

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "J", MUMBAI**

BEFORE SHRI G.S. PANNU (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6642/MUM/2016
Assessment Year: 2012-13**

The Deputy Commissioner of Income Tax, Central Circle-4(2), Central Range- 4, Room No. 1918, 19 th Floor, Air India Building, Nariman Point, Mumbai - 400021	Vs.	M/s Samudra Developers Pvt. Ltd., 4 th Floor, HDIL Towers, Anant Kanekar Marg, Mumbai - 400051 PAN: AAACS7992J
(Appellant)		(Respondent)

Revenue by : Shri Saurabh Deshpande (Sr. DR)
Assessee by : Shri Nirav Vora (AR)

Date of Hearing: 16/04/2018
Date of Pronouncement: 27/04/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 29.08.2016 passed by the Ld. Commissioner of Income Tax (Appeals)-52 (for short the 'CIT (A)'), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the assessee engaged in the business of Real Estate, filed its return of income for the assessment year under consideration declaring the total income of Rs. 62,67,148/-. The case was selected for scrutiny and the AO issued notice u/s 142 (1). During the year relevant to the assessment year under consideration, the appellant company

had incurred sponsorship fees of Rs. 4,13,23,948/-, administrative support services expenses of Rs. 1,71,41,448/- and travelling expenses of Rs. 4,07,98,812/-. Accordingly, the AO asked the assessee company furnish full details along with supporting evidence to establish the genuineness of the expenses. The assessee furnished the details and explanations, however, the AO rejected the contention/explanation of the assessee and allowed depreciation at the rate of 25% of the total amount of Rs. 4,13,23,948/-, claimed by the assessee as sponsorship fees holding that the expenses are of enduring nature therefore the same should be treated as intangible assets eligible for depreciation. Similarly, the AO allowed the expenditure under the head Administrative Support Service Charge' to the extent of 58.60 % and allowed the balance amount to capitalize in work in progress account. So far as the travelling expenses are concerned the AO disallowed 30% of the total amount claimed by the assessee on the ground that some of the bills were not produced by the assessee and some of the expenses have been made in cash. Aggrieved by the assessment order, the assessee challenged the same before the CIT(A). The Ld. CIT(A) after hearing the assessee partly allowed the appeal of the assessee and allowed the expenditure under the head Administrative Support Service Charge and deleted the addition. Similarly, the Ld. CIT(A) allowed the entire amount sponsorship fees claimed by the assessee and deleted the addition made by the AO. However, the Ld. CIT(A) restricted the addition of disallowance to 25% as against the disallowance of 30% made by the AO on travelling expenses of Rs. 4,07,98,812/-claimed by the assessee. The revenue is in appeal against the said findings of the Ld CIT(A).

3. The revenue has preferred this appeal before the Tribunal by raising following effective grounds:-

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) was justified in deleting the*

disallowance made on account of sales support services even though the assessee was following Project Completion Method of Accounting and the project was completed upto 58.60% and offered income for taxation to 58.60% only and claimed expenses in full.

2. *Whether on the facts and circumstances of the case and in law, Ld. CIT (A) was justified in deleting the disallowance made on account of sponsorship fees and management fees treating the expenses as revenue even though the said expenses are in nature of enduring and same should be capitalized as intangible assets.*
3. *Whether on the facts and circumstances of the case and in law, Ld. CIT (A) was justified in deleting the disallowance made on account of travelling expenses treating the same as business expenses even though the expenses was on account of travelling of Director with his family members, where no business activity are run by the assessee and therefore is purely personal in nature.*

4. Vide the first ground of appeal, the revenue has challenged the action of Ld. CIT (A) in deleting the disallowance made on account of sales support services even though the assessee was following project completion methods of accounting and the project was completed up to 58.60% and offered income for taxation to 58.60% only and claimed the entire expenses. The Ld. departmental representative relying on the assessment order passed by the AO submitted that since the assessee has been consistently following the percentage method and during the assessment year under consideration, the project was completed to the extent of 58.60% the AO has rightly allowed to the extent of percentage of work done and to capitalize the balance to work in progress account. Therefore, the finding of the Ld. CIT (A) is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee submitted that this issue is covered by the order dated 26.04.2017 of the ITAT, Mumbai in the assessee's own case ITA No. 5974/Mum/2013 for the A.Y. 2010-11. Since, the findings of the Ld. CIT(A) is in accordance with the decision of the Tribunal aforesaid, there is no infirmity in the findings of the Ld. CIT (A) to interfere with the same. Hence, this ground of appeal of the revenue is liable to be set aside. We have heard the rival submissions and perused the material on record in the light of the respective submissions of the parties. The coordinate Bench has decided the identical issue in favour of the assessee in assessee's own case aforesaid holding as under:-

“2.3 We have heard the rival submissions and perused the material before us. We find that the AO had held that assessee could claim 26.3% of the expenditure incurred by it under the heads Sales Support Services and Management Fee, that it had completed roughly 26% of the project, that the balance expenditure was to be capitalized under the head work in progress, that he had made a reference to AS-7 for making the disallowance. It is true that AS-7 stipulates proportionate allowance of expenditure. But, certain expenditures are not covered by the provisions of the said accounting standard. Expenses related with the day-to-day business of the assessee cannot be capitalized. Depending upon the nature of job undertaken by the assessee certain expenses have to be incurred on capital side whereas some expenditure has to be incurred for running the business. What the AS-7 has envisaged is that expenditure of first category have to be capitalized other expenses have to be allowed like any other revenue expenditure. It would be useful to refer to the AS-7, issued by the ICAI. We are reproducing the relevant portion of the AS and same read as under:

“Scope I. This Statement should be applied in accounting for construction contracts in the financial statements of contractors.

