

**.IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2556/Bang/2017
Assessment Year: 2014-15

M/s. Ozone Shelters Pvt. Ltd. # 38, Ulsoor Road Bangalore-560 042 PAN NO : AABCO 0607K	Vs.	Asst. Commissioner of Income-tax Circle 5(1)(2) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri B.R. Sudheendra, A.R.
Respondent by	:	Shri S. Sundar Rajan, D.R.

Date of Hearing	:	10.09.2020
Date of Pronouncement	:	10.09.2020

ORDER

PER GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of assessee is directed against CIT(A) order dated 31.8.2017. The relevant assessment year is 2014-15.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming disallowance of expenditure of diesel generator set amounting to Rs.1,10,57,643/-.

3. The brief facts of the case are as follows:

Assessee is a company. It is engaged in the business of development of properties. During the assessment year 2014-15,

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assessee had constructed and sold apartments in the name of “Evergreens”, which was taken as a joint development venture as per the JDA agreement dated 31.3.2009. For the assessment year 2014-15, assessee filed return of income on 26.11.2014, declaring loss of Rs.37,37,628/-. In the P&L account, assessee had claimed as deduction, a sum of Rs.1,10,57,643/- being expenditure incurred for purchase of diesel generator sets. The A.O. vide assessment order dated 13.12.2016 passed u/s 143(3) of the Income-tax Act, 1961 [‘the Act’ for short] disallowed the said expenditure by observing as under:

*“From the above it can be seen that the project has to be **maintained only till the formation of the association** and once the association is formed it need to be handed over to them. The DG set expenditure of Rs.11057643/- which is for the maintenance of the power back up of the apartments is over and above the FMC expenses shown above. Hence the claim of DG set as the business expenses of the assessee is not tenable. Thus the said expenditure is disallowed under section 37 of Income Tax Act, 1961 since it is not incurred exclusively and wholly for the business purpose.*

Without prejudice to the above when the assessee was asked to provide invoices related to DG set expenditure, both the sample invoices submitted by the assessee to a tune of Rs.48,54,441 were dated 22.04.2014 and falls in the AY 2015-16 and hence disallowed under section 37 of Income tax Act, 1961 as the expenditure was not incurred during the previous year 2013-14.

For all the detailed reasons given above the expenditure claimed of Rs.1,10,57,643/- as DG set expenses under the Head “Business Expenses” is disallowed u/s 37 as not being for business purpose and not incurred during the previous year and thus added back to the income of the assessee company.

Additions: Rs.1,10,57,643/-“

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4. Aggrieved by the assessment order, assessee preferred an appeal to the first appellate authority. Before the first appellate authority, the following submissions were made:

“Note of allowability of DG Set cost for construction of 6 Apartment Complexes of 19 Floors each and also for Club house, situated at Evergreens, Harluru Road, Off Sarjapur Road, Bangalore.

- 1. The cost of DG set is an input cost like any other raw materials, without which the construction of apartment complex is not full and complete. Hence the cost of DG set is allowable as business expense solely and exclusively incurred for the purpose of business and profession.*
- 2. The facilities of 24x7 power facility was assured and promised by the developer at the time of launch of the project for sale to the customers.*
- 3. 24x7 power is possible only with the power connection from BSECOM and standby power from DG set.*
- 4. DG Set power is mandatory by Fire authorities for operation of lifts, escalators, pumps, fire equipments, street lighting, pumping up of water to the top floor and many other essential facilities.*
- 5. DG set is a common asset in any apartment complex like club house and the same was handed over to the Apartment owners association upon completion. The club house and all other common assets held by the association for the benefit of all customers in terms of the project scheme.*
- 6. The DG set was bought and the cost of DG set is accounted as cost of the project which was also part of cost of sales of apartment on percentage completion method.*
- 7. The installation of DG set is a precondition to get the clearance from Fire Force authorities and such clearance certificate is a mandatory requirement for getting the occupancy certificate from Corporation Authorities (BBMP).*

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8. *The sale value of apartment is composite including the value for provision of DG set facility and no additional or extra sums are collected from the customers.*

In view of the foregoing, we pray that the cost of DG set be allowed as a business expense.”

5. The CIT(A) rejected the appeal filed by the assessee. The CIT(A) held that there is no infirmity in the order of the A.O. and no interference is called for.

6. Aggrieved by the order of the CIT(A), assessee has preferred this appeal before the Tribunal. The Ld. A.R. has filed a paper book inter-alia enclosing the audited financial statement, for the year ending 31.3.2014, notices received during the course of assessment proceedings, submissions made before the A.O. and the CIT(A), copies of the invoices of the diesel generator sets, delivery notes of the same, etc. The Ld. A.R. reiterated the submissions made before the A.O. and the CIT(A). The Ld. D.R. on the other hand, supported the orders passed by the income tax authorities.

7. We have heard rival submissions and perused the material on record. Assessee is a builder. During the year assessee had built a project in the name “Evergreens”. The apartment complex built by the assessee has 19 floors consisting of 912 apartments. In addition, there are many other facilities such as club house, security room, water filtration plant, etc. The facilities of 24x7 power facility was assured and promised by the developer assessee at the time of the launch of the project for the sale to customers. 24x7 power is possible only with the power connection from BESCO and stand by power from the DG sets. DG set power is mandatory by the fire authorities for operation of lift, escalator, pumps, fire equipments, street lights and other essential facilities. The DG set is a common

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asset in any apartment complex just like the club house and the same was handed over to the Apartment Owners' Association upon completion. The club house and all other common facilities held by the association are for the benefit of all the customers in terms of the project scheme. The DG set was handed over to the association on 23.9.2015 and same is evident from the letter written by the assessee to the President of "Evergreens Owners Association". The cost of DG set brought by the assessee is counted as cost of project, which was also part of the cost of sale of apartment on percentage completion method. The cost of DG set is a input cost like any other raw material without which the construction of apartment complex is not full and complete. Hence, the cost of DG set is allowable as a business expenses solely and exclusively incurred for the purpose of business and profession. The facility maintenance charges is regarding maintenance expenses, which are collected from the users of apartments owners unlike the DG set cost being construction cost of the developer. As mentioned earlier, the installation of DG set is a precondition for getting statutory clearance and occupancy certificate for the apartments constructed. Hence, it is an allowable deduction.

8. As regards the A.O's finding that the DG set expenditure to the tune of Rs.48,54,441/- was relating to assessment year 2015-16 and is not incurred in the year under consideration, the submission of the Ld. A.R. was that assessee is following mercantile system of accounting and the expenditure has crystalized in the current assessment year. Therefore the same is allowable as a revenue expenditure for the relevant assessment year. Admittedly, assessee is following the mercantile system of accounting and the same is evident from the assessment order dated 13.12.2016. When assessee had incurred the expenses on mercantile basis, the same is allowable as a deduction though the invoices may be raised in the

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subsequent assessment year. Assessee has produced the delivery note, wherein it is clearly stated that the DG set for an amount of Rs.48,54,442/- has taken delivery on 19.3.2014 i.e. during the relevant assessment year. However, there is no mention of the same in the order of assessment nor in the CIT(A)'s order. We are of the view that the matter is to be examined, whether the expenditure on purchase of diesel generator amounting to Rs.48,54,442/- has crystalized in the relevant assessment year or not. For the limited purpose of examination of the same, the issue is restored to the files of the A.O. The A.O. shall examine whether the expenditure of Rs.48,54,442/- has crystalized in relevant assessment year and if so, the same shall be allowed as a deduction. As regards the expenditure of Rs.62,03,202/- i.e. (Rs.1,10,57,642 – Rs.48,54,441/-), we hold that assessee is entitled the deduction as a business expenditure. It is ordered accordingly.

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

Order pronounced in the open court on 10th Sept, 2020

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bangalore,
Dated 10th Sept, 2020.
VG/SPS

Copy to:

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

By order