



ITA.No.5205/Mum/2016
Palace Gardens Chennai SEZ Private Limited
Assessment Year-2012-13

आयकर अपीलिय अधिकरण "आई" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI**

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
**BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.5205/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Assistant Commissioner of Income Tax -3(2)(2) Room No.674, 6 th Floor Aaykar Bhavan, M.K.Road Mumbai-400 020	बनाम/ Vs.	Palace Gardens Chennai SEZ Private Limited 514, Dalamal Towers, 211 FPJ Marg, Nariman Point Mumbai- 400 021
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No.		AACCB-9379-C
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Chetan Karia, Ld.AR
Revenue by	:	Saurabh Kumar Rai, Ld.DR

सुनवाई की तारीख/ Date of Hearing	:	29/06/2018
घोषणा की तारीख / Date of Pronouncement	:	04 /07/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2012-13 contest the order of Ld. Commissioner of Income-Tax (Appeals)-8 [CIT(A)], Mumbai, *Appeal No.CIT(A)-8/IT-201/15-16 dated 16/05/2016* by raising the following sole effective grounds of appeal:

Whether on the facts and circumstances and in law, the Ld. CIT(A) was right in allowing the expenses of Rs.3,08,64,906/- under various heads as Revenue



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Expenditure instead of Capital expenditure as held by the AO ignoring the facts that the assessee had only one project in hand at Chennai and was following project completion method of revenue recognition.

The assessment for impugned AY was framed by *Ld. Deputy Commissioner of Income Tax Circle-3(2)(2), Mumbai [AO] u/s 143(3) of the Income Tax Act, 1961* on 23/03/2015 wherein the income of the assessee was determined at Rs.6.96 Lacs after certain disallowances as against *revised returned Loss* of Rs.365.91 Lacs e-filed by the assessee for the impugned AY. As evident from grounds of appeal, the sole dispute involved under appeal is related with expenditure as claimed by the assessee in the Profit & Loss Account, which in the opinion of *Ld. AO*, were required to be capitalized keeping in view the method of accounting being followed by the assessee.

2. During impugned AY, the assessee being *resident corporate assessee* was engaged in the *business of real estate development*. It undertook only one project during the year which was not completed. Accordingly, it capitalized various expenses which, *inter-alia*, included *professional fees, technical expenses, insurance & civil work* under the head *Capital Work-in-progress* which was reflected in the *Balance Sheet*. At the same time, it claimed certain expenses viz. *finance cost, marketing service cost, sales commission, legal, profession and other fees* in the profit & loss account. It was noted that the assessee reflected receipt of advances against the projects at Rs.18.70 crores and reflected *closing WIP* at Rs.17.95 Crores. The *Ld. AO*, observing that the assessee was following *completed contract method*, disallowed these expenses as claimed by the assessee in Profit & Loss Account. As a



logical consequence, the capitalization thereof was allowed to the assessee. The break-up of the disallowed expenditure was as follows:-

Sr.No.	Nature of Expenses	Amount (Rs.)
1	Interest Expenses (Processing fees)	41,79,911
2	Marketing service cost	1,65,65,618
3	Sales Commission	90,67,159
4	Legal, professional and other fees	10,52,218
	TOTAL	3,08,64,906

3. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 16/05/2016 wherein Ld. CIT(A) concurred with the stand of the assessee by making following observations:-

5.1.1 *This ground pertains to disallowance of business expenses of Rs.3,08,64,906/- and capitalizing it to WIP. I find the assessing officer has discussed this issue at para 7 of his order. The assessing officer held that "As stated above, in the preceding paras as the assessee has only one project in hand and the advances received by the assessee in the business is wholly received from one project and the assessee adopted the method of accounting to arrive at profit at the completion of the project, hence all the expenses relating are towards the project which are elaborately discussed herein above. Therefore, the total expenses of Rs.3,08,64,906/- is capitalized to the WIP account and reduced from the Profit and Loss account. These expenses would be allowable in the year of completion of the project."*

5.1.2 *I find that the issue at hand is squarely covered by the decision of jurisdictional tribunal in the case of appellant's group concern M/s Hiranandani Palace Gardens Pvt. Ltd in ITA No.4579/M/2013 for A.Y.2009-10 wherein the Hon'ble ITAT has held that*

"the assessee, thus, has followed the accounting method which has been consistently followed by it and which is as per recognized principles of accounting. In view of the above discussion of the matter and following the above decision of Tribunal (i.e. Lodha Palazzo Vs. ACIT, ITA No.2298/M/2012 dated 10.12.2014.) for the sake of consistency, this issue is decided in favour of the assessee."

5.1.3 *Therefore, in view of the facts and circumstances of the case and respectfully following the ratio of the decision of jurisdiction Tribunal in the case of Hiranandani Palace Gardens Pvt. Ltd. cited supra, the assessing officer is directed to allow the expenses of Rs.3,08,64,906/- to be debited from Profit & Loss Account. This ground of appeal is, therefore, allowed.*

Aggrieved, the revenue's appeal is in further appeal before us.

4. The Ld. Departmental Representative [DR], *Sh. Saurabh Kumar Rai* relied on the finding of the Ld. AO and submitted that the assessee



was following *completed contract method of accounting* and therefore, all the expenditures were to be capitalized since the project was not completed during the year. Per *Contra*, Ld. Authorized Representative for Assessee [AR] *Shri. Chetan Karia*, drawing our attention to the financial statements of the assessee, controverted the finding of the Ld. AO that the assessee was following *completed contract of accounting*. The revenue, upon confrontation of the aforesaid contention by the bench, placed on record letter dated 06/04/2018 issued by Ld. AO, in this regard.

5. We have carefully heard the rival contentions and perused relevant material on record. After due consideration of the factual matrix, we find that the revenue is unable to controvert the fact that the assessee was following *percentage of completion method* which is evident from the aforesaid report of Ld. AO and the same is extracted below:-

1. *During the course of assessment proceedings, the assessee has submitted audit report. On verification of the audit report, the accounting polices is disclosed at para 2.7, Page 13 which is reproduced as under:-*

"2.7 Revenue Recognition

Revenue is recognized to the extent that it is probable that the economic benefit will flow to the company and the revenue can be reliable measured.

Income from real estate sales is recognized on transfer of all significant risks and rewards of ownership to the buyers and it is not unreasonable to expect ultimate collection and no significant uncertainty exists regarding the amount of the consideration. However if, at the time of transfer substantial acts are yet to be performed under the contract, revenue is recognized on proportionate basis as the acts are performed. i.e. on the percentage of completion basis.

Determination of revenue under the percentage of completion method necessary involves making estimates the company, some of which are of a technical nature, concerning, where relevant, the percentage of completion, costs to completion, the expected revenues from the project / activity and the foreseeable losses to completion. The estimates of costs are periodically reviewed by the management and the effect of changes in estimates is recognized in the period such changes are recognized. When the total project cost is estimated to exceed total revenues from the project, the loss is recognized immediately.

2. *On verification of record, it is noticed that the AY 2012-13, is the first years wherein the assessment was completed u/s 143(3) of the I.T.Act, 1961. The ROI for A.Y.2007-08 to A.Y.2011-12 is enclosed herewith for your kidn perusal.*



Nothing on record suggest that there was any change in the accounting policies adopted by the assessee and further, the genuineness of the expenditure is not under dispute since Ld. AO has already allowed the capitalization of these expenses. On the above facts and circumstances, we find that the stand of Ld. CIT(A) on placing reliance on the decision of this Tribunal in the case of other group concerns, on similar factual matrix, was quite appropriate and logical. The revenue is unable to controvert these decisions by any binding judicial precedents. Therefore, finding no infirmity in the order of Ld. First appellate authority, we dismiss the revenue's appeal.

6. Resultantly, the revenue's appeal stand dismissed.

Order pronounced in the open court on 04th July, 2018

Sd/-
(Saktijit Dey)

न्यायिकसदस्य / **Judicial Member**

मुंबई Mumbai; दिनांकDated : 04.07.2018

Sr.PS:-Thirumalesh

Sd/-
(Manoj Kumar Aggarwal)

लेखासदस्य / **Accountant Member**

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai