



ITA No.5613/M/2014 & CO 111/M/2017  
Rustomjee Evershine Joint Venture Private Limited  
Assessment Year 2010-11

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।  
**BEFORE SHRI JOGINDER SINGH, JM AND**  
**SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No. 5613/Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Deputy Commissioner Of Income Tax, Central Circle 10</b> Room No.802,8 <sup>th</sup> Floor Old CGO Annexe, M.K.Road Mumbai – 400 020	<b>बनाम/</b> Vs.	<b>Rustomjee Evershine Joint Venture Private Limited</b> Global City, Narangi Bypass Road Close to VIVA College Virar(West),Thane Thane-401 303
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

Cross Objection No.111/Mum/2017  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>Rustomjee Evershine Joint Venture Private Limited</b> Global City, Narangi Bypass Road Close to VIVA College Virar(West),Thane Thane-401 303	<b>बनाम/</b> Vs.	<b>Deputy Commissioner Of Income Tax, Central Circle 10</b> Room No.802,8 <sup>th</sup> Floor Old CGO Annexe, M.K.Road Mumbai – 400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AAAAR-7687-M</b>	:	
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Naresh Kumar, Ld.AR
<b>Revenue by</b>	:	M.Daya Sagar, Ld. DR (CIT)

सुनवाई की तारीख / <b>Date of Hearing</b>	:	17/10/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	08/12 /2017



## आदेश / ORDER

### Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by Revenue for Assessment Year [AY] 2010-11 contest the order of the Ld. Commissioner of Income-Tax (Appeals)-37 [CIT(A)], Mumbai, *Appeal No.CIT(A)-37/IT-311/DCCC-10/13-14 dated 17/06/2014* by raising following solitary grounds of appeal:

1. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs.2,94,02,417/- made on account of selling and administrative expenses, without appreciating the fact that the selling and administrative expenses include advertisement and publicity, selling and marketing cost, commission and brokerage, professional & legal charges, which are expenses related to the project and should have been capitalized.*

2.1 Facts leading to the same are that the assessee being *resident Association of Person [AOP]* was assessed for impugned AY on 30/03/2013 u/s 143(3) *read with Section 153C* of the Income Tax Act, 1961. The return of income was filed by the assessee on 15/10/2010 declaring loss of Rs.11,46,68,151/-. The assessee belonged to *Rustomjee Group (M/s Keystone Realtors Private Limited & Other Companies)*.

2.2 Pursuant to search and seizure action u/s 132(1) on 21/10/2010 on *Rustomjee Group & Evershine Group*, their group concerns, directors and related persons, certain documents relating to assessee were found and consequently, a notice u/s 153A *read with Section 153C* was issued to the assessee on 04/01/2013. Pursuant to said notice, the original return of income, as filed earlier, was offered by the assessee.

2.3 During assessment proceedings, it was noticed that the only project developed by the assessee during impugned AY was a project called



'Global City' situated at Virar, Thane. The assessee had capitalized entire cost of construction since the project had not generated any taxable income up to 31/03/2010. However, the assessee claimed *selling & administrative cost, personnel cost & Finance Cost* in the Profit & Loss Account as revenue expenditure. The sole subject matter of the appeal is claim of the assessee under the head *administrative cost*.

2.4 The Ld. AO noted that the assessee claimed *selling & administrative expenditure* of Rs.4,52,07,328/-, out of which the following items, in the opinion of Ld. AO, were directly related to the project carried out by the assessee and hence were required to be capitalized:-

<b>Sl.No.</b>	<b>Items</b>	<b>Amount (Rs.)</b>
1.	<i>Advertisement and publicity</i>	<i>1,22,36,393</i>
2.	<i>Selling and marketing costs</i>	<i>1,10,18,860</i>
3.	<i>Commission and Brokerage</i>	<i>21,35,663</i>
4.	<i>Professional and legal charges</i>	<i>40,11,501</i>
	<b>Total</b>	<b>2,94,02,417</b>

The assessee contended that the said expenses were not related with the project and allowable as revenue expenditure in terms of *Accounting Standard-7* issued by the *Institute of Chartered Accountants of India [ICAI]*. However, not convinced, Ld. AO disallowed the same and added the same to closing *Capital Work-in-Progress [WIP]*.

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 17/06/2014 where the assessee's ground was allowed by making following observations:-

*4.3.4 Now coming to the items of selling and distribution expenses treated by the AO as items to be capitalized, it is noted that these are not direct or indirect costs of construction. Further, Accounting Standards AS-7, clearly mentions that selling expenses and general administration costs should not be considered as part of construction costs and development costs. The action of the assessing officer is not supported by the Accounting Standards and also will result in complicated and cumbersome accounting to keep track of each year's WIP, without any gain to*



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*revenue. None of the expenses is held to be non-genuine. No revenue is recognized so there is no implication of shifting of profits. There is at best a mere postponement of costs. **The disallowance made by assessing officer is deleted and Ground of appeal 1 is allowed.***

Aggrieved, the revenue is in further appeal before us

4. The Ld. Departmental Representative [DR] placed reliance on the stand of Ld. AO and contended that the assessee did not offer any income from the project during impugned AY and therefore, all expenditure incurred by assessee during the same period was required to be capitalized. Further, the income of the assessee was to be arrived at independent of *Accounting Standards* issued by *ICAI*.

5. Per *contra*, Ld. Counsel for Assessee [AR] contended that the assessee was mandatorily required to follow *Accounting Standard-7* issued by *ICAI* and it was consistently following the same method of accounting in subsequent years. Reliance was placed on the judgment of *Hon'ble Guwahati High Court* rendered in *MKB (Asia) Private Limited Vs CIT [2006 167 Taxman 256]* and Supreme India in *CIT Vs. Woodward Governor India Private Limited [2009 179 Taxman 326]* for various contentions. Our attention is further drawn to the fact that the assessee followed consistent method of accounting in subsequent year, which has been accepted by the revenue in an assessment u/s 143(3).

6. We have heard the rival contentions and perusal the relevant material on record. The main contention of the assessee is that it is following the method of Accounting as prescribed by *Accounting Standard-7 [AS-7]* issued by *ICAI* whereas the stand of the revenue is that since no income from the project has been offered to tax, all expenditure was required to be capitalized with the project cost.



7. First of all, at the outset, it would be prudent to extract relevant portion of AS-7 titled as *Construction Cost* issued by ICAI, which read as follows:-

**Contract Costs**

15. *Contract costs should comprise:*

- (a) *costs that relate directly to the specific contract;*
- (b) *costs that are attributable to contract activity in general and can be allocated to the contract; and*
- (c) *such other costs as are specifically chargeable to the customer under the terms of the contract.*

16. *Costs that relate directly to a specific contract include:*

- (a) *site labour costs, including site supervision;*
- (b) *costs of materials used in construction;*
- (c) *depreciation of plant and equipment used on the contract;*
- (d) *costs of moving plant, equipment and materials to and from the contract site;*
- (e) *costs of hiring plant and equipment;*
- (f) *costs of design and technical assistance that is directly related to the contract;*
- (g) *the estimated costs of rectification and guarantee work, including expected warranty costs; and*
- (h) *claims from third parties.*

*These costs may be reduced by any incidental income that is not included in contract revenue, for example income from the sale of surplus materials and the disposal of plant and equipment at the end of the contract.*

17. *Costs that may be attributable to contract activity in general and can be allocated to specific contracts include:*

- (a) *insurance;*
- (b) *costs of design and technical assistance that is not directly related to a specific contract; and*
- (c) *construction overheads.*

*Such costs are allocated using methods that are systematic and rational and are applied consistently to all costs having similar characteristics. The allocation is based on the normal level of construction activity. Construction overheads include costs such as the preparation and processing of construction personnel payroll. Costs that may be attributable to contract activity in general and can be allocated to specific contracts also include borrowing costs as per Accounting Standard (AS) 16, Borrowing Costs.*

18. *Costs that are specifically chargeable to the customer under the terms of the contract may include some general administration costs and development costs for which reimbursement is specified in the terms of the contract.*

19. *Costs that cannot be attributed to contract activity or cannot be allocated to a contract are excluded from the costs of a construction contract. Such costs include:*

- (a) *General administration costs for which reimbursement is not specified in the contract;*
- (b) *selling costs;*



(c) research and development costs for which reimbursement is not specified in the contract; and

(d) depreciation of idle plant and equipment that is not used on a particular contract.

20. Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. However, costs that relate directly to a contract and which are incurred in securing the contract are also included as part of the contract costs if they can be separately identified and measured reliably and it is probable that the contract will be obtained. When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.

Upon perusal of clause-19, we find that *General administration costs and selling costs* are generally not considered a part of contract cost unless they are contract specific.

