

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.814/Bang/2015
(Assessment Year : 2010-11)

Deputy Commissioner of Income-tax,
Circle -5(1)(1), Bangalore

..Appellant

v.

M/s. RMZ Ecoworld Infrastructure P. Ltd,
(Formerly known as M/s. Adarsh Prime Projects P. Ltd),
The Millenia Tower, B-Level 12-14,
No.1 & 2, Murphy Road, Ulsoor, Bangalore 560 008
PAN : AABCA7596B

..Respondent

Assessee by : None
Revenue by : Dr. P. K. Srihari, Addl. CIT

Heard on : 21.10.2015
Pronounced on : 30 .10.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue its grievance is that CIT (A) held expenditure incurred for water supply and sewerage as revenue in nature.

As per the Revenue the payments to Bangalore Water Supply & Sewerage Board (BWSSB) was one time and assessee received enduring benefits.

02. Ld. DR strongly assailing the order of CIT (A) submitted that assessee had paid Rs.2,26,25,820/- to M/s. BWSSB and though such payment did not result in any capital asset being acquired by the assessee, could not be treated as revenue expenditure. As per the Ld. DR, the demand raised by BWSSB was for Rs.8,39,43,006/- of which Rs.6,13,17,186/- was paid by one M/s. Adarsh Developers, a group concern of the assessee. Ld. DR further submitted that balance was paid by the assessee and such payment resulted in enduring benefit to the assessee. None appeared for the assessee.

03. We have perused the orders and heard the contentions of the Ld. DR. Details of the demand raised by M/s. BWSSB, as it appears at page 3 of the assessment order is reproduced hereunder :

PARTICULARS	Residential (Rs.)	Commercial (Rs.)	Total (Rs.)
1. PRORATA CHARGES AD : [2,06,423.73 x 200/-], APPL [45,958.65 x 300/-]	4,12,84,746	1,37,87,595	5,50,72,341
2. INSPECTION CHARGES	3,748	1,252	5,000
3. 450 mm dia feeder Main share cost	86,73,401	28,96,599	1,15,70,000
4. Proposed 2 Nos. x 100 mm dia with 3000 mm water supply line & linking cost	<u>14,99,291</u>	<u>5,00,709</u>	<u>20,00,000</u>
TOTAL [A]	<u>5,14,61,186</u>	<u>1,71,86,155</u>	<u>6,86,47,341</u>
5. GBWSP Charges 616 Nos. Upto BUA 2400 sft [Rate Rs. 10,000/-] & Tech Park area 4,94,515 sft @ Rs. 5 per sft.	61,60,000	2,47,25,75	86,32,575
616 Nos. Upto BUA 2400 sft [Rate Rs. 10,000/-] & Tech Park area 4,94,515 sft 30Mx0.2 (Additional Amount).	36,96,000	29,67,090	66,63,090
TOTAL [B]	98,56,000	54,39,665	1,52,95,665
TOTAL PAYABLE TO BWSSB [A+B]	6,13,17,186	2,26,25,820	8,39,43,006

04. Assessee was a developer and out of the total demand, assessee had borne Rs.2,05,63,655/- as its share since facilities provided by M/s. BWSSB were common for the projects of the assessee as well as its group concerns. AO had not questioned the correctness of the sharing of expenditure. However according to him it had to be treated as capital outgo. As per the AO the amounts paid for getting water connection and related expenditure were necessarily capital in nature and had to be capitalised with the cost of construction. According to him timing of the payment was irrelevant since assessee could not have sold or leased out the premises without such facility. However, Ld. CIT (A), on assessee's appeal held that assessee had not acquired any capital asset by virtue of the

payments to BWSSB. We find that AO himself has given a finding that assessee was a developer and not holding the project as its own fixed asset. Assessee was selling or leasing it out as a part of its business activities. In our opinion assessee did not derive any benefit which could be termed as enduringly beneficial in nature by the payments effected for getting the water connections. We find that Ld. CIT (A) had followed the Hon'ble jurisdictional High Court judgment in the case of HMT Ltd v. CIT [(1989) 175 ITR 220], pertinent parts of which are reproduced hereunder :

20. Before concluding, it is necessary to refer to one more decision of this Court in Hindustan Machine Tools Ltd. (No. 3) vs. CIT (1989) 175 ITR 220 (Kar), wherein the assessee contributed towards the formation of an approach road which resulted in greater facility to its business/industrial activities. This Court upheld the assessee's claim that the amount contributed for road-making was a business expenditure. It was held that (at pp. 229, 233 and 230):

"The test of enduring benefit is not a conclusive test and it cannot be applied in a mechanical way without regard to the particular facts and circumstances of the case on hand."

21. *In the circumstances and facts of the instant case : (a) the construction of the road which is not the property of the assessee is undoubtedly connected with and advantageous to the business activity of the assessee ; (b) the contribution of Rs.3,61,236 made by the assessee is for the construction of the road under the scheme sponsored by the State Government ; (c) the cost of construction has been partly met by the assessee along with the Bangalore Development Authority and Bharat Electronics Ltd. ; (d) though it conferred upon the assessee an enduring advantage for the benefit of its business, it*

did not secure to the assessee any tangible or intangible asset and further the enduring advantage gained by the assessee is chiefly to facilitate the assessee's business operations with greater efficiency and profitability without touching the fixed capital of the assessee ; (e) there is no addition to, or expansion the profit-making apparatus.

Following the ratio in L. H. Sugar Factory and Oil Mills (P) Ltd. Vs. CIT (1980) 19 CTR (SC) 185 : (1980) 125 ITR 293 (SC), held that the expenditure incurred by the assessee for the formation of the road, not belonging to the assessee, is an admissible revenue expenditure.

22. *It is thus clear that the test of enduring nature applied to the purpose for which a particular expenditure is incurred is not a conclusive test ; it is only one of the several factors to be considered while answering the question. Expenditure incurred which does not result in the acquisition of a permanent asset may indicate that the expenditure incurred was of a revenue nature*"

We do not find any reason to interfere.

05. In the result, appeal of the Revenue stands dismissed.

Order pronounced in the open court on 30th day of October, 2015.

Sd/-

Sd/-

(SMT. ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar