

inspecting Assistant Vs. Punj and Sons

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Oct-31-1995

Reported in : (1996)56ITD281(Delhi)

Judge : T R Rao, M Mahajan

Appellant : inspecting Assistant

Respondent : Punj and Sons

Judgement :

1. This is an appeal filed by the Department against the order dated 30-9-1986 passed by the CIT(A)-II, New Delhi whereby he has deleted the addition of Rs. 9,39,058 from the computed contract income allowing Rs. 9,00,000 towards house tax deduction, deleting Rs. 21,023 being addition out of subscription account and deleting addition of Rs. 20,000 out of sales promotion. The assessee is a private limited company. The assessment year involved is 1983-84, for which the previous year ended by 31-3-1983. The assessee is a contractor. It had entered into a contract with Delhi Development Authority (hereinafter called 'DDA') under which it had agreed to provide and instal Sound Proof Foldable Partition at Indoor Stadium, Inderprastha Estate, New Delhi on the occasion of conducting games at ASIAD-82. It is a turn key project. The work was undertaken for a total consideration of Rs. 1,54,00,000. The break up of the lump sum price of Rs. 1,54,00,000 agreed upon was as under:(1) Execution of entire work Rs. 105.75 lakhs on turn key basis(2) Custom duty on items to Rs. 44.25 lakhs be imported (approximately)(3) Port Trust charges Rs. 4.00 lakhs ----- Total: Rs.

1,54,00,000 ----- One of the terms of the contract is that the assessee has to deposit Rs. 20,000 as earnest money. Another term of the contract was that the assessee would be paid by the D.D.A. Mobilisation advance of Rs. 10,57,000 against which represent 10% of Rs. 1,05,75,000 against furnishing a bank guarantee of any scheduled bank for a like amount which should not bare any interest charges. The said amount of advance would be recovered on a pro rata basis in such a manner that the whole amount is adjustable by the time when 90% work is completed. Another important term of the contract was about the time of completion of work. According to para 6 of the letter dated 28-5-1981 addressed by the Project Engineer, Project Division No. 3 to the assessee, the time of completion would be calculated from the date of issue of import licence which would be 20 weeks for delivery of material and 12 weeks for site fabrication/erection thereafter. The letter dated 23-6-1981 addressed by the assessee to the Chief Engineer, DDA, New Delhi contained the following important clauses in paras 13, 15 & 18 respectively, of the said letter. We agree to modify our guarantee clauses as under:- We shall guarantee the satisfactory performance and operation of entire installations including roll up mechanism, curtain, control gears etc. for a period of 2 years after installation, subject to normal maintenance being carried out by the DDA as per our requirements/ maintenance schedule indicated in our instruction manuals which shall be furnished to DDA. We would further like to make it clear that guarantee will not cover damages to the curtain material on account of public abuse and malicious damage etc.

Clause 15. We shall be fully responsible for the operation and maintenance of the partition till 31st December, 1982.

Clause 18. The security deposit will be deducted from our bills and shall be retained by the Department until the expiry of ASIAD-82.

Thereafter we shall replace the same with a bank guarantee in the requisite form approved by the DDA. (By their letter dated 29-6-1981 addressed by the assessee to the Chief Engineer, DDA, Indoor Stadium, I.P. Estate, New Delhi), they have modified the guarantee clause, extracted above in para 13 of their letter dated 23-6-1981 as under :- We shall guarantee the satisfactory performance and operation

of entire installations including roll up mechanism, curtain, control gears etc. for a period of 2 years after the installation subject to maintenance being carried out by the D.D.A. generally as per maintenance schedule indicated in our instructions manuals which shall be furnished to DDA in due course.

We would further like to make it clear that the guarantee will not cover the damages, curtain material on account of public abuse and malicious damages etc.

We would like further to clarify that we shall obtain adequate guarantee from our collaborators in respect of the portion of equipment and material supplied by them for this partition for their satisfactory performance and operation. Copies of guarantee will be furnished to DDA. It is further clarified that our foreign collaborators shall handled the engineering designs, scope of drawing with specification of all the components, machinery equipment and ancillaries that would be incorporated in the partition. Shop drawings, may be prepared by us on the basis of designs and details given by our foreign collaborators. All drawings and designs shall be subject to the approval of the DDA. Shop drawings if prepared in India will be approved by the collaborators.

We would also confirm that our foreign collaborators shall supply the operating system of the drives, gears and control and also such components which may be considered necessary to be imported by the DDA while approving the designs.

The collaborators will also give a list of the parts/equipments which could be manufactured in India. This will be subject to the approval of the DDA. We also confirm that our foreign collaborators shall supply the accoustic membrane material with the ancillaries required for the joints of poly vinyl fabric and fastening the same unto the frame.

We agree to delete the words 'if made from vinyl fabric'. We confirm that the curtain above the cat walk level up to the bottom of the trusses shall be in four layers of reinforced Poly vinyl fabric.

5. As per the letter of the Project Engineer dated 1st July, 1981 addressed to the assessee, the following letters would form part of the agreement: (1) DDA's letter

No. PE-II/ISAJ/Public-2(12)/80/1345 dated 28-5-1981.

(2) Assessee's letter No. PSPL/HO/C-26A/621 dated 23ⁿ June, 1981 a copy of which is furnished at page 196 of the paper book No. 2 filed by the assessee.

(3) Assessee's letter dated 29-6-1981 bearing No, PSPL/HO/C-26A/ 629, a copy of which is provided at page 202 of second paper book filed by the assessee.

(4) Assessee's letter bearing No. PSPL/HO/C-26A/550 dated 20-5-1981, though copy of the letter bearing the same number as Sl. No. 4 above was filed at pages 173 to 179 of the second paper book. The date was mentioned as 28-5-1981 whereas the date of the letter cited above was 25-5-1981.

It is no doubt true, that the learned Departmental Representative did not file a copy of the letter forth cited above but still in view of the different dates obtaining, we hold that the letter forth cited which is said to be forming part of the contract may be different than the letter actually filed at pages 173 to 179 of second paper book.

6. The copy of the original contract entered into by the assessee with DDA was furnished at pages i to 89 of the second paper book filed on behalf of the assessee.

7. At pages 1,2,3 of second paper book, copy of the printed contract given to the assessee was provided. It would show that the contract work undertaken was "providing an installation of sound proof foldable partition". The earnest money agreed upon was Rs. 20,000. The security deposit was Rs. 1 lakh and the time allowed for the work would be calculated from the date of issue of import licence which would be 20 weeks for delivery of material and 12 weeks for the site fabrication/erection thereof.

From pages 4 to 89 contain general rules and directions which form part of the contract. The return of income for assessment year 1983-84 was filed on 23-3-1984 declaring an income of Rs. 9,95,930. The return was accompanied by audited balance-sheet, trading and profit & loss account. The assessee had not shown any income from the DDA contract mentioned above. It is the case of the revenue that the work undertaken under the terms of the above contract was

completed before the time of ASIAD-82. It is also their case that since the accounting year ended by 31 -3-1983, the contractual work was undertaken by the assessee was completed during the year of account relevant to the assessment year 1983-84. By various order sheet entries, the assessee was asked to furnish details and information regarding non-disclosure of income from its contract with DDA. The assessee sent its reply through its letter dated 26-2-1986, a copy of which was furnished at pages 1 & 2 of the paper book No. 1 filed by the assessee. The case of the assessee in that letter was that it had given performance guarantee for a period of 2 years to satisfy the DDA about the operation of the partition. Taking advantage of the said guarantee, the DDA deferred the acceptance of the contractual work till the ASIAD-82 is over. The guarantee period would be over in Sept., 84. In 1984, the assessee is stated to have felt that the partition was working successfully and the contractual work was completed by them and therefore they have treated the contract work as over by 31-3-1984. The letters dated 3-3-1983, 16-4-1983, 7-5-1983 and 19-5-1983, which the DDA addressed to the assessee, copies of which were furnished at pages 3 to 6 of the paper book No. 1 was only to show that even beyond 31-3-1983, the DDA was insisting the assessee to perform additional work under the terms of the contract. The case of the assessee in short was that the contract was complete in the accounting year relevant to assessment year 1984-85 and it was not showing the income derived from the contract in the intervening accounting years but the whole of the contractual income was shown only in the accounting year in which the contractual work was fully over. It is also the case of the assessee that the amounts shown as income derived from the contractual work in the intervening accounting years was only tentative receipts which do not bear the character of income.

The method followed by the assessee has been showing the income derived in the accounting year when the contract work was completed. It is also the case of the assessee that it had derived an income of Rs. 9,39,054.54 as the ultimate contractual income on the execution of this contract, and, therefore, the whole of the contractual income is correctly assessable in assessment year 1984-85 and was also correctly returned in its income-tax return for assessment year 1984-85. The IAC(A) while completing the assessment for assessment year 1983-84 by his

assessment order dated 23-3-1986 find it hard to accept the argument of the assessee. On the other hand, he held that the income has been derived by the assessee on the execution of his contract in the accounting year relevant to assessment year 1983-84. The IAC(A) had rejected the argument of the assessee by holding that it is ridiculous to hear that the bills were not raised and accepted during the pendency of the guarantee period.

He held that the assessee in fact has been receiving the payment as is evident from the receipt shown as advance in the balance-sheet. He also felt it ridiculous that the DDA goes on making payments without bills.

He further held that even if it is accepted that the DDA did not make full and final settlement, the assessee is under an obligation, to account for work-in-progress. However, it had failed to do so in the accounting year relevant to the assessment year 1983-84. He felt that the reasons which weigh with the assessee to return the income under the contract in assessment year 1984-85 are obvious. He held that the perusal of the subsequent assessment years return of income reveal huge losses whereas the return for assessment year 1983-84 being a positive figure. It is beneficial to the assessee to postpone the accounting of income under the contract in question to the subsequent assessment years of loss, to get the income derived under the contract set off against losses of other heads. The IAC(A) found that the income declared by the assessee from the contractual work was Rs. 9,39,057.54 for assessment year 1984-85. He decided to include the said income of Rs. 9,39,057.54 in the total income for assessment year 1983-84 for the above cited reasons. Thus, as against the returned income of Rs. 8,95,930 he determined the total income of the assessee for assessment year 1983-84 as Rs. 30,35,194 as per his assessment order dated 23-3-1986 passed under Section 143(3).

8. Aggrieved against the addition of Rs. 9,39,057.54 the assessee went in appeal before the CIT(A). On the basis of the material adduced before him as well as before the IAC(A), the Ld. CIT held that the assessee had been accounting from the income from the contract on the basis of their completion and the IAC(A) had not disputed this position. He held that the IAC(A) was not justified in concluding

that the contract was over during the accounting period relevant to assessment year 1983-84 merely because the Indoor Stadium had to be constructed before the ASIAD-82 as per the agreement. He reminded that under the agreement two years' guarantee period was agreed upon. He further held that the DDA did not accept the stadium as complete. He held that the contract work was not actually complete by March 1983, since certain expenditure had been incurred and certain amounts were received from the DDA after 31-3-1983 and, therefore, the question of accounting for the profits from the contract by March 1983 did not arise. He observed that the learned IAC(A) made the addition without examining the actual facts but only on suspicion. He further observed that though the Ld. IAC(A) did not say that the contract was not complete by March 1983 but the purport of his order is that it would be deemed to be so. On this reasoning, he deleted the addition of Rs. 9,39,058. Against the said deletion, the revenue is now before us.

9. We have heard Shri Suman Gupta, the Ld. D.R. and Shri R. Ganesan, the Ld. C.A. for the assessee. The Ld. C.A. for the assessee had filed three paper books. Reference of the paper books will be made as and when necessary in the order. The Ld. D.R. argued that under the terms of the contract fixture of sound proof partition is to be completed before ASI AD-82. The assessee, in fact, completed the job and received the payment under the contract. He referred our attention to pages 52, 53 and 56 of paper book No, 1. At pages 52 & 53, the details of various jobs undertaken by the assessee for two years, namely, assessment years 1982-83 and 1983-84 were provided. As far as the DBA contract execution is concerned, in the accounting year ending with 31-3-1982 a sum of Rs, 15,40,000 was shown as advances and a sum of Rs. 3,76,027 was shown under raw material for job and running expenses. For the accounting year ending with 31-3-1983, a sum of Rs. 1,01,23,968 was shown as advances and deposits against job and a sum of Rs. 81,757 was shown as raw material for job and running expenses etc. The details furnished at pages 52 & 53 contained notes divided into three paras. In the second para under the said notes, the following is admitted by the assessee:-- The Indoor Stadium job vide Board meeting of DDA was awarded on 19-5-981 (the date of contract was 1-7-1981 as per page No. 194 first para).

The job was completed in August/September 1982 and offered to DDA for inspection and completion certificate. The DDA instead invoked guarantee and asked for removal of defects which went on as per correspondence up to May 1993 further incurring expenditure of Rs. 80,000 (approximately) and receipt of Rs. 30,000 (approximately).

According to the assessee job substantially completed and taken as income in March 1984. It is also stated that the Chief Engineer, DDA did not issue the completion certificate in March 1983 and did not also accept the completion of the contract. That is why the CIT(A) said 'in fact the DDA did not accept the stadium as complete ... question of accounting by March 1983 did not arise'. It is argued by the Ld, D.R. that the assessee had received the following amounts under the contract relevant for assessment years 1982-83, 1983-84 and 1984-85 respectively :- Up to March 1982 Rs. 15,40,000 Up to March 1983 Rs. 1,01,23,968 Up to March 1984 Rs. 19,32,131.

The issue before the Tribunal is whether Rs. 1,01,23,968 accrued to the assessee during the year. As per clause No. 2 of the contract, the compensation is to be paid for the delayed execution of the contract at 1 % or such smaller amount as the Chief Project Engineer may decide on the amount of the estimated cost of the whole work as shown in the tender for every day that the work remained uncommenced or unfinished after the proper dates. Clause 6 of the contract which is found at page 11 of the paper book No. 2 states when the contractor is entitled for a completion certificate. According to the terms of the said clause within 10 days of the completion of work, the contractor shall give notice in duplicate of such completion to the Engineer-in-charge.

Within .10 days of receipt of notice, the Engineer-incharge shall inspect the work and if there is no defect in the work, he shall furnish the contractor with a certificate of completion. Otherwise, a provisional certificate of completion indicating defects (1) to be rectified by the contractor or (2) for which payment will be made at reduced rates shall be issued. Even according to the assessee's own "admission the contractual work was complete by August/September 1982 and it was offered to the DBA for inspection and completion certificate. It was not the

case of the assessee that at that time some defects were pointed out which the assessee was asked to rectify or it was intimated that the work was not satisfactory and payment would be made at reduced rates. Letters referred to at pages 3 to 6 of the paper book No. 1 whereunder the assessee was intimated to rectify certain defects and they were acted upon and defects intimated were rectified incurring expenditure were sought to be relied upon by the assessee. If that contention is true, the resultant expenditure should have been reflected in the accounts of the assessee. At page No. 40 of paper book No. 1 we find the job account of DDA, which would show that after 31-3-1983 the nil payments were made. It is well-known that ASIAB-82 was held in November 1982 and the contractual work undertaken by the assessee were to be completed before the ASIAD begun. The contractual work was over and the completed contract work was handed over to the DDA in September 1982, The Ld. D.R. argued that in all probability letters at pages 3 to 6 of paper book No. 1 must have been engineered and got issued by the assessee against itself in support of its present case. Under clause No. 6 of the contract defects cannot be pointed out and the contractor cannot be asked to rectify them at any time they (DDA) like. Such defects can be pointed out only when the time limits strictly set out in clause No. 6. If any defect memos are served beyond the limits set out in clause 6, the contractor is not under an obligation to comply with them and they are ultra vires to the contractual terms. Thus the letters at pages 3 to 6 can be ignored from consideration. It is contended by the Learned D.R. that there is no clinching proof adduced by the assessee that it has been following a consistent method whereunder it is disclosing income derived under a particular contract only after the completion of the contractual work and not in the intervening accounting period. He argued that it is not one of the terms of the contract that the full and final payment under the contract shall be payable only after the guarantee period is over and not at any time before. On the other hand, the assessee was fully responsible for the operation and maintenance of partition till 31st December, 1982 i.e. till the ASIAD-82 games are over. The DDA did not issue any defect memo to the assessee alleging that it had not maintained or operated the partition till ASIAD-82 is over. A combined reading of clause No. 6 of the contract and clause No. 13 under which guarantee period of 2 years was assured to the DDA have no connection with each other. They in fact

stand apart from each other and in fact constitute two separate agreements. Under clause No. 6, the time at which the assessee is entitled to the final bill is readily prescribed, it has nothing to do with the guarantee period whatsoever. Similarly, clause No. 7 of the contract prescribes the time within which the final bill is to be paid. Therefore, from the fact and circumstances of this case, it cannot be held that the work under the contract was not completed till the guarantee period is over i.e., till September 1984.

Even the assessee did not bona fide believe its own contention for the simple reason that if really its contract subsisted till September 1984 the contract was complete only in assessment year 1985-86. But, however, the assessee itself had treated the contract closed by 31-3-1984 which falls in assessment year 1984-85. In the accounting standard filed at pages 10 to 17 of the assessee's paper book No. 1, in para 7.3 at page 12 the following is found:- Under the completed contract method, revenue is recognised only when the contract is completed or substantially completed ; that is when only minor work is expected other than warranty obligation. Costs and progress payments received are accumulated during the course of the contract but revenue is not recognised until the contract activity is substantially completed.

On the basis of the above accounting standard relied upon by the assessee itself if the contract is substantially completed, it would be enough that such contract could yield income in the year in which the substantial execution of the contract is made. Further, even under the completed contract method the period of warranty undertaken is not relevant for the purposes of determining as to when the contract activity is substantially completed. It means, the Learned Departmental Representative argued, that warranty period is to be excluded to determine when the contract work was substantially over. The Learned D.R. relied upon the Delhi High Court decision reported in *Tirath Ram Ahuja (P.) Ltd. v. CIT* [1976] 103 ITR 15 wherein it was held that in the case of contract whose execution taken more than a year, one need not wait till the contract was complete in order to ascertain the income. It was open to the revenue to estimate the profit on the basis of receipts in each year of construction although the contract was not complete. Hence, according to the said authority which is binding upon the Tribunal even

during the pendency of the contract, income can be computed from out of the contract undertaken. In *Morvi Industries Ltd. v. OT* [1971] 82 ITR 835 (SC) at page 740 it is held as under : The dictionary meaning of the word 'accrue' is to come as an accession, increment, or produce, to fall to one by way of advantage; to fall due. The income can thus be said to accrue when it becomes due. The postponement of the date of payment has a bearing only in so far as the time of payment is concerned, but it does not affect the accrual of income. The moment of the income accrues, the assessee gets vested with the right to claim that amount even though it may not be immediately. There also arises a corresponding liability of the other party from whom the income becomes due to pay that amount. The further fact that the amount of income is not subsequently received by the assessee would also not detract from or efface the accrual of the income, although the non-receipt may, in appropriate cases, be a valid ground for claiming deductions. The accrual of an income is not to be equated with the receipt of the income. That the two, accrual and receipt of income, have different connotations is also clear from the language of Section 4 of the Act. Clause (a) of Sub-section (1) of Section 4 of the Act deals with the receipt of income while the accrual of income is dealt with in Clause (&) of that section.

The above is a clear authority to show that accrual is something different from payment. The payment may be postponed and need not always synchronise with the accrual. Now in this case, we will have to see when the payment is accrued to the assessee and not when the amount under the contract is payable. In *Manilal Kher Amhalal & Co. v. A.G.Lulla*, Seventh ITO [1988] 40 Taxman 329 (Bom.) his Lordships was considering a case in which there was a running account between the client and his solicitors. Under the rules framed by the High Court, the account between the client and his solicitors will be finally adjusted after the work was completed and the income must be shown in the year in which the work was so completed. This method has been accepted by the Department in the past as a valid method for computing the income. In the year in question, a questionnaire was issued by the ITO questioning the validity of which a writ was filed. Ultimately, the writ was issued restraining the Department from taking steps or proceedings or completing the assessment proposed by the IAC(A). So even if the accounts are maintained on the completed contract work method, it is only the time when the

work under the contract was over which was relevant for the purposes of accrual of income and it is not the time for payment under the contract. From the facts of this case, the accrual had taken place in September/ October 1982 when the contract was handed over to the DDA and, therefore, the year ending with 31-3-1983 is the correct year in which the income under contract was accrued and, thus, it is only in assessment year 1983-84 the income arising out of the contract should be ascertained and should be assessed and in fact, it was rightly done so. Hence, the order of the Learned CIT(A) was wrong. It should be set aside and that of the IAC's order is restored.

10. The Learned C.A. for the assessee Shri R. Ganesan argued the following: He invited our attention to pages 51 and 52 of the paper book No. 1 filed by the assessee and he argued that the amount of Rs. 9,39,058 is accounted for and also taxed in the subsequent assessment years, namely 1984-85. The method of accounting adopted by the assessee is to account for the income derived under each contract on the completion of that contract. It is a valid method of accounting and this method is being regularly followed by the assessee. When once the method was accepted by the Department for earlier years and later years for purposes of computing the business income of the assessee, the method cannot be disturbed in a middle assessment year. It cannot be said that different method of accounting should have been followed than the one adopted by the assessee regularly in assessment year 1983-84.

Both under the head 'Business' as well as under the head 'Other sources' unless and until it is shown that the real profits cannot be ascertained, it is open to the assessee to adopt any method of accounting consistently year after year. Shri Ganesan submitted that the assessee had not shown any amounts which it had received as and when they have been received, and it used to show them only as advances. Taxability of income does not depend upon the way the accounts are prepared by an assessee and in support of this proposition, the learned counsel for the assessee relied upon the following case laws :- (1) Snow White Food Products Co. Ltd v. CIT (No. 2) [1983] 141 ITR 861 (Cal).

The learned counsel next argued that the DDA had put a number of restrictions in the contract both for issuing completion certificate and also for payment of final bill. Our attention was drawn to clauses 1,2,3,6 & 7 of the contract furnished by the assessee at paper book No.2 filed by the assessee. The agreement clearly stated that a bill must be presented every month and tender each bill exceeding Rs. 5,000 a contractor is entitled to receive a monthly payment, proportionate to the work executed to the satisfaction of the Engineer-in-charge but also that all such payments shall be regarded as payment by way of advance against the final payment and not as payments for work actually done and completed. Under clause 7 of the agreement, the final bill shall be submitted by a contractor within one month of the date fixed for completion of work or the date of certificate of completion furnished by the Engineer-in-charge and the payments shall be made within six months if the bill amount exceeds Rs. 2 lakhs. The learned counsel for the assessee argued that the Engineer-in-charge is the competent authority to issue a completion certificate on the basis of which only the final payment can be claimed by the assessee. However, there was a great delay in issuing such a completion certificate even, after the completion of the work and it was issued only in the accounting year relevant to the assessment year 1984-85. The learned counsel for the assessee sought to impress that the type of work under-taken by the assessee is only in the nature of works contract but not in the nature of sale of goods, and in order to draw a distinction in the legal incidence between the two, he relied upon the Hon'ble Supreme Court's decision reported in Ram Singh & Engg. Works v. CST [1979] 43 STC 195, Ultimately he argued that the income derived from the execution of the contract, is rightly understood to be taxable only in assessment year 1984-85 and it is rightly returned as income of the assessee from this contract only in that assessment year. Therefore, the learned counsel for the assessee argued that the learned CIT(A) is perfectly justified in his conclusion and his order appealed against is worthy to be upheld.¹¹ After hearing both the sides we hold that the appeal is worthy to be allowed. Our reasons are as follows : There is no conclusive evidence to establish that the assessee has been, following a consistent method, of accounting, namely, returning the income after the complete execution of the contract. The contract in this case was entered into on 1-7- 1981 as can be seen from page 205 of the paper book No. 2 filed, by the

assessee. The first of the assessment year in which the income is derived under this contract, would have come up for consideration in assessment year 1982-83. If really the assessee has been following method under which the income is returned, under the completed contract method and not in the accounting year during the execution of the contract, he would have stated explicitly in his income-tax return for the assessment year 1983-84 that for the reason the assessee has not returned anything as income derived under the contract. However, in this case the assessee did not choose to file the assessment order for assessment year 1982-83. Further a specific question by the IAC(A) who is the A.O. in this case was put to the assessee by means of various order sheet entries to furnish details and explanations regarding non-disclosure of income from this contract for assessment year 1983-84. No doubt, the assessee had responded to the query by its letter dated 26-2-1986, a copy of which is furnished at pages 1 & 2 of the paper book No. 2 filed by the assessee. If really the contention of the assessee was true then it would have come forward with the defence based on the method of accounts followed by it while disclosing the income derived under this contract. However, not even a whisper of it was made about the method of accounts maintained by it in its reply dated 26-2-1986. He would have raised this contention before the IAC(A) who is the A.O. in this case. However, this was not put in issue when the assessment proceeding was pending with the IAC(A). The grounds of appeals preferred before the learned CIT(A) were not placed, before the Tribunal to verify whether any ground is taken about the method of accounts adopted by the assessee. The assessee is a contractor executing not only this contract but several other similar contracts. The execution of all of which may not, be over in the year when the contract was taken, but the execution might have spilled over several years. It is not known whether income based on completed contract method is followed by the assessee only in this contract (DBA contract) or in the case of all other contracts, the burden to prove that the assessee is following a consistent method of accounts, is in our understanding, on the assessee and not on the Department.

12. Further assuming for a while that the assessee has been following the method of returning the income after the completion of contract, the next question would be that what is meant by completion of work.

Does it mean the completion of work undertaken by the assessee under the contract or does it mean issue of completion certificate contemplated under the terms of the contract entered into between the parties or does it depend upon the final payment of the amount due under the contract In this connection if the ratio of the Bombay High Court in Manilal Kher Ambalal & Cos case (supra) is to be respected and followed then we should conclude that the amounts due to an advocate from his client would arise in the year in which the work is completed.

Even if the date of final bill under the terms of the contract stipulated between the parties is taken into consideration then also the amount due under the contract easily may be said to have fallen due in assessment year 1983-84. Clause No. 6 of the contract at page 11 of the paper book No. 2 which is already extracted in above paras may be noticed at this juncture. This clause stipulates that a contractor who had completed his work under a contract should give notice in duplicate reporting about the completion to the Engineer-in-charge who shall inspect the work and if there is no defect in the work, he shall furnish the contractor with a certificate of completion. Otherwise, a provisional certificate of completion indicating defects shall be issued. The defect memo may be of two kinds. It may indicate : (2) the defects for which the payments shall be made at reduced rates.

As can be seen from the above clause that as soon as the work under the contract is reported to the Engineer-in-charge we shall have no option except to issue completion certificate within 10 days of his inspection, He has no right to postpone his visit of inspection beyond 10 days of reporting about the completion of work. The argument that unless the Engineer-in-charge issues a completion certificate the assessee will have no right to receive the amounts, in our opinion, is not correct. That arguments concern very much about the payment rather than about the accrual of amounts under the terms of the contract. Even according to the noting given at pages 52 & 53 of the paper book No. 1 the work under the contract was completed in August/September 1982. In any event the assessee is entitled to get completion certificate in October 1982. That means by 31-10-1982 the assessee under the clear terms of clause No. 6 of the contract is entitled for completion certificate issued by the Engineer-in-charge.

13. The learned counsel for the assessee, however, laid great stress upon clause No. 7 of the contract which concerns only about the payment to be made in pursuance of issue of a final bill. It is no doubt true that under clause 7 when a final bill is issued and the amount payable thereunder exceeds Rs. 2 lakhs the payment can be made within six months, but the taxable events does not depend upon, in our considered opinion on the date of payment under the final bill. In our considered opinion, the amount due under the significant portion of clause No. 7 of the agreement may be noticed in this connection: "The final bill shall be submitted by the contractor within one month of the date fixed for completion of the work or of the date of completion furnished by the Engineer-in-charge and Payment shall be made within three months if the amount of the contract plus that of additional items is up to Rs. 2 lakhs and in six months if the same exceeds Rs. 2 lakhs of the submission of such bill If there shall be any dispute about any items of work then the undisputed item or items only shall be paid within the said period of three months or six months or as the case may be". Thus clear time limits were set out for submission of bills as well as payment to be made under the bills. When the bill amount exceeds Rs. 2 lakhs payment should be made within 6 months of the date of submission of such bill.

If we apply the time limits to the facts of the case before us in September 1982 the final bill was submitted to DBA in six months time limit ends by end of March 1983. Even according to this the full amount under the contract is realisable by 31st March 1983 which falls in assessment year 1983-84 and not in assessment year 1984-85. In our considered opinion, the amount due under the contract would become payable on the completion of the contract work or 10 days thereafter when the completion should be reported to the Engineer-in-charge, who is obliged to visit the work and who is obliged to issue completion certificate or provisional certificate of completion indicating defects. The distinction between the accrual and the date of payment is well brought out by the Hon'ble Supreme Court in Morvi Industries Ltd's case (supra). The relevant portion obtaining at page 840 is already extracted in above paras of this order and it may be referred at this juncture.

14. In CIT v. British Paints India Ltd, [1991] 188 ITR 44 in the following law adumbrated by the Hon'ble Supreme Court at page 46, the relevant portion of the

head note reads as follows :- The question to be determined by the A.O. in exercise of his power under Section 145 is whether or not income can properly be deduced from the accounts maintained by the assessee, even if the accounts are correct and complete to the satisfaction of the officer and the income has been computed in accordance with the method regularly employed by the assessee. What is to be determined by the officer is a question of fact i.e. whether or not income chargeable under the Act can properly be adduced from the books of account, and he must decide the question with reference to the relevant material and in accordance with the correct principles. It is not only the right but the duty of the A.O. to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom. It is incorrect to say that the officer is bound to accept the system of accounting regularly employed by the assessee, the correctness of which had not been questions in the past. There is no estoppel in these matters and the officer is not bound by the method followed in the earlier years.

The last lines of the ratio of the Supreme Court decision noted above are very important.

15. The next question which falls for our consideration is whether the warranty period of 2 years can in any way determine the completion of work. Before taking up of this issue, let it be recalled that one of the contentions advanced by the assessee was that the job was completed in August/ September 1982 and was offered to DDA for inspection and issue of completion certificate. However, the DDA instead invoked guarantee and asked for removal of defects which went on, as per correspondence, up to May 1993. The assessee incurred an expenditure of Rs. 80,000 approximately against which it had received an amount of Rs. 30,000. This argument remained unsubstantiated. The assessee filed the whole of the ledger account at page 56 of the paper book No. 1. At page 56/1 by 56 /16 of the paper book is shown the whole of the ledger account concerning DDA's job. It had not recorded even a single rupee outgo from the assessee towards this work after 31 -3-1983. At page 56 /20,21 & 22, relates to ledger account in the books of the assessee which disclosed the account of M/s Jesons Electronics Ltd., the foreign collaborators with the help of whom the assessee executed the contract.

As can be seen from the said account, the amount paid to the said collaborators up to 31-3-1983 remained at Rs. 9,30,000 as on 31-3-1983.

The same amount is brought forward even as on 31 -3-1984 on which date it was squared up. At page 56/ 30, 31 & 32, we find that the account in the name of Project Engineer, Project Division No. 2 Indoor Stadium, DBA. If we look into the account of a credit of Rs. 15,40,000 appears as on 31-3-1982 and the same figure is continued to be the credit as on 31-3-1983. However, on 31 -3-1984, the account was squared up. Thus the alleged incurring of Rs. 80,000 towards additional work executed by the assessee at the contract site or towards the contract work is not substantiated and it is also not substantiated by the set of accounts filed by the assessee. Further the assessee itself did not bona fide believe that the contract work should be deemed to be over only after the completion of the guarantee period of two years that means in September 1984. If really the contract work was completed, according to the version of the assessee only in September 1984 which falls in assessment year 1984-85 and there is no reason why the assessee had itself recorded in its books of account that the contract work was completed even in March 1984. Therefore, there is neither any truth nor bona fides contained in the allegations made by the assessee. Now the question remained for our consideration is whether under the completed contract method warranty period should be taken into consideration for considering and for determining the date of completion of the contract.

In this connection, the following is stated at page 12 of the paper book No. 1 which is a portion of accounting standard prescribed under the leaflet titled as "Accounting for Construction Contract issued by the Institute of C.A." which is already extracted in the prior paras and which may be considered at this juncture.

16. In para 7.3, a contract yields income only when it is completed or substantially completed. Warranty period should be excluded while considering when a contract was completed or substantially completed, in such a case warranty period does not come into reckoning. Para No.7.3 of the above accounting standard is extracted fully hereunder:- Under the completed contract method revenue is recognised when the contract is completed or substantially completed that is

when only minor work is effected other than warranty obligation. Costs and progress payment received or accumulated during the course of the contract but revenue is not recognised until the contract activity is substantially completed.

It is significant to note that the damages for breach at the guarantee clause was not quantified under the terms of the contract obligation may arise or may not arise during the guarantee period. The obligation is contingent in nature. The argument that the results under the contract can or should be found out only after the guarantee period is over under the completed contract method of accounting and the question of accrual of income does not arise until then is an argument which is stated to be rejected. In this connection matter at page 4241 of Sampath Iyengar's Law of Income-tax (Eighth Edition), Volume-IV is as under:- As its very name suggests, this method is adopted in respect of contracts which have to be completed by stages over a course of years, such as, building contracts or building schemes by co-operative or private enterprise, or contracts entered into with public authorities, such as, Public Works, Military, etc. The ascertainment of the profits in the execution of such contracts cannot be deferred till after the completion of the entire constructions which may take several years. Each year's profit shall have to be in the nature of things, computed on an estimate, having regard to the work completed during each year. The method of valuation is set out as follows : If a contract is nearly complete and only a small portion of the work remains to be done and estimate will be made of the further expenditure on the portion remaining to be done, and an allowance will also be made for the margin of profit on that portion. This estimate should be added to the amount already expended to the contract, and the total will represent the cost of finishing the whole work. This cost should be compared with the contract price, and if the latter exceeds the former, the excess will represent profit on the completed portion of the contract.

If a contract has not reached a sufficient stage as to enable one to make a reasonable estimate of remaining portion of the work, the profit or loss on the portion already completed is ascertained thus.

The cost of the work completed will be represented by the total of the debit side on the Contract A/c, less the cost of stores, materials and plant on hand. This net cost

should be compared with the amount of work certified by the Contractee's Architect plus the cost of work done but not certified. If the latter exceeds the former, the excess represents profit and may be taken into account, it is not advisable. However, to take full credit for the whole of the profit thus ascertained but to reverse a portion of it. for contingencies, such as a likely rise in the price of materials or labour. A sound method, therefore, is to transfer to profit: & loss account only two-thirds or three-fourths of the profits ascertained, and to carry forward the balance to the next year's account by debiting Contract Account and crediting work in progress account. At the commencement of the next year, the above entry will be reversed....

Thus the case law relied upon by the learned counsel for the assessee are not germane for the point at issue. The list of cases relied upon by the assessee are already noted. Let us examine how far they are relevant for our purposes. In Snow White Food Products Co. Ltd. s case (supra), our attention was drawn to page 864 which contained the following part of the head note:- In the assessment year 1969-70, the Tribunal re-examined the matter, whether the change in the method of accounting effected by the assessee in the assessment year 1968-69 was bona fide, on further evidence, and came to the conclusion that the object of the assessee in effecting the change in its method of accounting was only in respect of interest receivable from one debtor and, therefore, the change was not bona fide. Even assuming that such a finding was correct and had become final, it still remained to be examined whether in continuing the changed method of subsequent years 1970-71 and 1972-73 the assessee acted mala fide. Particulars of the debtors of the assessee and their payments to the assessee in the subsequent years were neither called for nor examined. There was no specific finding in the relevant assessment years that the assessee in maintaining the change in its method of accounting was not acting bona fide.

Therefore, the assessee was entitled to change its method of accounting from the mercantile system of accounting to the cash system in respect of the credits in the interest account and the sums of Rs. 1,97,657 and Rs. 2,01,517 being interest accrued during the relevant years but not received could not be included in the assessments for the assessment years 1971-72 and 1972-73.

17. We have studied the whole of the report and in our understanding the case is an authority for the proposition that the change in method of accounting is permissible in later years and the bona fides of such change in accounting need not be insisted upon before accepting such change. We are primarily concerned as to the date of accrual of income under the completed contract system and this decision does not in any way help decide any matter in that regard and, hence, it is not relevant for our purposes. The ratio of the decision reported in Investment Ltd. 's case (supra) was already extracted in the above paras and it is unexceptional. However, we are not very much on the point of the method of accounting. We are concerned with the finding out of the taxable event, assuming that the method adopted, namely, completed contract system is the correct method to be adopted in this case. However, we may observe that there is some conflict between the ratio laid down in Investment Ltd.'s case (supra) on the one hand and British Paints India Ltd. 's case (supra) relied upon by the Department on the other. In our understanding the ratio of the later Supreme Court decision prevails than over the earlier, for the presumption is that while laying down the ratio under the later of the two decisions, the Hon'ble Supreme Court is presumed to have surveyed the whole of the law on the subject and especially fully aware of the decisions previously rendered on the topic. Therefore, firstly, according to us decision reported in Investment Ltd. 's case (supra) is not germane for our purposes and, secondly, if there is really a conflict between the decision reported in Investment Ltd. 's case (supra) and British Paints India Ltd. 's case (supra), we should necessarily prefer the later decision than the earlier. Another decision relied upon on behalf of the assessee was Indo-Commercial Bank Ltd. v. CIT [1962] 44 ITR 22 (Mad.). The ratio sought to be laid down in that case was that the assessee is entitled to change his method of valuation provided it is bona fide and provided further this is a method of valuation for regular employment by the assessee and not merely for the year in question. In other words, a change in the method of valuing the closing stock under certain circumstances does not entail a rejection of the method of assessee's choice on the application of the proviso to Section 13. Firstly, we are not concerned with the question of valuing of the closing stock, and secondly, we are not on the question as to how many times the assessee can change its method of accounting over the years. Further, we are of

the opinion that this decision appears to be not in consonance with British Paints India Ltd. 's case (supra).

For these reasons, we hold that this decision is not genuine for our purposes and its ratio does not apply to the facts of the present case.

18. Now the question remains of the Hon'ble Supreme Court decision reported in Ram Singh & Engg. Works's case (supra). In that case, the question was whether the contract for fabrication and erection of 'three motion electrical, over-head and travelling crane' is a contract for work and labour and not a contract for sale. Their Lordships held that the crane comes into existence as a unit only when the component parts are fixed in position and erected at the site but at this stage it becomes the property of the customer because it is permanently embedded in the land belonging to the customer. The decision of the Hon'ble Supreme Court in that case was that it is essential that a transaction for fabricating component parts and putting them together and erecting them at the site so as to constitute a 'three motion electrical, over-head and travelling crane' and there was no transfer of property in it made by the manufacturer to the customer as a chattel. The case before the Hon'ble Supreme Court concerns about the levy of sales-tax. The question before us does not depend upon in deciding whether it is a contract for sale or a contract for work and labour. Therefore, the decision, in our humble opinion, is not relevant for our .present purposes.

19. The question is whether the contract was completely executed or not cannot depend upon the fact that whether DDA accepted the work as complete or not. It depend upon, in our opinion, the contractual terms in the contract between parties and what legally follows from out of such contractual terms. However, the learned CIT (Appeals) did not bother himself to discuss any stipulation in the agreement or did not come to the conclusion on the basis of such a stipulation. He stated that the assessee had been following completed contract system of accounting and the IAC(A) had not disputed his position. However, we are unable to find anything from the assessment order passed by the IAC (A) about his alleged admission regarding the method of accounting followed by the assessee. The Id. CIT (A) had merely mentioned the arguments of the assessee and virtually had treated them

as his decision itself, e.g., he stated in his order : "the same agreement is also stipulated two years' guarantee period. In fact, the DDA did not accept the stadium as complete. It pointed out certain shortcomings which had to be rectified". Since the contract was not actually complete by March 1983, certain expenditure had to be incurred and certain amounts were received from the DDA after that date. The question of accounting of profit from the contract by March 1983 did not arise.

19A. Thus it can be seen that the very argument of the assessee without putting it to test and without verifying the truth from the material on record and without considering whether it has any legal basis or not, the Learned CIT (A) had adopted it as part of his order. Further he had put certain versions which the IAC (A) in his assessment order did not state. The following is the version :- The IAC has not made the addition with reference to the examination of the actual facts but on the basis of assumption and suspicion he has not stated that the contract was not complete by March 1983 but the purpose of his argument is that it would be deemed to be so.

Thus the order of the Ld. CIT (A) is lacunic without proper appreciation of evidence on record and without appreciating the question of law involved, and, by short circuiting everything which needs elaborate discussion and ultimate decision dependent thereon. We hold that the order of the Ld CIT (A) is liable to be set aside and the assessment order of the IAC (A) is to be restored. The appeal of the revenue on this point is allowed.

20. to 23. [These paras are not reproduced here as they involve minor issues.

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