

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No. 419/Ind/2022**  
**(Assessment Year:2015-16)**

M/s. Parth Developers Manawar Dist. Dhar	Vs.	Pr. CIT-1 Indore
(Appellant / Assessee)		(Respondent/ Revenue)
<b>PAN: AALFP 4509 N</b>		
Assessee by	Shri Milind Wadhvani, AR	
Revenue by	Shri P.K. Mishra, CIT-DR	
Date of Hearing	22.06.2023	
Date of Pronouncement	28.07.2023	

**O R D E R**

**Per Vijay Pal Rao, JM:**

This appeal by the Assessee is directed against the revision order dated 28.11.2022 passed by Pr. Commissioner of Income Tax u/s 263 of the Act for Assessment Year 2015-16. The assessee has raised following grounds of appeal:

*“1.That on the facts and circumstances of the case and in law, the Learned Principal Commissioner of Income tax-1, Indore [“the PCIT] erred in invoking provisions of section 263 of the Income Tax Act, 1961 (the Act) and directing revision of the assessment order passed u/s. 143 (3) of the Act by the Income Tax Officer-Dhar, (the AO)”*

*2.That on the facts and circumstances of the case and in law, the Ld. PCIT has erred in passing the order u/s 263 on the alleged ground that the assessment order passed u/s. 143(3) was erroneous and/or prejudicial to the interest of the revenue.*

*3. That on the facts and in the circumstances of the case and in law, the Ld. PCIT erred in setting aside the order passed u/s. 143(3) by the assessing officer by invoking the provision of section 263 of the Act.*

4. *That on the facts and circumstances of the case order passed by the PCIT is illegal, bad in law and without jurisdiction.*
5. *The appellant craves leave to add, amend, alter vary and or withdraw any or all the above grounds of appeal.”*

4. The assessee is a partnership firm carrying business of Real Estate Developer. The assessee has filed its return of income on 01.10.2015 declaring total income of Rs.1,52,430/-. The case was selected for limited scrutiny through CASS. The assessment was completed u/s 143(3) on 27.12.2017 whereby the AO assessed the total income of assessee at Rs.39,85,295/-. Subsequently, ongoing through assessment record the Pr. CIT found that the certain points were not taken into consideration by the AO while completing assessment order u/s 143(3) dated 27.12.2017. The Pr. CIT noted that the AO passed assessment order without making required examination/investigation which has resulted assessment order being erroneous so far as prejudicial to the interest of the revenue. He has accordingly issued show cause notice u/s 263 on 02.03.2020. In the show cause notice the Pr. CIT has raised the issue of applicability of Percentage Completion Method as against the Project Completion Method adopted by the assessee. There was no response on behalf of the assessee to the notice issued by the Pr. CIT consequently the impugned order was passed by the Pr. CIT whereby the assessment order was set aside and matter was remanded to the record of the Assessing officer with direction to pass fresh assessment order on the line of the observation of the Pr. CIT. Aggrieved by the impugned order the assessee has filed present appeal.

5. The Ld. AR of the assessee has submitted that the assessee followed mercantile system of accounting and consistently following the Project Completion Method of accounting from year after year. The assessee offered the revenue for taxation in the year when the sales were made and sale deed were registered. This method of accounting has been accepted by the revenue in the preceding years of assessment. The assessee credited advance receipt against the booking of plot in separate account under the head advance against plot booking which are shown as liability in the

balance sheet. The revenue is recognized on the registration of sale deed. The case of the assessee was selected for limited scrutiny through CASS on three issue i.e. income from real estate business, sundry creditors, and sales turnover mismatch. During the limited scrutiny proceedings the AO issued notice u/s 142(1) raising various queries in respect of issues on which limited scrutiny was taken up. The assessee duly replied all the queries and produced all the relevant details and documentary evidences. The AO made disallowance u/s 43CA of the Act on account of transfer of plot of land by the assessee less than the value adopted by the stamp duty authority & addition on account of sundry creditors. Therefore, the AO has conducted a due inquiry in respect of the issues which were taken up for limited scrutiny. The Pr. CIT has invoked the provisions of section 263 on the ground that the AO has not examined the issue of applicability of Percentage Completion Method which was not subject matter of limited scrutiny proceedings. Thus, the Pr. CIT has committed an error in setting aside the assessment order by holding that the same is erroneous for want of inquiry on the point of applicability of the Project Completion Method. The Ld. AR has submitted that before the introduction of section 43CB vide Finance Act 2018 with retrospective effect 01.04.2017 the Percentage Completion Method was not mandatory for the Real Estate business. He has submitted that section 43CB is not applicable for the year under consideration and therefore, question of applicability of the Percentage Completion Method does not arise. He has further submitted that when the assessee has recognized the revenue from the sale of plots in the subsequent year and offered income to tax then this issue is revenue neutral. He has relied upon the decision of Coordinate Bench of Tribunal in the case of Ashoka Hi-tech Builders (P.) Ltd. vs. DCIT 96 taxmann.com 547 (ITAT, Indore) and Trident Estate P. Ltd. vs. ITO 127 taxmann.com 360 (ITAT, Bom). Ld. AR has further submitted that the deferment of tax as result of method is regularly and consistently employed by the assessee is not viewed adversely by Hon'ble Bombay High Court as well as Hon'ble Supreme court in case of CIT vs. Aditya Builders 378 ITR 75 (Bom) and in case of Excel Industries Ltd. 358 ITR 295(SC). Even otherwise the

appropriate accounting method is a matter method of opinion and debate not amenable to revisional jurisdictional u/s 263 as held by the Hon'ble Bombay High Court in case of CIT vs. Aditya Builders (supra).

