

**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.7430/Mum/2013
(Assessment Year :2010-11)**

M/s. Magna Warehousing & Distribution Private Limited Raheja Tower, Plot No.C-30, G Block Opp. SIDBI, Bandra Kurla Complex Bandra East Mumbai – 400 051	Vs.	Dy. Commissioner of Income Tax- 9(2), Mumbai
PAN/GIR No.SSECM4101H		
(Appellant)	..	(Respondent)

Assessee by	Shri Madhur Agarwal
Revenue by	Shri Satish Chandra Rajore
Date of Hearing	14/08/2019
Date of Pronouncement	21/08/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.7430/Mum/2013 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)20/DC9(3)/IT-293/2012-13 dated 04/09/2013 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 11/02/2013 by the Id. Dy. Commissioner of Income Tax – 9(2), Mumbai(hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id CITA was justified in confirming the action of the Id AO of treating the entire expenditure of Rs 1,09,84,625/- debited to profit and loss account as expenditure pertaining to commercial project and capitalized to work in progress, in the facts and circumstances of the case.

3. We have heard the rival submissions. We find that the assessee is engaged in the business of real estate development of hotel, retail, mall, information technology park and other high quality commercial segments and had filed the return of income for the Asst Year 2010-11 on 10.9.2010 declaring total loss of Rs 1,08,35,377/- for the current year. During the year under consideration, the assessee's commercial project at Bengaluru was under progress and accordingly, the expenditure incurred towards the said project were capitalized to capital work in progress by the assessee. But there are certain administrative and general expenditure which were incurred by the assessee which cannot be attributed to the commercial project as such and accordingly the same were charged off by the assessee as a revenue expenditure to the tune of Rs 1,09,84,625/ by debiting the same to the profit and loss account. The Id AO observed that the assessee had derived other income of Rs 1,50,563/- against which the aforesaid expenditure was set off. Accordingly, the Id AO disallowed the loss claimed by the assessee in the sum of Rs 1,08,35,377/- and allowed the same to be capitalized to capital work in progress in view of the fact that the project had not commenced during the year under consideration. We find that the details of expenditure debited to profit and loss account are as under:-

Sr.	Expenses Head	Amount	Remarks
1	Rates, taxes and others	5,000	Professional tax paid
2	Guest house expenses	3,54,596	Day-to-day use of employees white on duty
3	Printing and Stationery	98,816	Letter-head and other miscellaneous stationery
4	Legal and Professional expenses	5,37,705	Internal Audit and Tax Audit fees
5	Project support fees (non-technical)	41,35,560	Administrative charges, HR Accounting, Finance. Payroll, taxation etc.
6	Travelling and conveyance	11,56,447	Routine travel and related expenses
7	Communication costs	37,713	Telephone charges
8	Repairs and maintenance	4,43,785	Various AMC & internet charges at corporate office
9	Audit fees	7,49,488	Statutory Audit Fees
10	Royalty charges	17,35,524	For use of name and logo
11	Bank charges	48,202	Routine bank charges
12	Subscription charges	56,500	Subscription to Export promotion council and business association
13	Advertisement and Publicity expenses	5,29,524	Market Survey and research reports
14	Miscellaneous expenses	1,13,155	Various day to day small nature expenses at corporate office

3.1. We find that the assessee had pleaded that the aforesaid expenditure were incurred for the purpose of smooth running of the business and are

purely administrative in nature and are not connected with the project undertaken by the assessee. In other words, it was pleaded that the aforesaid expenditure are routine administrative expenses and are to be incurred irrespective of the completion of the project by the assessee. We find from the perusal of the balance sheet that the assessee had already considered , the cost of land, material and contractual payments, technical professional fees, rates & taxes for the project, travelling expenses for the project, technical project support fees, interest etc aggregating to Rs 187 crores, to the capital work in progress as they are directly related to the construction of project. This was done in accordance with the mandate prescribed in Accounting Standards (AS-7) issued by Institute of Chartered Accountants of India (ICAI) . We find that the assessee pleaded before the lower authorities that the very same set of expenditure were incurred by the assessee and claimed as deduction by the assessee in earlier years in Asst Years 2006-07 and 2007-08 wherein the claim of the assessee was accepted by the Id AO in scrutiny assessments. It is not in dispute that the commercial project had been undertaken by the assessee from the earlier years and had not been completed during the year under consideration. The aforesaid treatment of expenditure i.e partly towards capital work in progress in respect of direct project related expenses and partly towards revenue expenditure in respect of routine administrative expenses has been consistently followed by the assessee in the earlier years also and the same stand was taken by the assessee during the year under consideration. We find that there is no reason for the Id AO to take a divergent stand with regard to the treatment of expenditure given by the assessee in the books which is similar to treatment for income tax purposes also. In any case, we find that these administrative expenses , even if transferred to capital work in progress, would eventually find its

way to the profit and loss account in the year of completion of project , in view of the fact that the revenue had not doubted the genuineness of incurrence of those expenditure and the business nexus of the same. We find that the lower authorities had not appreciated the action of the assessee wherein the routine administrative expenses that are not directly connected with the project, need to be charged off as revenue expenditure. Hence we direct the Id AO to grant deduction of the revenue expenditure in the sum of Rs 1,09,84,625/- that were debited to profit and loss account by the assessee. Accordingly, the Ground No. 1 raised by the assessee is allowed.

4. In view of our aforesaid decision, the adjudication of Ground No. 2 becomes academic in nature as it would not have any bearing on the computation of total income of the assessee for the year under consideration. Accordingly, the Ground No. 2 on merits is left open and is hereby dismissed as being academic in nature.

5. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 21/08/2019

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, sr.ps

21/08/2019

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai