

**IN THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member
and Shri Sandeep Gosain, Judicial Member**

ITA No. 6118/Mum/2016
(Assessment Year: 2012-13)

M/s. Dedhia Assocaites 107/108, Laxmi Chhaya Co-op. Hsg. Society Ltd. L.T. Road, Borivali (W) Mumbai 400091	Vs.	JCIT, Circle-32(1) BKC IT Office, Bandra (E) Mumbai 400051
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PAN – AA EFD5810B

Appellant

Respondent

Appellant by: Shri Sameer G. Dalal
Respondent by: Shri Ashish Kumar

Date of Hearing: 24.05.2018
Date of Pronouncement: 03.08.2018

ORDER

Per Sandeep Gosain, JM

This appeal filed by the assessee is directed against the order of the CIT(A)-44, Mumbai dated 29.08.2016 and it relates to A.Y. 2012-13.

2. The brief facts of the case are that the assessee filed its return of income on 18.09.2012 declaring total income of `17,47,84,363/-. The assessee is a firm engaged in the business of builders & developers. The assessee firm has constructed a residential building in which certain number of flats were remaining unsold during the concerned financial year. During the course of assessment proceedings, it was noted by the AO that there are electricity charges and society maintenance charges debited in Profit & Loss Account related with vacant flats. The AO was of an opinion that the expenses related with vacant flats are not revenue expenses. It was stated by the AO that such expenses totaling upto `5,13,372/- should be added to the value of closing stock of unsold flats.

It was further noted by the AO that there are expenses of various nature which are mentioned in para 4.1 below totaling upto `26,59,166/- which are similarly required to be apportioned between sold flats and unsold flats. The AO computed the proportionate expenses at `12,06,898/- and added the same to the closing stock. As a consequence, `5,13,372/- and `2,06,898/- were disallowed as expenses and added to the total income of the assessee.

3. Aggrieved by the order of the AO, assessee preferred appeal before the CIT(A) and the learned CIT(A), after considering the contentions of both the parties, partly allowed the appeal. Against the order of the CIT(A), assessee has preferred the present appeal before us on the grounds mentioned herein below: -

“1- a) On the facts and circumstances in the case as well as in Law the Hon'ble CIT (A) – 44 has erred in upholding addition of Rs.8,81,595/- treating the expenses incurred under the head hardware, garden equipment, window material, tiles, wooden material, electric material, plumbing material, water proofing material and water pump equipment as a capital expenditure.

1-b) Your Appellant is a Builder and Developer engaged in construction of residential building for them the above expenses are of revenue nature.

1-c) Your Appellant pray that addition of Rs.8,81,595/- uphold by Hon'ble CIT (A) on the ground of capital expenditure is to be considered as a revenue expenditure and the addition is required to be deleted.”

4. Through the grounds raised the assessee has challenged the order of the learned CIT(A) upholding the addition of `8,81,595/- treating the expenses incurred under the head hardware, garden equipment, window material, tiles, wooden material, electric material, plumbing material, water proofing material and water pump equipment as a capital expenditure. The learned A.R. reiterated the same arguments as raised before the learned CIT(A). It was submitted by the learned A.R. that the assessee had incurred revenue expenses and the same have been debited

to the Profit & Loss Account. In this respect the learned A.R. drawn out attention to para 4.1 of the order of the learned CIT(A) wherein the details of expenses are mentioned.

5. On the contrary, the learned D.R. relied upon the order of the authorities below.

6. We have hearing the counsels of both the parties and we also perused the material placed on record. Before we decide the merits of the issue it is necessary to validate the order passed by the learned CIT(A). The learned CIT(A) has dealt with this ground in para 4 of his order. The operative portion as contained in para 4.3 of the order is reproduced below: -

“I have carefully gone through the assessment order as well as the written submission and paper book filed by the appellant. From a perusal of list of expenses mentioned at para 4.2 is seen that in this list also most of the expenses are revenue in nature which cannot be added to the value of closing stock. However, there are some head of expenses which cannot be described as revenue expenses for e.g. hardware amounting to Rs 3,27,944/- garden equipment amounting to Rs 4,17,840/-. Then there are expenses under the head window material, tiles, wooden material, electric material, plumbing material, water proofing material and water pump equipment. The total of such expenses come to Rs 8,81,595/-. These expenses cannot be described as revenue in nature as they are not recurring expenses. After considering the totality of facts, the addition on this issue is restricted to Rs 8,81,595/-. Grounds of appeal no. 2 is accordingly partly allowed.”

7. After having gone through the orders passed by the Revenue authorities and after considering the submissions made by both the parties we find that the learned CIT(A) has concluded that the expenses as mentioned in para 4.2 of its order cannot be described as revenue in nature as they are not “recurring” expenses. In our considered view all the expenses as mentioned and detailed by the assessee are day-to-day running expenses for society building and the same are revenue expenses incurred for maintenance of society building. Even otherwise by incurring of such expenses, there is not addition of cost value of unsold flats. Even Revenue has not been able to point out as to what addition has taken

place in the cost/value of unsold flats because of incurring of day-do-day running expenses for the society building. Hence we are of the considered view that the expenses as mentioned and detailed in para 4.2 of the order of the CIT(A) are revenue in nature and we hold accordingly. Consequently this ground of appeal is allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 3rd August, 2018.

Sd/-
(G.S. Pannu)
Accountant Member

Sd/-
(Sandeep Gosain)
Judicial Member

Mumbai, Dated: 3rd August, 2018

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -44, Mumbai
4. The CIT - 32, Mumbai
5. The DR, "H" Bench, ITAT, Mumbai

By Order

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Assistant Registrar
ITAT, Mumbai Benches, Mumbai

n.p.