6. The Ld. AR has vehemently contended that when the issue of applicability of the Percentage Completion Method was not subject matter of limited scrutiny then the order of the AO cannot be held as erroneous for want of conducting an inquiry on this issue. He has referred the CBDT Instruction No.7/2014 and submitted that the CBDT issued guidelines to the assessing officers not to exceed the jurisdiction under limited scrutiny. The CBDT again issued guidelines vide instruction dated 30.11.2017 to remind the assessing officers regarding the instruction for limited scrutiny and also expressed its concern about the exceeding of the jurisdiction by the AO in the limited scrutiny assessment.

7. Thus, the Ld. AR has submitted that the case of the assessee was subjected to limited scrutiny to examine the specific issues which were examined by the AO while passing the assessment order. The issue of applicability of Percentage Completion Method and correctness of the closing stock were not part of the scrutiny assessment proceedings and therefore, the Pr. CIT was not permitted to invoke the provision of section 263 of the Act on the ground that the order passed by the AO is erroneous for not conducting the inquiry on this issue. Ld. AR has also submitted that the assessee challenged the assessment order before the Ld. CIT(A) and the appeal was pending before first appellate authority. Therefore, the

jurisdiction of the Pr. CIT was barred when the assessment order was subject matter of the appeal before the Ld. CIT(A).

8. On the other hand, Ld. DR has submitted that the assessee is neither following the Project Completion Method nor Percentage Completion Method. Each assessment year is separate unit of assessment, therefore, the claim of revenue neutrality cannot be a ground for not following the proper method of recognition of the revenue. He has further submitted that the limited scrutiny was taken up for three issues which includes income from real estate business and sales turnover mismatch, therefore, issue of income from real estate business covers recognition of the revenue by adopting proper method of accounting. He has further submitted that the assessee has shown advance against booking of Rs.5.88 cr whereas the assessee has declared turnover of Rs.56 lac which is less than 10% of the advance booking. Therefore, the issues of sales turnover mismatch were also taken up for limited scrutiny. He has relied upon the impugned order of Pr. CIT.


9. We have considered the rival submissions as well as relevant material on record. The case of the assessee was selected for scrutiny under CASS for the issues as under:

1. Income from Real Estate Business
2. Sundry creditor
3. Sales Turn over mismatch

10. The AO issue notice u/s 142(1) on 22<sup>nd</sup> May 2017 and again on 8<sup>th</sup> August 2017 raising following queries as under:

(22)

ANNEXURE 04

  
कार्यालय आयकर अधिकारी, धार  
आयकर भवन, चाणक्यपुरी, धार

F.No.32/CASS/2017-18 1684 Date:08.08.2017

To,  
**M/s Parth Developers**  
249,13-14 Dawa Bazaar  
1<sup>st</sup> floor RNT Marg, Indore.

Sir/Madam,

In connection with the assessment for the A.Y. 2015-16 upon change of incumbent you are required to produce or cause to be produced before me at my office at O/o The Income tax officer, Chanakyapuri, Dhar on 08.08.2017 at 11.00 A.M. documents specified below:


1. Please explain in brief nature of your business during the year under consideration.
2. Please furnish copy of agreement/ deed for purchase of land for development of colonies in following format.

S.No.	Address of land in question	Date of purchase	Measurement of land	Amount of purchase

Copy of agreement for land purchase where advances are paid are also required to be produced.

3. Please furnish copy of plan (MAP) for development plan of colony.
4. Please explain in brief alongwith substantial evidences, development expenses claimed by you.
5. Please explain method of valuation of closing stock.
6. Please furnish details of purchaser of plot/land in the following format

S.NO.	Name of purchaser of land/plot	Address	PAN	Measurement of plot	Amount of purchase



23

It is also requested to produce copy of agreement for booking of plot/flat/house.

7. Please furnish list of sundry creditors in following format.


S.No.	Name, complete address and PAN of creditor	Opening balance	Addition during the year	Closing balance

8. Please provide details of bank account in the following format

S.No.	Name and address of branch	Account no.	Type of account	Closing balance.

9. Please produce copy of Sales tax return/VAT return for the year under consideration.



  
(ARUN KUMAR SHARMA)  
Income Tax Officer, Dhar.  
अरुण कुमार शर्मा  
आकर अधिकारी  
धर (म. प्र.)

8 COPY

11. The assessee vide reply dated 14.09.2017 furnishing the relevant details including purchase and sale of the plots during the year, bank account details & list of sundry creditors. The assessee also furnished vide reply dated 22.12.2017 the copy of ledger account confirmation from the sundry creditors and details of cost of construction (project wise). The details of sundry creditor and advance against booking of the plot are also part of the balance sheet as given in the schedule being forming part of the balance sheet. All the relevant records were available before the AO

while conducting scrutiny assessment. The Pr. CIT in the show cause notice issued u/s 263 as taken up the issues as under:

*“2. In this regard, it is stated that an assessment order u/s 143(3) for A.Y. 2015-16 was passed on 27/12/2017 determining total income at Rs. 39,85,295/- by the Assessing Officer [Income Tax Officer, Dhar] in your case.*

*3. On perusal and examination of assessment records, it is found that aforesaid order appears to be erroneous as well as prejudicial to the interest of revenue on account of passing the order without making proper enquiry/investigation by the Assessing Officer in levying the correct tax for following reasons-*

*It is observed that your firm is engaged in business of real estate. Having gone through the records, AS-7 deals accounting of construction contracts, whereas AS-9 deals with revenue notes on accounting of real estate transaction in year 2012. This guidance note is based on the principles laid down in AS-7 and that of revenue recognition in AS-9. This guidance note lays down the guidelines on the applicability and method to invoke percentage of completion method. Your firm is clearly in the nature of that of a real estate developer and hence the case should have been examined from the angle of/ applicability of POCM in general and in particular guidance note issued by ICAI. Your firm ought to have returned the real income based on the principle revenue recognition to avoid deferment of taxes. The AO should have examined the provisions of section 145(3) and inter alia with the correctness and completeness of accounts as working of the closing stock was not found placed on record so as to ascertain the basis of the same”.*

*4. The AO has not examined these facts/issues and no enquiries/investigations have been made. Therefore, the assessment order passed by the AO appears to be erroneous in so far as it is prejudicial to the interest of the revenue. You are, therefore, required to show cause why provisions of section 263 be not invoked in your case for the reasons mentioned above.*

*5. You are, accordingly, given an opportunity to attend my office on 07.03/2020 at 12:30 P.M. and produce necessary evidences, explanation, etc. in support of your contentions and arguments. If you fail to attend the hearing, it shall be presumed that you have nothing to say in the matter and order u/s 263 shall be passed on merit and on the basis of facts available on record.”*

12. It is manifest from the show cause notice that the commissioner has invoked provisions of section 263 of the Act on the issue of applicability of



the Percentage Completion Method as against Project Completion Method adopted by the assessee. The Pr. CIT has finally opined as under:

*“3. I have carefully considered the facts of the case and the earlier written submission of the assessee available on assessment records. It is observed from the submission that the case was selected for verification whether assessee has adopted percentage completion method in view of real estate business with high closing stock. It is also observed that the assessee is a real estate builder and developer engaged in the business of real estate and colony development and sale of plots. AS-7 deals accounting of construction contracts, whereas AS-9 deals with revenue notes on accounting of real estate transaction in year 2012. This guidance note is based on the principles laid down in AS-7 and that of revenue recognition in AS-9. This guidance note lays down the guidelines on the applicability and method to invoke percentage of completion method. The assessee firm is clearly in the nature of that of a real estate developer and hence the case should have been examined from the angle of applicability of POCM in general and in particular guidance note issued by ICAI. The assessee firm ought to have returned the real income based on the principle revenue recognition to avoid deferment of taxes. The AO should have examined the provisions of section 145(3) and inter alia with the correctness and completeness of accounts as working of the closing stock was not found placed on record so as to ascertain the basis of the same. The failure of the AO to make necessary inquiry and investigation resulted in assessing the income at lesser value. Therefore, the assessment order passed by the AO for the A.Y. 2015-16 on 27.12.2017 is not only erroneous but also prejudicial to the interests of the Revenue.”*

13. Thus, the order of the AO was held as erroneous so far as prejudicial to the interest of the revenue on the ground that the AO has not examined applicability of the Percentage Completion Method. It is pertinent to note that the method of accounting was not subject matter of limited scrutiny taken up through CASS. Further, the Percentage Completion Method has been made compulsory for the real estate business vide amendment by Finance Act 2018 whereby section 43CB was introduced w.e.f. 01.04.2017. Prior to the said amendment it was not mandatory for the real estate business to apply Percentage Completion Method as for the year under consideration the newly inserted section 43CB is not applicable. The ld. AR of the assessee has relied upon the

decision of Coordinate Bench of ITAT, Indore in case of Ashoka Hi-tech Builders (P.) Ltd. vs. DCIT (supra) on this point wherein the tribunal has specifically discussed this issue as under:

*“42. Before parting of with adjudication of this issue it would be relevant to take note of the amendment brought in statute with retrospective effect w.e.f 1.4.2017 by way of insertion of Section 43CB for the purpose of computation of income from construction and service contract. The relevant provision of Section 43CB of the Act reads as follows:*

*43CB. Computation of income from construction and service contracts.-(1) The profits and gains arising from a construction contract or a contract for providing services shall be determined on the basis of percentage of completion method in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:*

*Provided that profits and gains arising from a contract for providing services:-*

*(i)with duration of not more than ninety days shall be determined on the basis of project completion method;*

*(ii) involving indeterminate number of acts over a specific period of time shall be determined on the basis of straight line method.*

*(2) For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1):-*

*(i)the contract revenue shall include retention money;*

*(ii) the contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains”.*

*43. From the perusal of above section it is crystal clear that before the insertion of this section there was no legal obligation on the part of the assessee to follow percentage completion method only. Before insertion of this section person engaged in construction and service contracts were free to follow either the project completion/ Completed project method or percentage completion method in accordance with the provisions of Section 145 of the Act. In the instant appeal assessee even though not directly involved in the construction activity and it is merely gave its land for development and it was agreed between the assessee-company and the developer that 32% of the saleable area shall be given to the assessee. The assessee is constitutently followed completed project contract/percentage*

*completion method as recognized its revenue at the time of execution of getting the sale deed registered and before that it has to be consistently showing the advance from sale of flats as the liability in the balance sheet.”*

14. Even otherwise when the legislature has specifically stated that this amendment is applicable w.e.f. 01.04.2017 then the same cannot be applied for A.Y.2015-16. Therefore, we concur with the view of the Coordinate Bench of this Tribunal on this point.

15. Having held that the provision of section 43CB are not applicable for the year under consideration the question arises is whether the AO can go beyond the subject matter of limited scrutiny while passing the assessment order. The answer to this question is certainly not without converting the limited scrutiny into complete scrutiny. Therefore, in case the AO proceeded within the scope of limited scrutiny and not taken up any issue beyond the scope of limited scrutiny the same can be held to be erroneous for lack of inquiry. The CBDT issued instruction No.5 of 2016 dated 14.07.2016 and specifically clarified the scope of limited scrutiny in para 4 as under:

*“4. It is further clarified that in cases under Limited Scrutiny, the scrutiny assessment proceedings would initially be confined only to issues under Limited Scrutiny and questionnaires, enquiry, investigation etc. would be restricted to such issues. Only upon conversion of case to 'Complete Scrutiny' after following the procedure outlined above, the AO may examine the additional issues -besides the issue(s) involved in 'Limited Scrutiny'. The AO shall also expeditiously intimate the taxpayer concerned regarding conducting Complete Scrutiny' in such cases.”*

16. Thus, the scope of limited scrutiny has been explained by the CBDT and it was advised to the assessing officers not to travel beyond the jurisdiction while making assessment of limited scrutiny cases. The CBDT again expressed its concern on the point of exceeding the jurisdiction and scopes of limited scrutiny by AO's vide instruction dated 30.11.2017 in para 3 & 4 as under:

*“3. Instances have come to notice of CBDT where some Assessing Officers are travelling beyond their jurisdiction while making assessments in Limited Scrutiny cases by initiating inquiries on new issues without complying with mandatory requirements of the relevant CBDT Instructions dated 26.09.2014, 29.12.2015 and 14.07.2016. These instances have been viewed very seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of allegations of several irregularities. Amongst other irregularities, it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. This gave rise to a very strong suspicion of mala fide intentions. The Officer concerned has been placed under suspension.*

*4. In view of discussion in the preceding paragraphs it is once again reiterated that the Assessing Officers should abide by the instructions of CBDT while completing limited scrutiny assessments and should be scrupulous about maintenance of note sheets in assessment folders.”*

17. Thus, it is not open to the AO take up any issue which is not subject matter of the limited scrutiny until and unless the limited scrutiny is controverted into complete scrutiny. Hence not conducting an inquiry on the issue beyond subject matter of limited scrutiny would not be considered as lack of inquiry on the part of the AO so as to render the order of the AO erroneous so far as prejudicial to the interest of revenue. Even otherwise the Project Completion Method of accounting is well recognized and accepted method and if the assessee is following this method regularly and consistently then the revenue cannot force the assessee to adopt different method not mandated by statute. The coordinate bench of this tribunal in case of *Ashoka Hi-tech Builders (P.) Ltd. vs. DCIT (supra)* after following the binding precedents of Hon'ble Supreme Court and various High Courts has held as under

*“28. Now the issue as to whether a person is mandatorily required to adopt percentage completion method o The method of accounting is governed by section 145 of the Act and as per section 1482) of the Act the income is to be computed in accordance with either cash or mercantile system of accounting to be regularly employed. This sub-section further empowers Central Government to notify the accounting standards to followed by any case of assessee or in respect of clause*

from time-to-time and sub-section 3 of section 145 empowers the Assessing Officer to make the assessment of the assessee in the manner provided under section 144, in case he is not satisfied about the correctness or completeness of the assessee or where the method of accounting have not been regularly followed by the assessee, Once the assessee followed accounting regularly the Assessing Officer is bound to assess the income of the assessee on the basis of such method of accounting On perusal of the provision of section 145 shows that it nowhere empowers the authorities to assess the income on the basis of method of accounting followed by another assessee nor does it empower the authorities to thre upon the assessee to adopt the method of accounting followed by mother assessee. In the instant appeal both the lower authorities have rejected the books of account of assessee and applied the percentage completion method adopted by the developer JSM DPL and computed the income accordingly. Whether soch action of the revenue authorities is justified or not needs to be examined in light of the jurisdictional pronouncements. 29. We find that Hon'ble Supreme Court in case of Investment Ltd. (supra), where their Lordships have heldy that "assessee is free to employ for the purpose of his trade, his own method of keeping accounts, and for they purpose to value his stock-in-trade either at cost or at market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation. The method of accounting regularly employed may be discarded only, if, in the opinion of taxing authorities, income of the trade cannot be property deduced there from (as per provisions of 1922 Act in force at that time, presently only if case falls in sub section (3) of section 145).

30. Further in another judgment of Hon'ble Supreme Court in the case of Krishnaswami Mudaliar (supra), their Lordship's of Apex court while dealing provisions of section 13 of 1922 Act (the provisions of which are in parimateria of section 145 of 1961 Act) have held as under "Section 13 of 1922 Act merely prescribes that the computation of taxable profits shall be made according to the method of accounting regularly employed. Where in the opinion of the ITO the income, profits and gains cannot be properly deduced from the method of accounting, it is open to ITO to compute the income upon such basis and in such manner as he may determine".

Comparing the provisions with the English provisions, it is held:

"the only departure made by section 13 of 1922 Act from tax legislation in England is that whereas under English legislation the commissioner is not obliged to determine profits of a business venture according to method of accounting adopted by the assessee, under the Indian Income Tax Act, prima facie, the ITO has for purposes of sections 10 & 12 of 1922 act to compute income, profits and gains in

*accordance with method of accounting regularly employed. If, therefore, there is a system of accounting regularly employed and by appropriate adjustments from the accounts maintained taxable profits may be properly deducted the ITO is bound to compute profit in accordance with method of account, but wherein the opinion of ITO the profit cannot be properly deducted from the system of accounting adopted by the assessee is it open to him to adopt a more suitable basis for computation of true profits.*

*Their Lordship then also dealt with method of accounting and observed as under:-*

*among Indian businessmen as elsewhere, there are current two principle systems of book keeping, there is, firstly, the cash system in which record is maintained of actual receipts and actual disbursements, entries being posted when money or money's worth is actually received, collected or disbursed. There is secondly, mercantile system in which entries are posted in the books of account on the date of transaction is on the date on which rights accrue or liabilities are incurred irrespective of the date of payment."*

*31. Further in the decision of the coordinate Bench, ITAT Allahabad Bench in the case of Mahabir Jute Mille (upra) as also on the decision in the case of Advance Construction Company (P) Ltd. (upra), where their Lordships have reiterated position that choice of accounting method lies with that of assesses, the only caveat being that it has to show that the chosen method has been regularly followed. The section is couched in mandatory terms and the department is bound to accept the assessee's choice of method regularly employed except for the situation wherein the AO is permitted to intervene, in case it is found that true income profits and gains cannot be arrived at by the method employed by assessee. Their Lordship's further held that the position of law is further well settled that regular method adopted by assessee cannot be rejected merely because it gives benefit to assessee in certain years.*

*32. Examining the facts of instant appeal we in light of above judgments we find that the method of accounting along with following project completion method for treatment of advances received from proposed buyers the assessee has been consistently followed this method and appellant's assessment has been completed by the Ld AO for first two years Viz, AYS, 2010-11 & 2011-12, In both these years also the appellant has credited the advance received against proposed sales of flats to a separate account and shown as a liability in balance sheet At this stage it may be relevant to mention that in those years also the appellant has credited the advance received against proposed sale of flats to the Advance against sale of Flat Aler and not treated the same as income for said years on the basis that revenue in respect of sale of said flats would be recognized only*

*execution and registration of sale deeds of flats. The assessment of the said years have been completed by AD by the same common order, accepting the method of accounting and method of recognition of revenue. Thus the method followed by appellant is a consistent method which has been accepted by AO for two years Le AYS. 2010-11 & 2011-12 Since the said method has been consistently followed by appellant and even accepted by department, the same cannot be deviated in the present two years without there being any finding as contemplated u/s 145(3) on the basis of satisfaction required by that section viz, (1) about correctness or completeness of the accounts of the assessee or (2) about the fact that the assessee has not regularly employed the method of accounting provided in sections 145(1) or (3) that the income has not been computed in accordance with the standards notified u/s 145(2).*

*33. Now it is an admitted fact based on the financial statement and audited reports for 2010-11 and 2011-12 accepted by the revenue authorities in the assessment proceedings w/s 143(3), read with respect of 153(A) of the Act that the assessee has been consistently following project completion method/completed contract method for the treatment of advances received from proposed buyers through developer JSM DPL. In the light of the above fact we observe that Hon'ble Gujarat High Court in the case of Manjusha Estates (P) Ltd. (supra) adjudicating similar issue i.e. "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in rejecting the project completion method which was followed consistently by the assessee and instead applying work-in-progress method and taxing 80 per cent. Thereon as net profit held that as assessee has followed the method which is consistent considering the decision in the case of CIT v Shivalik Buildwell (P) Ltd. [2013] 40 laxmann.com 219/12014] 220 Taxman 3 (Mag) (Guj.) and CIT v. Umang Hiralal Thakkar [2014] 42 Laxmann.com 194/226 Taxman 28 (Mag.) (Guj) and therefore this court is are of the opinion that the view taken by the Tribunal and the Commissioner of Income Tax is not correct. Issue decided in favour of assessee.*

*34. Further the Hon,ble High Court of Gujarat in the case of CIT v Shivalik Buildwell P Ltd (2013) 40 taxmann.com 219 (Guj.) dealing with the similar issue observed as follows;*

*"On the Revenue's appeal, the Tribunal confirmed the view of the Commissioner of Income Tax (Appeals), however, on slightly different ground, namely, that the assessee being a developer of the project, profit in his case, will arise on transfer of title of the property and receipt of any advances or booking amount cannot be treated as trading receipt of the year under consideration. The Tribunal further noted that such method of accounting followed by the assessee had been accepted by the Revenue in earlier years. The Tribunal was, therefore, of the opinion that the Assessing Officer's decision to reject*

*the book results during the year under consideration was not justified.*

*We are of the opinion that the Tribunal committed no error. If as per the accounting standard available, the assessee was entitled to claim the entire income on completion of the project and if such accounting standard was accepted by the Revenue in the earlier years, in the present year, the Assessing Officer could not have taken a different sand and that too, without hearing the assessee".*

*Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016*

*35. Further in another judgment by CIT Vs. Umang Hiralal Thakur (2014) 42 taxmann.com 194 (Guj) is placed on the following paragraphs of its judgment.*

*"In the present case, it is not the Assessing Officer's case that the appellant is not reporting or under reporting its income. In fact, I find in the subsequent assessment year, i.e. the assessment year 2007-08, the appellant has disclosed substantial income from the projects undertaken in the business proprietary concerns, viz, M/s. Neelkanth Enterprises, M/s. Ghanshyam Enterprises and M/s. Swaminarayan Enterprises. In the subsequent year, i.e. the assessment year 2007-08 the profit declared from the projects run by these three proprietary concerns ranges from 43 per cent to 46 per cent. The Supreme Court in the case of [Sanjeev Woolden Mills v. CIT](#) (supra), has clearly held that to attract the proviso to section 145(1) of the Act, the Assessing Officer should be of the view that the accounts are correct and complete but the method employed is such that the income cannot be properly deduced there from. The choice of method of accounting regularly employed by the assessee lies with the assessee but the assessee would be required to show that he has followed the chosen method regularly. The Department is bound by the assessee's regular method would not be rejected as improper merely because it gives the assessee the benefit in certain years or that as per the Assessing Officer, the other method would have been more preferable. If the method adopted does not afford true picture of profit, it would be rejected, but then such rejection should be based on cogent evidence and should be done with caution.*

*In the present case, the appellant has declared substantial profits on the basis of project completion method in the subsequent years. In construction, the project completion method and percentage completion methods, both have also been recognized by the Central Board of Direct Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 Taxes in the instruction No.4 of 2009 dated June 30, 2009. Therefore, the Assessing Officer is not considered justified in bringing to tax the profit of Rs.1,66,70,811 in*



*the year under consideration, particularly when such profits have already been offered to tax by the appellant in the assessment year 2007-08. The addition of Rs.1,66,70,811 are directed to be deleted".*

*36. Further the co-ordinate Bench of Ahmedabad Tribunal in the case of Vraj Developers passed in ITA No.19/AHD/2008 which attained finality as it is not challenged by the department before the high forum observed as follows;*

*"The learned Departmental representative supported the order of the learned Assessing Officer and the learned authorized representative of the assessee supported the order of the learned Commissioner of Income-*

*tax (Appeals) and also placed reliance on the Bangalore Bench of the Tribunal in the case of [Nandi Housing P. Ltd v. Deputy CIT](#) (2003) 80 TTJ (Bang) 750, wherein the Tribunal followed the decision of the Karnataka High Court in the case of Khoday Distillers Ltd, in ITRC Nos. 19 to 21 of 1993. This, it is observed that the issue which requires our adjudication is that the income in the instant case is to be computed as per system of accounting followed by the assessee or as per accounting followed by the assessee or as per accounting standard AS7 for the purpose of charging of income tax. We find that the issue is to be decided in accordance with the provisions of [section 145](#) of the Act shows that 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. Thus, in our considered opinion, the option for choosing the system of account is with the assessee and not with the learned Assessing Officer provided the Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 system chosen by the assessee is consistently followed by him and such system is not a defective system. In our considered view, provisions of AS7 cannot override the provisions of [section 145](#) in so far as the computation of business income under the [Income Tax Act](#) for the purpose of determining income is concerned. In the instant case, we find that the learned Assessing Officer has brought no 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. In our considered view, even a project completion method is also a recognized system of accounting. Simply the Institute of Chartered Accountants of India has recommended the percentage completion method does not mean that project accounting or the same is a defective system of accounting. The learned Commissioner of Income-tax (Appeals) has recorded a finding after pursuing the assessment records of the subsequent years that the assessee has offered for taxation its income in the subsequent year as per the consistent*

*system of accounting followed by the assessee. The learned Departmental representative could not point out any error in the above finding of the learned Commissioner of Income-tax (Appeals). In view of the above discussion, we do not find any error in the order of the learned Commissioner of Income-tax (Appeals) and therefore, the same is upheld and the appeal of the Revenue is dismissed.*

*It is reported that the decision of Appellate Tribunal in the case of Vraj Developers (supra) has attained the finality as the said decision is not challenged by the Department before higher forum. In view of the above and more particularly, when it has been found that the assessee is consistently following the accounting system of percentage completion method, which is permissible and accepted by ICAI and the Central Board of Direct Taxes with respect to construction work, it cannot be said that the learned Appellate Tribunal has committed any error/ or Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 illegality, which call for the interference of this court. We see no reason to see to interfere with the impugned judgment and order passed by the learned Commissioner of Income tax (Appeals) deleting the addition of Rs.1,66,70,881 which was made by the Assessing Officer on rejecting the accounting system on percentage completion method followed by the assessee. No question of law much less any substantial question of law arise in the present appeal. Hence, the present appeal deserves to be dismissed and is accordingly dismissed."*

*37. We further find the co-ordinate bench of Mumbai in the case of Prem Enterprises V Income Tax Officer (2012) 25 taxmann.com 179 (Mum.) deal with the similar issue wherein the assessee was constructing a project and was consistently following project completion method and the assessing officer rejected the method of project completion adopted by the assessee on observing that 8% of the total project has been incurred up to the relevant assessment year the income should have declared on the percentage completion method. The Co-ordinate Bench decided in favour of the assessee holding that the results declared by the assessee on the basis of method of accounting consistently followed and the entire profit of the project has been offered in subsequent assessment year therefore there is no justification in rejecting the method of accounting followed by the assessee and substituting the same by adopting accounting AS-7 issued by ICAI and followed it for accounting.*

*38. Similarly Hon'ble High Court of Punjab & Haryana in the case of [Commissioner of Income Tax \(Central\), Gurgaon V. Principal Officer, Hill View Infrastructure \(P\) Ltd](#) (2017) 81 taxmann.com 58 (Punjab & Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 Haryana) order dated 13.8.2015 confirmed the view taken by the Tribunal deciding in favour of the assessee relating to the issue of the project completion method adopted by the assessee*

*vis-à-vis percentage completion method applied by us, the Assessing Officer observing as follows;*

*"The assessee in reply to the query raised by the Assessing Officer had inter alia claimed that it had been consistently following method of booking of the revenue on the completion of the flat when full payment had been made to it by the person concerned and possession was delivered to him. It was pointed out that neither Accounting standard 9 (AS 9) or Accounting Standard 7 (AS 7) issued by the Institute of Chartered Accounts of India has been recognized by the Act and in such circumstances, there was no guidance or strict procedure for adopting a particular accounting standard under the /act and it depends upon facts and circumstances of each case. In other words, the assessee was entitled to adopt Project Completion method for determining its income which was being regularly followed by it. Though the Assessing Officer had rejected the plea of the assessee, but the CIT(A) while accepting the appeal of the assessee made the following observations:-*

*"It is however not the AO's case that the profits have been distorted by following the project completion method. The impugned order is also silent as regards the position of the books of account. In other words the books have not been rejected, nor any defects pointed out. In the case of [CIT vs. Bilahari Investment \(P\) Ltd](#) (2008) 299 ITR 1 SC, the Apex Court held that the completion contract method adopted by the assessee for chit discount consistently over the years, is not required to be substituted by percentage completion method. In *CIT v Manish Buildwell (P) Ltd* (2011) 245 CTR 397 (Del), it was enunciated that project completion method is one of the recognized methods of accounting. That *Ashoka Hi-Tech Builders Pvt.Ltd* ITA No.121/Ind/2016 &686/Ind/2016 it cannot be said that the project completion method followed by the assessee would result in deferment of payment of taxes.*

*Therefore, considering the discussion above, I do not find any merit on the part of the AO to have worked out the income by applying the percentage completion method".*

*The Tribunal affirmed the order of the CIT(A). It was concluded that project completion method and percentage completion method are accepted standards of accounting and the assessee has option to adopt any one of them. The relevant findings recorded by the Tribunal read thus:-*

*"We have heard the rival contentions and perused the record. The issue arising in the present appeal before us is in relation to the method to be applied for recognizing the revenue generated by the assessee in the course of carrying on the business of real estate developers. The case of the assessee is that it is following one of the*

*accepted accounting standards approved by ICAI for recognizing the revenue generated by it. The assessee had followed project completion method which had been consistently followed by the assessee for the preceding years also. The Assessing Officer on the other hand, had applied percentage completion method to compute the income in the hands of the assessee. The Commissioner of Income Tax (Appeals) had allowed the claim of the assessee.*

*Both the methods of accounting are i.e. project completion method and percentage completion method is accepted standards of accounting and either of the methods can be applied by the assessee. In the facts of the present case before us, the assessee had chosen to compute its income on the basis of project completion method i.e. recognizing the income on the completion of the project and not from year to year whereas the case Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 of the revenue was that it should account for the income as it is generated in the hands of the assessee i.e. from year to year on the basis of the work completed being relatable to the revenue generated from year to year.*

*The Hon'ble Supreme Court in CIT Vs. Bilahari Investment (P) Ltd (supra) had held that "recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. Completed contract method is one such method. "It was further held that "Every assessee is entitled to arrange its affairs and follow the method of accounting which the Department has earlier accepted. It is only on those cases where the department records a finding that the method adopted by the assessee results in distortion of profits, the Department can insist on substitution of the existing method".*

*Applying the above said principles to the facts of the present case we find that the assessee before us has been following the systematic method of accounting from year to year which has been accepted by the department and no defects have been pointed out by the department in the method of accounting adopted by the assessee and thus, there is no reason to reject the same.*

*The Hon'ble Delhi High Court in CIT v Manish Buildwell (P) Ltd (supra) had held that "It is well settled that the project completion method is one of the recognized methods of accounting. It cannot be said that the projection completion method followed y the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the [IT Act](#). AS-7 issued by the ICAI also recognizes the position that in the case of construction contracts, the assessee can follow either the project completion method or the percentage completion method."*

*Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 Where the assessee was following a particular method of accounting consistently, which has been accepted by the department from year to year and in the absence of any defect being pointed out by the Assessing Officer that by following such method, income had escaped assessment, we find no merit in the order of the Assessing Officer in holding that percentage completion method should be applied to the assessee for the year under consideration. It is the prerogative of the assessee to arrange its affairs in such a manner and follow any recognized method of accounting to compute its profits. In view thereof, we find no merit in the order of the Assessing Officer in recomputing the income in the hands of the assessee. Upholding the order of Commissioner of Income Tax (Appeals), we dismiss ground of appeal raised by the revenue".*

*The Delhi High Court in CIT v Manish Build Well (P) Ltd (2011) 16 taxmann.com 27(2002) 204 Taxman 106 noted that project completion method is one of the recognized methods of accounting. It was held as under:-*

*"It is well settled that the project completion method is one of the recognized methods of accounting. It cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the [IT Act](#)"*

*The assessee respondent had been consistently following one of the recognized methods of accountancy, i.e project completion method, for computation of its income. In the absence of any prohibition or restriction under the Act for doing so, it cannot be held that the approach of the CIT(A) and the Tribunal was erroneous or illegal in any manner so as to call for interference by this Court. No substantial question of law arises. Consequently, finding no merit in these appeals, the same are dismissed."*

*Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016*

*38. It is well settled that the project completion method is one of the recognized methods of accounting. In CIT v Hyundai Heavy Industries Co. Ltd (2007) 291 ITR 482/ 161 Taxman 191 (SC) the Supreme Court held as follows:-*

*"Lastly, there is a concept in accounts which is called the concept of contract accounts. Under that concept, two methods exist for ascertaining profit for contracts, namely, "completed contract method" and "percentage of completion method". To know the results of his operations, the contractor prepares what is called a contract account which is debited with various costs and which is credited with*

revenue associated with a particular contract. However, the rules of recognition of cost and revenue depend on the method of accounting. Two methods are prescribed in Accounting Standard No.7. They are "completed contract method" and "percentage of completion method".

39. This view was reiterated by the Supreme Court in [CIT v. Bilahari Investment \(P\) Ltd.](#) (2008) 299 ITR 1/168 Taxman 95 with the following observations:

*"Recognition/identification of income under the 1961 Act is attainable by several methods of accounting. It may be noted that the same result could be attained by any one of the accounting methods. The completed contract method is one such method. Similarly, the proceedings of completion method is another such method.*

*Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 Under the completed contract method, the revenue is not recognized until the contract is complete. Under the said method, costs are accumulated during the course of the contract. The profit and loss is established in the last accounting period and transferred to the profit and loss account. The said method determines results only when the contract is completed. This method leads to objective assessment of the results of the contract.*

*The On the other hand, the percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under this method is determined by reference to the stage of completion of the contract. The stage of completion can be looked at under this method by taking into consideration the proportion that costs incurred to date bears to the estimated total costs of contract.*

*The above indicates the difference between the completed contract method and the percentage of completion method." (underlining ours)*

40. After the above judgments of the Supreme Court it cannot be said that the project completion method followed by the assessee would result in deferment of the payment of the taxes which are to be assessed annually under the [Income Tax Act](#). Accounting Standards 7 (AS7) issued by the Institute of Chartered Accountants of India also recognize the position that in the case of construction Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 contracts, the assessee can follow either the project completion method or the percentage completion method. In view of the judgments of the Supreme Court (Supra), the finding of the CIT(A), upheld by the Tribunal, does not give rise to any substantial question of law. Further, the Tribunal has also found that there was no justification on the part of the assessing officer to adopt the percentage completion method for one year(the year under appeal) on selective basis. This

*will distort the computation of the true profits and gains of the business. For these reasons, we are of the view that no substantial question of law arises. We, therefore, decline to admit question Nos. 2 and 3."*

*41. From perusal of all the judgments it has been consistently held rather a settled law that the action of revenue authorities cannot be held justified if they substitute another method of accounting on the assessee which in the instant case was imposing of percentage completion method on the assessee even when it has been consistently maintaining the regular books of accounts on mercantile basis u/s 145 of the Act adopting project completion method to account for the revenue and the revenue authorities have failed to bring forth any inconsistency in the books of accounts. The Assessing Officer in the instant case has merely applied the method of percentage completion adopted by the Developer JSM DPL and calculated the income of the assessee completely ignoring the fact that the assessee was merely the owner of land and he was entitled to 32% of saleable area only on completion of construction and the deadline of which was 60 Ashoka Hi-Tech Builders Pvt.Ltd ITA No.121/Ind/2016 &686/Ind/2016 months from the date of agreement i.e. from 1.4.2009. The Ld.A.O also ignored the fact that right to sale its share of constructed area with the assessee was only from April, 2014 onwards and the assessee has offered the revenue for taxation from F.Y 2014-15 onwards as and when the sale deed has been registered. As held by various courts as discussed above that the method of adopting project completion method is not ultra virus and the assessee is free to adopt either the percentage completion method or project completion method with the only rider that it should be consistently adopted and in case of any deviation the effect of profit or loss should be offered to tax as the case may be. Revenue has not disputed this fact that assessee has offered the impugned advances to tax in the subsequent years i.e. from financial year 2014-15 based on sale deed registered which proves that there has been no loss to the revenue. Mere postponement of tax as a result of method employed by assessee has not been viewed adversely by courts so long as the method is regularly and consistently employed as held by Hon'ble Apex Court in the case of Excel Industries Ltd (2013) 358 ITR 295."*

18. Therefore, when the assessee is consistently following the Project Completion Method which is not prohibited by law the acceptance of the same by the AO cannot be held as erroneous decision on the part of the AO and consequently the Pr. CIT cannot invoke the provisions of section 263 of the Act on a claim which is *bona fide* and a possible view not prohibited by law. Accordingly, in the facts and circumstances of the case

and following the decision of Coordinate Bench in the case of *Ashoka Hi-tech Builders (P.) Ltd. vs. DCIT (supra)* we hold that the impugned order passed u/s 263 of the Act is not sustainable in law and liable to be set aside. We order accordingly.

19 In the result, appeal of assessee is allowed.

Order pronounced in the open court on 28.07.2023.

**Sd/-**

**(B.M. BIYANI)**  
Accountant Member

**Sd/-**

**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 28 .07.2023**

**Patel/Sr. PS**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore*