

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI A.N.MISSHRA, ACCOUNTANT MEMBER**

ITA No.1410/Del./2015, A.Y. :2010-11

Global Heritage Venture Ltd. (Formerly known as Krishna Buildwell And Developers Pvtg. Ltd.) New Delhi	Vs.	DCIT Central Circle-7, ARA Centre, Jhandewalan Extn. New Delhi
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(PAN : AACCK9842M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Sh. Sudesh Garg, Adv.
REVENUE BY : Smt. Aparna Karan, CIT- DR

Date of Hearing : 19.02.2019
Date of Order : 25 .02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant Global Heritage Venture Ltd. (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 22/12/2014 passed by Ld. Commissioner of Income Tax(A)-XXIV, New Delhi qua the Assessment Year 2010-11 on the grounds inter alia that :

“1. The CIT(A) has erred on facts and in law in holding that the capital work in progress to the extent of Rs. 6,54,85,016/- would be reduced whenever any depreciation is claimed on the asset to be created or whenever the asset is ultimately transferred.

2. The Ld. CIT(A) has erred in giving credence to the observations of the assessing officer in spite of grave non application of mind pointed out by the appellant in its submissions.

3. The Ld. CIT(A) has erred in upholding disallowance of 1/5th of the expenses made by the assessing officer on estimate basis wholly on assumptions & presumptions without pointing out any mistake whatsoever in the books of accounts maintained by the appellant which were duly audited.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

2. Briefly stated that facts necessary for adjudication of the controversy at hand are : the assessee company is into the business of construction of Five Star Hotel. It is the case of the assessee that due to slowdown in the construction activities because of recession in the real estate market, the construction activities was continued and expenses of Rs. 32.74 crore incurred in respect of development of project has been capitalized as capital work in progress. On failure of the assessee to furnish detail of expenses i.e. bills, vouchers, purchase book, ledger A/c etc. to prove the expenses capitalized during the year under assessment AO disallowed 1/5th of such expenses on estimated basis and thereby

made an addition of Rs. 6,54,85,016/- and assessed the total income f Rs. 6,69,3,140/-.

3. Assessee carried the matter before Ld. CIT(A) by way of filing the appeal who has given part relief by partly allowing the appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. DR for the revenue and gone through the order passed by the lower revenue authority.

5. Undisputedly the assessee has capitalized Rs. 32.74 crore out of expenses debited to P & L Account under the head "less expenses transferred to capital work in progress". However, the AO has disallowed 1/5th of such expenses on failure of the assessee to furnish details of such expenses which bill, vouchers purchase books ledger account etc. on estimated basis.

6. However, it is case of the assessee that the entire detail of financial break up was there in the schedule forming part of the P & L Account as on 31.03.2011 available at page 21 of the paper book. Perusal of the assessment order as well as impugned order passed by the Ld. CIT (A) go to prove that the Assessing Officer has not disputed the expenses otherwise capitalized by the assessee during the year

under assessment but has disallowed 1/5th thereof for want of furnishing the bills, vouchers, purchase books, ledger account etc.

7. When we examine this facts in the light of the fact that the assessee initially appeared before the AO and filed certain details with the AO but subsequently none-appeared on behalf of the assessee to assist the AO to reach the logical conclusion. So in these circumstances, we are of the considered view that when claim of the expenses capitalized by the assessee has otherwise not been disputed by the AO who has proceeded to disallow 1/5th thereof on the basis of estimation, opportunity is required to be given to the assessee to produce the bills, vouchers, purchase books, ledger account etc. to prove the expenses capitalized in the interest of justice.

8. In view of what has been discussed above, impugned order passed by AO/Ld. CIT(A) is set aside and remanded back to the Assessing Officer to decide afresh after providing opportunity of being heard to the assessee. Consequently appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on this 25th February, 2019.

Sd/-
(A.N.MISSHRA)
ACCOUNTANT MEMBER
Dated : 25.02.2019

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-XXVI, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	18.02.2019
Date on which the typed draft is placed before the dictating Member	18.02.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	25.02.2019
Date on which the fair order comes back to the Sr. PS/PS	25.02.2019
Date on which the final order is uploaded on the website of ITAT	25.02.2019
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	