conditions, the Promoter after allotment, is unable to deliver the plot to the Buyer for his/her occupation and use, the Buyer agrees that decision of said competent Authority/Court shall be applicable and binding on all the concerned parties thereto.

8. *That transfer of the plot will be at sole discretion of the Promoter and will need his prior written approval. Administrative charges as prescribed by the Promoter from time to time will be paid by the Transfer at the time of Transfer. Any change in the name (including addition/deletion) registered as plot Buyer with the Promoter will be deemed as transfer for this purpose. No administrative charges for the transfer of the plot amongst family members (husband/wife and own children/mother/father and real brother/sister) will be charged. Claims if any, between Transferor and Transferee as a result of subsequent reduction/increase in the area or its location will be settled between themselves i.e. Transferor and Transferee and the Promoter will not be party to this.*

13. *That all taxes whether levied or leviable now or in future on the said plot, as the case may be, shall be borne by the Buyer from the date of booking.”*

(ii) *It is evident from the above referred terms and conditions of Plot Buyer's Agreement that all the significant risk and rewards were transferred to the buyer at the time of executing the 'Plot Buyer Agreement' as the buyer can now sell the plot booked by him and is also responsible for the taxes levied or leviable in future and if the land is acquired by any government authority, the same shall be at the cost and risk of the buyer. Further, in view of the Guidance Note as discussed earlier in this order, the appellant was required to recognize revenue on account of the total contract amount in respect of the plots, for which 'Plot Buyer Agreements' were executed i.e. the entire amount of sale consideration thereof and not only the amount received as*

advance received from the customers, as the significant risks and rewards of ownership have been transferred and no significant uncertainty exists regarding the amount of the sale consideration and then the Percentage Completion Method is to be applied.

(iii) The appellant has not recognized any revenue on advances received from customers, which is not in consonance with the Percentage Completion Method, as claimed to be followed by it. Therefore, in view of the above discussion, it is held that the AO was justified in rejecting books of accounts of the appellant u/s 145(3) of the Act as the appellant did not apply Percentage Completion Method in respect of all cases wherein the significant risks and rewards of ownership have been transferred and no significant uncertainty exists regarding the amount of the sale consideration on executing of 'Plot Buyer Agreement' and it has selectively followed Percentage Completion Method, which cannot be approved.

(iv) It is pertinent to mention here that in the assessment order, the AO has taken only the amount actually received by the appellant as advances from customers, whereas, the total amount of contract in respect of the plots, for which 'Plot Buyer Agreements' were executed was to be taken into account for computing profit of the appellant thereof as the significant risks and rewards of ownership have been transferred and no significant uncertainty exists regarding the amount of the sale consideration and then the Percentage Completion Method is to be applied.

(vi) Thus, in view of the above discussion, it is held that the total amount or gross amount in respect of the plots, for which 'Plot Buyer

Agreements' were executed and substantial advances have been received from the customers by the appellant is to be taken into account for computing profit by applying Percentage Completion Method. Since, the project or the development is complete to the extent of only 45.73% therefore, the profit on account of advances from customers (gross amount of contract) is to be taken at Rs. 1,73,71,778/- , as computed by the AR during appellate proceedings against Rs. 1,13,22,028/- computed by the AO i.e. there is increase of profit by a sum of Rs. 60,49,750/-."

17. Now, both the parties are in appeal against the said findings of the Id CIT(A). In respect of sale for which registry has been executed, the Revenue is challenging reduction in profit from Rs. 2,29,91,672/- to Rs.1,17,80,367/- from sale proceeds and the assessee is challenging the determination of the gross profit at Rs.1,17,80,367/- as against gross profit of Rs.1,17,24,318/- declared by the assessee and thus, confirming the addition of Rs.56,049/- by the Id CIT(A). Secondly, in respect of advance received from the customers, the Revenue is challenging the action of the Id CIT(A) in estimating profit of Rs.1,73,71,178/- from sale proceeds in absence of any substantial evidence to prove the claim of incomplete work and the assessee is challenging the action of the Id CIT(A) in confirming the action of the AO in holding that revenue on percentage completion basis should be recognised in respect of advance received from customers where such advance is more than 10% of the consideration even when the conditions of revenue recognition are not satisfied and thereby determining the income in respect of such advance at Rs.1,73,71,778/-.

Assessee's submission

18. The Id AR submitted that the dispute in the present appeal is how the Percentage Completion Method is to be applied. The ICAI has issued Guidance Note in respect of Accounting of Real Estate Transactions. The relevant para as per this Guidance Note on the basis of which income is recognised by the assessee consistently is as under:-

Application of the revenue recognition principles prescribed in AS-9 to Real Estate Sales

Para 2:- For recognition of revenue in case of real estate sales, it is necessary that all the conditions specified in paragraphs 10 and 11 of Accounting Standard (AS) 9, Revenue Recognition, as reproduced below, are satisfied:

"10. Revenue from sales or service transactions should be recognised when the requirements as to performance set out in paragraphs 11 and 12 are satisfied, provided that at the time of performance it is not unreasonable to expect ultimate collection. If at the time of raising of any claim it is unreasonable to expect ultimate collection, revenue recognition should be postponed.

11. In a transaction involving the sale of goods, performance should be regarded as being achieved when the following conditions have been fulfilled:

- (i) the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership; and*
- (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the sale of the goods."*

Para 3:-The real estate sales take place in a variety of ways and may be subject to different terms and conditions as specified in the agreement for sale. Accordingly, the point of time at which all significant risks and rewards of ownership can be considered as transferred, is required to be determined on the basis of the terms and conditions of the agreement for sale. In case of real estate sales, the events, such as, transfer of legal title to the buyer or giving possession of real estate to the buyer under an agreement for sale, usually, provide an evidence to the effect that all significant risks and rewards of ownership have been transferred to the buyer. It may, however, be noted that in case of real estate sales, the seller usually enters into an agreement for sale with the buyer at initial stages of construction. This agreement for sale is also considered to have the effect of transferring all significant risks and rewards of ownership to the buyer provided the agreement is legally enforceable and subject to the satisfaction of all the following conditions which signify transferring of significant risks and rewards even though the

legal title is not transferred or the possession of the real estate is not given to the buyer:-

- a. The significant risks related to the real estate have been transferred to the buyer; in case of real estate sales, price risk is generally considered to be one of the most significant risks.*
- b. The buyer has a legal right to sell or transfer his interest in the property, without any condition or subject to only such conditions which do not materially affect his right to benefits in the property.*

Para 4: Once the seller has transferred all the significant risks and rewards of ownership to the buyer and other conditions for recognition of revenue specified in paragraphs 10 and 11 of AS 9 are satisfied, any further acts on the real estate performed by the seller are, in substance, performed on behalf of the buyer in the manner similar to a contractor. Accordingly, in case the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership, revenue is recognized by applying the percentage of completion method in the manner explained in AS 7, Construction Contracts.

Relevant Para 24 of AS-7 "Construction Contract" is as under:

The recognition of revenue and expenses by reference to the stage of completion of a contract is often referred to as the percentage completion method. Under this method, contract

revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. This method provides useful information on the extent of contract activity and performance during a period.

Para 9.2 of AS 9 provides as follows:

Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim, e.g., for escalation of price, export incentives, interest etc., revenue recognition is postponed to the extent of uncertainty involved. In such cases, it may be appropriate to recognize revenue only when it is reasonably certain that the ultimate collection will be made. Where there is no uncertainty as to ultimate collection, revenue is recognized at the time of sale or rendering of service even though payments are made by installments."

Accordingly, in case it is unreasonable to expect ultimate collection, the revenue recognition is postponed to the extent of uncertainty involved.

19. It was submitted by the Id AR that the assessee has accounted the income following the Guidance Note and Accounting Policy but the AO, where the sale deed is executed has not applied percentage completion method but where advance is received from customers has incorrectly applied percentage completion method. The Ld. CIT(A)

accepted the contention of assessee for determining the profit where sale deed is executed (of course with some variation) but has incorrectly determined the profit where advance is received from the customers. Each of these two issues is explained below:-

20. Booking of revenue where sale deed is executed:

a) The sale consideration of plots for which sale deed has been executed is Rs.5,44,46,105/- till 31.03.2012. The entire sale proceeds cannot be considered revenue as assessee has to incur expenditure against such receipt. As explained above, work of only 45.73% with reference to the actual expenditure to the projected expenditure has been incurred. Therefore, only 45.73% of the amount received where sale deed has been executed can be recognized as income. Thus, till 31.03.2012, only Rs.2,48,98,204/- (45.73% of Rs.5,44,46,105/-) can be recognized as revenue and the remaining amount is to be carried forward as unearned revenue in the next year. As revenue of Rs.37,59,918/- is already recognized till 31.03.2011 as per the consistent accounting policy followed by the assessee, assessee correctly recognized revenue for the year at Rs.2,11,28,286/-.

b) As against above, AO considered the entire amount where the sale deed is executed as revenue. In doing so, he failed to consider para 4 of the Guidance Note which provide that in case the seller is obliged to perform any substantial acts after the

transfer of all significant risks and rewards of ownership, revenue is recognized by applying the percentage of completion method in the manner explained in AS-7, Construction Contracts. As per para 24 of AS-7, where percentage of completion of method is to be applied, contract revenue is required to be matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. Therefore, sale consideration as per the sale deed can't be recognized as revenue rather the proportionate sale consideration attributable to the cost incurred can only be recognised as revenue. As assessee has incurred only 45.73% of the total cost and it is obliged to perform substantial act even after the transfer of significant risk and reward of the ownership to the buyer, revenue is correctly recognized at 45.73% of the sale consideration realised where the sale deed has been executed.

- c) The Ld. CIT(A) has correctly appreciated these facts and therefore, he rightly held that revenue in respect of completed sales can be recognized only at 45.73% of the amount received, i.e. Rs.2,11,28,286/-. However, in respect of the expenditure to be allowed against such revenue, he considered 44.27% of Rs.2,11,38,286/-, i.e. Rs.93,57,919/- as against Rs.94,13,968/- worked out by the assessee which also tallies with the expenditure recognized in P&L A/c. Therefore, gross income

where sale deed is executed would work out at Rs.1,17,24,318/- as against Rs.1,17,80,367/- worked out by the CIT(A).

21. Booking of revenue in respect of advance from customers:

- a) In case of advance received from customers, revenue, as per Para 3 of the Guidance Note issued by ICAI, can be recognised when all significant risk and reward of ownership is transferred. In case of agreement for sale, all significant risk and reward of ownership is considered to be transferred where there is no price risk and the buyer has a legal right to sale or transfer his interest in the property without any condition or subject to only such condition which do not materially affect his right to the benefits in the property.
- b) In the present case, on advance received from the customers, the conditions of revenue recognition are not satisfied as the assessee has not transferred to the buyer significant risks and rewards of ownership. This is evident from Para 7-10 of the plot buyers agreement where it is categorically provided that if the buyer default in depositing the instalment amount maximum two times, the assessee shall have the right to cancel the agreement and forfeit the earnest money, interest on delayed payment, etc. and the amount paid over and above the earnest money shall be refunded to the buyer only after realising such amount from resale of the plot. It is further provided that transfer of plot shall be at sole discretion of the assessee and need his written prior

approval and that the actual rightful and meaningful possession shall be handed over to the buyer only after receiving entire sales consideration. These conditions clearly show that buyer has no legal right to sale or transfer his interest in the property till the entire sales consideration is paid by him. Therefore, the condition laid down in the Guidance Note for revenue recognition with reference to advance received from customer is not satisfied.

- c) It is also submitted that as per the consistent accounting policy followed by the assessee, assessee is not recognizing the revenue in respect of the advance received from customers. Advance received is said to accrue only when sale deed is registered and not on the basis of the plot buyer's agreement. Reliance in this connection is placed on the following cases:

S.K. Properties vs. ITO (2017) 162 ITD 419 (Bang.) (Trib.):

The right, title or interest in the immovable property can be transferred only by way of registering the conveyance deed executed in this behalf. Even the accounting standard 9 dealing with the recognition of income also lays down that the income in respect of transfer of immovable property can be recognized only when the risks, rewards and ownership of the property is transferred to the buyer. Therefore, the matter requires fresh examination by Assessing Officer in light of the above position of law. Therefore, court remand this matter back to the file of Assessing Officer with a direction that the income in respect of

sale of plots can be recognized only in the year in which conveyance deed executed is registered in favour of the buyers and to allow the development expenditure incurred as expenditure or the expenditure likely to be incurred on the plots sold as expenditure. And this direction also goes in line in consonance with the provisions of accounting standard 9 which clearly lays down that matching is required to be done on accrual basis in respect of the income offered to tax and upheld by Hon'ble Supreme Court in the case of CIT Vs. Taparia Tools Ltd.

