(2015) 09 BOM CK 0003

In the Bombay High Court

Case No : Income Tax Appeal No. 1738 of 2013

Commissioner of Income Tax — APPELLANT

Vs

Aditya Builders — RESPONDENT

Date of Decision : 14-09-2015

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 260A, 263

Citation : (2015) 378 ITR 75

Hon'ble Judges : M.S. Sanklecha and G.S. Kulkarni, JJ.

Bench : Division Bench

Advocate : A.R. Malhotra and N.A. Kazi, Advocates, for the Appellant; Sanjiv M. Shah, Advocate, for the Respondent

Judgement

1. This appeal filed under section 260A of the Income-tax Act, 1961 ("the Act") challenges the order dated February 6, 2013 (Aditya Builders v. CIT (Admn.) , [2013] 25 ITR (Trib) 77 (Mumbai)), passed by the Income-tax Appellate Tribunal ("the Tribunal"). The assessment year involved is the assessment year 2007-08.

2. The Revenue has raised following questions of law for our consideration:

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the assumption of jurisdiction under section 263 of the Act by the Commissioner of Income-tax is not valid and that the assessee has not committed any legal error by uniformly and consistently following ''project completion method'' when he should have followed ''percentage completion method'' as per Accounting Standard 9?

(2) Whether, on the facts and the in circumstances of the case, the Tribunal was justified in law in not appreciating that the order passed by the Assessing Officer in this case is prejudicial to the interests of the Revenue as the assessee has not recognised revenue as per Accounting Standard 9 from its Link Comer Project which was 88.78 percent, complete in which case, the Assessing Officer should have recognised the revenue from this project?"

3. The respondent-assessee is engaged in construction of commercial and residential premises. For the subject assessment year 2007-08, the respondent filed return of income declaring income of Rs. 1.51 crores. The Assessing Officer also in the course of assessment noticed that the respondent-assessee was undertaking two construction projections, namely, Link Corner Project and Gym View Project following the project completion method of accounting. Further, the Gym View Project was completed in the subject assessment year and it''s profits were offered to tax. The Assessing Officer completed the assessment under section 143(3) of the Act on July 13, 2009, determining the total income at Rs. 1.58 crores.

4. On March 27, 2012, the Commissioner of Income-tax (the "Commissioner") in exercise of his powers of revision under section 263 set aside the order dated July 13, 2009, of the Assessing Officer and directed him to recompute the income of the respondent-assessee in respect of the Link Corner Project by applying the percentage completion method. However the profits disclosed by applying the project completion method in the case of Gym View Project was not disturbed.

5. Being aggrieved, the respondent-assessee filed an appeal before the Tribunal. The Tribunal by the impugned order held that the respondent-assessee has been consistently following the project completion method over the years. Further, in respect of the two projects which arise for consideration in the subject assessment year, the respondent was following the project completion method in respect of both the projects. The Commissioner, while seeking to revise the order of the Assessing Officer, has not disturbed the adoption of the project completion method in respect of the Gym View Project and merely sought to replace the project completion method by the percentage completion method in respect of the Link Corner Project. Further, the impugned order relied upon the settled position of law that the method of accounting cannot be thrust upon the assessee and where the assessee has been consistently following a particular method of accounting, the same cannot be tightly disturbed. Moreover, the issue relating to the appropriate method of accounting is a debatable issue and, thus, the Commissioner would have no jurisdiction under section 263 of the Act to direct application of one particular method of accounting in preference to another. In the-above view, the Tribunal set aside the order of the Commissioner dated March 27, 2013, passed in exercise of the power of revision under section 263 of the Act.

6. Mr. Malhotra, learned counsel for the Revenue, submits that in any case, as the project was substantially completed and the project completion method ought to have followed. Otherwise, he supports the order of the Commissioner of Income-tax in exercise of the powers under section 263 of the Act.

7. We find that the Revenue has accepted the project completion method in respect of the Gym View Project of the respondent-assessee. Further, as recorded by the Commissioner in his order dated March 27, 2012, the

respondent-assessee has offered to tax the income earned on the Link Corner Project by following the project completion method in respect of the subsequent assessment year, i.e., the assessment year 2008-09. It is a settled position of law that where the Revenue has accepted a particular method of accounting over several years, the same is not to be lightly substituted unless the Revenue is able to show that the same distorts the profit for a particular year. As held by the apex court in United Commercial Bank, Calcutta Vs. Commissioner of Income Tax, West Bengal-III, Calcutta, , the choice of method of accounting is of the assessee. The respondent-assessee has chosen/adopted the project completion method of accounting and has been consistently following it over the years. It is not open to the Revenue to reject a method because, according to the Assessing Officer, another method is preferable. In view of the above settled position, no fault can be found with the impugned order of the Tribunal. Moreover, the most appropriate method of accounting to correctly reflect the true financial statement is a matter of opinion and debate. Issues of debate are not amenable to the revisional jurisdiction under section 263 of the Act.

8. So far as the alternative submission made by Mr. Malhotra, viz., the Link View Project should have also been brought to tax under the project completion method is concerned, the same does not arise for our consideration as Commissioner in his order dated March 27, 2012, has specifically directed adoption of percentage completion method of accounting to subject the income arising on the Link Corner Project to tax. In any view of the matter, the profits on the Link Corner Project has been offered to tax and accepted in the subsequent assessment year, i.e., the assessment year 2008-09. In fact, this court in Commissioner of Income Tax, Delhi, Ajmer, Rajasthan and Madhya Bharat Vs. Nagri Mills Co. Ltd., , has observed as under:

"We have often wondered why the income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-tax Act raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other."

9. Accordingly, the questions raised for our consideration do not give rise to any substantial question of law. Hence, the appeal dismissed. No order as to costs.

Certificate

Certified to be true and correct copy of the original signed order.