Definitions 2. The following terms are used in this Statement with meaning specified:

A Construction contract is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely

interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.

A fixed price contract is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which in some cases is subject to cost escalation clauses.

A cost plus contract is a construction contract in which the contractor is reimbursed for allowable or otherwise den costs, plus percentage of these costs or a fixed fee.”

A perusal of the above reveal that that AS-7 deals with contractor whereas the assessee before us is a builder/developer. Therefore, it can be said AS-7 is not strictly applicable to the facts of the case. Leaving the issue of applicability of AS-7 aside, we would now like to refer to the clauses relevant for deciding the issue and same reads as follow:

“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 are specifically chargeable to the customs under the terms of the contract.

16. Costs that relate directly to a specific contract include (a) site labour costs, including site supervisions (b) cost of material 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 10 be allocate to specific contract 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 overhead include costs such as the preparation and processing of construction personnel payroll. Costs that may be attributable to contract activity is 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 recognized 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.”

From the above discussion on thing is clear that the entire cost of a project is not required to be added while determining the tax liability of an assessee. AS-7 stipulates that only those costs should be considered that are directly attributable to a project. Other costs like general administration costs, selling costs, depreciation on those assets which are not used in construction activities, are not be considered for capitalization or proportionate allowance. In the case under consideration the AO had held that only 26.32% of the impugned expenses were to be allowed. In our opinion expenses incurred by the assessee on salary of the office employees/management fees cannot be disallowed on proportionate basis. They do not have any direct nexus project. Such expenditure fall in the category of expenses incurred for running of day-to-day business. So, we do not find any legal or factual infirmity in the orders of the FAA. Confirming the same, we decide First ground of appeal against the AO.”

6. The coordinate Bench has decided the identical issue in favour of the assessee and against the revenue in assessee's own case for the assessment year 2010-11. Although the decision of the coordinate Bench aforesaid came

after the passing of the impugned order by the Ld. CIT(A), yet since the findings of the Ld. CIT(A) on this issue is in accordance with the decision of the coordinate Bench passed in the assessee's own case for the assessment year 2010-11, we do not find any infirmity in the impugned order to interfere with the same. Hence, respectfully following the decision of the coordinate Bench aforesaid, we uphold the findings of the Ld. CIT(A) and dismiss this ground of the appeal of the revenue.

7. Vide second ground the revenue has challenged the action of the Ld. CIT(A) in deleting the addition of Rs. 3,09,92,961/- made by the AO holding that sponsorship fees is capital in nature and the assessee is entitled for depreciation on the same @ 25% on the total amount of Rs. 4,13,32,948/-. The Ld. DR relying on the assessment order submitted that since, the sponsorship fees is capital in nature, the LD. CIT(A) has wrongly deleted the addition made by the AO.

8. On the other hand, the Ld. counsel submitted that the ITAT, Mumbai has decided this issue against the revenue in the assessee's own case pertaining to the assessment year 2010-11 aforesaid. Since, the order of the Ld. CIT (A) is in accordance with the order passed by the Tribunal, there is no reason to interfere with the same. The Ld. counsel further submitted that there is no merit in the appeal of the revenue, therefore, this ground of appeal of the revenue is liable to be dismissed.

9. We have heard the rival submissions and also perused the material on record in the light of the rival submissions of the parties. We notice that the Ld. CIT (A) has deleted the similar addition made by the AO in the assessee's own case for the A.Y. 2010-11 and the Ld. CIT (A) relying on the decision of the Hon'ble Delhi High Court in the case of Delhi Cloth and General Mills Company

Ltd. 115 ITR 659 (Del) and the judgment of the Hon'ble Supreme Court delivered in Empire Jute Company Ltd. vs. CIT 124 ITR 1 (SC) and Alembic Chemicals Works Ltd. vs. CIT 177 ITR 377 (SC), deleted the addition made by the AO. The facts of the present case being identical, the Ld. CIT (A) consistent with his own findings aforesaid deleted the identical addition made by the AO in the present case. We further notice that the findings of the Ld. CIT (A) aforesaid has been upheld by the coordinate Bench in the appeal ITA No. 5974/Mum/2013 pertaining to the A.Y. 2010-11, filed by the revenue. The operative part of the order of the coordinate Bench reads as under:-

“We find that the assessee group had entered into an agreement with India Win, that it was a co-sponsor of Mumbai India IPL team it had incurred similar expenditure in the subsequent two years, that out of the total expenditure the assessee had claimed a very small proportion under the head sponsorship expenses. Such an expenditure is for advertising the brand name of the Group. Being a recurring expenditure, it had to be allowed as revenue expenditure . We find that in the case of Delhi Cloth and General Mills Co. Ltd. (supra) the Hon'ble Court had held that expenditure incurred for organizing sports events are allowable items of revenue expenditure as such events publicise the names of the sponsor. The AO was not justified in capitalizing the expenses. The entire expenditure was rightly allowed by the FAA as revenue expenditure. After going through the details of expenditure incurred by assessee under the head managerial expenses, we are of the opinion that it had not got any enduring benefit from the expenditure incurred nor did the expenditure create any capital asset. Therefore, we do not want to interfere with the order of the FAA. Considering the above, we decide second ground of appeal against the AO.

10. The facts of the case and the issue raised in the present case are identical to the facts and the issue raised in the assessee's own case for the A.Y. 2010-11. Since, the coordinate Bench has upheld the findings of the Ld.CIT (A) and decided the identical issue against the revenue, we respectfully

following the decision of the coordinate Bench rendered in the assessee's own case aforesaid uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue and direct the AO to delete the addition.

11. Vide ground no. 3, the revenue has challenged the action of the Ld. CIT (A) in deleting the disallowance made on account of travelling expenses treating the same as business expenses. The Ld. DR submitted before us that the AO has rightly made addition of Rs.1,22,39,190/- on account of disallowance of travelling expenses to the extent of 30% of the total amount claimed. The Ld. DR further submitted that the Ld. CIT (A) has deleted the addition ignoring the fact that the expenses were on account of travelling of Director with his family members, therefore, the expenditure is personal in nature.

12. On the other hand, the Ld. counsel for the assessee submitted that the Ld. CIT (A) has restricted the addition to 25% of the total amount claimed by the assessee during the assessment year 2010-11. In the present case also the Ld. CIT (A) has restricted the addition to 25% of the total amount of travelling expenses claimed by the assessee by following his own order passed in the assessee's case for A.Y. 2010-11. The Ld. counsel further submitted that the ITAT, Mumbai has upheld the findings of the Ld. CIT (A). Hence, there is no merit in the contention of the revenue and accordingly this ground of appeal is liable to be dismissed.

13. We have heard the rival submissions and also gone through the orders passed by the authorities below as well as the order passed by the coordinate Bench in assessee's case aforesaid. The coordinate Bench has upheld the findings of the Ld. CIT (A) given in the assessee's own case for the A.Y. 2010-11 holding as under:-

4. Next ground deals with deletion made on account of travelling expenses. During the assessment proceedings the AO found that the assessee had debited Rs. 1.14 crores on account of travelling expenses. He directed it to show cause as to why expenses should be

allowed. Vide its letters dt. 29.10.2012 & 18/12/2013 the assessee made its submissions. After considering the same, he held that the assessee had failed to substantiate its claim, that the expenses were not incurred for carrying out its day to day business activities, that expenses were purely of personal nature, that it had failed to co-relate and prove that expenses were spent wholly and exclusively for business activities. Finally he made disallowance 1,14,09,190/- and held that expenses were of personal nature and were not incidental to the business of the assessee.

4.1 During the appellate proceedings before the FAA, the assessee made elaborate submissions. After considering the available material, he held that perusal of the travelling expenditure proved that major part of expenditure had been incurred in respect of the directors namely, Dheeraj Wadhwan and H. Bindra, that they have travelled inside and outside India, that the journeys were claimed to have been undertaken for business purposes. He further found that the directors had travelled with their family members on certain occasions. He held that such journeys were undertaken for personal purposes or that element of personal use could not be totally denied. Finally, he restricted the disallowance to 25% of total expenditure i.e. 28.52 lakhs.

4.2 The DR supported the order of the AO. The AR stated that the FAA already upheld disallowance of Rs. 28.52 lakhs.

We find that the AO have disallowed the entire expenditure that the FAA verified the details of travelling expenses that he found that personal element was there in the expenditure incurred by the assessee, that he deleted 75% of the disallowance. In our opinion, his order does not suffer from any infirmity. After considering available material he estimated the disallowance, whereas the AO had disallowed entire claim. Confirming the order of the FAA, we decide third ground against the AO.”

14. The facts of the present case and the issue involved in this ground of appeal are identical to the facts and issue involved in the assessee's own case for the A.Y. 2010-11. Since, the coordinate Bench has upheld the findings of

the Ld. CIT (A) on the identical issue involved in the assessee's case for the A.Y. 2010-11, we respectfully following the decision of the coordinate Bench, uphold the findings of the Ld. CIT (A) and dismiss this ground of appeal of the revenue and direct the AO to made addition of 25% of the total amount of travelling expenses claimed by the assessee.

In the result, appeal filed by the revenue for assessment year 2012-2013 is dismissed.

Order pronounced in the open court on 27th April, 2018.

Sd/-

(G.S. PANNU)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 27/04/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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