ACIT Vs. Happy Home Corporation (2017) 50 CCH 0076 (Ahd.) (Trib.):

AO did not dispute with regard to stand of assessee that amounts which had been accounted in regular books of accounts would be taxed when sale deed would be executed or possession will be delivered to prospective buyers—Different yardstick was adopted for on-money received by assessee over and above amounts stated in regular books of accounts—Analysis of AO was that against this amount, assessee would not be required to incur expenditure—It was net realization which had only profit component—Right to retain this amount would accrue to it when sale deed would be executed or possession of flats would be given to prospective buyers on completion of project—For example, if on account of any reason project could not be completed, then assessee would be required to refund money and in that situation, on-money would

also be refunded—Thus, right to receive or retain this component was subject to execution of sale deed or handing over of possession—Title in property would be transferred not in year in which assessee received part consideration as earnest money but it was to be construed in year when sales was registered or possession was handed over to prospective buyers—Gujarat High Court in case of CIT Vs. Shivalik Buildwell held that assessee being developer of project, profit in his case arose on transfer of title of property and receipt of any advances or booking amount could not be treated as trading receipt of year under consideration—Tribunal further noted that such method of accounting followed by assessee had been accepted by revenue in earlier years—Tribunal was therefore, of the opinion that AO's decision to reject book results during year under consideration was not justified—CIT(A) deleted addition on ground that same amount could not be taxed twice because this very amount had been offered for taxation in different years and same rate of tax was applicable upon assessee—Revenue's Appeal dismissed.

CIT Vs. Ashaland Corporation (1982) 133 ITR 55 (Guj.) (HC):

Income accrues on sale of land and arises in the year in which the title in the property is transferred and not in the year in which assessee received part of consideration and earnest money. The transaction of sale of immovable property becomes complete only on possession of title which takes place only when

registered deed is executed. Some receipt of earnest money and advance receipt of money towards transaction would not by itself partake the character of taxable income as the registered sale deed was executed only in the subsequent year, In this regard, head notes from the judgment are referred as under:-

"The land purchased by the assessee which forms part of its stock- in-trade would continue to be so until and unless it sells it. The business deal in respect of the land would be complete only when the assessee executed a sale deed. Since it was only on completion of the sale transaction that the assessee could be said to have earned profit or suffered loss, the earnest money and part payment of price would not constitute trading receipts for the assessment year in which they were received unless the title of the assessee is extinguished, the title to the purchaser cannot arise. Both cannot be the exclusive owners of the same property at the same time. It was axiomatic that an agreement to sell does not create any interest in favour of the purchaser. It is on completion of the transaction of purchase and sale culminating in the extinguishment of the title of the vendor and simultaneous creation of the title in the vendee that the assessee earns profit or suffers loss. A transaction which may or may not ultimately result in a completed sale by executing a registered conveyance is no transaction at all for the purpose of working out profit. Receipt of sum amount would assume the character of income or profit only when the sale transaction is completed in accordance with law. The land does not cease to

be the stock-in-trade of the assessee unless and until the sale is completed. Therefore, the amount received by the assessee by way of earnest money and part-payment of the purchase price cannot be treated as its trading receipt.”

Paras Buildtech India Private Limited & Anr. Vs. CIT (2016) 382 ITR 0630 (Del.) (HC):

Advance amount—Treatment of advance amount received by assessee as income—Application of percentage completion method—Assessee engaged in business of real estate as a developer—Assessee either purchased land in its own name or got power of attorney from land owner in case property was owned by another party so as to carry out activities of development on land in terms of a collaboration agreement—Assessee entered into agreements to develop and sell overall projects in terms of sharing with owner—Assessee entered into contracts with various buyers and received sums by way advance for booking or reserving flats/shops/areas—On completion of project, assessee handed over possession of flats booked to respective customers/buyers along with execution of sale/conveyance deed— Assessee regularly followed Accounting Standard (AS) 9 issued by Institute of Chartered Accountants of India (ICAI)— In this method, revenue was recognized as and when significant risk and reward of ownership/title was transferred- All sums received for construction project till such time were treated as advances and shown as liability— All expenses incurred in construction were accounted for in stock in

trade and/or block of buildings and reflected as such in balance sheet of assessee—AO rejected submission of assessee and held that AS-7 was applicable to assessee— AO held that assessee was acting as a contractor and held that significant risks and rewards of ownership had been transferred by assessee to buyers when agreements to sell were entered into with them— Books of account of assessee were rejected u/s 145 and its profits were computed by applying AS—AO added a sum of Rs.1,56,88,100 to assessee's declared income by applying percentage completion method— CIT(A) also noted that entire exercise was revenue neutral as AO had only advanced accrual of income from AY 2006-07 to AYs 2004-05 and 2005-06— CIT(A) held that percentage completion method would not apply in assessee case— ITAT reversed order of CIT(A) and accepted plea of revenue that percentage completion method would apply since assessee had transferred risks and rewards to buyers even prior to commencement of construction activities—Held, action 145 (1) of the Act states that income chargeable under heads 'Profits and gains of business or profession' shall be computed in accordance with either cash or mercantile system of accounting "regularly employed by assessee"— It was only with effect from 1st April 2015 that change had been brought about in Section 145 (2) which permitted central government to notify in Official Gazette from time to time income computation and disclosure standards to be followed by any class of assesses or in respect of any class of income-- That change was prospective and in any event did not apply to case on hand—It is settled legal position

that it is not open to an AO to reject accounts of assessee unless he comes to determination that notified accounting standards have not been regularly followed by assessee— As pointed out by CIT(A) in order dated 2nd July, 2010, AS of ICAI did not have any statutory recognition under the Act although it was binding under the Companies Act, 1956—Method of accounting followed by assessee in present case i.e. project completion method was certainly one of recognized methods and had been consistently followed by it— No good reason for ITAT to have reversed finding of CIT(A)—Only reason given in impugned order of ITAT was that 'risks and rewards' of ownership were transferred to buyers who had paid booking advance amounts and in some cases these rights were transferred to third parties—However, this did not in any manner affect treatment of said amounts in books of Assessee—As noted hereinbefore, expenses of construction were not debited to P&L account of assessee--It was shown as cost of construction or block of buildings—Explanation added by way of Notes to Accounts was not taken note of by ITAT when it came to conclusion that percentage completion method should apply to assessee— In CIT-IV v. Shivalik Buildwell (P) Ltd. (2013) 40 taxmann.com 219 (Gujarat). It was held that assessee who was a developer, was entitled to book amount received as booking advance as income on transfer of property—Till then advance booking amounts could not be treated as his trading receipt—High Court recognized that assessee in that case was entitled to apply project completion method in terms of applicable AS—High

Court answered question (a) as far as AY 2005-06 in negative, i.e. favour of assessee and against revenue—Assessee's appeal allowed.

- d) It may be noted that assessee has accounted for income in respect of these advances in subsequent years when registry of these plots took place. The position of the total registry and advance from customer up to 31.03.2015 is as under:-

Amount of registry done up to 31.03.2015 - Rs.6,88,31,758/-

Advance from customers up to 31.03.2015- Rs.3,37,47,056/-

From the above it can be noted that in respect of part of the advance received from the customer till 31.03. 2012, registry has been done in the subsequent years and offered for tax as per the method of accounting consistently followed by the assessee. In subsequent years, income so offered has been accepted and therefore, taxing the income as per the method adopted by the lower authorities would tantamount to double taxation. Hence, the addition made by AO and enhanced by the Ld. CIT(A) with reference to the advance received from customer is unjust.

23. In view of above, it was submitted that the addition of Rs.1,13,22,628/- made by the AO and enhanced by the Ld. CIT(A) to Rs.1,73,71,778/- in respect of advanced received from the customer is uncalled for & be directed to be deleted.

24. On the other hand, Id. D/R vehemently argued the matter. He took us through the findings of the AO and the Id CIT(A) which we have noted above. Further, Id DR submitted that even though assessee claims that it follows percentage completion method of recognition of revenues, in reality, revenues in terms of advance received from the plot buyers have not been recognized at all and in respect of duly executed sale deeds, again the revenues have been recognized to that extent of work completed, thus the assessee has followed a mix approach which cannot be accepted. He drawn our reference to the decision of the Hon'ble Supreme Court in case of CIT vs Bilahari Investment (168 Taxman 95) and CIT vs Shri Goverdhan (69 ITR 675). He also referred to the decision of the Coordinate Bench in case of Paras Build Call (P) Ltd (57 Taxmann.com 12) and our reference was drawn to Para 10 and Para 12.1 & 12.2 of the said decision which reads as under:

"10. Turning to the taxation principle relevant for our purpose, we find that section 5 contains the scope of total income. It provides, inter alia, that all income from whatever source derived which accrues or arises or is deemed to accrue or arise, is included in the scope of total income. Under the mercantile system of accounting, which the extant assessee is following, an income becomes taxable when right to receive an income is finally acquired. Ordinarily, when some goods/products are sold by a businessman, income does not arise before the transfer of title in such goods to the buyer. It is because that till that time, the buyer does not acquire any risks and rewards attached to the product, which pass only with the sale. But if the product under sale is of a unique nature, such as, a commercially constructed unit, for which the

Developer has entered into agreement for sale at the initial stage of construction by transferring all significant risks and rewards of the ownership to the buyer, the income accrues on year-to-year basis by considering the percentage of completion of the property under transfer. It is so for the reason that after signing agreement to sell, the Developer acquires an infallible right over the payments received towards sale consideration which coincide with the progress in construction. The buyer simultaneously acquires ownership of the right in the property much before the transfer of legal title in his favour. Such a right in the hands of buyer is a valuable right capable of transfer to any third person at any stage of construction. As such, it is wrong to say that no profit accrues to the Developer/Builder till the execution of registered sale deed. The position may be different when the Developer undertakes the construction work without entering into any agreement for sale to the buyers at the initial stage. When the Developer first completes the construction work at his own and then sells the commercial units to the buyers, no income can be said to have accrued to the Developer till the construction is completed and sale is made to the buyers by transfer of legal title. The reason being, that till the transfer of title to the buyers, it is only the Developer who holds all the risks and rewards of ownership. Income becomes taxable only when it accrues and it accrues when right to receive it is finally acquired. A right to receive income in the case of sale of commercial unit is acquired when risks and rewards attached to its ownership are transferred to the buyers and not before or after that. It is but natural that no Developer will transfer risks and rewards of ownership to the buyers until he has secured the receipt of sale consideration. This appears to be the reason

which propelled the Institute to come out with Guidance Note in 2006 requiring the adoption of the Percentage completion method alone for the recording of accounting transactions by Developers so that the accounts give a true and fair view of its profits. Similar view has been reiterated in the Guidance note issued in 2012. So the litmus test of accrual of income of a Developer under the mercantile system of accounting is the passing of risks and rewards of ownership to the buyers.

12.1 Before applying them, it is sine qua non to note their salient features. Under the Percentage of completion method, income accrues matching with the stage of completion reached up to the end of the year. Caveat is that the risks and rewards in the construction must have been transferred to the buyer. In the absence of such a transfer, there can be no question of accrual of income simply on the basis of the owner constructing his property meant for sale on completion at a later stage. Income is computed under this method by deducting the costs incurred in reaching the stage of completion from the proportionate sale price attributable to the work completed. In contrast to that, under the Project completion method, or as we also commonly call, the Completed contract method, income accrues only when the contract is completed or substantially completed. Substantially completed means that when only minor construction work is left to be done. Under this method, the costs incurred on year to year basis up to the stage of completion or substantial completion of construction are treated as work-in-progress. Similarly the payments received are also accumulated during the course of the contract and shown as Liability in the balance sheet. Income accrues only upon the completion or substantial completion of the

construction activity. Here again, the same caveat applies that the Developer should have transferred the risks and rewards of ownership to the buyers at initial stage. If there is a prior agreement but there is no transfer of risks and rewards of ownership to the buyer, then no income would accrue till the passing of risks and rewards to the buyer at the time of completion or substantial completion of the construction activity. On the other hand, if there is no prior agreement for sale, then income accrues only when sale is actually made, which event may happen after the completion or substantial completion of construction.

12.2 It can be noticed from the decisions available on the point that the assessee has a choice of consistently following either the Project completion method or the Percentage completion method, when it has entered into an agreement for sale and transferred risks and rewards of ownership to the buyer at the initial stage. Obviously, the choice to the assessee is restricted to either of the two methods and it cannot breach both of them. When a Developer, having transferred risks and rewards of ownership to the buyer at the initial stage, follows the Percentage completion method on a consistent basis, the income accrues on year to year basis in line with the progress of the construction. On the other hand, when such a Developer follows the Project completion method, income accrues on the completion or substantial completion of the project. The essence of the Project completion method is the completion or the substantial completion of construction. But when such a Developer, having initially transferred all the risks and rewards of ownership to the buyers, offers income at the time of the registration of sale deed, then this manner of offering income fails to accord with the

Project completion method. Such a course of action, obviously, results into shifting of income from the year of completion or substantial completion of construction contract to later year(s), which is impermissible.”

Our findings

25. We have heard the rival contentions and perused the material available on record. The issue in dispute relates to recognition of revenue by the assessee, which has been categorized into two broad categories – revenues where the assessee has entered into registered sale deeds with the plot buyers and secondly, where certain advances have been received from the plot buyers, where the assessee is following percentage completion method of accounting.

26. The assessee is engaged in development of residential township project “South City” located in village Jaisinghpura/Rampura Bujurg, near Chaksu, Tonk road, Jaipur in collaboration with M/s Shakuntalam Colonisers Pvt Ltd and M/s Vastukar Colonizers Pvt Ltd. In terms of plot buyers agreement, the buyer agrees to purchase a plot of specified size and location and the agreed price covers development of internal services such as roads, electricity, water and drainage system within the peripheral limits of township. The nature of transaction under consideration is therefore sale of plots of land with development of internal common facilities within the township.

27. The assessee has contended that by following consistent accounting policy where the revenues are recognized on percentage

completion method, during the year under consideration, revenues for the year are recognised at Rs.2,11,38,286/- as per registered sale deeds and no revenues are recognised against the advance/booking amount of Rs.4,44,28,514/- received from customers. The said accounting policy has been duly reflected in Schedule 11 of its audited financial Statement and the same is in accordance with Paras 10 and 11 of AS-9 issued by the ICAI as well as Guidance Note on "Recognition of Revenues by the Real Estate Developers" issued by the ICAI in the year 2006. The AO has also referred to the said guidance note issued by ICAI while arriving at his findings that the whole of sale proceeds in respect of registered sale deeds should be recognized as revenues and secondly, the advance received from the customers should be recognized to the extent of percentage of work completed in the township project.

28. It would therefore be relevant to refer to the recommendations as contained in the said guidance note issued by the ICAI and the same are reproduced as under:

"6. Revenue in case of real estate sales should be recognized when all the following conditions are satisfied:

(i) The seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with ownership;

- (ii) no significant uncertainty exists regarding the amount of the consideration that will be derived from the real estate sales;*
- and*
- (iii) It is not unreasonable to expect ultimate collection.*

7. The determination of point of time when all significant risks and rewards of ownership are transferred depends on the facts and circumstances of each case considering the terms and conditions of the agreement. In case of real estate sales, all significant risks and rewards of ownership are normally considered to be transferred when legal title passes to the buyer (e.g., at the time of the registration, with the relevant authorities, of the real estate in the name of the buyer) or when the seller enters into an agreement for sale and gives possession of the real estate to the buyer under the agreement. All significant risks and rewards of ownership are also considered to be transferred, if the seller has entered into a legally enforceable agreement for sale with the buyer and all the following conditions are satisfied even though the legal title is not passed or the possession of the real estate is not given to the buyer:

- (a) The significant risks related to real estate have been transferred to the buyer. In case of real estate, price risk is generally considered to be one of the most significant risks.*
- (b) The buyer has a legal right to sell or transfer his interest in the property, without any condition or subject to only such conditions which do not materially affect his right to benefits in the property.*

8. *When the seller has transferred to the buyer all significant risks and rewards of ownership, it would be appropriate to recognize revenue at that stage subject to fulfillment of other conditions specified in paragraph 6 above, provided the seller has no further substantial acts to complete under the contract. However, in case the seller is obliged to perform any substantial acts after the transfer of all significant risks and rewards of ownership, revenue should be recognized on proportionate basis as the acts are performed, i.e. by applying the percentage of completion method in the manner explained in Accounting Standard (AS) 7, Construction Contracts. An example is a building or other facility on which construction has not been completed though all significant risks and rewards of ownership have been transferred pursuant to the fulfilment of conditions stated in paragraph 7 above. Another example is of a land which is yet to be developed though the seller has transferred all significant risks and rewards of ownership of the land to the buyer through an agreement for sale as per paragraph 7 above.*

9. *whether the seller retains no effective control of the real estate transferred to a degree usually associated with ownership also depends on the facts and circumstances of each case considering the terms and conditions of the agreement. The nature and extent of continuing involvement of the seller should be assessed to determine whether the seller retains effective control. In some cases, real estate may be sold with a degree of continuing involvement by the seller such that the risks and rewards of ownership are not transferred. Examples are sale and repurchase agreements which include put and call options, and*

agreements whereby the seller guarantees occupancy of the property for a specified period.

10. In case of real estate sales, since normally the amount of consideration is specified in the agreement, no significant uncertainty exists regarding the amount of the consideration that will be derived from the sales.

11. For determining whether it is not unreasonable to expect ultimate collection, a seller should consider the evidence of the buyer's commitment to make the complete payment. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time all significant risks and rewards of ownership are transferred to the buyer, revenue recognition is postponed to the extent of uncertainty involved. For example, when the aggregate of the payments received including the buyer's initial down payment , or continuing payments by the buyer, provide insufficient evidence of the buyer's commitment to make the complete payment, revenue is recognized only to the extent of realisation of the consideration provided other conditions for recognition of revenue are satisfied.

12. An enterprise should disclose the accounting policy regarding recognition of revenue arising from the real estate sales, including the timing of transfer of significant risks and rewards of real estate which is the subject matter of sale."

Further, it is noted that as per AS 7, the recognition of revenue and expenses by reference to the stage of completion of a contract is often referred to as the percentage completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

29. In the instant case, in respect of transactions where sale deeds for plots of land have been duly executed and registered with the relevant authorities, there is no dispute that the assessee has transferred to the buyer all significant risk and rewards of ownership and the assessee retains no effective control of the real estate to a degree usually associated with ownership, and no significant uncertainty exists regarding the amount of the consideration and its collection as the same has been fully recovered prior to signing of the sale deed.

30. At the same time, what is equally relevant to consider is the economic substance of the transaction. As we have noted above, in terms of plot buyers agreement, the buyer agrees to purchase a plot of specified size and location and the agreed price covers development of internal services such as roads, electricity, water and drainage system within the peripheral limits of township. The economic substance of transaction under consideration is therefore sale of plots of land alongwith development of internal common facilities within the township. The buyer of plot of land is not paying merely for piece of land cut into specified size at a given location but also for development of various common facilities. There is no separate identifiable

consideration for development activities which is available on record and therefore, one can only speculate and debate about whether these activities are substantial or not, the fact remains that unless such facilities are made available and functional, these plots of land cannot be put to intended use. The development activities are therefore closely linked to the sale of plot of land and the economic substance of the transaction is therefore sale and purchase of developed plots of lands. The assessee is therefore obliged to perform the specified development activities even after the sale deeds have been duly executed in favour of buyers. The revenues in such cases should therefore be recognized on proportionate basis as the acts are performed, i.e. by applying the percentage of completion method in the manner explained in Accounting Standard (AS) 7, Construction Contracts which provides that contract revenue are required to be matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed. We find that the AO has not disputed the fact that the assessee is required to carry out the specified development activities and also the application of percentage of completion method of recognition of revenues but has missed this finer nuance of interconnection between the economic substance of the transaction and application of percentage completion method of recognition of revenues while analyzing the guidance note issued by the ICAI and which has been rightly appreciated by the Id CIT(A). The stage of development of the township project has been determined by the assessee at 45.73% with reference to entire land and development cost for the whole project and is not in dispute before us. The total

revenues in respect of executed sale deeds till 31.03.2012 comes to Rs 5,44,46,105 and 45.73% thereof comes to Rs 2,48,98,204 and after allowing credit for revenues already recognized in the previous year amounting to Rs 37,59,918, the revenues for the year have been rightly determined by the Id CIT(A) at Rs 2,11,38,286 and we hereby affirm his findings in this regard.

31. Now, we refer to the second category of revenues which are advances and booking amounts received from the customers in terms of plot buyer's agreement as against revenues in respect of executed sale deeds which we have discussed above. The AO has applied percentage of completion method and to the extent of development of the township project determined by the assessee at 45.73%, has brought to tax revenues amounting to Rs 2,03,17,159 out of total advances to the tune of Rs 4,44,28,514 received as on 31.03.2012. The Id CIT(A) has however, considered the whole of sale consideration amounting to Rs 6,81,63,838 in respect of which the plot buyers agreement have been executed and such advances have been received, and brought to tax, revenues amounting to Rs 3,11,71,323 to the extent of work completed i.e, 45.73% applying the percentage completion method.

32. In this regard, we refer to the plot buyer's agreement and see whether the parameters specified in the guidance note issued by ICAI for recognition of revenues, as we have noted in para 28 above, are satisfied in the instant case or not. The sample plot buyer's agreement placed on record at APB page 22-36 has been entered into between one of the collaborator of the assessee, M/s Shakuntlam Colonizers Private

Limited and Shri Mukesh Kumar Saini dated 7th Oct, 2009. The said agreement provides that the promoter along with its associates have undertaken development & promotion of a residential colony known as "South City", in the village Jaisinghpura/Rampura Bujurg, Near Chaksu, Tonk Road, Jaipur and the surrounding area of said villages and the buyer, who has earlier applied and granted provisional registration of residential plot of 200 sq. yds at a basic price of Rs. 1700/- per sq. yard under the installment payment plan and thereafter a Registration No. SC/252 dated 25.04.2007, and now this agreement shall supersede the terms and conditions as set out in Registration Form which has been signed & delivered by the buyer when he booked the said plot. In clause 1 of the agreement, it has been provided that the promoter agrees to sell and the buyer agrees to purchase Plot No. 29 in Block G admeasuring size of 200 sq. yards allotted on the basis of Lottery drawn on 21.05.2008 in the presence of registration holders @ Rs. 1700/- per sq. yard in South City, Jaipur. It has been further provided that the said agreed price of the plot of land covers development of internal services such as roads, electricity, water and drainage system within the peripheral of the colony and the payment is to be made in installments as prescribed in Schedule 1 annexed to this agreement. It has been further provided that the preferential location charges @ 10% of the basic price will be charged extra in addition to the aforesaid rate determined. It has been further provided that it will be responsibility of the buyer to strictly adhere to the payment schedule as mentioned in Schedule 1 and the buyer also agrees to deposit the post dated cheques for balance installments of the said plot as the per the payment plan.

33. On perusal of the Schedule 1 to the agreement, it provides for the total cost of the plot at Rs. 34,000,00/-, the plot size, the rate, location and the installments which are payable on monthly basis. It provides for a registration amount of Rs. 5,000/-, booking advance of 20% amounting to Rs. 68,000/- and the remaining amount in 24 installments which varies from 2 to 5% of total price and the final installment of 21.52% payable at the time of handing over of the possession to the buyer. In clause 2 of the agreement, it has been provided that any external or peripheral services provided by any Government or Local Authority and any service charges levied thereof shall also be payable in addition to the aforesaid price of the plot. In clause 7C, it has been provided that 20% of the total deposited amount either at the time of registration/plot buyer agreement or thereafter shall constitute the earnest money for the purpose of this agreement.

34. On cumulative reading of all these clauses in the agreement which have been mutually agreed and consented to by the assessee and the plot buyer, it is crystal clear that the price risk which is one of the significant risk in relation to real estate has been fully transferred by the assessee to the buyer. Further, it is noted that regarding any external regulatory risk by way of any direction or action of the State Government or any Local Authority, the entire cost and risk has again been passed on by the assessee to the buyer and at the same time, the assessee has safeguarded its own interest and risk, as it clear from clauses 4 and 5 of the agreement which are reproduced as under:-

"4. That at present there is no subsisting notification, or order by the State Government or any other Government or Local

Authority regarding acquisition or requisition or otherwise for taking over of the area in which the plot is located. In case any such development happens or takes place hereafter, the same shall be at the cost and risk of the Buyer who will be bound to carry out and implement all the terms of the Agreement, including payment of the outstanding instalments and will also thereafter be entitled to receive the compensation paid by the Government or Local Authority in respect of the plot. The Promoter shall not be responsible or liable in any manner whatsoever on account of any such development.

5. That the buyer agrees that, if as a result of any legislation, order, rule or regulation made or issued by the Government or any other Competent Authority or if any matter, issue relating to such approvals, permission, notices, notifications by the Competent Authority (ies) become subject matter of any suit/writ before a competent Court or force majeure conditions, the Promoter after allotment, is unable to deliver the Plot to the Buyer for his/her occupation and use, the Buyer agrees that decision of said competent Authority/Court shall be applicable and binding on all the concerned parties thereto."

35. In light of above, it is clear that the significant risk relating to the real estate namely price risk as well as any external regulatory risk relating to acquisition, requisition or taking over area in which plot is located by the State Government or any other local authority has been transferred by the assessee to the buyer.

36. Regarding the 2nd condition as to whether the buyer has a legal right to sell or transfer his interest in the property, we refer to Clauses 7, 8 and 9 of the plot buyer's agreement which reads as under:

"7. That it shall be incumbent on the Buyer to comply with all the terms and conditions of this agreement and/or non deposit of instalment and/or default in depositing the instalment amount maximum two times, not more than three consecutives instalments simultaneously. In such circumstances the Promoter shall have right to cancel and/or terminate this agreement after giving a registered notice to the Buyer and shall be entitled to forfeit the entire amount of earnest money, interest on delayed payment etc. and the Buyer shall be left with no lien, right, interest, or any claim of whatsoever nature in the Plot. The Promoter shall thereafter be free to resell and/or deal with the said Plot in any manner whatsoever claim of whatsoever nature in the Plot at its sole discretion. The amount if any paid over and above the earnest money, processing fees, interest on delayed payment etc., would be refunded to the Buyer by the Promoter only after realizing such amount to be refunded on resale but without any interest or compensation of whatsoever nature. The Promoter shall have the first lien and charge on the said plot for all its dues payable by the Buyer to the Promoter.

Without prejudice to the Company's aforesaid rights, the Company at its sole discretion waive the breach in not making payments as per the payment plan, but on the condition that the Buyer shall pay interest to the Company which shall be charged @ 24% per annum for the period of default on the defaulted amount.

(b) That in addition to the other specific clauses relating to cancellation, the Promoter shall be free to exercise its right of cancellation of allotment in the case of:

- i. Provisional allotment obtained through misrepresentation/suppression of material facts/illegal practice by a natural person or judicial person formed in any constitutional law of India for the time being in force.*
- ii. Violation of any Law, Rule or Regulation framed by the Central Government or State Government for the time being in force.*

In the event of cancellation, the entire deposits till the date of cancellation shall be forfeited and the Promoter will resume possession of the plot with structure thereon, if any, and the Buyer will have no right to claim any compensation thereof.

The Buyer shall indemnified to the Company for such loss of reputation caused by the action/deed of buyer and shall be responsible for all the consequence resulting there from and the Company does not accept any responsibility in this regard.

(c) That the Promoter and the Buyer hereby agree that 20% of the total deposited amount either at the time of Registration/Plot Buyer Agreement or thereafter paid to the former by the latter, shall constitute the earnest money for the purpose of this agreement.

(d) That no separate notice shall be given in this regard.

8. *That transfer of the plot will be at the sole discretion of the Promoter and will need his prior written approval. Administrative charges as prescribed by the Promoter from time to time will be paid by the Transfer at the time of Transfer. Any change in the name (including addition/deletion) registered as plot Buyer with the Promoter will be deemed as transfer for this purpose. No administrative charges for the transfer of the plot amongst family member (husband/wife and own children/mother/father and real brother/sister) will be charged. Claims if any, between Transferor and Transferee as a result of subsequent reduction/increase in the area or its location will be settled between themselves i.e. Transferor and Transferee and the Promoter will not be party to this.*

9. *That the Buyer shall pay, as and when demanded by the Promoter, the final sale consideration of the plot at the time of possession. Buyer undertakes to take the possession within 30 (thirty) days from the date when the Promoter intimate in writing of the offer of possession, failing which the Buyer authorizes the Promoter to cancel the allotment and forfeit the earnest money, delayed payment interest etc. and refund the balance price paid by the Buyer without any interest upon realization of money from resale/re-allotment to any other party.*

Without prejudice to the Company's aforesaid rights, the Company at its sole discretion waive the breach in not making payments as per the payment plan, but on the condition that the Buyer shall pay interest and penal interest to the Company which shall be charged @ 24% per annum for the period of default on the defaulted amount."

37. In light of above, we are of the view that pursuant to the plot buyer agreement, the buyer has been allotted a specified plot of land even though the possession has not been handed over at that stage and the sale deed shall be executed in future. The buyer clearly has a right to sell or transfer his interest in the property after taking prior written approval as well as payment of specified administrative charges. The approval of the assessee cannot be read to mean in any way restricting the assessee's right to deal with the plot of land rather such an approval is more of a regulatory mechanism put in place by the assessee which the buyer should adhere to. There is no restriction which has been provided in the agreement which specifically restrict such right of the buyer in terms of handling or transferring his interest in the property to a third person till the entire sale consideration has been paid.

38. Regarding the third condition, since the amount of the consideration for the sale of plot has been clearly specified in the plot buyers agreement, we do not see any uncertainty which exists regarding the amount of the consideration that will be derived from the said sale of plot of land.

39. Regarding the last condition as to whether it is not unreasonable to expect ultimate collection, as we noted above, the buyer has agreed to deposit the booking advance of 20% and has also agreed to deposit the post dated cheques for the balance installments as per the payment plan specified in Schedule 1. However, it is for the assessee to assess the ultimate collection with reasonable certainty in each of the individual cases vis-a-vis the acts and commitments as well as taking

into account any default if so committed by the respective buyers and where the seller comes to a view that the ultimate collection is lacking in certain cases, revenue recognition can be postponed to the extent of uncertainty involved. At the same time, it has been provided in the guidance note issued by ICAI that where the aggregate of payments or continuing payments by the buyer provide insufficient evidence of the buyer's commitment to make complete payment, revenue to the extent of actual realisation of the consideration should be recognized provided other conditions for recognition of revenue are satisfied. Therefore, in the instant case in absence of a specific finding by the Assessing Officer to the contrary and the fact that assessee has not realized the full sale consideration at the time of signing of the buyers agreement, a reasonable presumption can be drawn that the ultimate collection of the full amount of the sale consideration with reasonable certainty is lacking. Given that, the revenue recognition is to be postponed to the extent of uncertainty involved in terms of realisation of subsequent installments and the amount which has actually been realized/received during the year in respect of the advance received from customers should only be recognized in the financial statement as revenues accruing for the period, to the extent of percentage of work completed, following the percentage of completion method. In the instant case, for example, where the booking advance received is Rs 68,000 and the work has been completed to an extent of 45.73%, revenues to the extent of Rs 31,096 shall be recognized in the financial statements and the balance shall be carried forward to subsequent financial year.

40. Now, coming to another contention of the Id AR that as per the consistent accounting policy followed by the assessee, it is not

recognizing the revenue in respect of the advance received from customers. It was contended that advance received is said to accrue only when sale deed is registered and not on the basis of the plot buyer's agreement and reliance was placed on various Coordinate Bench and High Court decisions referred supra. In this regard, it is an admitted position of the assessee that it is following percentage completion method of accounting of recognition of revenues. Further, the litmus test of accrual of income under the mercantile system of accounting is the passing of risks and rewards of ownership to the buyers. Under the percentage completion method of recognition of revenues, the income is computed by deducting the cost incurred in reaching the stage of completion from the proportionate sale attributable to the work completed. Therefore, where under the plot buyer's agreement, where significant risk and rewards have been transferred to the buyers, the consideration so received to the extent of stage of completion of the project has accrued and will be subject to tax. By not offering the consideration in form of advance so received from the customers, the assessee cannot be said to be following the percentage completion method, rather it would be following project completion method. The Hon'ble Delhi High Court in case of Paras Builtech (supra) wherein decision of Hon'ble Gujarat High Court in case of Shivalik Buildwell reported in 40 Taxmann.com 219 was also relied upon, held that where the advances have been received during the year and not offered to tax following the project completion method, the same was certainly one of the recognized method of accounting, besides percentage completion method and where the same is consistently followed by the assessee, it should not be disturbed.

However, in the present case, where the assessee has admittedly chosen to follow the percentage completion method, it cannot be allowed to breach the very same method by not offering the advances so received during the year to tax and following a project completion method. The above said decisions therefore don't support the case of the assessee. Further, the decision of Hon'ble Gujarat High Court in case of Ashaland Corporation (supra) was rendered in the context of a dealer of land which had entered into an agreement with a housing society to sell certain plots of land and is thus distinguishable, as in the instant case, the assessee is not merely selling plots of land but has also undertaken carry out the development activities and is a developer. Similarly, other decisions of the Coordinate Bench have been rendered in their peculiar facts and circumstances of the case and are distinguishable.

41. Further, it is noted that in respect of revenues from executed sale deeds, the revenues have been recognized to the extent of work completed and the said principle will apply in respect of advances so received from the buyers. The assessee has therefore to maintain the consistency in its method of accounting where it is following percentage completion of method and within the said method, it cannot be allowed to make variation on the basis of plot buyers agreement and executed sale deeds so long as the basic parameters for recognition of revenues, as we have discussed above, have been fulfilled.

42. In light of above discussions, in respect of total advances actually received from the customers as on 31.03.2012 amounting to Rs

4,44,28,514 arising out and in respect of which plot buyers agreement has been executed, revenues to the extent of percentage of work completed (45.73%) which comes to Rs 2,03,17,159, following the percentage completion method has been rightly brought to tax by the Assessing officer and the order of the Id CIT(A) is set aside to this extent.

43. In the entirety of facts and circumstances of the case, following the percentage completion method, revenues, as per executed sale deeds amounting to Rs 2,11,38,286 and in respect of advances received from the customers amounting to Rs 2,03,17,159 arising out and in respect of which plot buyers agreement has been executed, shall be recognized for the year under consideration. There is no dispute regarding the cost incurred and expected to be incurred in future and which has been determined as a percentage of sale @ 44.27% at Rs 1,83,52,325 and after setting off the said cost, the profit chargeable to tax shall be Rs 2,31,03,120 as against Rs 3,43,13,700 determined by the AO.

44. The respective grounds of appeal filed by the assessee and revenue are disposed off accordingly.

ITA No. 172/JP/2017

45. In case of M/s Shakuntalam Colonisers Pvt. Ltd., for AY 2011-12, in ground no. 1, the assessee has challenged the action of Id. CIT(A) wherein the revenue on percentage completion basis has been

recognized in respect of advances received from the customers. Both the parties submitted that the facts and circumstances of the case are *pari materia* to the case of Vastukar Colonizer Pvt. Ltd in ITA No. 105 &119/JP/2017 hence our findings and directions contained in ITA No. 105/JP/2017 and 1119/JP/2017 shall apply *mutatis mutandis* to this appeal as well. The ground No. 1.1 was not pressed hence the same has been dismissed as not pressed.

ITA No. 106/JP/2017 & 120/JP/2017

46. In case of M/s Vastukar Colonizers Pvt. Ltd., for AY 2012-13, the similar grounds of appeal have been taken by the assessee and the revenue in respect of recognition of revenue for which registry has been executed and where advances have been received from the customers. The facts and circumstances of this case are *pari materia* to the facts and circumstances of the case in Vastukar Township Pvt. Ltd. in ITA No. 105 &119/JP/2017. Hence, our findings and directions contained in ITA No. 105/JP/2017 and 1119/JP/2017 shall apply *mutatis mutandis* to this appeal as well.

In the result, respective appeals of the assessee and revenue are disposed off with above directions.

Order pronounced in the open court on 22/12/2017

Sd/-
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

Sd/-
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/12/2017.

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Vastukar Township Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-2, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 105,119,172,106 & 120/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar