

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
(Though Video Conferencing)

ITA No. 8475/Del/2019  
(Assessment Year: 2014-15)

Supreme Build Cap Private Limited, 8A, Commissioner Lane, Civil Lines, New Delhi PAN: AABCS3168B (Appellant)	Vs.	ACIT, Central Circle-05, New Delhi (Respondent)
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Assessee by :	Shri Rohit Tiwari, Adv
Revenue by:	Shri Saras Kumar, Sr. DR
Date of Hearing	16/06/2020
Date of pronouncement	13/07/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT (A)-24, New Delhi dated 19.08.2019 for the Assessment Year 2014-15.
2. The assessee has raised the following relevant effective grounds of appeal:-
  - “2. *That on the facts and circumstances of the case the Ld. AO / Ld. CIT(A) has erred on the facts and in law in making an addition of INR 4,07,12,068 to the total income of the appellant under the provisions of the Act.*
  3. *That on the facts and in the circumstances of the case and in law, the Ld. AO / Ld. CIT(A) is not justified in making an addition of INR 2,10,73,800 to the returned income of the appellant company. In doing so the Ld. AO erred in adding the amount of INR 2,10,73,800 as reflected in Form No. 26AS and received from Adamas Builders Private Limited without appreciating the fact that the aforesaid receipt of amount is part of outstanding payment due from Adamas Builders Private Limited.*
  4. *That on the facts and in the circumstances of the case and in law, the Ld. AO / Ld. CIT (A) erred in determining an addition of INR 729,706 on account of disallowance of depreciation on fixed assets.*
  5. *That on the facts and in the circumstances of the case and in law, the Ld. AO / Ld. CIT(A) erred in determining an addition of INR 1,89,08,562 on account of disallowance of legal and professional charges.*

6. *That the Ld. AO / Ld. CIT(A) have grossly erred in law and on the facts in not appreciating that the expenditure of INR 1,89,08,562 under the head Legal and Professional Charges were incurred wholly and exclusively for the purpose of business and applicable taxes were deducted at source on such payments and were duly deposited.”*

3. Three issues are involved in this appeal as under :-

- i. Addition of Rs 2,10,73,800 as reflected in Form No. 26AS and received from Adamas Builders Private Limited claimed that the aforesaid receipt of amount is part of outstanding payment due from Adamas Builders Private Limited.
- ii. Disallowance of Depreciation of Rs 729706/- on fixed assets
- iii. Disallowance of expenses of Rs 18908562/-

4. Brief facts of the case shows that the assessee is a company engaged in the business of real estate. It filed its return of income on 31.03.2015 declaring Nil income and carry forward of loss of Rs. 26,22,510/-. During the assessment proceedings the ld AO made three additions/ disallowance, which are subject matter of appeal before us , as under :-

- a. LD AO found that assessee has debited Rs. 1,89,08,562/- as Legal and Professional fees. The assessee was asked to furnish the copies of the bills with justification for allowability of the above expenditure. The assessee submitted its reply on 16.11.2018 and 29.11.2018. The assessee submitted details of the various expenditure incurred. The ld AO examined the same but noted that the assessee has not submitted the details of the expenditure to which project was belonging to. He further noted that the expenses have been claimed by the assessee of architectural consultancy expenses, liaison charges, and charges for authority, charges for approval and drawing, document preparation, and several charges of similar nature. The ld AO noted that the assessee has incurred the above expenditure of similar nature. The ld AO noted that the assessee has incurred the above expenditure in relation to its project Global Technology Park, Bangalore. The Global Technology Park project of the assessee was sold to M/s. Adamass Builders Pvt. Ltd during the Financial Year 2012-13 relating to

assessment year 2013-14. The ld AO noted that as per the noting policy the assessee recognizes accounts and accounts for income and expenditure on accrual basis. Therefore, he did not allow the assessee to claim the above expenditure in the main assessment year as this was related to FY 2012-13. The ld AO further invoked the matching concept and held that the assessee has claimed the expenses of prior period and it is not allowable as assessee follows mercantile system of accounting. Thus, the legal and professional fees of Rs. 1,89,08,562/- was disallowed.

