

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' C '**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

I.T. A. No.203/Bang/2014
(Assessment Year : 2007-08)

M/s. Bairavi Properties & Construction Pvt. Ltd.,
NO.1432, 10th Main, 6th Cross, Kodihalli,
HAL 3rd Stage, Bangalore.

.... Appellant.

Vs.

Dy. Commissioner of Income Tax,
Circle 11(2), Bangalore.

..... Respondent.

Appellant By : Shri Tata Krishna, Advocate.
Respondent By : Shri S . Sundar Rajan, JCIT (D.R)

Date of Hearing : 08.09.2016.
Date of Pronouncement : 30.09.2016.

O R D E R

Per Shri Vijay Pal Rao, J.M. :

This appeal by the assessee is directed against the order dt.4.11.2013 of Commissioner of Income Tax (Appeals)-I, Bangalore for the Assessment Year 2007-08.

2. The assessee has raised the following grounds :

1. The Appellant is a Company engaged in the business of land building and developing.
2. The Appellant filed its return of income for the assessment year 2007-2008, on 18.10.2007, declaring a total income of Rs. 3,65,85,350/-.
3. The case was selected for scrutiny and notice was issued under Section 143(2) on 09.09.2008. In response to the said notice, the authorised representative of the Appellant appeared from time to time and submitted the details called for.
4. After examining the details filed and verifying the books of accounts produced by the Appellant, the Learned Deputy Commissioner of Income Tax, Circle - 11(2), Bengaluru (Assessing Officer) completed the assessment and passed the assessment order under Section 143(3) on 07.12.2009 accepting the total income declared by the Appellant.
5. Subsequently, the Learned Commissioner of Income Tax, Bengaluru - I, (CIT) issued notice under Section 263 to the Appellant by stating that the assessment order passed by the Learned Assessing Officer is erroneous and prejudicial to the interest of the revenue for the reason that a sum Rs. 2,07,75,951/- representing the provision for expenses towards cost of completion of flats has been allowed by the Learned Assessing Officer wrongly,

without proper application of mind to the facts of the case and relevant provisions of the Act.

6. In response to the said notice, the Appellant filed the reply substantiating its claim before the Learned CIT on 31.10.2011 and also filed the submission on 21.11.2011.
7. After a few hearings, the Learned CIT, passed the order under Section 263 on 28.11.2011 directing the Learned Assessing Officer to re-examine the issue and to make thorough enquiries regarding the nature and basis of the said claim. He further directed to afford an adequate opportunity to the Appellant and pass a fresh assessment order taking into consideration all the facts relevant to the issue and the legal provisions and thereafter to take a view regarding allowability or disallowability of the said claim of Rs. 2,07,75,951/-.
8. Consequently, the Learned Assessing Officer issued notice under Section 143(2) on 11.07.2012. In response to the said notice, the authorised representative of the Appellant appeared and filed the details called for on 27.08.2012.
9. After a few hearings, the Learned Assessing Officer passed the order under Section 143(3) r.w.s 263 on 12.09.2012 by disallowing a sum of Rs. 2,07,75,951/-.

3. The brief facts leading to the controversy are as under :

3.1. The assessee-company engaged in the business of real estate development. The assessee filed its return of income on 18.10.2007

declaring a total income of Rs.3,65,85,350. The assessee was developing a project Ananda Bhairavi comprising of 122 units. During the year under consideration, the assessee has declared income from sale of 87 units. The Assessing Officer accepted total income declared by the assessee while passing assessment order under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') on 7.12.2009. Subsequently, the CIT proposed to revise the assessment by issuing a notice under Section 263 of the Act on the issue that a sum of Rs.2,07,75,951 representing the provision for expenses towards cost of completion of flats has been wrongly allowed by the Assessing Officer without proper application of mind to the facts of the case and the relevant provisions of the Act. Consequently, the CIT set aside the assessment order vide revision order dt.28.11.2011 and directed the Assessing Officer to make fresh assessment after verification of relevant records and facts and giving an opportunity of hearing to the assessee. In pursuant to the directions of the CIT the Assessing Officer called for necessary details and consequently disallowed the said claim of Rs.2,07,75,951 on the ground that the provisions debited to the P & L Account is not an allowable claim

as per the provisions of the Income Tax Act. The assessee challenged the action of the A.O. before the CIT(Appeals) but could not succeed.

4. Before us, the learned Authorised Representative of the assessee has submitted that the flats in question were sold during the year under consideration however certain works were to be completed and therefore the assessee has debited this expenditure on estimate basis which is not a contingent in nature rather it is a known and crystallised liability. He has further submitted that the expenditure was to be incurred on the specific work to be completed for completion of the flats sold. Since the bills were raised subsequently therefore, the assessee had booked the provision for expenditure as and when the material was supplied and the works were performed. He has further contended that the expenditure in question relates to the material and work carried out which is inevitable for completion of the construction of the flats sold. Thus the provision was not made in assumption or on the basis of any uncertainty but it is based on the actual work was to be completed and further on the basis of the material supplied/work carried out during the period relevant to the assessment year under consideration. He has

referred to the details of the provisions of the expenses and submitted that the break up of the expenses clearly shows that this expenditure was incurred regarding various furnishings, electric expenses, bath room fittings and tiles, etc the construction material used for carrying out the works, children play equipment, compound wall, railing, etc. He has referred the entire details of the expenditure which has been reproduced in the submissions produced before the authorities below. The learned Authorised Representative has also referred the bills of the work carried out in the project and submitted that since the bills were raised by the vendors after the end of the financial year therefore the assessee has estimated the expenditure. He has forcefully contended that the entire expenditure and the bills are relating to the project in question and therefore the expenditure incurred in connection with the completion of the flats sold during the year is an allowable expenditure on the concept of matching principle as this expenditure has not been claimed and allowed in the subsequent assessment year. The learned Authorised Representative has filed the copy of the assessment order for the A.Y. 2008-09 and submitted that the assessee did not claim the expenditure

in question for the next assessment year and therefore if the said expenditure is disallowed it will result double taxation of the same amount. He has further contended that the expenditure incurred by the assessee has been disallowed by the A.O. only on the ground that the provision is a contingent liability which is not allowable. The learned Authorised Representative has contended that the revenue has been recognized when the sale of the 87 units during the year under consideration then the cost of construction of these 87 units is an allowable expenditure as per the matching concept. In support of his contention he has relied upon the following decisions :

- a) Rotork Controls India (P.) Ltd. Vs. CIT (2009) 180 Taxman 422 (SC)
- b) Calcutta Co. LTd. Vs. CIT (1959) 37 ITR 1 (SC)
- c) CIT Vs. Triveni Engg. & Industries Ltd. (2011) 336 ITR 374 (Del)
- d) ACIT Vs. Krishna Grameena Bank 2016-TIOL-945-ITAT-BANG.

He has further contended that the deduction is also permissible under the Income Tax Act even if the actual payment is not made but if the liability is incurred. Therefore when the assessee is following the Mercantile System of Accounting then the expenditure which is already

incurred and corresponding income has been offered to tax then the same is an allowable deduction under the IT Act. In support of his contention, he has relied upon the following decisions :

- a) CIT Vs. Vodafone Essar South Ltd. 2014-TIOL-2045-HC-DEL-IT
- b) CIT Vs. Excel Industries Ltd. (2013) 358 ITR 295 (SC)
- c) Dumraon Textile Ltd. Vs. DCIT 2016-TIOL-1489-HC-KOL-IT

The Id. AR then submitted that since the assessee has not claimed this expenditure in the subsequent assessment year therefore this is revenue neutral claim as the assessee is being taxed at the maximum rates. In support of his contention, he has relied upon the following decision

CIT Vs. Nagri Mills Co. Ltd. (1958) 33 ITR 681 (Bom.)

The Id. AR has referred to the details of the total expenditure on completion of the project in the next year and submitted that the provision of expenditure claimed during the year under consideration is almost equivalent to the expenditure to be apportioned on the basis of the ratio of the saleable area of the total project and the area of 87 units sold during the year. The Id. AR has forcefully argued that the expenditure in question was determined on the actual expenditure

incurred by the assessee and therefore it cannot be regarded as contingent in nature. Referring to the decisions relied upon above, the Id. AR has submitted that the Hon'ble Supreme Court has time and again held that the estimated expenditure which has to be incurred by the assessee in discharging liability which it had already undertaken is eligible for deduction. The expenditure pertains to the liability which occurred during the accounting year relevant to the assessment year under consideration though it was to be discharged at a future date when the parties have raised the bills. Thus the liability was required to be estimated under the Mercantile System of Accounting and has to be debited against the corresponding income. Liability arises within the accounting period is an allowable deduction though it may be quantified and discharged at a future date. Therefore the provision for liability is amenable to the deduction if there is an element of certainty. The impugned provision relates to the supply of material and execution of work already taken place although the bills were raised by the supplier in the subsequent year. He has contended that mere fact that the expenditure was not quantified during the impugned assessment year

due to the bills which were raised by the supplier in the subsequent year would not alter the fact and hence it is an allowable expenditure. The Id. AR has then referred to the CBDT Notification dt.25.1.1996 and submitted that accounting standard and policies adopted by the assessee should be such so as to represent a true and fair view of state of affairs of business in the financial statements prepared and presented on the basis of such accounting policies. The accounting treatment and presentation in that financial statement should be governed by their substance and not merely by legal form. Accruals refers to estimation that revenue and costs i.e. recognized as they are earned and incurred and not as money received and paid as per the concept of consistent accounting policies from one period to another. Therefore the assessee's claim of expenditure is based on principle of prudence which is akin to Doctrine of Conservation in Accounting which has been consistently followed by the assessee. Thus it is not claimed on the basis of actual payment or quantification but on the basis of accrual. As per the principle of matching concept when the assessee has offered income from sale of 87 flats out of 122 units then the expenditure which is

allocated as per the percentage of area sold during the year is an allowable expenditure.

5. On the other hand, the Id. DR has submitted that despite the directions of the CIT (Appeals) under Section 263, the assessee failed to produce the relevant details before the Assessing Officer to substantiate its claim that it is not a contingent liability. Further the assessee has failed to prove that the expenditure in question was in respect of the 87 units sold during the year. Therefore the assessee failed to establish that the claim of provisions of expenditure is directly related to the flats sold during the year. He has referred to the paras 8, 9 & 11 of the CIT (Appeals) and submitted that the assessee has not produced the sale agreement to show that the flats sold during the year were incomplete and the work was yet to be completed. He has relied upon the orders of the authorities below.

6. We have heard the learned A.R. as well as learned D.R. and considered the relevant material on record. The assessee has declared income from sale of 87 units out of 122 units of the project in question. The Assessing Officer while passing the assessment order in pursuant to

the revision order dt.28.11.2011 passed under Section 263 of the Act has disallowed the claim of Rs.2,07,75,951 being the provision of expenses debited to the Profit & Loss Account is not allowable. The assessee has contended before the authorities below as well as before us that this amount of Rs.2,07,75,951 was allocated against the income from the sale of 87 units because this expenditure was actually incurred and crystallized during the year but due to the bills raised by the vendor in the next year the same was estimated by the assessee as an expenditure incurred in relation to the construction of these 87 units. We find that though the assessee has given the details of the expenditure which was allocated against income declared during the year on estimate basis and creating a provision however, nothing has been brought on record either before the authorities below or before us to show that this expenditure was actually having any direct or indirect nexus with the 87 units sold during the year under consideration. If the said expenditure is actually incurred in relation to the construction work of these 87 units then even if the bills were raised by the vendors in the subsequent year as per the principle of matching concept, it is an allowable claim against the

income from the sale of these 87 units. Therefore there is no quarrel as far as the concept of matching of expenditure against the revenue however for applying that doctrine of matching concept the expenditure must have a direct nexus with the income declared during the year under consideration. We find that the claim of the assessee is not supported by any evidence as the work order in respect of this expenditure itself was issued by the assessee after the end of the financial year relevant to the assessment year under consideration. Therefore, the contention of the assessee is not acceptable wherein it is claimed that the expenditure was already incurred during the year under consideration but since the bills were raised in the subsequent year therefore the assessee has made the provision on the basis of estimation. We further note that the CIT(A) has raised a specific query in para 11 of the impugned order as under :

11. Further more, the appellant has not furnished any documentary evidence to show that there is agreement with the buyers regarding uncompleted work to be completed even after the flats were sold. Contingent liabilities do not constitute 'expenditure' cannot be the subject matter of deduction even under the mercantile system of accounting. Expenditure which is deductible for income tax purposes is towards a liability actually existing at the time but setting apart money which might become expenditure on the happening of an even is not expenditure as held in the cases of :-

- (i) *Shree Sajjan Mills Ltd vs. CIT(1985) 156 ITR 585(SC)*
- (ii) *Indian Millasses Co. (P) Ltd Vs CIT (1959) 37 ITR 66(SC)*
- (iii) *Gangaprasad Vs. Second ITO(1966) 61 ITR 384(Bom)*

Expenditure must be towards actually existing liability, expenditure which is deductible for Income Tax purpose is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure as held in the case of -

Mysore Lamp Works Ltd. Vs. CIT (1950) 185 ITR 96 (Kar.)"

Despite a specific question raised by the CIT(A) that the assessee has not furnished any documentary evidence to show that the flats sold during the year were incomplete and were required to be completed as per the agreement with the buyers. The assessee has not furnished any such document or sale document before us to show that these 87 flats sold

during the year were incomplete and the assessee was to complete the incomplete work after the sale of these flats. Therefore in the absence of any material to establish the nexus between the expenditure in question and the flats sold during the year the claim of apportionment of the expenditure against the income from sale of these flats cannot be allowed.

7. As regards the contention of the assessee that the assessee has offered the income from the entire project in the subsequent year on completion of the project and therefore this claim is revenue neutral, we find that the Assessing Officer has disallowed this claim of Rs.2,07,75,951 in respect of the provision of expenditure whereas the income offered by the assessee for the Assessment Year 2008-09 is only Rs.98,64,944. Therefore factually it cannot be a revenue neutral as claimed by the assessee. In view of the facts and circumstances of the case as well as above discussion, we do not find any error or illegality in the orders of the authorities below in disallowing the provision of expenditure.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 30th Sept., 2016.

Sd/-
(A.K. GARODIA)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Bangalore,

Dt. 30.09.2016.

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

By Order

Asst. Registrar, ITAT, Bangalore