

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No. 1572/Bang/2017
Assessment year: 2012-13

Crown Home Engineers Pvt. Ltd, No. 413, 4 th Floor, 84 Barton Centre, M.G. Road, Bangalore – 560 001. PAN: AACCC 9758Q	Vs.	The Assistant Commissioner of Income Tax, Circle-2(1)(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bharat.L, CA
Respondent by	:	Smt. R.Premi, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	09.09.2020
Date of Pronouncement	:	10.09.2020

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of the CIT(Appeals), Bengaluru-2, Bengaluru dated 12.04.2017.

2. The assessee has raised grounds that the CIT(Appeals) erred in confirming disallowance of Rs.65,86,224 being office, administrative costs and other relevant expenses as prior period expenses by holding that in order to claim the expenditure as deduction, it is necessary to declare income under the provisions of Chapter XIV-C of the Act.

3. The brief facts of the case are that the AO noticed that assessee has not declared any income from business operations, whereas it has claimed other expenditure and loss at Rs.65,86,224. As expenditure was claimed

without declaring any income and claiming loss, the claim was not allowed by the AO within the meaning of section 28 while computing income u/s. 29 of the Act. Therefore the entire amount of expenditure of Rs.65,86,244 to the extent of loss claimed was disallowed.

4. The CIT(Appeals) observed that the expenditure claimed by the assessee was directly related to construction activity and it can be allowed only once the said project is completed or capable of yielding income. According to him, the expenditure cannot be allowed unless the assessee earns income from the project. Against this, the assessee is in appeal before us.

5. We have heard the parties and perused the record. The main contention of the Id. counsel for the assessee is that to claim expenditure, the assessee has to set up and commenced the business. In the present case, he drew our attention to the copy of Commencement Certificate issued by BBMP vide order dated 30.4.2012 placed on record at page 102 of PB. Attention was also drawn to Project Management Agreement dated 18.3.2010 with Dr. M.P. Soma Prasad, landlord of the Project, which is placed on record at pages 103 to 113 of PB. It is also submitted that the sanctioned plan of the project was obtained on 6.6.2011 which is before the end of FY 2011-12. He submitted that earning income is not a criterion to for allowing expenditure. The assessee is in the field of real estate projects and commencement of the project itself is enough to allow business deduction. The Id. AR relied on various decisions as follows:-

1	Vardhman Developers Ltd. — Hon. ITAT (Mumbai) — 55 taxmann.com 370
2	Berger Impex India (P) Ltd. — Hon. ITAT Delhi — ITA No.4019/De1/2010
3	Western India Vegetable Products Ltd. [1954]-Hon. Bombay High Court-26 ITR 151
4	ESPN Software India (P.) Ltd [2009]-Hon. Delhi High Court- 184 TAXMAN 452

5	Saurashtra Cement & Chemical Industries Ltd. [1973R-ion. Gujarat High Court-91 ITR 170
6	Dhoomketu Builders & Development (P.) Ltd. [2013]-Hon. Delhi Court-34 taxmann.com 18
7	UE Development India (P.) Ltd. [2013]-Hon. Bangalore ITAT-35 taxmann.com 607

6. We have heard the parties and perused the record. In our opinion, there is merit in the plea of assessee. The Hon'ble Delhi High Court in the case of *CIT v. Dhoomketu Builders & Development (P) Ltd.*, 34 [taxmann.com](#) 18 (Delhi) has held that having regard to the business of the assessee, which is the development of real estates, the participation in the tender represents commencement of one activity which would enable the assessee to acquire the land for development. If the assessee is in a position to commence business, that means the business has been set-up. The Acts of applying for participation in the tender, the borrowing of monies for interest from the holding company, the deposit of the borrowed monies on the same day with as earnest money were all Acts which clearly establish that the business had been set-up. The commencement of real estate business would normally start with the acquisition of land or immovable property. When an assessee whose business is to develop real estates, is in a position to perform certain acts towards the acquisition of land, that would clearly show that it is ready to commence business and, as a corollary, that it has already been set-up. The actual acquisition of land is the result of such efforts put in by the assessee; once the land is acquired the assessee, it may be said to have actually commenced its business which is that of development of real estate. The actual acquisition of land may be a first step in commencement of business, but section 3 does not speak of commencement of business, it speaks only of setting-up of the business. When the assessee in the present case was in a position to apply for the tender, borrowed money for interest albeit from its holding

company and deposited the same on the same day, it shows that the assessee's business had been set-up and it was ready to commence business. The revenue would, however, state that till the land is acquired, the business is not set-up. The difficulty in accepting the argument is that an assessee may not be successful in acquiring land for long period of time though he is ready to commence his business in real estate, and that would result in the expenses incurred by him throughout that period not being computed as a loss under the head 'Business' on the ground that he is yet to set-up his business. That would be an unacceptable position. The other argument of the revenue that the tax auditors of the assessee have themselves pointed out that the assessee is yet to commence its business is also relevant because of the distinction between the commencement of the business and setting-up of the same.

7. As seen from the evidence filed by the assessee, the assessee has already commenced its business by entering into agreement with the landlord and also requisite licence and permission from BBMP. It cannot be said that assessee has not commenced the business. Hence the assessee is entitled to claim deduction. Accordingly, we allow the ground raised by the assessee.

8. The assessee has also raised additional ground with regard to allowability of the above expenditure as deduction in the year when the project is completed or capable of yielding income as follows:-

“The Appellant prays to submit the under-mentioned additional ground of appeal which were not urged specifically in the original grounds of appeal filed at the time of institution of appeal. These grounds do not involve any investigation of any facts otherwise on the record of the department and are also pure questions of law, which goes into the very root of the matter of jurisdiction and validity of the impugned addition and therefore, it is prayed that the additional ground may kindly be admitted and

disposed off on merits for the advancement of substantial cause of justice. Reliance is placed on the decision of the Supreme Court in National Thermal Power Co. Ltd. v. CIT (229 ITR 383) and decision of the Karnataka High Court in Gundathur Thimmappa & Sons v. CIT (70 ITR 70).

1. Without prejudice to Ground No. 1-4, the LAO and the LAA erred in not considering that the expenditure incurred towards projects should be allowed as deductible expenditure when the said project is complete or capable of yielding income.”
9. Since we have allowed the main ground of assessee, this additional ground has become infructuous and dismissed accordingly.
10. In the result, the appeal is partly allowed.

Pronounced in the open court on this 10th day of September, 2020.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th September, 2020.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.