

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1503/Mds/2017

निर्धारण वर्ष / Assessment Year : 2013-14

The Deputy Commissioner of
Income Tax,
Corporate Circle – 5(1),
Chennai - 600 034.

v.

M/s Ramkay Wavoo Developers
Pvt. Ltd.,
323, Level 5, Diamond Dune,
Poonamalle High Road,
Aminijikalar, Chennai - 600 029.

PAN : AADCR 3794 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms. S. Vijayaprabha, JCIT

प्रत्यर्थी की ओर से/Respondent by : None

सुनवाई की तारीख/Date of Hearing : 03.01.2018

घोषणा की तारीख/Date of Pronouncement : 30.01.2018

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-3, Chennai, dated 31.03.2017 and pertains to assessment year 2013-14.

2. No one appeared for the assessee inspite of service of notice. However, a written submission was filed. Therefore, we

heard Ld. Departmental Representative and proceeded to dispose the appeal on merit after considering the written submission filed by the assessee.

3. Ms. S. Vijayaprabha, the Ld. Departmental Representative submitted that the only issue arises for consideration is disallowance of advertisement expenditure to the extent of ₹86,71,507/- incurred on the project known as "Atlantis". According to the Ld. D.R., the assessee claimed advertisement expenditure in respect of project "Atlantis". However, no income was offered from that project. Therefore, according to the Ld. D.R., the Assessing Officer found that the expenditure relating to the project "Atlantis" has to be capitalized. The Ld. D.R. further submitted that the assessee segregated the expenditure in relation to various projects in the Profit & Loss account and thereafter claimed as advertisement expenditure. Therefore, according to the Ld. D.R., the segregation made in the Profit & Loss account cannot be ignored, hence, it cannot be allowed under Section 37 of the Act as revenue expenditure.

4. Referring to the order of the CIT(Appeals), the Ld. D.R. submitted that the CIT(Appeals) found that the assessee claimed

composite expenditure with regard to advertisements and followed consistent method of accounting. According to the Ld. D.R., only revenue expenditure can be claimed as allowable deduction. Since the income was not offered in respect of the project "Atlantis", the expenditure relating to that project can be claimed only in the subsequent year. According to the Ld. D.R., the segregation of expenditure in the Profit & Loss account in relation to various projects cannot be ignored, therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee.

5. The contrary submission filed by the assessee in writing by way of written submission reads as follows:-

"The Appellant is a Real Estate promoter. During the year, more than half a dozen projects are in progress. They have launched a project during the year, and approximately spent on advertisements of ₹86,71,507/-.

Advertisement expenditure in income-tax parlance is only a revenue expenditure and not considered capital expenditure. Neither it is amortized or allocated on turnover basis. Advertisements given are mostly in general for all the projects in progress. Only for a reference, an analysis is made to apprise themselves of an approximate cost of the project. The basis of the accounting also is to claim the advertisement whenever it is incurred and especially whenever launching is done, a major amount is spent and booking made and small advances are

received. The income from the project usually accrues only after 3 to 4 years when the project is completed and registered. This basis has been followed all along the past and even in this year, the same basis is adopted. In income-tax parlance, a basis adopted should be followed and it is not permissible to change the basis.

Normally, real estate advertisements display the past achievements of the Company and even when a new launching is done, a big advertisement of the new project contains fuller design and a Cad design of the eventual building. The name of the Company, the name of the project, the brand name and the names of other projects completed and in progress are displayed to project the image and goodwill of the organization. The popularity and the reliance of the trade name count which generate good turnover and demand in the business. When the launching is done, no income at the time of launching or for one or two years will arise till almost the project is completed when the registration is done. Amounts received from day one at the time of launching till the registration is completed, the income does not arise. This practice is in the line of our business and we have been following this basis all along. Now, the basis is totally ignored and a change in the basis of accounts in income-tax parlance is not permissible. Neither amortization of advertisement or capitalization of the expenditure has ever been made. Neither a *pro rata* area division of advertisements on sale can be followed.

The basis followed all along the past, the Department has been accepting and it shall continue to accept the same basis. It is also submitted advertisements have to be done from day one when it is launched and until the completion of the project. Even after the completion of the project, if there is slackness in sales of the

project, the advertisement has to be continued further. Under the circumstance, advertisement is to be done irrespective of the generation of income from a particular project. Of late, due to the slackness in the real estate business, people are carrying inventory without demand which needs more and more advertisements without proper sales.”

6. We have heard Ld. Departmental Representative and perused the written submission filed by the assessee and the material available on record. The only issue arises for consideration is disallowance of advertisement expenditure to the extent of ₹86,71,507/-. The main contention of the Revenue is that the assessee has not offered any income in respect of the project called “Atlantis”, therefore, the expenditure relating to this project cannot be allowed during the year under consideration. According to the Ld. D.R., at the best, it can be allowed in the subsequent year when the assessee offers the income. It is not in dispute that the assessee is in the business of real estate development and civil construction. In the course of its business activity, the assessee developed several projects. One of the projects is known as “Atlantis”. The assessee made several advertisements to promote its business. It is also not in dispute that the assessee developed several projects. One among them is known as “Atlantis”. When

the assessee made advertisements, as claimed by the assessee in its written submission, it displayed the name of the concern, name of the projects, brand name, etc. Such advertisements will definitely promote not only the projects developed by the assessee but also the image and goodwill of the assessee-company among the general public. Therefore, the cost of expenditure cannot be related to a particular project which is undertaken by the assessee in a particular year. At the best, it can be relatable to the year in which the advertisement was made.

7. Merely because the assessee segregated the cost of expenditure in relation to a particular project and later stage claimed as general advertisement expenditure that may not alter the character of the advertisement expenditure incurred by the assessee. This Tribunal is of the considered opinion that as long as the expenditure on the advertisement made during the year under consideration is not in dispute, it cannot be disallowed by the Assessing Officer on the ground that no income was disclosed in respect of a particular project known as "Atlantis". Hence, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee. Therefore, this Tribunal

does not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on 30th January, 2018 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 30th January, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-3, Chennai-34
4. Principal CIT- 5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.