

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**  
ITA No.1734/Del/2015  
Asstt. Year: 2011-12

CO No. 300/DEL-2015

DCIT, Central Circle – 26, Room No. 323, 3 <sup>rd</sup> Floor, ARA Centre, Jhandewalan Extn. New Delhi.	vs.	M/s. Puma Realtors Pvt. Ltd. 5-Dhanraj Chamber, 1 <sup>st</sup> Floor Satbari, New Delhi. PAN AADCP6870D
<b>(Appellant)</b>		<b>(Respondent)</b>

(In ITA No. 1734/Del/2015)  
Asstt. Year 2011-12

M/s. Puma Realtors Pvt. Ltd. 5-Dhanraj Chamber, 1 <sup>st</sup> Floor Satbari, New Delhi PAN AADCP6870D	Vs.	DCIT, Central Circle – 26, New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by:	Shri Sanjit Singh, CIT(DR)
Assessee by :	None
Date of Hearing	29/08/2018
Date of pronouncement	/11/2018

**ORDER**

**PER AMIT SHUKLA, J.M.**

The aforesaid appeal has been filed by the Revenue and cross objection by the assessee against impugned order dated 20.1.2015, passed by the Ld. CIT (Appeals) 29 New Delhi for the quantum of

assessment passed u/s 153A/143(3) for the assessment year 2011-12. In the revenue's appeal following grounds have been raised:-

1. *“On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,74,168/- made by the AO on account of expenses incurred on Gold bars on festival u/s 37 of the Income Tax Act, 1961.*
2. *On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 1,72,25,470/- made by the AO on account of incurred on business promotion and advertisement.*
3. *The order of the CIT (A) is erroneous and is not tenable on facts and in law.*
4. *The appellant craves leave to add, alter or amend any/all of the grounds of appeal before or during the course of the hearing of the appeal.”*

2. The facts in brief are that Assessee Company is in the business of real estate development and during the year it has launched two residential projects at Mohali and has started booking the sale of residential units to the customers. It had booked sale of Rs. 14,65,22,133/- for residential unit sold to 222 customers and also incurred expenditure of Rs. 1,95,98,000/- towards advertisement and business promotion as selling expenses which was in the nature of hoardings, sponsorships, posters, etc. The assessee company has adopted “project completion method” for recognition of revenue as per the prescribed guidance notes on real estate issued by the ICAI. In so far as Mohali project is concerned, since the project completed was less than 30%, therefore, revenue receipt of Rs. 14,65,22,133/- was shown as advance from customers under the head ‘current liabilities’. The Ld. AO held that, since assessee has not shown income from

projects undertaken at Mohali, therefore, the expenditure incurred should have been capitalised towards work in progress. As per the project completion method, the assessee has only completed project less than 30%, therefore, expenditure to the extent of Rs. 1,72,25,470/- should have been taken to work-in-progress instead of claiming as indirect expenses in the profit and loss account. Accordingly, disallowance of Rs. 1,72,25,470/- was made by the AO.

3. Apart from above, Ld. AO noted that Assessee Company has debited expenditure of four gold coins which was given on festivals for distribution of sweets and customary gifts. He held that expenses on purchases gold bars cannot be held to be business expenditure. Ld. CIT(A) in so far as addition of Rs. 1,74,168/- on account of gifts given in the form of gold coin / bar during festival occasions, held that similar issue existed in the assessment year 2008-09 also in assessee's own case wherein such kind of expenditure has been allowed by the Ld. CIT(A). Therefore, following the same precedence he deleted the same.

4. As regards the disallowance of expenditure of Rs. 1,72,25,470/- as capital expenditure, Ld. CIT(A) held that, assessee is following 'percentage completion of method' whereby revenue has to be recognised as per the ICAI guidelines when the seller has transferred to the buyer all significant risks and rewards of ownership and the seller retains no effective control of the real estate to a degree usually associated with the ownership. No significant uncertainty exists regarding the amount of the consideration that will derive from the real estate and it is not unreasonable to expect ultimate collection are attracted. In so far as cost is concerned the same should comprise of costs that are related directly to the specific contract, i.e., costs which are attributable to contract activity in general can alone be allocated to

the contract. But such other costs as are not specifically chargeable to the customer under the terms of the contract, the same cannot be allocated. As per the guidance note of ICAI on accounting for real estate transactions as revised in the year 2012, selling overheads and indirect cost incurred for the project are booked directly to the profit and loss account as the expense and is not part of construction cost or development cost. Thus, keeping in this guidance note issued by the ICAI, Ld. CIT (A) held that AO is not correct in taking all the selling and market expenses to the work-in-progress. After detailed discussion, he held that AO's action in capitalising these expenses is not based on any sound footing and thus disallowance made by the AO was deleted.

5. None appeared on behalf of the assessee; hence, appeal is being decided on the basis of material available on record and arguments placed by the Ld. CIT-DR.

6. After considering the finding given the impugned order and arguments placed by the Ld. DR, we find that it is an undisputed fact that assessee has incurred expenditure of Rs. 1,95,98010/- towards advertisement and business promotion expenses which was in the nature of advertising and sales promotion for launching of its residential project and attracting the customers. AO has treated expenditure to the extent of Rs. 1,72,25,470/- to be part of work-in-progress, because assessee has not disclosed any income from such a project. It is further not in dispute that assessee has not disclosed any income from such a project and that assessee has incurred this expenditure to popularise its project and to get the booking for ultimate sale of the residential units. These are purely indirect expenditure not related to the cost of the project and therefore, same could not have been taken the project as work-in-progress. Such an

advertisement expenditure on account of brand promotion advertisement, etc., are indirect revenue expenditure which are otherwise allowable as business expense u/s 37 (1). As per the guidance note of accounting for real estate issued by ICAI, selling cost is not included in the cost of construction and development and since it is an indirect cost, therefore, it has to be allowed irrespective of any link with the construction of work-in-progress. The details and invoices of incurring of these expenditures too have been admitted by the AO. Ld. CIT (A) after taking note of such guidance note of ICAI and also the accounting standard has given a categorical finding that selling and marketing expenses being indirect expenditure cannot be taken to the work in progress and therefore such a disallowance made by the AO treating it to part of work-in-progress has rightly been deleted by him. Accordingly, order of Ld. CIT (A) on this score is upheld.

7. In so far a disallowance of Rs. 1,74,168/- on account of gifts given during the festive season, it is matter of record that in the earlier years exactly similar issues were involved wherein on the stage of first appellate authority the matter has been decided in favour of the assessee. Since no new facts have been brought on record, therefore, we do not find any reasons to interfere in the finding of the Ld. CIT (A) and accordingly the same is affirmed.

8. In the result appeal of the revenue is dismissed.

9. Since in the cross objection, assessee has supported the order of the Ld. CIT (A) in deleting the aforesaid disallowance, therefore the cross objection raised by the assessee is treated as infructuous.

10. In the result the appeals filed by the revenue as well as the CO filed by the assessee are dismissed.

**Order pronounced in the Open Court on 12<sup>th</sup> November, 2018.**

sd/-

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated: /11/2018

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, New Delhi