



**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, MUMBAI**

**माननीय श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI C.N. PRASAD, JM AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.2289/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2013-14)

<b>Anjani Kumar Company Pvt.Ltd.</b> 306, Raj Chamber, Manubhai Road Malad (E), Mumbai-400 097.	<b>बनाम/</b> Vs.	<b>ACIT-2(1)(1)</b> Room No.561, 5 <sup>th</sup> Floor Aaykar Bhavan Mumbai-400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. <b>AABCA-1474-E</b>		
(□ पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	None
<b>Revenue by</b>	:	Shri Rajesh Kumar Yadav - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	22/04/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	22/04/2019

**आदेश / O R D E R**

**Per Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year [AY] 2013-14 contest the order of Ld. Commissioner of Income-Tax (Appeals)-4, Mumbai, [CIT(A)], *Appeal No. CIT(A)-4/IT-96/ITO-2(1)(3)/2016-17* dated 28/02/2018 *qua* confirmation of certain additions. None has appeared for assessee and no valid adjournment application is on record. Left with no option, we proceed to dispose-off the same on the basis of material on record and after hearing Ld. Departmental Representative, who relied upon the orders of lower authorities.



2.1 Facts, in brief, are that the assessee being *resident corporate assessee* stated to be engaged in development and construction, was assessed for impugned AY u/s 143(3) on 18/03/2016. During assessment proceedings, it transpired that the assessee had shown *work-in-progress [WIP]* and transferred project related expenses directly to *WIP* Account. The total expenses incurred during impugned AY were Rs.197.34 Lacs out of which Rs.149.01 Lacs was transferred to two projects as *WIP* whereas the balance of Rs.48.32 Lacs was claimed in the profit & loss Account as revenue expenditure. However, not satisfied with assessee's working, Ld. AO proceeded to allocate the claimed expenditure of Rs.48.32 Lacs in the ratio of *WIP* to *Total Assets* and came to a conclusion that an amount of Rs.19.56 Lacs out of Rs.48.32 Lacs was to be capitalized as *WIP*. Accordingly, the income was enhanced by corresponding amount.

2.2 Another addition of Rs.72,359/- represent interest income reflected in assessee's Form 26AS but which has not been reflected by the assessee in the return of income.

3.1 Before Ld. first appellate authority, the assessee provided the details of head-wise expenditure and submitted that expenditure related to specific projects was already transferred to *WIP* account and claimed expenditures were sort of fixed costs which were to be incurred under all circumstances and not related with any specific projects. The attention was drawn to *Accounting Standard-7 & Guidance Notes on accounting for real estate transactions* to support the accounting methodology. However, Ld. CIT(A) observed that the only revenue earned by the assessee during the year was *TDR Sales receipts, interest / dividend and other non-operating income* which would mean that the assessee



had absolutely no business income during the year and therefore, had no justification to claim these expenditure particularly keeping in view the fact that the said expenditure would go on the reduce the taxable income earned from sale of *TDR / non-operating income*.

3.2 In the above background, Ld. CIT(A) proceeded to examine the allowability of each expenditure which would be necessary to comply with statutory requirements. Finally, after examining each and every expenditure, Ld. AO was directed to capitalize the following expenditure:-

<b>No.</b>	<b>Head of Expenditure</b>	<b>Amount (Rs.)</b>
1.	<i>Security Service Charges</i>	<i>2,43,274/-</i>
2.	<i>Finance Cost</i>	<i>19,14,398/-</i>
3.	<i>Business promotion</i>	<i>1,59,300/-</i>
4.	<i>Water Expenses</i>	<i>2,25,379/-</i>
	<b>Total</b>	<b>25,42,351/-</b>

In other words, the action of Ld. first appellate authority resulted into enhancement of capitalization from Rs.19.56 Lacs to Rs.25.42 Lacs. The stand of Ld. AO in making another addition of Rs.0.72 Lacs was also confirmed. Aggrieved, the assessee is in further appeal before us.

4. After careful consideration, we find fallacy in the observation of Ld. first appellate authority that the assessee would not be entitled to claim otherwise allowable expenditure, if he had no business income during impugned AY since deduction of legitimate business expenditure would not be subject to actual earning of business income. Another noteworthy point is that the assessee has only one head of income i.e. business income during the impugned AY which is evident from the quantum assessment order. This would mean that whatever amount was credited by the assessee in the Profit & Loss account either as TDR sale or as non-operating income, the same was assessed as business income only



and therefore, there could be no reason to deny the legitimate business expenditure. With these observations, we deem it fit to restore the matter back to the file of Ld. CIT(A) for re-adjudication after appreciating the factual matrix in the correct perspective with a direction to the assessee to substantiate his stand.

5. The second addition of Rs.0.72 Lacs represent certain income reflected in assessee's Form 26AS but which has not been offered to tax by the assessee. The prime argument advanced by the assessee before lower authorities seems to be the fact that no money was received from the payers and the assessee, ultimately, had to write-off these balances in subsequent years. However, this argument weakens by the fact that payers had deducted as well as deposited due TDS against these payments. Further, nothing on record substantiate the assessee's submissions. Therefore, this matter also stands remitted back to the file of Ld. CIT(A) for re-adjudication with a direction to the assessee to substantiate his stand, in this regard.

6. Resultantly, the appeal stands allowed for statistical purposes in terms of our above order.

*Order pronounced in the open court on 22<sup>nd</sup> April, 2019.*

**Sd/-**

**(C.N. Prasad)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22/04/2019  
Sr.PS, Jaisy Varghese



**आदेशकीप्रतिलिपिअग्रेषित/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. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**