b. Ld AO disallowed the depreciation of Rs. 7,29,706/- holding that during the year the assessee has not carried out any business and the assets were not used for business purposes.

c. Ld AO found that during the year the assessee has received total receipt of Rs. 3,14,58,417/- from M/s. Adamass Builders Pvt. Ltd and on the above sum TDS was deducted u/s 194J of the Act. The ld AO found that out of those receipts Rs. 5,00,000/- is lease rent, Rs. 64,79,080/- as miscellaneous income and Rs. 34,05,537/- as service tax receipts. All these receipts were found to be properly booked and income is offered. Therefore, there is no dispute to that extent. However ld AO found that the assessee has not shown balance receipt of Rs. 2,10,73,800/- as its income and therefore, same was also added.

5. The assessee preferred an appeal before the ldCIT (A), who passed an order dated 19.08.2019. With respect to the addition of Rs. 2, 10, 73,800/- on account of sum received from M/s. Adamass Builders Pvt. Ltd not shown by the Assessee as its income during the year as per Form No. 26AS, it was confirmed. He further confirmed the disallowance of depreciation of Rs. 729706/-. With respect to the legal and professional expenses of Rs. 18908562/- he confirmed the same. Therefore, the Assessee is in appeal before us.

6. Ground No. 1 and 2 of the appeal are general in nature, Ground no 7 and 8 are on interest u/s 234B, C etc and Initiation of penalty proceedings u/s 271(1) ( C ) of the act are consequential and hence those are dismissed. Therefore, those are dismissed.

7. Ground No. 3 is with respect to addition of Rs. 21073800/- on account of sum received from M/s. Adamass Builders Pvt. Ltd, which was allegedly not shown as income by Assessee. Facts shows that during the year Assessee received Rs. 31458417/- from M/s. Adamass Builders Pvt. Ltd. Ld AO noted that out of the above sum, e Assessee has received Rs. 5 lakhs towards lease rent and Rs. 6479080/- as miscellaneous income and Rs. 3405537/- as services tax. There is no dispute with respect to the above three sums as they are accounted for by the Assessee in its profit and loss account. The balance sum of Rs. 2,10,73,800/- was not credited to the profit and loss account as income and therefore, the ld AO made the addition. The ld CIT (A) confirmed the same. Before the ld CIT(A) the Assessee submitted that this sum received by the Assessee is on account of outstanding receivable from M/s. Adamass Builder to whom assessee sold one project last year . Assessee submitted the copy of account of Adamass Builders from the books of account of the Assessee along with agreements and submitted that Assessee received the total sum from that party of Rs. 3,14,58,417/- , out of which three receipts are taken in the profit and loss account as income . It was further stated that the sum of Rs. 2,10,73,800/- was received from that party towards outstanding sale consideration receivable from that party for project sold in the earlier year. Still a sum of Rs. 2,20,00,681/- as at 31/03/2013 is receivable from the above party towards the sale of the project in the earlier year. It supported the above argument with the copies of the account of the party. The Assessee also submitted that above buyer has deducted the tax at source u/s 194J of above the sum paid and therefore, it is reflected in Form No. 26AS. It was further stated that the Assessee has already paid tax on the above sum of Rs. 2,10,73,800/- when the project was sold , So it amounts to double addition. Therefore, no addition can be made in the hands of the Assessee. The ld CIT (A) rejected the contention of Assessee stating that the it has only submitted the ledger copy of M/s. Adamass Builders Pvt. Ltd and not the confirmation from that party and assessee also could not explain why buyer has deducted tax u/s 194J of the Act and how it is reflected in Form NO. 26AS. Therefore, he confirmed the above addition.

8. Before us, Id AR vehemently reiterated the above facts. He referred to the profit and loss account of the Assessee wherein in March 2013 the Assessee has sold a project to M/s. Adamass Builders Pvt. Ltd and shown the net profit on sale of project of Rs. 1,99,71,48,604/-. He submitted that out of the above sale consideration part of that was to be received from Adamass Builders and part of that was subject to certain conditions such as various approvals and compliances, which Admass Builder got done as per agreement and debited the account of the assessee towards outstanding payable. As the payments were for various charges of statutory authorities etc, it also deducted TDS u/s 194 J of the act while debiting the account of assessee. He referred to Form No. 26AS for AY 2014-15 wherein, total payment of Rs. 3,14,58,417/- is shown to have been received from / adjusted by M/s. Adamass Builders Pvt. Ltd. He submitted that the buyer has deducted tax therein for the reason that various statutory charges were covered u/s 194J as per buyer. He submitted the copy of the account of M/s Adamass Builders Pvt. Ltd placed at page No. 59 of the paper book where outstanding receivable from that party was placed at Rs. 4,30,74,493/-. He also referred to the computation of total income for AY 2013-14 wherein total sale consideration receivable from Adamass Builders was Rs. 294 crores. He also referred to the copy of agreement for sale executed between the assessee and Adamass Builders Pvt. Ltd dated 24.10.2011 towards the sale of the above project. Thus, he submitted that the above sale consideration has already been offered for taxation in the earlier years and therefore, it cannot be taxed during the year as it amounts to double taxation.
9. The Id DR vehemently supported the orders of the lower authorities.
10. We have carefully considered the rival contentions and perused the orders of the lower authorities. As per the facts, Assessee has sold Global Technology Park, Bangalore, for Rs. 294 crores to M/s. Adamass Builders Pvt. Ltd. This transaction was concluded in AY 2013-14 and the Assessee offered above sale consideration and profit arising therein as its income in that year. Profit and loss account of the assessee clearly depicts the same and there is no dispute on it. However, buyer did not pay the full amount to the assessee because of certain pending obligation on part of assessee, as per

'agreement' for sale of above property. Assessee was to obtain necessary approval from the Govt Authorities such as Airport Authority of India, Water Supply and Sewerage Board, Electricity Supply company, Fire and Emergency Services, Pollution Control Board and State Industrial Development Board. Admass Builders Private Limited, [ Buyer] as and when obtained such approvals, sanctions, debited the expenses to the account of the appellant in its books and also deducted tax at sources u/s 194 J of the act. Thus, expenses incurred by Adamass Builders were adjusted from the above sale consideration payable to the appellant. This was part of the agreement and lease deed entered into between the parties. Account of the Adamass Builders Pvt. Ltd clearly shows above sums were adjusted by that party by debiting the account of appellant. Therefore, the above sums were paid to Admass Builders as per part of the above agreement. During the year, there were certain adjustments as stated above and certain payments received towards the current lease income and miscellaneous expenses. During the year, assessee credited account of Admass Builders Pvt Limited in its books by Rs. 3,14,58,429/- . This sum is also reflected in form No 26 AS of the assessee on which buyer deducted tax at source u/s 194J of the act.

- i. A sum of Rs. 316688/- was adjusted by Admass Builders towards amount payable to Airport Authority of India. When the above amount is shown to have been debited to the account of Admass Builders on 10<sup>th</sup> April 2013.
- ii. Further sum of Rs. 1635069/- was paid by Admass Builders by debiting the account of the Assessee on final receipt of NOC from Bangalore Water Supply and Sewerage Board. This also apparent from the account entry dated 10.04.2013.
- iii. Further Rs. 1377934/- was paid by Admass Builders to Bangalore Electricity Supply Company on 15.07.2013 and debited the account of assessee.
- iv. Similarly, Rs. 3307361/- was paid to the Fire Department and Rs. 6970643/- was paid to Pollution Control Department.

- v. Further, Rs. 9459060/- was paid to Industrial Area Development Board towards final approval.
  - vi. It included some other such related expenditure of that project.
  - vii. Over and above sum assessee was also paid Rs. 5 lakhs was also received towards lease rent, miscellaneous expenditure of Rs. 6549805/- and service tax of Rs. 345557/-.
11. Therefore it is apparent that of Rs. 2,10,73,800/- was on account of outstanding receivable from the above party debited by Admass Builders to the account of the assessee towards various charges. The gross sale price of the above project has already been offered for taxation in the earlier year. Thus, the receipt of consideration of income, which has been already offered for taxation in earlier years, received in this year, naturally cannot suffer tax once again. This amounts to double taxation in the hands of the assessee. The lower authorities rejected the submissions of the Assessee asking for the confirmation when all the agreement were already available before them and copies of the ledger account depicting the conditions of the agreement before them. There were details of each and every expenditure incurred by Admass Builder pursuant to above agreement. The agreement itself shows various stages of payment and various obligations of the parties. The buyer was to obtain certain approvals at the cost of the appellant on payment as per the agreements. Buyer incurred such cost and debited the account of the appellant as payment of sale consideration. The appellant also accepted the same and credited the account of the buyer. Just because the payer has deducted tax at source, it cannot become the income of recipient automatically. It is undisputed that total c sales consideration received/ receivable is offered for taxation in immediately preceding year. In view of this, merely because the assessee did not furnish confirmation and more so even when each and every expenditure is part of the agreement, this addition cannot be made so it cannot be sustained. In view of this, we direct the ld AO to delete the addition of Rs. 21073800/- accordingly Ground No. 3 of the appeal is allowed.
12. Ground No. 4 of the appeal is with respect to disallowance of depreciation of Rs. 729706/-. The ld AO disallowed the same stating that there is no business activity during the year. The ld CIT (A) also confirmed the same.

13. The ld AR submitted that during the year the assessee has earned the revenue of Rs. 82 lakhs. The detail of the same is given in note No. 10. Therefore, it cannot be said that the assessee has not carried out any activity. He further submitted that the claim of the depreciation of assessee is on routine business assets such as computers, air conditioners, motor cars etc. He therefore, submitted that these assets were used for the purposes of the business therefore, depreciation should be allowed.
14. The ld DR submitted that assessee is a real estate company and there is no real estate project therefore there is no business carried out by the Assessee during the year. Therefore, depreciation cannot be allowed.
15. We have carefully considered the rival contentions and perused the orders of the lower authorities. During the year, assessee has earned gross revenue of Rs. 81,50,271/- such as miscellaneous income and lease rent income etc. These incomes is offered by the assessee as business income and accepted by the ld AO in the assessment. The assessee has been allowed several business expenditure during the year. Further, the assets on which depreciation is claimed by the assessee are also general asset as per Schedule No. 5 of the balance sheet. They are in the nature of air conditioner, fax machine, Xerox machine, computers, motor cars. These assets were not purchased during the year but was part of the assets i.e. block of assets in earlier. These assets were used for the purposes of the business. Merely because there was no project undertaken by the assessee during the year, and was trying to complete the formalities of sale of the huge project sold last year, which has certain obligations cast on assessee to be fulfilled, it cannot be said that those assets are not used during the year. The business of the assessee is continuing. In view of this, it cannot be said that the assessee did not carry on any business during the year. Accordingly, ground No. 4 of the appeal of the assessee is allowed and the ld AO is directed to grant depreciation of Rs. 7,29,706/- accordingly.
16. Ground no. 5 and 6 of the appeal is with respect to the expenditure of Rs. 1,89,08,562/-. The above expenditure is debited under the head legal and professional charges. The ld AO disallowed the same holding that these were related to Global Technology Park, Bangalore, which was sold in earlier year i.e. previous year and therefore, the expenditure claimed by the assessee in

this year is not allowable on the matching concept as well as those are prior period expenses. The Id CIT (A) confirmed the same.

17. The Id AR submitted that all these expenditure are related to the Global Technology Park, which was sold in earlier years however, the expenditure relating to that project was incurred during the year as respective expenditure such as billsetc.were received/ approved during the year. He submitted that when the allowability for payment of the above expenditure is incurred on receipt and approval of the bills, expenditure is said to have been incurred or accrued. He further submitted that the assessee is a company following mercantile system of accounting maintaining its books of account on accrual method and therefore, this expenditure should be allowed to the assessee during this year. The assessee also submitted the copy of the invoices and payment receipts of different parties from page No. 181 to page No. 200 of the paper book.
18. The Id DR supported the orders of the lower authorities stating that these are expenditure related to the project, which has been sold during the earlier year, and therefore, the expenditure cannot be allowed during this year.
19. We have carefully considered the rival contentions and perused the orders of the lower authorities. Undoubtedly, assesseehas incurred the expenditure during the year on account of consultancy and professional charges towards the Global Technology Park project. The consultancy expenses included drawing preparation and documentation charges, electricity approval, consultation charges, legal and professional charges etc during the year. The ledger account shows that the assessee received the bills of the parties during the year and itwas accrued during the year. The assessee also supported the above payment by production of the necessary bills as well as the receipt of the payment made. As per the agreement, some of the expenses were on account of assessee. Those expenseswere incurred during the year as bills of the same were received during the year, they were acknowledged in this year, and consequently obligation to pay by assessee and right to receive by the service providers arose in this year. Therefore, assessee incurred this expenditure during this year. Under section 209(3)(b) of the Companies Act, 1956 [now section 128(1) of the Companies Act,

2013], all companies are required to follow the accrual basis of accounting. However, the profit on sale of the project Global Technology park was offered for taxation in the immediately previous year. As the allowability of these expenditure, the above bills agreed during the year and it was paid during the year. We do not find any reason for the disallowance of the same. This is also in conformity with the Guidance note applicable to Real Estate Transactions, replaced by Ind As 11 and 18 and now further replaced by Ind As 115 which provides that

*“ 98. An entity shall recognise the following costs as expenses when incurred:*

- (a) general and administrative costs (unless those costs are explicitly chargeable to the customer under the contract, in which case an entity shall evaluate those costs in accordance with paragraph 97);*
- (b) costs of wasted materials, labour or other resources to fulfil the contract that were not reflected in the price of the contract;*
- (c) costs that relate to satisfied performance obligations (or partially satisfied performance obligations) in the contract (ie costs that relate to past performance); and*
- (d) costs for which an entity cannot distinguish whether the costs relate to unsatisfied performance obligations or to satisfied performance obligations (or partially satisfied performance obligations).*

Assessee was to record and recognize expenses when they are incurred in case those expenses relate to past performances. The sale took place last year, full sales consideration was offered for taxation by assessee. Some of the expenses of such a large project are bound to spill over to next year. It was a continuous process to incur expenditure when such a large project was sold and to account for in the books of account. Therefore, even though they were treated technically as prior period expenses, it related to a continuous flow of expenditure. Therefore, there was no justification in disallowing the expenditure, otherwise normally eligible for deduction. [Union Bank of India v. ACIT (2011) 49 SOT 32 (ITAT Mumbai), Bank of India v. DCIT (2012) 139 ITD 493 (ITAT Mumbai)]. Therefore, claim of assessee also cannot be found fault with respect to incurring of expenditure. It is not the case of revenue that

- (1) Right to receive these expenses arose to service providers in last year,
- (2) obligation of assessee to pay them also arose in last year

(3) Bills have been raised in last year.

It is not the case of the revenue that the assessee towards the business of the assessee did not incur these expenses. In view of this, we direct the ld AO to delete the above disallowance. Accordingly, ground No. 5 and 6 of the appeal of the assessee are allowed.

20. In the result, the appeal of the Assessee is partly allowed.

Order pronounced in the open court on 13/07/2020.

-Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 13/07/2020  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi