

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA
BEFORE SHRI A.T. VARKEY, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.2414/KoI/2017

(निर्धारणवर्ष / Assessment Year : 2012-13

M/s Bengal Peerless Housing Devt. Co. Ltd. 6/1A, Moira Street, "Mongal Deep", Ground Floor, Kolkata-700017	Vs.	DCIT, Circle-7(1), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCB 3038 P		
(अपीलार्थी/Assessee)	..	(प्रत्यर्थी / Respondent)

आयकरअपीलसं./ITA No.2549/KoI/2017

(निर्धारणवर्ष / Assessment Year : 2012-13

DCIT, Circle-7(1), Kolkata Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069	Vs.	M/s Bengal Peerless Housing Devt. Co. Ltd. 6/1A, Moira Street, "Mongal Deep", Ground Floor, Kolkata-700017
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AABCB 3038 P		
(अपीलार्थी/Assessee)	..	(प्रत्यर्थी / Respondent)

निर्धारितीकीओरसे /Assessee by : Shri S.K. Tulsian, Adv.& Shri S. De,(CA)

राजस्वकीओरसे /Revenue by :Robin Choudhury, Addl. CIT Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 11/12/2018

घोषणाकीतारीख/Date of Pronouncement : 31/12/2018

देश / ORDER

Per Dr.Arjun Lal Saini, AM:

The captioned cross appeals filed by the Assessee and Revenue, pertaining to assessment year 2012-13, are directed against an order passed by the learned Commissioner of Income Tax (Appeals)-16, Kolkata (in short the Id. CIT(A)] in appeal no.612/CIT(A)-16/Cir-7(1)/2014-15, dated 24.10.2017, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act') dated 27.02.2015.

2. The appeal filed by the Revenue in I.T.A. No. 2549/Kol/2017, for assessment year 2012-13, is barred by limitation by 2 days. The Revenue has moved a petition requesting the Bench to condone the delay. We have heard both the parties on this preliminary issue, and having regard to the reasons given in the petition, we condone the delay and admit the appeal of Revenue for hearing.

3. Since, the issue involved in these two cross appeals are common and identical therefore, these appeals have been heard together and are being disposed off by this consolidated order. For the sake of convenience, the grounds as well as facts narrated in I.T.A. No. 2414/Kol/2017, for assessment year 2012-13, have been taken into consideration for deciding the above appeals *en masse*.

4. We note that the assessee in his appeal raised a multiple grounds of appeal, but at the time of hearing, the solitary grievance of the assessee has been confined to the issue that out of total disallowance of Rs.4,79,18,880/- made by the Assessing Officer, the Id. CIT(A) erred in confirming the disallowance of Rs. 94,51,860/- and Rs. 2,15,30,312/-,(being estimated expenditure still required to be incurred).

On the other hand, the solitary grievance of the Revenue in its appeal in I.T.A. No. 2549/Kol/2017, is that the Id. CIT(A) has wrongly allowed the provisions for

expenses amounting to Rs. 1,69,36,708/-, out of total disallowance of Rs. 4,79,18,880/-.

We note that solitary grievance of the Assessee and Revenue are common and interlinked with each other, as mentioned above, challenging total disallowance of Rs.4,79,18,880/- made by the Assessing Officer, and on appeal, deleted by the Id CIT(A) partly, which are dealt together as under.

5. The facts of the case which can be stated quite shortly are as follows: The assessee company is engaged in the real estate business. During the assessment year 2012-13, it had disclosed its total income from a project known as "Anahita Project" involving construction of a large number of residential flats in a multi storied building. The total work-in-progress of the project 'Anahita' as on 01.04.2011 was Rs. 36,19,47,176/- to which further direct expenses and indirect expenses were debited taking the total cost of the construction at Rs. 77,20,91,223/-. Out of total 356 flats constructed in this project upto 31.03.2012, 314 flats were sold during the financial year 2011-12 and there was a closing stock of 42 ready built flats as on 31.03.2012. During the assessment proceedings, the Assessing Officer noted that the assessee company has claimed the following amounts as provision for liabilities under the head of expenditure mentioned below:

Sl. No.	Head of Expenditure		Amount of expenditure included	Remarks mentioned by the assessee company
1.	Superstructure Lift	Sundry parties	37,58,000	Provisional liability provided on completion of project. TDS deducted subsequently on settlement of bills.
2	Superstructure	Do	3,18,85,066	Do
3	Sanitary and water supply	Do	2,18,203	Do
4	Do	Do	74,59,486	Do
5	Electrification	Do	15,27,397	Do
6	Do	Do	30,70,728	Do
		Total	4,79,18,880	

During the assessment proceedings the assessee was asked to explain the nature of the provisions and the expenses claimed which are mentioned in the above noted table. In response, the assessee submitted that since the project was completed, the assessee company had booked all the expenditure irrespective of the fact whether the bills were received on or before 31.03.2012 or not. The assessee company was requested to furnish the bills in respect of all the provisions for expenses debited to the direct expenses. In response, the assessee submitted a detailed list of provisional direct expenses during assessment year 2012-13, in which the following facts were noted by the assessing officer:

- i) That all the bills of expenditure namely superstructure, superstructure lift, sanitary and water supply, electrification etc, were received after 31/03/2012, majority of which are dated in the months between July, 2012 and March. 2013 and some are even dated between April, 2013 and November, 2013.
- ii) That the date of transactions on receipt of bills from various parties under the above heads of expenditure fall in the months as mentioned in Sl. No. (i) above. The payments on final settlement of bills have been made to the parties during the AY 2013-14 and also in AY2014-15, not relevant to the impugned assessment year 2012-13.
- iii) That the TDS was deducted on such bills at the time of credits/ payments on the dates of transactions and therefore much beyond the end of the AY 2012-13.

It was submitted by the assessee that all expenses related to project 'Anahita' were booked and were provided during the AY 2012-13 itself, as all expenses have to be booked, as the project was completed. However, the following information were noticed by the AO, from the accounting statements of the assessee:

- i) The total WIP of the project 'Anahita' as on 01/04/2011 was Rs. 36,19,47,176/- to which further direct expenses and indirect expenses were debited taking the total cost of the construction of the flats at Rs.

77,20,91,223/- . The WIP of the project, as on 31/03/2012 is declared at Rs. Nil.

- ii) However, as against total constructed flats at 356 on 31/03/2012, in respect of 'Anahita' project, the number of flats actually sold during the AY 2012-13, was 314 nos; and therefore closing stock of ready built flats was 42 (356-314) as on 31/03/2012.

6. The AO noted that superstructure, superstructure lift, sanitary and water supply and electrification jobs, have not been completed till 31.03.2012, therefore, the expenses relating to these uncompleted jobs should not be included for the A.Y. 2012-13. But the assessee has included these provisional expenses, in the direct and indirect expenses for AY 2012-13 despite the fact that such expenditure do not pertain to AY 2012-13. The AO further noted that the expenses for which bills had not been received by the assessee till 31.03.2012, and the contractors had not completed their job till 31.03.2012, should not be included for the assessment year 2012-13, as these expenses pertain to next assessment years. Therefore, the Assessing Officer held that the assessee has not submitted proper explanation regarding the project completion date as on 31.03.2012 and submitted the expenditure bills which pertain to the next assessment years, therefore the Assessing Officer made addition of Rs. 4,79,18,880/-.

7. Aggrieved by the addition made by the assessing officer, the assessee carried the matter in appeal before the Id. CIT(A) who has partly allowed the assessee's claim. The Id. CIT(A) noted that out of total expenditure of Rs. 4,79,18,880/-, the sum of Rs. 1,69,36,708/- pertains to purchase of building material and therefore did not require deduction of TDS and hence he deleted the addition to the extent of Rs. 1,69,36,708/-. For balance addition sustained by the Id CIT(A) to the tune of Rs.94,51,860/- and Rs.2,15,30,312/- (out of total addition of Rs. 4,79,18,880), the assessee is in appeal before us, and the Revenue is in appeal before us against the amount of Rs. 1,69,36,708/- deleted by Id CIT(A).

8. Shri S.K. Tulsian, the Ld. Counsel for the assessee, begins by pointing out that the assessee has made a provision for the expenses to be incurred / already incurred to the tune of Rs. 4,79,18,880/-. Out of the said total expenditure a sum of Rs.1,69,36,708/- belongs to raw material purchased by the assessee, therefore no TDS is required to be deducted, as it relates to raw material purchased by the assessee. Therefore, on appeal by the assessee, the Id CIT(A) has rightly deleted the addition of Rs.1,69,36,708/-. On the balance amount of Rs.94,51,860/- the assessee has deducted TDS before 31.09.2012, i.e. before filing the return of income, for assessment year 2012-13, therefore the disallowance on account of TDS u/s 40a(ia) does not arise. On the remaining sum of Rs. 2,15,30,312/- (Rs. 4,79,18,880-Rs.1,69,36,708-Rs.94,51,860), since the assessee is following contract completed method, which is known as project completion method of accounting, in this method of accounting of construction contracts the assessee prepared the financial statement on substantial completion of the project. The assessee's substantial activities were completed before 31/03/2012, therefore the assessee made profit & loss account and balance sheet and other financial statements and has shown entire income of the project. Since the assessee has shown the entire income of the project therefore it was necessary to make the provision for the expenses (minor work/miscellaneous work) to be incurred for completion of project. Therefore, the assessee made a provision on estimated basis to the tune of Rs. 2,15,30,312/- where the payee is not known and it is just kind of a provision on estimate basis and therefore TDS obligation does not arise. Shri S.K. Tulsian also pointed out that the Assessing Officer has not disputed the method of accounting i.e. project completion method. Moreover, the Assessing officer has also not disputed the fact that the assessee was maintaining its books of account on project completion method. Apart from this, the real reason for disallowance of the expenditure by the Assessing Officer was not the failure of the assessee to produce all the bills and vouchers as alleged in the department's grounds of appeal, but the fact that all the expenditure were not incurred during the assessment year 2012-13 but some of these expenditure spilled over to the assessment years 2012-13 and 2013-14. The Id. Counsel

pointed out that the Id. CIT(A) had condoned this defect on the ground that the assessee was following project completion method and allowed a sum of Rs. 1,69,36,708/-. The Id. Counsel, Shri S.K. Tulsiyan also pointed out that in assessee's case almost the entire project was completed by the end of 31.03.2012 and only a certain additional works as required to be done was pending. Out of total flats built by the assessee, the 88% of the flats were sold and remaining 12% of the unsold flats were carried to stock-in-trade. Further, since the assessee has disclosed its entire income from 'Anahita' project in the current year, all the corresponding expenses incurred or to be incurred in connection with the said project were also taken into account, so as to arrive at the correct net profit from this project, hence the counsel prayed before the Bench that addition deleted by the Id CIT(A) of Rs.1,69,36,708/- should be sustained and addition confirmed by the Id CIT(A) of Rs.94,51,860/- and Rs.2,15,30,312/- should be deleted.

9. On the other hand, the Id. DR for the Revenue vehemently submitted before us that, first of all, the assessee has not produced before the Assessing Officer the project completion certificate and has also not submitted the bills and vouchers and the sufficient proof to substantiate these expenditures, hence the addition made by the AO should be sustained. Moreover, the assessee has not submitted the bills and invoices in relation to the raw material purchased to the tune of Rs. 1,69,36,708/-. He has also pointed out that these expenses were based on the provisions made in accounts, and these are not actual expenditure incurred by the assessee therefore these should not allowed. The DR further pointed out that since the assessee has completed its project substantially therefore he supposed to deduct TDS on the entire expenditures which are to be incurred for ancillary or minor work, which are to be done after completion of the project. Since the assessee has failed to deduct TDS on Rs.4,79,18,880/-, therefore the same should be disallowed.

10. We have given a careful consideration to the rival submissions and perused the material available on record. We note that recognition of contract revenue

and expenses are done by the contractors by following either percentage of completion method or completed contract method. The completed contract method is also known as project completion method. In percentage completion method the revenue and contract costs associated with the construction contract shall be recognized as Revenue and Expenses respectively by reference to the stage of completion of the contract activity at the end of the accounting period.

Whereas in completed contract method, which is also known as project completion method, the revenue and expenses are recognized at the time of substantial completion of the project. The substantial completion of the project means the project should be completed by and large, except to some ancillary and minor/miscellaneous work, which can be completed in subsequent years. The another feature of project completion method is that, in this method, the financial statements, that is, profit and loss account and balance sheet is prepared once in the life of the project therefore it is necessary to make the provision in the books of accounts for expenses like ancillary and minor/miscellaneous work, which are yet to be completed or to be completed in subsequent years. The assessee company, before us, is following project completion method and made provision for expenses on account of ancillary and minor/miscellaneous work, which is to be completed in subsequent years.

We note that the Assessing Officer, in the assessee's case under consideration has not disputed the method, which has been adopted by the assessee. The assessee as a matter of consistency has been following the project completion method. In project completion method, as we pointed out earlier that the assessee prepares balance sheet, profit & loss account and other financial statement once in a life of the project i.e. for a particular project the financial statements consisting profit & loss account and balance sheet is prepared only once in a life of the said project. Therefore, if the assessee is of the view that his project has substantially completed and only some minor/ ancillary and miscellaneous works are pending, which is yet to be completed, in that situation, the assessee prepares financial statements, in that year itself and will show the entire expenses and entire sales

receipts in the profit & loss account. Since in project completion method, the entire expenses and entire sales should be shown, therefore, it is necessary for the assessee to make provision for estimated expenditures which are to be incurred in subsequent years on account of minor/miscellaneous work. If the assessee does not make provision for estimated expenditures, like, exp. on minor/miscellaneous work, then in that case assessee will not able to show true profit and loss, in its profit and loss account. As we pointed out in our earlier para that in project completion method, the assessee prepares profit and loss account and other financial statements once in life of a project, therefore, these estimated expenditures, like, exp. on minor/miscellaneous work, can not be shown next year. Another important point is that in project completion method, the assessee has shown entire sales/Revenue therefore he is entitled to record the entire expenses which had incurred by him or to be incurred to earn the said entire sales/Revenue. Therefore, in order to derive the true net profit in project completion method it is necessary to show these estimated expenditures, like, Exp. on minor/miscellaneous work. Hence, we accept the treatment made by the assessee in respect of estimated expenditures, like, Exp. on minor/miscellaneous work, in its books of accounts.

11. Now the next question before us is deduction of TDS on these estimated expenditures, like, Exp. on minor/miscellaneous work? Since the expenditure are estimated only and work will be executed against these expenses in subsequent years therefore, the payee is not known hence it is not possible for assessee to deduct TDS on these estimated expenditure, like, Exp. on minor/miscellaneous work, which is to be completed in years to come. Therefore, this is a kind of condition which is mandated by the project completion method that the financial statements of a particular project is to be made once in a life of the project, on completion of substantial activity therefore, the assessee does not have any option but to make estimate for Exp. on minor/miscellaneous work. When the expenses are estimated, the payee is not known, hence, without knowing the payee, it is not possible to deduct TDS.

12. We note that the department is in appeal against the amount deleted by the Id. CIT(A) to the tune of Rs.1,69,36,708/- on the ground that the assessee has not submitted bills and vouchers. We note that the assessee has furnished all the bills and vouchers relating to said expenditure, therefore the stand of the revenue that bills and vouchers have not been submitted by the assessee is not tenable hence we do not accept the contentions of the Id. DR that the assessee has not submitted or produced the bills and vouchers in relation to the expenditure of Rs. 1,69,36,708. We also note that the accounts of the assessee were duly audited by the statutory auditor, therefore, the allegation of the Id DR, about non-availability of bills and vouchers relating to the sum of Rs.1,69,36,708/- appears to be not correct and therefore we dismiss the appeal of the Revenue.

13. We note that the if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. In the assessee's case under consideration the liability to pay the expenses(estimated expenditure explained above) is present in the assessment year under consideration though it should be discharged at a future date. For that we rely on the judgment of the Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT reported in 245 ITR 428, wherein the same facts and ratio was decided.

14. At the cost of repetition, we reiterate the facts that the assessee is following project completion method and in this method the revenue is recognized when a substantial portion of the construction work is completed although some unfinished ancillary works may remain pending. The total expenditure in respect of such ancillary unfinished work is estimated and a provision is made in the books of accounts. This principle is adopted when the assessee has recognized the

entire income from the project and the same is credited in the books of accounts. Therefore in the assessee's case under consideration, since the assessee has disclosed its entire project receipts of its 'Anahita' project in the assessment under consideration, therefore, all the expenses incurred or to be incurred in connection with the said project were also taken into account so as to arrive at the correct net profit from this project. On the same facts, our views are fortified by the judgment of Hon'ble Supreme Court in the case of Calcutta Co. Ltd. reported in 37 ITR (1) wherein it was held as under:

"The appellant bought lands and sold them in plots fit for building purposes undertaking to develop them by laying out roads, providing a drainage system and installing lights etc. When the plots were sold the purchaser paid only a portion of the purchase price and undertook to pay the balance in installments. The appellant in its turn undertook to carry out the developments within six months but time was not of the essence of the contract.

In the relevant accounting year the appellant actually received in cash only a sum of Rs. 29,392 towards sale price of lands, but in accordance with the mercantile system of accounts adopted by it, it credited in its accounts the sum of Rs. 43,692 representing the full sale price of lands. At the same time it also debited an estimated sum of Rs. 24,809 as expenditure for the developments it had undertaken to carry out, even though no part of that amount was actually spent. The Department disallowed the expenditure.

Held, (i) that the undertaking to carry out the developments within six months from the dates of the deeds of sale (which, in view of the fact that time was not of the essence of the contract, meant a reasonable time) was unconditional, the appellant binding itself absolutely to carry out the same. That undertaking imported a liability on the appellant which accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was thus an accrued liability and the estimated expenditure which would be incurred in discharging the same could be deducted from the profits and gains of the business, and the amount to be expended could be debited in account maintained in the mercantile system of accounting before it was actually disbursed. The difficulty in the estimation thereof did not convert the accrued liability into a conditional one because it was always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case.

(ii) That the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the assessee in the course of carrying on its

business and was incidental to the business and, having regard to the accepted commercial practice and trading principles, was a deduction which, if there was no specific provision for it under section 10(2) of the Income-tax Act, was certainly an allowable deduction, in arriving at the profits and gains of the business of the appellant, under section 10(1) of the Act, there being no prohibition against it, express or implied, in the Act.

The expression "profits or gains" in section 10(1) of the Income-tax Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure purpose of earning the receipts is deducted therefrom whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date."

15. We note that the grievance of the revenue is that the assessee has not deducted TDS on the sum of Rs. 94,51,860/- and Rs. 2,15,30,312/-. So far the sum of Rs. 94,51,860/- is concerned, we note that the assessee has deducted TDS and paid before 31.09.2012 i.e. before the due date of submission of return of income for assessment year 2012-13, therefore by no any stretch of imagination, the disallowance should be attracted i.e. the disallowance made by the Assessing Officer is directed to be deleted based on the fact that the assessee made the compliance and paid TDS on or before submissions of the return of income.

16. So far the balance amount of Rs. 2,15,30,312/- is concerned, as we have explained in our above para that since the assessee is following the project completion method and in project completion method the assessee prepares financial statement, profit and loss account and balance sheet once in life of project and some ancillary works which may remain pending will get completed in subsequent years. Since the assessee made provision for these expenses to compute the true net profit and the payee is not known, therefore, deduction of TDS is not possible, hence the disallowance is not attracted. For that we rely on the judgment of the Co-ordinate bench of ITAT Delhi in the case of Apollo Tyres Ltd. vs. DCIT reported in [2017] 54 ITR (Trib)(S.N) 1 (ITAT[Del]) wherein it was held as under:

“A survey was conducted at the premises of the assessee. Thereafter, the summons were issued under section 131 of the Income Tax Act, 1961 asking for details and information for the financial years 2009-10, 2010-11 and 2011-12, in response to which, necessary details were furnished by the assessee. Thereafter, the Assessing Officer passed an order raising a demand under section 201 and levying interest under section 201 (1 A) holding that the assessee had failed to deduct tax at source in respect of the provision made under several heads of income amounting to Rs. 15,07,25,637. The Commissioner (Appeals) sustained the addition. On appeal:

Held, allowing the appeal, that according to the scheme of tax deduction at source under Chapter XVII-B, credit for the tax deduction at source is to be given to the deductee. Thus the identification of the person from whose account Income-tax was deducted at source is a pre-requisite condition so as to make the provision for Chapter XVII-B workable. Tax deducted at source is considered to be tax paid on behalf of the person from whose income the deduction was made and therefore credit therefore is to be given to such person. Section 203(1) lays down that for all tax deduction at source, the tax deductor has to furnish a certificate to the person to whose account such credit is to be given. Therefore, when the tax deductor cannot ascertain the payee who is the beneficiary of a credit of tax deduction at source, the mechanism of Chapter XVII-B cannot be put into service. The Assessing Officer was to verify whether the payee was identifiable and the amount payable to him was ascertainable. Then the assessee would be required to deduct tax at source in respect of such provision. However, if payee was not identifiable, the provisions of Chapter XVII-B i.e., tax deduction at source, could not be pressed into service and, therefore, the assessee was not required to deduct tax at source in such a case. The Assessing Officer was to re-adjudicate the issue afresh after examining the facts.”

Considering the entirety of facts and circumstances of the case and the material on record, we are unable to uphold the stand of the Revenue, therefore we direct the Assessing officer to delete the addition of Rs. 94,51,860/- and Rs.2,15,30,313. We also uphold the order of the ld. CIT(A) in respect of deletion of amount of Rs.1,69,36,702/-, since this amount pertains to purchase of raw material therefore no TDS is attracted. Hence, we dismiss the appeal filed by the revenue in I.T.A. No. 2549/Kol/2017 in assessment year 2012-13 and we allow the assessee's appeal in 2414/Kol/2017 for assessment year 2012-13.

17. In the result, the appeal filed by the assessee is allowed whereas the appeal filed by the revenue is dismissed.

Order pronounced in the open court on this 31/ 12/2018.

Sd/-

(A.T. VARKEY)

न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-

(DR. A.L.SAINI)

लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता/Kolkata; दिनांक Dated 31 / 12/2018

SB, Sr.PS.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Assessee- M/s Bengal Peerless Housing Devt. Co. Ltd.
2. प्रत्यर्थी/ The Respondent.-DCIT, Circle-7(1), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकर आयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy// By Order

Assistant Registrar
I.T.A.T., Kolkata Benches,
Kolkata