8. Proceeding further, we find it prudent to extract relevant portion of judgment of *Hon'ble Guwahati High Court qua method of accounting* rendered in *MKB (Asia) Private Limited Vs CIT [supra]* in the following manner:-

7. *Learned Counsel for the appellant has produced before us the text of accounting standards AS-7 issued by the ICAI. It shows that this system was introduced in the year 1983 and it was made mandatory in the year 1990. There is no dispute at the Bar that this accounting system is an approved system of maintenance of accounts applicable to construction works contract. Sri Bhuyan, Learned Counsel for the respondents, has submitted that the question raised is more or less academic as in the long run, the assessee is not affected as the liability of tax on the income of the total works contract remains the same and the question is at what stage the tax is to be paid. Mr. Joshi was fair enough to submit that it is not a question of additional liability of tax, but the question is whether the IT Department can force the assessee to adopt a particular system of accounting, or whether the assessee has the option. While going through AS-7, we find the executor of the works contract is required to pay income-tax even on the part completion of the work also, but a formula has been provided for the purpose regarding valuation, etc., keeping in mind the ultimate payment to be received against the entire work.*

8. *In the present case, the factual part is not under dispute and hence we would confine to the question raised.*

9. *A similar question had arisen in the case of CIT vs. Doom Dooma India Ltd. (1994) 117 CTR (Gau) 156 : (1993) 200 ITR 496 (Gau), wherein the question of valuation of stock arose as a result of the accounting system. Referring to the provision of s. 145 of the Act, This Court held:*

*"It is for the assessee to adopt any recognized method of accounting for his business. The income shall be computed in accordance with the method of accounting regularly employed by the assessee. In other words, it is open to the assessee to opt for such method of accounting as he deems reasonable and*



appropriate. He may opt to adopt the manufacturing cost price method or the market price method provided the method is followed in regard to both the opening stock and the closing stock. It is not open to him to adopt one method for valuing the opening stock and a different method of valuing the closing stock so as to intentionally suppress the income derived or derivable in the particular previous year. Even where an assessee has adopted a particular method for a period of years, there is no provision of law which prevents him from changing to any other method, provided the changeover is not made in the same assessment year.

The proviso to sub-s.(1) empowers the AO to compute the income on such basis and in such manner as he determines if the accounts are correct and complete but the method adopted is such that, in his opinion, the income cannot properly be deduced therefrom. The jurisdiction can be invoked where he is of the opinion that the income cannot properly be deduced therefrom. He cannot exercise the jurisdiction merely on the ground that the method adopted, which is otherwise regular or fair, is detrimental to the Revenue or advantageous to the assessee. If the AO is not satisfied about the correctness or the completeness of the accounts of the assessee, or where no method of accounting has been regularly employed by the assessee, the AO may make an assessment in the manner provided in s. 144."

10. In support of the above findings, this Court had placed reliance on the following decisions of the apex Court:

- (1) Chainrup Sampatram vs. CIT (1953) 24 ITR 481 (SC);
- (2) Investment Ltd. Vs. CIT (1970) 77 ITR 533 (SC); and
- (3) A.L.A. Firm vs. CIT (1991) 93 CTR (SC) 133 : (1991) 189 ITR 285 (SC).

11. We may recapitulate the following observations of the Hon'ble Supreme Court in Investment Ltd. Vs. CIT(supra) :

" 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 at 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. No inference may, therefore, arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade."

12. As stated above, the accounting system AS-7 is an approved system of accounting by the ICAI and as such the authenticity of the said accounting system is not under challenge. The assessee firm/appellant being a private limited company was maintaining its accounts following the said system and the accounts were duly audited by a qualified chartered accountant, maintenance of the accounts as well as the valuation of work-in-progress will not prejudice either side. Admittedly, the particular work contract was 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 dependent upon the total (fixed) amount received by the assessee against the particular work contract.

13. We, therefore, hold that the IT authority has no option/jurisdiction to meddle in the matter either by directing the assessee to maintain its accounts 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 accounting for his business and the income shall be computed in accordance with such regularly maintained accounting system.



9. The Ld. AR has contended that the assessee is consistently following the same method of accounting over several years, which is nowhere controverted by the revenue. Further, a perusal of quantum assessment order for AY 2011-12 as placed on record reveal that the assessee has claimed similar expenditure in that year also which has been allowed by the revenue in an assessment u/s 143(3) despite the fact that unsold inventory has remained with the assessee in the Balance Sheet.

10. On the basis of above discussion, it can be observed that the assessee was consistently following a particular method of accounting which was in accordance with *Accounting Standard* issued by *ICAI* which is well accepted by higher courts. Further, the revenue has accepted the method adopted by assessee in subsequent year and therefore, precluded from changing stand particularly when both the assessment orders were framed by same assessing officer and on same date.

11. Therefore, on the facts of the case, we find no reason to interfere the with the order of Ld. CIT(A) since the same was in accordance with settled judicial pronouncements. Hence, we are inclined to dismiss revenue's appeal and consequently, assessee's cross objections becomes *infructuous*.

12. Finally, revenue's appeal as well as assessee's cross objections stands dismissed.

*Order pronounced in the open court on 08<sup>th</sup> December, 2017.*



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Rustomjee Evershine Joint Venture Private Limited  
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**Sd/-**  
**(Joginder Singh)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 08.12.2017  
Sr.PS:- *Thirumalesh*

**आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai