(2018) 03 RAJ CK 0114

Rajasthan High Court (Jaipur Bench)

Case No: Income Tax Appeal No. 2 of 2018

Principal Commissioner Of Income Tax-I @APPELLANT@Hash M/s. Panchsheel Colonizers Pvt. Ltd. — APPELLANT

Vs

RESPONDENT

Date of Decision: March 13, 2018

Acts Referred:

- Income Tax Act 1922 - Section 13, 132, 145, 145(1), 145(2), 145(3), 153A

Hon'ble Judges: K.S.JHAVERI , J; VIJAY KUMAR VYAS, J

Bench: Division Bench

Advocate: Anuroop Singhi, Aditya Vijay

Final Decision: Dismissed

Judgement

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the

Revenue.

2. Counsel for the appellant has framed the following substantial questions of law:-

â€œWhether on the facts and circumstances of the case, the Tribunal was justified in deleting the addition made by the Assessing Officer by applying

percentage Completion Method, without appreciating that the actual receipts on sale of flats could be ascertained on the basis of sale/allotment

agreements entered by the assessee and the assessee has contravened AS-7 and As-9, which tantamount to not following AS-1 provided in Section

145(2) of the Act?â€

Whether on the facts and circumstances of the case, the Tribunal was justified in holding that the Assessing Officer rejected the accounts on the sole

ground that the assessee has not followed Accounting Standard-7 and AS-9 for recognition of revenue, though the AO had examined actual allotment

agreement and had then reached the conclusion that revenue could be reliably recognized on the basis of Percentage Completion Method?

Whether on the facts and circumstances the case the Tribunal has erred in conforming deletion the disallowance made under Section 40(a)(ai) and

40A(3) on the ground that assessee has followed project completion method and expenses have not been claimed ignored the fact that said expenses

were included in work-in-progress, to be claimed as revenue expenses subsequently?

3. The issues are now covered by the decision of this court in the case of same assessee in D. B. Income Tax Appeal No.3/2018 and another

connected matters decided on 20.02.2018 where while deciding the issues, this court held as under:-

â€œ5. Now, the issues are squarely covered by the decision of this court in ITA No.23/2013 (CIT Central Jaipur vs. M/s Unique Builders And

Developers Jpr) decided on 19.5.2017 wherein it has been observed as under:-

â€œ4.3 Counsel for the appellant has relied upon the decision of Supreme Court in the case of S.N. Namasivayam Chettiar vs. The Commissioner of

Income Tax, Madras AIR 1960 SCC 729 where the Supreme Court has observed as under:

â€œ10. It was then urged that the four reasons given, which we have out above, could not make s. 13 applicable. For the rejection of accounts several

reasons were given by the Appellate Tribunal; one these reasons was the non-production of stock registers and manufacturing accounts This reason

was given by the Income-tax Officer and adopted by the Appellate Tribunal. It was submitted that the non-production of stock account was not such

a defect as to entitle the Taxing Authorities to reject the books and apply the proviso to S. 13. Reliance was placed on the judgment of the Punjab

High Court in Pandit Brothers v. Commissioner of Income-tax, Delhi, MANU/PH/0015/1955. The facts in that case were very different. The income-

tax Officer there added a certain sum to the assessee's profits on the ground that the expense ratio was too high and the profits disclosed were too

low and there was no stock register. The finding in that case was that the assessee maintained regular accounts of his purchases and sales and there

was no finding by Income-tax Officer that in his opinion the income could not properly be deduced therefrom. Khosla, J. (as he then was) there said :

'There is no finding that there was material before the Income-tax Officer to lead him to the conclusion that a proper statement of income, profits and

gains could not be deduced from the material placed before him. All he said was that the profits appeared to be somewhat low and there was no stock

register'.

The want of a stock register was, in that particular case, not a very serious defect because the account books had been found and accepted as correct

and disclosed a true state of affairs. It cannot therefore be said that that case laid down as a proposition of law that the want of a stock register by

which a proper check could be made was not such a serious defect as to make the proviso to s. 13 inapplicable.â€

4.4 He has also relied on the decision in the case of Commissioner Of Income Tax, vs. M/S Bilahari Investment (P) Ltd. 2008 (4) SCC 232 wherein it

is held as under:

â€œ11. The limited controversy is whether the completed contract method of accounting adopted by the assessees as method of accounting for chit

discount is required to be substituted by percentage of completion method.

12. In this connection, it is the case of the assessees that, profits (loss) accrued to the assessees only when the dividends exceeded the discount paid

and that difference could be known only on the termination of the chit when the total figure of dividend received and discount paid would be available.

That, it would be possible for the assessees to make profits only when the sum total of the dividend received exceeded the sum total of discounts

suffered which is debited to P & L account. According to the assessees, the Department has all along been accepting the completed contract method

and, therefore, there was no justification in law or in facts for deviating from the accepted practice. According to the assessees, a chit transaction has

been treated by the various courts as one single scheme running for the full period and, therefore, according to the assessees, the completed contract

method adopted by it over the years was not required to be substituted by any other method of accounting.21. Before concluding, we may point out

that under section 211(2) of the Companies Act, Accounting Standards (""AS"") enacted by the Institute of Chartered Accountants havenow been

adopted [see: judgment of this Court in J.K. Industries case (supra)]. Shri Tripathi, learned counsel for the Department, has placed reliance on AS 22

as the basis of his argument that the completed contract method should be substituted by deferred revenue expenditure (spreading the said expenditure

on proportionate basis over a period of time). He also relied upon the concept of timing difference introduced by AS 22. It may be stated that all these

developments are of recent origin. It is open to the Department to consider these new accounting standards and concepts in future cases of chit

transactions. We express no opinion in that regard. Suffice it to state that, these new concepts and accounting standards have not been invoked by the

Department in the present batch of civil appeals.â€

4.5 He has further relied upon the decision in the case of (2008) 15 SCC 112 wherein it has been held as under:

â€œIn cases where the Department wants to tax an assessee on the ground of the liability arising in a particular year, it should always ascertain the

method of accounting followed by the assessee in the past and whether change in method of accounting was warranted on the ground that profit is

being under estimated under the impugned method of accounting. If the AO comes to the conclusion that there is under estimation of profits, he must

give facts and figures in that regard and demonstrate to the Court that the impugned method of accounting adopted by the assessee results in under

estimation of profits and is therefore rejected. Otherwise, the presumption would be that the entire exercise is Revenue neutral.â€

5. Counsel for the appellant has contended that the observations which have been made by the Tribunal in para 12 & 13 are contrary to law, which

reads as under:

We have heard parties with reference to material on record. The rival submissions as well as case laws brought to our notice have duly been

considered. The assessee is engaged in the business of construction as a builder/real estate developer. The appellant has maintained complete books

of account which are duly audited by a qualified Chartered Accountant. The assessee maintains its accounts on mercantile basis by regularly

employing Project Completion Method. The closing stock has been valued consistently at lower of cost or net realizable value. The auditors have

reported no change in method adopted by the assessee. The revenue has accepted this method in regular assessments made from year to year. An

action under section 132 of the IT Act (""Act"" for short) was taken on its business premises on 28.01.2009. On the same very day the members of the

appellant group as well as of the separated group and their business/residential premises were also searched by the department. The assessee-

appellant furnished return of income in response to notice issued under section 153A of the Act. The return of income was furnished on the basis of

books of account maintained by it as no document giving rise to undisclosed income was found or detected by the search party. The books of account

seized during the course of search were considered in making the assessment pursuant to notices issue under section 153A of the Act. The Assessing

Officer reached a finding that the books of account maintained by the assessee did not present true and complete picture of its accounts and financial

transactions. The Assessing Officer after making elaborate discussion has rejected the books of account of the assessee by application of provisions

of section 145(3) of the Act as they failed to depict the complete picture of accounts and moreover do not follow the method of accounting standard

as specified under section 145(2) of the Act. The Assessing Officer has drawn support from few judgments rendered by the Appellate Tribunal and

also by the judgment in the case of Kachwala Gems vs. JCIT, MANU/SC/8797/2006MANU/SC/8797/2006 : 288 ITR 10 (SC) for invoking provisions

of section 145(3) of the Act.

â€œ12.1. Section 145 as is relevant in the year under appeal is reproduced as under:-

Â Sec. 145(1) Income chargeable under the head ""Profits and gains of business or profession"" or ""Income from other sources"" shall, subject to the

provisions of subsection (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify inthe Official Gazette from time to time accounting standards to be followed by any class of assessees or in

respect of any class of income.

(3) Where the Assessing Officer is notsatisfied about the correctness or completeness of the accounts of the assessee, or where the method of

accounting provided in sub-section (1) or accounting standards as notified under subsection (2), have not been regularly followed by the assessee, the

Assessing Officer may make an assessment in the manner provided in section 144.

12.2. The first basis taken by the AssessingAuthority in reaching a finding that the assessee's accounts do not depict correct and complete picture of

its accounts is that the assessee has not maintained a detailed qualitative and quantitative stock register and failed to get the valuation of its closing

stock verified with the detailed day-wise qualitative cum quantitative stock register.

The appellant's case before the authorities below has, however, been that the assessee had kept both quantitative and qualitative details of material

purchased by it as is evident from various ledger accounts related to construction material that were forming part of the seized material available with

the assessing authority. All the expenses relating to the project including material purchased were charged to project/work-in-progress and directly

taken to the balance sheet. In other words, the materials purchased for the project are issued to site immediately after its purchase and transferred to

project in progress for determining profit at the time of completion of the project. No expenditure is charged to Profit & Loss account. The quantity so

issued to the sites/projects is recorded in separate records maintained for each item of building material used therein. There was thus no need to

maintain a detailed quality-wise quantitative register by the appellant. The lower authorities have not pointed out any defect in the valuation of

project/work-in-progress. It is also not the case of the Assessing Officer that there have been omission or failure to record any purchases or direct

expenses to the project in process nor even the case is that the assessee has inflated the cost of such stock held and disclosed by the assessee in the

financial statements presented along with the return of income. In fact, this is a case where the accounts were found duly audited by a qualified

Chartered Accountant with no adverse comments with respect to correctness and completeness of the accounts maintained by the assessee or the

method of valuation adopted by him. The appellant has valued the stock of project in process at cost as all the purchases of materials and direct

expenses were charged to this account. The books of account stood seized as a result of search on assessee-appellant and the same were available

with the Assessing Officer. The assessee had also produced requisite vouchers and other documents as were demanded by the Assessing Officer

from time to time. It was, therefore, his own duty to verify quantity of each quality of goods purchased by the assessee and correctness of valuation

disclosed in the accounts. For the remissness on the part of the Assessing Officer, assessee cannot be blamed. The Assessing Officer also appears to

have casually stated that as per AS-2 it is essential that the details of both quality as well as quantity of different items of stocks including details of

direct expenses and costs are required to be maintained meticulously. In fact, the AS-2 notified by the CBDT relates to disclosure of prior period and

extra ordinary items and change of accounting policies. The accounts maintained by the assesseeappellant conform to the commercially accepted

accounting standards and true profits of assessee's business could be deduced therefrom. The findings reached by the Assessing Officer are thus not

factually correct with respect to the lacuna pointed out by him on maintenance of stock record as well as valuation of inventory held by the assessee.

12.3. In the case of Pandit Brothers vs. CIT, MANU/PH/0015/1955MANU/PH/0015/1955 : 26 ITR 159, the Hon'ble Punjab & Haryana High Court

has held that the mere fact that there is no stock register, it only cautions him against the falsity of the return made by the assessee. He cannot say

that merely there is no stock register, the accounts book must be false. The Hon'ble Supreme Court took note of this judgment in the case of S.N.

Namasivayam Chettiar vs. CIT,Â 38 ITR 570 (SC) and held that it is for the Incometax authorities to consider the material which is placed before

him and if after taking into account in any case the absence of stock register coupled with other material, are of the opinion that correct profits and

gains could not be deduced then they would be justified in applying the proviso to section 13 of the IT Act, 1922. On the peculiar facts in the present

case in appeal before us, merely because of nonmaintenance of a detailed qualitative and quantitative register alone, the same could not be a valid

reason to reach a finding that books of account do not present true and complete picture of accounts and financial transactions. The finding by the

assessing authority being perverse is, therefore, set aside.

12.4. The second issue raised by theassessing authority for invoking provisions of section 145 of the Act is about non verification of some of the

vouchers relating to payment in respect of direct expenses. The perusal of the impugned order reveals that this was only a prima facie view which the

assessing authority entertained before issuing a show cause notice to the assessee for rejecting its accounts by invoking provisions of section 145(3) of

the Act. He has not been able to point out as to which of these payments in respect of direct expenses could not be verified by him nor the Assessing

authority is shown to have required the assessee to get payment of any specific amount of direct expenses verified. Merely for saying it could not be

taken a lacuna in the books of account of the assessee and take the same as a reason for rejecting the books of account that were maintained by

assessee in regular course of its business.

12.5. Thirdly, the Assessing Officer hastaken the reasoning that the search proceedings revealed incriminating documents which contained nothings of

receipt of cash ""out of books"" by the members of Unique Group of which the assessee is an important member. The Ld. CIT (A) in paras 13.1 to 13.3

of the impugned order has supported the findings reached by assessing authority by stating that the group is owned and controlled by two brothers,

namely, Shri Ajay Pal Singh and Shri Ajit Singh and their sons. During the search and seizure operation evidence of ""on money"" received on sale of

different flats of this firm were found and were also admitted by the partners of the firm Shri Ravinder Singh/Shri Ajit Singh. Moreover, the ""on-

money"" so received was also included as undisclosed income in the return of income so filed by one of the partners. We, therefore, required the Ld.

D/R to produce such material and evidence so as to test the correctness of the veracity of the authorities below as the appellant has categorically

denied of receipt of any ""on-money"" in the joint business carried with his separated brother Shri Ajit Singh and his son. The separation had occasioned

in the year 2006 which is a date much prior to the date of action taken under section 132 of the Act on the appellant. From the record produced, we

find that it is a correct fact that these two groups have separated from joint business in the year 2006 and thereafter carried business with no interest

or involvement of the other brother. This fact, the appellant also disclosed by way of a foot note on the computation of income filed along with return

of income. The statements given by Shri Ajit Singh and Shri Ravinder Singh during the course of search admittedly were with regard to receipt of

extra money with respect to the flats sold by them. These sales were not of the projects done jointly with the appellant, its constituents or family

members. The ""on-money"" so received by them has been disclosed and applied to explain the transactions of their independent business unrelated to

the appellant and its constituents. The statements so taken, therefore, did not constitute a material or evidence for rejecting the books of account

maintained by the assessee in saying that the monies received as earnest money or advances towards sale of its flats are not fully accounted. The

reason so taken by the Assessing Officer for rejecting the accounts is thus vitiated and unfounded.

12.8. The Hon'ble Kerala High Court in the case of St. Teresa's Oil Mills vs. State of Kerala, 76 ITR 365 (Ker.) has entertained a view that the

accounts regularly maintained by the assessee in the course of business have to be taken as correct unless there are strong and sufficient reasons to

indicate that they are unreliable. The department has to prove satisfactorily that the accounts books are unreliable, incorrect or incomplete before

rejecting the accounts. The rejection of books is not a matter to be done light heartedly.

12.9. There is also a feeble observation in the orders of the authorities below for rejecting the accounts that in the trade of real estates 'notorious trade

practices' are prevailing. The Ld. Counsel for the assessee has placed reliance on the judgment by Hon'ble Apex Court in the case of Lalchand

Bhagat Ambica Ram vs. CIT, MANU/SC/0081/1959MANU/SC/0081/1959 Â 37 ITR 288 (SC) and also by Hon'ble Delhi High Court in the case of

CIT vs. Discovery Estate Pvt. Ltd. 2013 TIOL 139 High Court DEL-IT in which the practice of making additions in the assessment on mere

suspicions and surmises or by taking note of the 'notorious trade practices' prevailing in trade circles has been disapproved. Having considered the

aforesaid view, the finding of ""on-money transactions"" in the appellant's case by the authorities below is found without any basis and found perverse

on facts. It, therefore, could not be a reason for rejecting the books of account maintained by the assessee in regular course of business.

12.10. The last reasoning taken by the assessing authority as also stood confirmed by the Ld. CIT (A) is that the assessee has not followed

Accounting Standards 9 & 7 which tantamount to not following Accounting Standard-1 as prescribed under section 145(2) of the Act in view of the

exercise undertaken by the Assessing Authority to apply percentage of project method that gave a different and positive results revealing more profits

taxable in the years under consideration. The Assessing Officer, therefore, changed the method to percentage completion method as against the

project completion method regularly employed by the assessee. The admitted position and also the fact is that the appellant has regularly employed

project completion method from year to year and the assessments prior to the date of search were also made by accepting project completion method.

Both Project Completion method and the Percentage Completion method are recognized methods for assessment of correct income of the assessee

under the IT Act, 1961. The choice of method of accounting, however, lies with the assessee. It is not open to the Assessing Officer to change his

own opinion or change the method of accounting because he finds another method of accounting better than the one adopted regularly by the assessee

and by rejecting his accounts substitute the same with another method of accounting without any just and reasonable cause. In the present case the

exercise so undertaken being imaginary and rested on irrelevant considerations could not constitute a just or reasonable cause empowering the

authority to change the method of accounting regularly adopted by the appellant. The revenue has also not been able to successfully demonstrate that

the method of accounting provided under subsection (1) or Accounting Standard notified under sub section (2) of section 145 of the Act have not been

regularly followed by the assessee. Even for the first year, the method of accounting is deemed to have been employed if the same is shown to have

been regularly employed in subsequent years. The decision by Hon'ble Delhi High Court in the case of CIT vs. Smt. V. Sikka & Another (1984) 149

ITR 73 (Del.) is relevant. The real estate developer is not a pure contractor but is a seller of flats/goods. The revenue recognition in the case of sale

of goods is triggered on completion of performance as provided in para 11 of AS-9 "" revenue recognition"". It is not mandatory for a real estate

developer to follow percentage of completion method as prescribed by the Institute of Chartered Accountants of India under AS-7. AS-7 issued by

the Institute of Chartered Accountants of India, recognizes the position that in the case of construction contracts the assessee can follow either the

project completion method or the Percentage completion method. The judgment by Hon'ble Delhi High Court in the case of CIT vs. Manish Buildwell

(P) Ltd. in ITA No. 928/2011 dated 15.11.2011 is relevant. Neither the revised Guidance Notes 2012 issued by Institute of Chartered Accountants of

India nor the Exposure Draft for Guidance Note on Recognition of Revenue issued by the Institute of Chartered Accounts of India in 2011 are

mandatory. The completed contract method followed by the appellant, therefore, could not be faulted with by the revenue and the assumptions made

by the Assessing Officer that by not following AS-9 & 7 the same tantamount to not following prescribed AS-1 under section 145(2) of the Act are

found misplaced, unnecessary and uncalled for besides being contrary to principles ofinterpretation of the statutory provisions. The same, therefore,

could not be taken a valid basis for change of method regularly employed by the appellant. The Income-tax Authority, therefore, has no option or

jurisdiction to meddle in the matter either by directing the assessee to maintain its account in a particular manner or adopting a different method for

valuing work-inprogress. It also cannot recompute income by adopting any method other than that regularly employed by the assesseeappellant in a

case like this nor make the same as basis to reject its accounts.

12.11. The Apex Court in the case of CIT vs. McMillan & Co.Â 33 ITR 182 (SC) at page 188 has also entertained this opinion which is evident from

the following passage:-

The section enacts that for the purposes of section 10 (profits of business, profession or vocation) and section 12 (income from other sources) income,

profits and gains must be computed in accordance with the method of accounting regularly employed by the assessee. The choice of the method of

accounting lies with the assessee; but the assessee must show that he has followed the method regularly for his own purposes. The section and the

proviso read together clearly make such a method of accounting regularly employed by the assessee a compulsory basis of computation unless, in the

opinion of the Income-tax Officer, the income, profits and gains cannot properly be deduced therefrom. If the true income, profits and gains cannot be

ascertained on the basis of the assessee's method, or where no method of accounting has been regularly employed, the income must be computed

upon such basis and in such manner as the Income-tax Officer may determine.

12.12. Again the Apex Court in the case of Â Investment Ltd. vs. CIT MANU/SC/0265/1970MANU/SC/0265/1970 : 77 ITR 533 (SC) at page 537

and 538 has taken a view that the tax payer is free to employ any method of accounting but the same should be consistently and regularly followed by

him. This is so evident from the following passage:-

Â Â In the balance-sheet, it is true, the securities and shares are valued at cost, but no firm conclusion can be drawn from the method of keeping

accounts. A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-

trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the departmental

authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly

employed may be discarded only if, in the opinion of the taxing authorities, income of the trade cannot be properly deduced therefrom. Valuation of

stock at cost is one of the recognized methods.

12.13. The Apex Court in the case of United Â Commercial Bank vs. CIT MANU/SC/0623/1999MANU/SC/0623/1999 : 1999 240 ITR 355 (SC)

after considering the judgment in the case of British Paints

India Ltd. MANU/SC/0729/1990MANU/SC/0729/1990 : 188 ITR 44 (SC) which is also relied upon by the authorities below against the appellant

before us is found to have entertained a view that a method of accounting adopted by the tax payer consistently and regularly cannot be discarded by

the departmental authorities on the view that he should have adopted a different method of keeping of accounts or of valuation. The Revenue's

reliance upon the decision in CIT vs. British Paints India Ltd. (supra) in no way advanced the case of the revenue. The Apex court while dealing with

the contention of the assessee in that case for valuation of the raw material without taking into account any portion of the cost of manufacture, held

that:- Â the question of fact which the Assessing Officer must necessarily decide is whether or not the method of accounting followed by the

assessee discloses the true income and observed thus (page 51):

It is a well-recognised principle of commercial accounting to enter in the profit and loss account the value of the stock-intrade at the beginning and at

the end of the accounting year at cost or market price, which-ever is the lower.

The court further considered section 145 of the Act and observed that what is to be determined by the officer in exercise of the power is a question of

fact, that is, whether or not income chargeable Under the Act can be properly deduced from the books of account and the question must be decided

with reference to the relevant material and in accordance with the correct principles. The court also observed (page 52):

Â Where the market value has fallen before the date of valuation and, on that date, the market value of the article is less than its actual cost, the

assessee is entitled to value the articles at market value and thus anticipate the loss which he will probably incur at the time of the sale of the goods.

Valuation of the stock-in-trade at cost or market value, whichever is the lower, is a matter entirely within the discretion of the assessee. But which-

ever method he adopts, it should disclose a true picture of his profits and gains. If, on the other hand, he adopts a system which does not disclose the

true state of affairs for the determination of tax, even if it is ideally suited for other purposes of his business, such as the creation of a reserve,

declaration of dividends, planning and the like, it is the duty of the Assessing Officer to adopt any such computation as he deems appropriate for the

proper determination of the true income of the assessee. This is not only a right but a duty that is placed on the officer, in terms of the first proviso to

section 145, which concerns a correct and complete account but which, in the opinion of the officer, does not disclose the true and proper income.

Hence, for the purpose of income-tax whichever method is adopted by the assessee, a true picture of the profits and gains, that is to say, the real

income is to be disclosed. For determining the real income, the entries in a balance-sheet require to be maintained in the statutory form, may not be

decisive or conclusive. In such cases, it is open to the Income-tax Officer as well as the assessee to point out the true and proper income while

submitting the income-tax return.

12.14. The Hon'ble Andhra Pradesh High Court in the case of CIT vs. Margadarshi Chit Funds (P) Ltd., 155 ITR 442 (AP) did not find any

justification in the entertainment of the view by the Assessing Officer that there could be a better system of accounting. This is no reason to the

application of the provisions of section 145 of the Act. The relevant passage as contained at page 447 of the report is reproduced as under:-

Â The ITO's view that there could be a better system of accounting is no reason to the application of the provisions of s. 145 of the I.T. Act,

especially in view of the fact that this system of accounting is followed by the assessee uniformly and regularly for the past several years, and was

accepted by the Department without quarrel. It is not open to the ITO to intervene and substitute a system of accounting different from the one which

is followed by the assessee, on the ground that the system which commends to the ITO is better.

Â Attention may be invited to the decisions in:

(i) CIT & EPT v. Chari and Rant MANU/TN/0427/1948MANU/TN/0427/1948 : [1949] 17 ITR 1 (Mad);

(ii) CIT v. Srimati Singari BaiMANU/UP/0354/1954MANU/UP/0354/1954 : [1945] 13 ITR 224 (All);

(iii) CIT v. K. Doddabasappa MANU/KA/0021/1963MANU/KA/0021/1963 : [1964] 54 ITR 221 (Mys); and

(iv) Juggilal Kamlapat, Bankers v. CITMANU/UP/0226/1973MANU/UP/0226/1973 : [1975] 101 ITR 40 (All).

These are all decisions which lend support to the proposition that the Department is bound by the assessee's choice of accounting regularly employed

unless it can be said that the method of accounting followed by the assessee does not reflect the true income. The AAC, as well as the Income-tax

Appellate Tribunal, after a careful scrutiny, came to the conclusion that the system of accounting employed by the assessee is consistent and regular

and the ITO, therefore, is not entitled to interfere with the system of accounting followed by the assessee, unless it is possible for him to make out and

bring the case within the terms of s. 145 of the I.T. Act. On this basic issue itself, the Department's contention that the dividend should be assessed in

the hands of the assessee as and when it is received, in substitution of the method of accounting followed by the assessee, should fail. Even otherwise,

we are not persuaded to accept the view that the system of accounting followed by the assessee is in any way defective.

12.15. The Apex Court had also an occasionto consider the Percentage of completion method and Completed Project Method in the case of CIT vs.

Bilahari Investment Pvt. Ltd., 299 ITR 1 (SC). In this judgment it has taken a view 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. The

Completion Contract method is one of such methods. Under the Completed contract method, the revenue is not recognized until the contract is

completed. 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. The method leads to

objective assessment of the results of the contract. 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 and 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 Apex Court again in the case of CIT vs. Hyundai Heavy Industries Co. Ltd.,Â 291 ITR 482 (SC) took the similar view and

held at page 495 as under:-

Lastly, there is a concept in accounts which 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"". Thus, as both the methods of accounting are recognized methods of accounting, the assessee is at liberty to

choose any of the above and if any one of the method of accounting is consistently followed by the assessee, the assessing officer cannot change the

method of accounting to the ""percentage of completion method.

12.16. The Hon'ble Delhi High Court whiledealing with the similar situation in the case of CIT vs. Manish Buildwell Pvt. Ltd. in ITA No. 928/2011

dated 15.11.2011 held that 'after the above judgment of Supreme Court in CIT vs. Bilahari Investment Pvt. Ltd., 299 ITR 1, it cannot be said that the

project completion method followed by the assessee would result in deferment of the payment of taxes which are to be assessed annually under the

Income-tax Act. Accounting Standard AS-7 issued by the Institute of Chartered Accountants of India also recognize the position that in the case of

construction contracts, the assessee can follow either the project completion method or the percentage completion method. In view of the judgments

of the Supreme Court (supra), the findings of 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 completionmethod for one year on

selective basis. This will distort the true profits and gains of business.

12.17. The judgment rendered by ApexCourt in the case of Kachwala Gems vs. JCIT, MANU/SC/8797/2006MANU/SC/8797/2006 : 288 ITR 10

(SC) the Hon'ble Apex Court has observed that several cogent reasons have been given on facts by Income-tax authorities for rejecting the books of

account and that is the reason no different view could be taken on this issue. This case as well as other case laws brought on record by revenue are

distinguishable on the peculiar facts of this case in hand and the same do not advance revenue's case.

13. Considering entire conspectus of the case in the light of the peculiar facts and findings reached herein before in this case, it is neither proper nor

justified to hold that the books of account maintained by the assessee did not present true and complete picture of its accounts and financial

transactions. It is a case where accounts of the assessee are correct and complete. Method of accounting and accounting standard has been regularly

followed. True and correct profits of the business of the assessee could be deduced from such books of accounts. In this view of the matter the

assessing authority could not change the method regularly adopted by the assessee from Project Completion Method to Percentage Completion

Method on irrelevant considerations. We are, therefore, satisfied that provisions of section 145(3) are not attracted in this case. The Ld. CIT (A), is

found to have erred in upholding the decision of Ld. Assessing Authority to invoke section 145(3) of the Act and making assessment in the manner

provided under section 144 of the Act. We, therefore, set aside the decision in this regard and allow ground nos. 2 & 3 raised in appeal by the

assessee in assessment year 2003-04.â€

6. He has contended that all the issues are required to be answered in favour of the Department and against the assessee.

7.Counsel for the respondent Mr. Jhanwar has contended that the first issue is squarely covered by the decision of this Court in the case of Pr.

Commissioner of Income-tax Vs. Bhawani Silicate Industries, (2016) 65 taxmann.com 106 (Rajasthan) wherein the Division Bench of this Court in

para 9 & 10 has observed as under:

â€œ8. We have heard and considered the arguments advanced by counsel for the Revenue and in our view, the Tribunal, which is the ultimate final

fact finding authority, after analyzing the material again placed before it and having gone into the issue once again has come to the conclusion that

merely because qualitative record was not maintained and on this premise, the books of account could not have been rejected. It is also an admitted

fact that mustard seed is only single commodity used by the assessee for manufacturing of mustard oil and the

Tribunal noticed that the assessee filed yield percentage for two months before the AO in which no discrepancy was found by the AO. The Tribunal

has found that the production of mustard oil is a continuous process and the seeds are put into the milling for continuous oil production. The Tribunal

has further found that 8096 of its mustard oil is by way of trading sale and neither discrepancies were noticed by the AO in either purchase or sale nor

any sale or purchase, found unrecorded. The Tribunal also found that the books of account had been maintained in the same manner as in the past and

the assessee cannot be expected to stop the plant as and when the new lot of mustard seed is subjected to crushing as manufacturing of mustard oil is

a continuous process. The Tribunal has also found as a finding of fact that except quality, quantity wise stock details has been maintained but no other

defect was noticed by the AO in the quantitative details and after noticing the above fact, has come to the conclusion that the books of account ought

not to have been rejected. In our view, such a finding of fact which has been reached by the Tribunal is after appreciating the material and evidence

on record and such a finding has been arrived at by the Tribunal after analyzing the material and in our view, no substantial question of law can be said

to arise out of the order of the Tribunal. Once the stock register has been held to be properly maintained and has been held to be proper, no trading

addition could have been made and rightly so, even otherwise, minor discrepancies cannot result into rejection of books of account.

9. Leave apart the above, in our view, what conclusions are to be reached is independent of the results shown in the books of account if any

maintained by the assessee. Section 145 only provides the basis on which computation of income is to be made for the purpose of determining the

amount of tax payable by an assessee. The provision by itself does not deal with the addition or deletion in the income. Best judgment is also based on

the material available on record and therefore, while making an addition something more is to be collected by the AO who makes assessment of an

assessee. As pointed out above, merely because there is some deficiency of quality wise record in the books of account, or merely because of

rejection of the books of account, it does not mean that it must necessarily lead to addition in the return of income of the assessee. As noticed earlier,

even the AO estimated the income by making estimated addition by applying a particular GP Rate so also the CIT(A) reduced it further. Therefore,

these two authorities even while resorting to best judgment had no basis for coming to the conclusion reached and even in a case of estimated/ad hoc

addition, prima-facie, some material is required to be brought on record. The revenue has ample powers under the Act, if an assessee avoids or

evades to unearth of tax evasion, this observation is on the contention of counsel for the Revenue that except resorting to rejection of books of

account, Revenue possibly has no other alternative and come to make estimated addition after resorting to provisions of Sec. 145(3).â€8. He has also

relied upon the decision of Gujarat High Court in the case of Jaytick Intermediates (P.) Ltd. Vs. Assistant Commissioner of Income Tax, (2016) 73

Taxmann.com 195 (Gujarat) wherein in para 8 to 10 it is observed as under:

â€œ8. It will not be out of place to mention here that the assessee is a manufacturing unit and it has to pay the excise duty. It is the specific contention

of the assessee that the books of accounts maintained by it are tallying and the excise duty is paid on that basis. The stock register is not tallying with

the other books of account only because some of the items were not deleted from the stock register. Taking into account the decision of this Court,

not maintaining the day-today stock register is not a ground to reject the books of account. In Commissioner of Income-tax-IV v.

Symphony Comfort Systems Ltd. (supra), it is observed as under:--

Question No. 1 pertains to the addition made by the Assessing Officer on the basis of low gross profit.

The Commissioner (Appeals) as well as the Tribunal, however, deleted such addition after examining the material on record. In particular, the Tribunal

while upholding the order of the Commissioner (Appeals) in this respect, made following observations:

4. On consideration of the rival submissions, we do not find any justification to interfere with the order of the learned CIT(A) in deleting the addition.

The AO merely gone by the fact that there was a fall in the gross profit rate as compared to the preceding assessment year which itself is no ground

to reject the books of accounts of the assessee. No specific defect in the maintenance of the books of accounts by the assessee has been pointed out

AO. The AO further noted that day to day stock and inward and outward registers are maintained on computer. Perhaps, this was the sale reason

which swayed the AO to reject the books of accounts and make the addition. Now-a-days it is common knowledge that all the records are maintained

on computer including by the government and semi government organizations. Even if, records are maintained on computer is not ground to reject the

explanation of the assessee. The AO should have verified the entries from the computerized records also to point out any defect thereon. In the

absence of any specific defect pointed out in the books of accounts and the records maintained on computer, the AO was not justified in rejecting the

books results, or to enhance the gross profit rate. Accordingly, there is no merit in this ground of appeal of the revenue. The same is accordingly,

dismissed.

From the above, it can be seen that the entire issue is based on appreciation of evidence on record. No question of law, therefore, arises particularly

when the Commissioner (Appeals) as well as the Tribunal concurrently held in favour of the assessee.

Issue No. 2 pertains to the additions made by the Assessing Officer on account of excessive expenses. The Commissioner (Appeals) as well as the

Tribunal, however were of the opinion that such additions were not justified. The Tribunal while upholding the view of the Commissioner (Appeals),

made following observations:

6. On consideration of the rival submissions, we do not find any merit in this ground of appeal of the revenue. The AO merely made comparative

study of the expenses for the year under consideration with the preceding assessment year and found that expenses incurred in the preceding

assessment year were 2.89% on turnover but in the assessment year under appeal it was 4.78% on the turnover. The expenses were, therefore, found

excessive without pointing out as to which of the expenses incurred by the assessee was not connected with the business activity of the assessee. The

AO has not pointed out which of the expenditure were not admissible in law. In the absence of any pointing out inadmissible expenses, the AO cannot

make addition merely by comparingÂ the expenditure with the preceding year's expenditure. The learned CIT(A) on proper appreciation of the facts

and material on record rightly deleted the addition. This ground of appeal of the revenue is accordingly dismissed.

The entire issue is based on appreciation of evidence. No question of law arises. When the Commissioner (Appeals) as well as the Tribunal

concurrently held that on the basis of the evidence, addition as made by the Assessing Officer was not justified, we are not inclined to interfere.

9. In Commissioner of Income-tax-XII v. Smt. Poonam Rani (supra), it is observed as under:--

10. During the course of arguments before us, it was submitted by the learned counsel for the appellant that the assessee was not maintaining the

Daily Stock Register. We, however, find no such finding in the assessment order. On the other hand, we note that the Assessee had submitted before

the Commissioner of Income Tax (Appea ls) that Form 3CD containing all the quantitative details in respect of raw materials as well as the finished

goods, duly audited by the Certified Accountant had been placed on record, but, the Assessing Officer ignored those actual figures enclosed with the

return. In any case, no statutory provision under the Income Taxregime requiring the assessee to maintain the Daily Stock Register has been brought

to our notice. Hence, even if no such register was being maintained by the assessee as is contended by the learned counsel for the appellant, that by

itself does not lead to inference that it was not possible to deduce the true income of the assessee from the accounts maintained by her, nor the

accounts can be said to be defective or incomplete for this reason alone. If stock register is not maintained by the assessee that may put the Assessing

Officer on guard against the falsity of the return made by the assessee and persuade him to carefully scrutinize the account books of the assessee.

But the absence of one register alone does not amount to such a material as would lead to the conclusion that the account books were incomplete or

inaccurate. Similarly, if the rate of gross profit declared by the assessee in a particular period is lower as compared to the gross profit declared by him

in the preceding year, that may alert the Assessing Officer and serve as a warning to him, to look into the accounts more carefully and to look for

some material which could lead to the conclusion that the accounts maintained by the assessee were not correct. But, a low rate of gross profit, in the

absence of any material pointing towards falsehood of the accounts books, cannot by itself be a ground to reject the account books under Section

145(3) of the Act.

10. In view of above observations andconsidering the facts of the case, we are of the opinion that the view taken by CIT (Appeals) is required to be

accepted by setting aside the impugned order of the Tribunal. Accordingly, the question posed for our consideration is answered in favour of the

assessee and it is held that the Tribunal has erred in upholding the action of the Respondent in rejecting the books of accounts of the Assessee under

Section 145 (2) of the Act and further erred in confirming the part of the addition on estimated basis against the revenue. Accordingly, Tax Appeal

No. 1196 of 2007 is allowed.â€

9. Therefore, he has contended that the rejection of books of accounts for non maintenance of stock register is not a ground under Section 145(3) of

the Act.Â

10. He has relied upon following decisions: Manjusha Estates Pvt. Ltd. vs. The Income Tax Officer Tax Appeal No.828/2007 [Gujrat High Court],

decided on12.08.2016:

4.1 Learned Counsel for the department has taken this Court to Section 145(3) of the IT Act which relates to rejection of the books of accounts and

contended that the CIT(A) as well as the Tribunal has rightly come to the conclusion after considering the material placed before them. After making

the aforesaid submissions he has contended that the appeal may be dismissed.

5. Having heard the learned Counsel for the parties and having gone through the order passed by the authorities below, as well as, considering the fact

that the assessee has followed the method which is consistent considering the decision in case of Shivalik Buildwell (P.) Ltd. (supra) and Umang

Hiralal Thakkar (supra) and therefore this Court is of the opinion that the view taken by the tribunal and CIT(A) is not correct. Since the issue

involved in this appeal is identical to the decision cited by the learned Counsel for the assessee while adopting such reasons, we allow this appeal and

accordingly answer the issue raised in this appeal in favour of the assessee and against the department.

CIT-IV vs. Shivalik Buildwell (P.) Ltd. [2013] 40 Taxman.com 219 (Guj.):

3. On the revenueâ€™s appeal, the Tribunalconfirmed the view of CIT (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 Officerâ€™s decision to reject the book

results during the year under consideration was not justified.

4. WE are of the opinion that the Tribunalcommitted 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 stand and that too, without hearing the assessee. Paras Buildtech India Private Limited & anr. vs.

CIT & Anr. [2016] 382 ITR 630 (Delhi):

18. Section 145(1) of the Act states that the income chargeable under the heads 'Profits and gains of business or profession' shall be computed in

accordance with either cash or mercantile system of accounting ""regularly employed by the Assessee"". It is only with effect from 1st April 2015 that a

change has been brought about in Section 145(2) which permits the central government to notify in the Official Gazette from time to time the income

computation and disclosure standards to be followed by any class of Assesses or in respect of any class of income. That change is prospective and in

any event does not apply to the case on hand.

19. The settled legal position as far asSection 145 of the Act is concerned is that it is not open to an AO to reject the accounts of an Assessee unless

he comes to a determination that notified accounting standards have not been regularly followed by the Assessee. As pointed out by the CIT (A) in

the order dated 2nd July, 2010, the AS of the ICAI did not have any statutory recognition under the Act although it was binding under the Companies

Act, 1956. The method of accounting followed by the Assessee in the present case i.e. project completion method was certainly one of the recognized

methods and has been consistently followed by it.

Lunar Electricals vs. Assistant Commissioner of Income Tax [2012] 2010 Taxman 69 (Delhi):

The next aspect relates to rejection of books of accounts because the assessee was following completed contract method. We do not think completed

contract method is contrary and cannot be adopted and applied when an assessee follows mercantile system of accounting. This issue was examined

by the Madras High Court in Commissioner of Income Tax versus Â SAS Hotels and Enterprises Limited, MANU/TN/3098/2010Â : (2011)334 ITR

194 (Mad.) and it has been held that the said method confirms and can be adopted by an assessee. In fact, we find that there is a contradiction in the

orders of both the CIT(Appeals) and the tribunal on the said aspect. With regard to NBCC contract, both of them have held that the receivables and

expenses should be excluded as the contract was incomplete. But, at the same time they have held that completed contract method cannot be adopted

for the purpose of accounts/computing taxable income as the assessee is following mercantile system of accounting. We may notice here that while

examining the question of rejection of books of accounts, the CIT(Appeals) in his finding, which have been quoted above, was ambivalent and did not

deal with the real issue and question whether or not the completed contract method is permitted and can be adopted by the assessee following

mercantile system of accounting. The tribunal also went on certain other aspects relating to service of notice in the first proviso to Section 145 and did

not deal with the issue and question accordingly. On the second question, therefore, we hold and observe that completed contract method can be

adopted under Section 145 of the Act when an assessee follows mercantile system of accounting. However, we remand the matter to the tribunal to

examine the other aspects relating to computation of taxable income on the basis of completed contract method. Question No. 2 is accordingly

answered partly affirmative and partly in negative. Commissioner of Income Tax vs. Bilahari Investment (P) Ltd [2008] 299 ITR 1 SC:

15.Recognition/ identification ofÂ 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.

Similarly, percentage of completion method is another such method.

19. In the judgment of the Bombay HighCourt in Taparia Tools Ltd. (supra) it has been held that in every case of substitution of one method by

another method, the burden is on the Department to prove that the method in vogue is not correct and it distorts the profits of a particular year. Under

the mercantile system of accounting based on the concept of accrual, the method of accounting followed by the assessees is relevant. In the present

case, there is no finding recorded by the AO that the completed contract method distorts the profits of a particular year. Moreover, as held in various

judgments, the Chit Scheme is one integrated scheme spread over a period of time, sometimes exceeding 12 months. We have examined computation

of tax effect in these cases and we find that the entire exercise is revenue neutral, particularly when the scheme is read as one integrated scheme

spread over a period of time.

20. As stated above, we are concerned withassessment years 1991-1992 to 1997-1998. In the past, the Department had accepted the completed

contract method and because of such acceptance, the assessees, in these cases, have followed the same method of accounting, particularly in the

context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier

accepted. It is only in 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. Further, in the present cases, we find from the various statements produced before us,

that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure, is revenue neutral.

Therefore, we do not wish to interfere with the impugned judgment of the High Court. CIT vs. Manish Build Well (P) Ltd. [2011] 63 DTR 369(Delhi):

6. Questions Nos. 2 and 3 are connected.They assail the decision of the Tribunal rendered in paragraph 20 of its order. An addition of

Rs.28,21,000/was made by the assessing officer on the footing that the assessee was adopting the project completion method or the completed

contract method, which was not proper and the profits of the business should be computed on the basis of the percentage completion method under

which the profits of the development and construction business of the assessee get assessed over a period of years, keeping pace with the progress in

the construction/development of the project. The CIT (A) however held that the assessee had no reason to withhold the handing over of possession of

the space to the purchaser in respect of a project which is completed and that wherever possession was not handed over to the purchaser, it was for

the reason that the project was not completed. He further found that a buyer who has paid the entire sale consideration would immediately demand

possession and the entire sale consideration could be received by the assessee only on completion of the project. On these facts it was noted by the

CIT (A) that unless the buyer makes full payment the assessee could not hand over possession nor get the sale transaction registered. A further

finding recorded by the CIT (A) was that the impugned project was completed only in the accounting period relevant to the assessment year 2008-09

and in support of this finding, he noted that a copy of the completion/occupancy certificate was placed on the record of the Assessing Officer. He

further recorded a finding that after the issue of the occupancy certificate and till the date of the assessment order, possession of almost 75% of the

developed area was handed over to the buyers who made full payment and the sale deeds were also executed. Thereafter, possession of 20% of the

remaining area was handed over to the buyers. The possession of the balance 5% of the developed area could not be handed over to the remaining

buyersbecause they could not make full payment and take possession. On these findings the CIT (A) held that the allegation of the assessing officer

that the assessee was adopting a method of accounting namely the project completion method, to suit its convenience to book income was baseless. A

further finding recorded by the CIT (A) is that there was no manipulation in the books of accounts. So far as the method of accounting is concerned,

the CIT (A) held that the project completion method is a wellrecognized and accepted method of accounting and was the only method suitable for any

developer who has to deliver a completed product to the buyer. Ultimately the CIT (A) held as under:

Thus on overall perusal of the assessment order it is seen that neither any defect has been pointed out by the assessing officer in the method of

accounting followed by the appellant nor any finding has been given that true and fair profits cannot be deduced following the said method of

accounting. No evidence was found during the course of search to show that the books of account are not properly maintained by the appellant. The

main thrust of the assessing officer in making the addition is that the assessee is deferring the payment of taxes. But this allegation of the assessing

officer cannot be accepted as the assessee is consistently following a method of accounting which is well recognized in development business and has

been accepted by the assessing officer also in the other group cases. Thus the addition is here by deleted.

7. The aforesaid finding of the CIT (A) was approved by the Tribunal with the observation that the department has accepted the assessee's method of

accounting namely, the project completion method and therefore there was no justification for adopting the percentage completion method for one year

on selective basis.

8. It is well settled that the project completion method is one of the recognized methods of accounting. In Commissioner Income-Tax And Another v.

Hyundai Heavy Industries Co. Ltd. MANU/SC/7731/2007Â : (2007) 291 ITR 482 (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.

This view was reiterated by the Supreme Court in Commissioner of Income-Tax v. Balearic Investment P. Ltd. MANU/IG/5001/2007Â : (2008) 299

ITR 1 (SC) 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 percentage of completion method is

another such method.

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.

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)

9. 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 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.CIT vs. SAS Hotels & Enterprises Ltd. [2011] 334 ITR 194 (Madras):

7. In this context, when we apply Section 145(3) of the Income Tax Act, it specifically stipulates that where the Assessing Authority is not satisfied

about the correctness or completeness of the accounts of the Assessee, or where the method of accounting provided in Sub-section (1) or accounting

standards as notified under Subsection (2), have not been regularly followed by the Assessee, the Assessing Authority may make an assessment in the

manner provided in Section 144. Therefore, in order to invoke Section 145(3) of the Act and disturb the existing system of accounting, the Assessing

Officer must necessarily express his dissatisfaction about the correctness or completeness of the accounts of the Assessee and also note that such

system of accounting was not regularly followed by the Assessee, in which event alone, the Assessing Officer can exercise his jurisdiction and make

an assessment as provided under Section 144 of the Act.

9. We fully concur with the conclusion of the Tribunal in having interfered with the orders of the Assessing Authority as well as that of the

Commissioner of Income-tax (Appeals). We are, therefore, not inclined to entertain the substantial question of law, as we do not find any need for the

same. The appeal fails and the same is dismissed. No costs. MKB (Asia) (P) Ltd. vs. CITÂ [2007] 294 ITR 655 (Gau HC):

11. As stated above, the accounting systemAS 7 is an approved system of accounting by the Institute of Chartered Accountants and as such the

authenticity of the said accounting system is not under challenge. The assessing firm/appellant being a Private Limited Company was maintaining the

account following the said system and the account were duly audited by qualified Chartered Accountant, maintenance of the accounts as well as the

valuation of works in progress will not prejudice either side. Admittedly, the particular work control were not completed and it comes under the

category of work in progress. There is also no dispute that the ultimate liability of the Assessee as regards tax will be dependant upon in total (fixed)

amount received by the Assessee against the particular work control.

12. We, therefore, hold that the Income taxauthority has no option/ jurisdiction to muddle in the matter either by directing the assessee to maintain the

account in a particular manner or adopt a different method for valuing the work in progress. We reiterate the decision in Doom Dooma India Ltd.

(supra) and hold that an assessee has as the option/liberty to adopt any recognized method of account for his business and the income shall be

computed in accordance with such regularly maintained accounting system. CIT vs. V.S. Dempo & CO. Pvt. Ltd. [1996] 131 CTR 203 (Mum):

4. We have carefully considered the rival submissions. We find that the controversy in this case is basically a finding of fact which has to be decided

by the authorities concerned on the facts and circumstances of each case. In the instant case, the Tribunal has come to a conclusion that the method

of accounting followed by the assessee was correct and resort to s. 145(1) was not called for. We do not find any infirmity in the said finding. We,

therefore, refuse to interfere with the same. ST. Teresaâ€™s Oil Mills vs. State of Kerala [1970] 76 ITR 0365 (Ker):

4. The learned counsel for the petitionerbrought to our notice the decision of the Ahdhra Pradesh High Court in N. Raja Pullaiah v. Deputy

Commercial Tax Officer, [1969] MANU/AP/0166/1969Â : 73 I.T.R. 224 and contended that the consumption of electricity by itself cannot form a

reliable test for determining the yield of oil, that the yield depends upon various factors like the condition of the machine, the quality of copra--whether

it was dried or moist--the nature of the electric supply and other similar factors and that the consumption of electricity is affected by these and various

other factors. It was also contended that no test-crushing had been done in this case and the department itself had accepted in other cases figures

varying from 10 to 12 units per quintal of copra. In the petitioner's case, the average works out to 12 units per quintal. On behalf ofthe revenue it was

urged that the rejection of the accounts was justified since there was very wide divergence in the consumption of electricity and that it was indicative

of the unreliability of the petitioner's accounts. The proposition is well-settled that accounts regularly maintained in the course of business have to be

taken as correct unless there are strong and sufficient reasons to indicate that they are unreliable. The department has to prove satisfactorily that the

account books are unreliable, incorrect or incomplete before it can reject the accounts. The rejection of accounts is not a matter to be done

lightheartedly, though it may not be possible to lay down in general terms the exact circumstances in which the accounts should be considered as

unreliable or incorrect. The accounts could be rejected as unreliable if important transactions are omitted therefrom or if proper particulars and

vouchers are not forthcoming or if they do not include entries relating to one particular class of business. In this connection, it has to be pointed out

that the rejection of accounts and assessment to the best of judgment are two distinct and separate processes and should not be confused as one,

although there will be no overlapping in the materials used for applying both processes. The initial step of rejecting the accounts will be justified when

the account books are found for valid reasons unreliable, incorrect or incomplete. The assessee at this stage has to be given reasonable opportunity for

offering explanations regarding the defects in the accounts and on his failure to satisfactorily explain the defects, the department will be justified in

rejecting the accounts. The subsequent step of assessment to the best of judgment, as has been uniformly recognised by the courts, involves some

guess-work and necessarily has to be done on the materials available in each case. The Privy Council had occasion to consider the exact import of the

expression ""to the best of his judgment"" occurring in Section 23(4) of the Indian Income Tax Act, 1922 (see Commissioner of Income Tax v.

Laxminarain Badridas [1937] 5 I.T.R. 170, 180 (P.C.)). The Privy Council made the following observation in that judgment:

He (the assessing authority) must not act dishonestly or vindictively or capriciously because he must exercise judgment in the matter. He must make

what he honestly believes to be a fair estimate of the proper figure of assessment, and for this purpose he must, their Lordships think, be able to take

into consideration local knowledge and repute in regard to the assessee's circumstances, and his own knowledge of previous returns by and

assessments of the assessee, and all other matters which he thinks will assist him in arriving at a fair and proper estimate; and though there must

necessarily be guess-work in the matter, it must be honest guess-work.

5. In the case on hand, the only circumstancerelied on by the authorities below for the rejection of the accounts is that there was wide disparity in the

consumption of electricity. In our opinion, this factor by itself without any other supporting circumstance does not justify the rejection of the accounts.

Such variation in the consumption of electricity can be due the various factors outside the control of the assessee. It is unsafe to categorically say that

because there is variation in the consumption of electricity the accounts are incorrect or unreliable. It sometimes happens that current supply falls far

below the usual voltage and on such occasions the output will necessarily be much lower than the normal rate. The efficiency of the crushing machine

as also the moisture content in the copra would also be relevant factors to be taken into account in arriving at the output. It is, therefore, unsafe to

uphold the rejection of the accounts purely on the ground that there has been divergence in the consumption of electricity. In this case, there is also the

additional circumstance that the department itself has admitted variations ranging from 10 to 12 units per quintal; and the petitioner's consumption of

electricity is 12 units per quintal, which cannot be said to be wide off the accepted consumption. We are of the opinion that in these circumstances the

rejection of the accounts is not legally justified.

6. We accordingly set aside the order of theTribunal and direct that the assessment be modified accepting the assessee's accounts. In the

circumstances, however, there will be no order as to costs. United Commercial Bank vs. CIT [1999] 240 ITR 355 (SC):

11. From the aforesaid form of the prescribedbalance sheet, it is evident that Scheduled Nationalised Banks were directed to put the value of shares

and securities at cost and if the market value is lower, it was to be shown separately in brackets. Now, the question would be when such a Bank is

submitting its statutory return of income, whether it can disclose in its return its real profit and/or loss on the basis of market value of securities and

shares? It has been pointed out that the balance sheet or the audited accounts maintained on the basis of the investment in shares at cost would not

disclose the real profit or loss of the Bankin view of the fact that depreciation in the value of the shares or fall in the market value of the shares and

securities is not provided in the audited accounts. Learned Counsel for the appellant submitted that even though in the balance sheet maintained by the

assessee, market price of the shares and securities is not mentioned, yet for determining the real income of the assessee Bank, the said price is

required to be taken into account. And, for that purpose since years, the assessee Bank was submitting income tax returns after taking into account

the market price of such shares and securities which has been accepted by the Department without any objection. He also submitted that not making

of proper entries in the balance sheet could hardly be a ground for not assessing the real income.

12. For the reasons, the Central Governmenthad issued Notification dated 12th May, 1982 permitting the assessee bank not to disclose in brackets the

market value of the investment under the sub-heads in inner column against any of the sub-heads (ii), (iii), (iv) and (v) of Item 4 of the assets side of

the prescribed form. It is also undisputed that:

(a) the appellant is a Nationalised Bank and therefore is governed by the Banking Regulation Act, 1949.

(b) The appellant follows mercantile systemsof accounting both for Book keeping purpose as well as for tax purposes.

(c) The appellant consistently and for over 30 years prior to the assessment year in dispute (1982-83) has been valuing its stock- in-trade

(investments) 'at cost' in the balance sheet whereas for the same period of time the appellant has been valuing the very same investment 'at cost or

market value whichever is lower' for income tax purposes.

13. In the background of the aforesaid facts, we would state that it is an established rule of commercial practice and accountancy that closing stock

can be valued at cost or market price whichever is lower. In Chainrup Sampatram v. Commissioner of Income Tax, Â West Bengal

MANU/SC/0046/1953Â :[1953]24ITR481(SC) , this Court explained the underlying reasons for the said practice thus:

'It is wrong to assume that the valuation of the closing stock at market rate has, for its object, the bringing into charge any appreciation in the value of

such stock. The true purpose of crediting the value of unsold stock is to balance the cost of those goods entered on the other side of the account at the

time of their purchase, so that the cancelling out of the entries relating to the same stock from both sides of the account would leave only the

transactions on which there have been actual sales in the course of the year showing the profit or loss actually realised on the year's trading. As

pointed out in paragraph 8 of the Report of the Committee on Financial Risks attaching to the holding of Trading Stocks, 1919,

As the entry for stock which appears in a trading account is merely intended to cancel the charge for the goods purchased which have not been sold,

it should necessarily represent the cost of the goods. If it is more or less than the cost, then the effect is to state the profit on the goods which actually

have been sold at the incorrect figure.... From this rigid doctrine one exception is very generally recognised on prudential grounds and is now fully

sanctioned by custom, viz., the adoption of market value at the date of making up accounts, if that value is less than cost. It is of course an anticipation

of the loss that may be made on those goods in the following year, and may even have the effect, if prices rise again, of attributing to the following

year's results a greater amount of profit than the difference between the actual sale price and the actual cost price of the goods in question.

(extracted in paragraph 281 of the Report of the Committee on the Taxation of Trading Profits presented to British Parliament in April, 1951).

While anticipated loss is thus taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into account, as

no prudent trader would care to show increased profit before its actual realisation. This is the theory underlying the rule that the closing stock is to be

valued at cost or market price whichever is the lower, and it is now generally accepted as an established rule of commercial practice and

accountancy. As profits for income tax purposes are to be computed in conformity with the ordinary principles of commercial accounting, unless, of

course, such principles have been superseded or modified by legislative enactments, unrealised profits in the shape of appreciated value of goods

remaining unsold at the end of an accounting year and carried over to the following year's in a business that is continuing are not brought into the

charge as a matter of practice, though as already stated, loss due to a fall in price below cost is allowed even if such loss has not been actually

realised. As truly observed by one of the learned Judges in Whimster & Co. v. Commissioner of Inland Revenue 12 Tax Cas. 813, Under this law

(Revenue Law) the profits are the profits realised in the course of the year. What seems an exception is recognised where a trader purchased and still

holds goods or stocks which have fallen in value. No loss has been realised. Loss may not occur.

Nevertheless, at the close of the year he is permitted to treat these goods or stocks as of their market value.

18. Even applying the aforesaid tests laid down by this Court, what is taxable under the Act is the really accrued or arisen income. On the basis of the

method of accountancy regularly employed by the assessee, the real income is pointed out in the income-tax return submitted by the assessee. This

cannot be ignored by holding that in a balance sheet which is required to be statutorily maintained in a particular form, market value of the shares and

securities is not mentioned or is mentioned in brackets. The decision in the case of State Bank of Travancore does not lay down any rule that

whatever is not mentioned in the prescribed statutory balance sheet is not to be taken into account for deciding real taxable income.

21. The learned Counsel for the Revenuefurther relied upon the decision in Commissioner of Income-Tax v. British Paints India Ltd. :

[1991]188ITR44(SC) . In our view, the said decision would not in a way advance the contention raised by the respondent. The Court while dealing

with the contention of the assessee for valuation of the raw material without taking into account any portion of the cost of manufacture, held that the

question of fact which the Assessing Officer must necessarily decide is whether or not the method of accounting followed by the assessee discloses

true income and observed thus:

It is a well recognised principle of commercial accounting to enter in the profit and loss account the value of the stockin-trade at the beginning and at

the end of the accounting year at cost or market price, whichever is the lower.

22. The Court further considered Section 145 of the Act and observed that what is to be determined by the officer in exercise of the power is a

question of fact, that is, whether or not income chargeable under the Act can be properly deduced from the books of accounts and the question must

be decided with reference to the relevant material and in accordance with the correct principles. The Court also observed:

Where the market value has fallen before the date of valuation and, on that date, the market value of the article is less than its actual cost, the

assessee is entitled to value the articles at market value and thus anticipate the loss which he will probably incur at the time of the sale of the goods.

Valuation of the stock-in-trade at cost or market value, whichever is the lower, is a matter entirely within the discretion of the assessee. But

whichever method he adopts, it should disclose a true picture of his profits and gains. If, on the other hand he adopts a system which does not disclose

the true state of affairs for the determination of tax, even if it is ideally suited for other purposes of his business, such as the creation of a reserve,

declaration of dividends, planning and the like, it is the duty of the Assessing Officer to adopt any such computation as he deems appropriate for the

proper determination of the true income of the assessee. This is not only a right but a duty that is placed on the officer, in terms of the first proviso to

Section 145, which concerns a correct and complete account but which in the opinion of the officer, does not disclose the true and proper income.

23. Hence, for the purpose of income taxwhichever method is adopted by the assessee a true picture of the profits and gains, that is to say, the real

income is to be disclosed. For determining the real income, the entries in a balance sheet required to be maintained in the statutory form, may not be

decisive or conclusive. In such cases, it is open to the Income Tax Officer as well as the assessee to point out the true and proper income while

submitting the income tax return. In Kedamath Jute Mfg. Co. Ltd. v. Commissioner of Income Tax (Central), Calcutta MANU/SC/0438/1971 Â :

[1971]82ITR363(SC) , this Court has negatived the contention that ""if an assessee under misapprehension or mistake fails to make an entry into the

books of account and although, under the law, a deduction must be allowed by the Income-Tax Officer, assessee will loss the right of claiming or will

be debarred from being allowed that deduction."" The Court held that whether the assessee is entitled to the particular deduction or not will depend

upon the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries

in the books of account be decisive or conclusive in the matter. In the present case, the question is slightly different. For reasons, Central Government,

in exercise of the powers conferred by Section 53 of the Banking Regulation Act, and on the recommendation of the Reserve Bank of India, permitted

the assessee not to disclose the market value of its investment in the balance sheet required to be maintained as per the statutory form. But as the

assessee was maintaining its accounts on mercantile system, he was entitled to show his real income by taking into account market value of such

investments in arriving at real taxable income. On that basis, therefore, Assessing Officer has taxed the assessee.

24. From the decisions discussed above, itcan be held:

(1) That for valuing the closing stock, it isopen to the assessee to value it at the cost or market value, whichever is lower;

(2) In the balance sheet, if the securities andshares are valued at cost but from that no firm conclusion can be drawn. A taxpayer is free to employ for

the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price;

(3) A method of accounting adopted by thetax payer consistently and regularly cannot be discarded by the departmental authorities on the view that he

should have adopted a different method of keeping accounts or of valuation;

(4) The concept of real income is certainlyapplicable in judging whether there has income or not, but in every case, it must be applied with care and

within their recognised limits;

(5) Whether the income has really accrued orarisen to the assessee must be judged in the light of the reality of the situation; and

(6) Under Section 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the

Income Tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the

Income-Tax Officer may determine.

26. In our view, as stated above consistently for 30 years, the assessee was valuing the stock-in-trade at cost for the purpose of statutory balance

sheet, and for the income tax return, valuation was at cost or market value whichever was lower. That practice was accepted by the Department and

there was no justifiable reason for not accepting the same. Preparation of the balance sheet in accordance with the statutory provision would not

disentitle the assessee in submitting income tax return on the real taxable income in accordance with a method of account adopted by the assessee

consistently and regularly. That cannot be discarded by the departmental authorities on the ground that assessee was maintaining balance sheet in the

statutory form on the basis of the cost of the investments. In such cases, there is no question of following two different methods for valuing its stock-

in-trade (investments) because the Bank was required to prepare balance sheet in the prescribed form and it had no option to charge it. For the

purpose of income tax as stated earlier, what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly

maintained by the assessee and that was done by the assessee in the present case.â€

11. Counsel for the respondent has contended that even the second issue is covered by the aforesaid decisions.

12. So far as issue No.(iii) is concerned, where it has been relied upon the decision of Gujarat High Court reported in Tax appeal No.1250/2011

wherein the Division Bench on the question of own money, in para 9 has observed as under:

â€œ9. So far as second question is concerned, we find that the same is covered by decision of this Court in case of CIT v. Amar Corporation (supra).

This Court while considering the same issue held and observed as under:

5. It could be seen from the facts that the housing projects were developed during the years prior to Assessment Year 2004-05. The search was

conducted on 18.06.2003 wherein the loose papers or the documents were seized. The material seized in form of loosepaper was qua one flat No.

A/204 only in respect of which taking of 'on-money' could be alleged. It was on the basis of such loose papers, the addition on On-money account was

sought to be made. That material could not have been used for the subsequent years for making addition on the same count. The addition in the

Assessment Year 2004-05 was not sustained by the Tribunal in the appeal before it on the ground that the Assessing Officer ought to have confined

himself in respect of sale transaction of one particular flat and he could not have on that basis calculated the addition for all flats. Accordingly, in

respect of previous Assessment Year 2004-05, it was held by the Tribunal that the addition for On-money, made in the said year was not proper

inasmuch as such addition could have been made only in respect of the flat in respect of which the evidence of On-money was found at the time of

search. The said decision dated 31.03.2011 of ITAT, Ahmedabad was relied on, on behalf of the assessee.

5.1 Even as for the year 2004-05 also, the addition on account of on-money was held to be on the basis of guess work and extrapolation, again in the

next year 2005-06 being year under consideration the addition of Rs. 1,52,53,128/- was made repeating the same story. When in respect of previous

Assessment Year 2004-05 also the Tribunal had dismissed the HC-NIC Department's appeal on the ground that the addition in that year also was

based on extrapolation, it emerged beyond pale of doubt that for the addition made for the year 2005-06 there was no evidence whatsoever and the

same was presumptive in nature.

6. In above view, the findings recorded by the Tribunal were proper and legal flowing logically from the facts on record. The Tribunal has not

committed any error in passing the impugned order. The appeal is devoid of merit, and raises no substantial question of law required to be considered.

7. Accordingly, the appeal is dismissed.

13. In that view of the matter, he has contended that the issue No.(iii) is required to be answered in favour of the assessee and against the

department.

14. We have heard counsel for the parties.

15. In view of the observations made in para 12, 12.1 onwards and 13, by the Tribunal, we are of the opinion that the Tribunal while considering the

case has gone in detail and after considering the facts on record has given a finding.Â In our considered opinion the Tribunal being a fact finding

authority, it will not be appropriate for us to re appreciate the evidence which has already been appreciated by the Tribunal.Â

16. Therefore, in view of the decision of this Court and the Gujarat High Court, referred to by Mr. Jhanwar, the first issue is answered in favour of the

assessee.

17. In view of the decision of Supreme Court referred hereinabove, the second issue is also required to be answered in favour of the assessee.

18. In view of the decision of Gujarat High Court in the case of S.A. Builders (supra), the issue No.(iii) is answered in favour of the assessee and

against the department.â€

6. In that view of the matter, no substantial question of law arises.â€

4. In view of the above, no substantial question of law arises.

5. The appeal is dismissed.