

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.168/Bang/2018
Assessment Year: 2010-12

M/s. Buildmet Pvt. Ltd. No.45, 1 <sup>st</sup> Floor, Yamuna Bai Road Madhavanagar Bangalore-560 001.  <b>PAN NO :AAACB7376F</b>	<b>Vs.</b>	Deputy Commissioner of Income-tax Circle-11(2) Bangalore
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Smt. Pratibha R., A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

<b>Date of Hearing</b>	:	01.12.2020
<b>Date of Pronouncement</b>	:	02.12.2020

**O R D E R**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 30.10.2017 passed by Ld. CIT(A)-1, Bengaluru and it relates to the assessment year 2011-12. The grounds urged by the assessee relate to the following 3 issues:

- a. Disallowance made u/s 14 A of the Income-tax Act,1961 ['the Act' for short].
- b. Disallowance of provision for labour charges and purchases
- c. Disallowance of professional charges.

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2. The assessee is engaged in the business of industrial construction.

3. The first issue relates to disallowance made u/s 14A of the Act. The assessee derived dividend income of Rs.36.60 lakhs and claimed the same as exempt. The A.O. noticed that the assessee had made investments to the tune of Rs.2.60 crores and Rs.5.25 crores as at the end and beginning of the year respectively. Hence, the A.O. asked the assessee as to why disallowance u/s 14A of the Act should not be made. The assessee submitted that it had made investments in mainly mutual funds and has utilized own funds for making investments. Accordingly, the A.O. made disallowance out of administrative expenses as per Rule 8D(2)(iii) of the I.T. Rules, which worked out to Rs.1,96,250/-. The Ld. CIT(A) confirmed the above said disallowance.

4. We heard the parties on this issue. The Ld A.R submitted that the assessee has used its own funds for making investments. However, the question of usage of own funds would arise only in respect of interest disallowance. We notice that the A.O. has not made any disallowance out of interest expenditure. We have noticed that the disallowance has been made by the A.O. out of administrative expenses under Rule 8D(2)(iii) of the I.T. Rules. The assessee did not furnish any material before us to show that the above said disallowance is not called for. Accordingly, we confirm the order passed by Ld. CIT(A) on this issue.

5. The next issue relates to disallowance of “provision for labour charges and purchases”. The assessee had created a provision of Rs.46,77,214/- as at the yearend towards labour charges and purchases. The A.O. was of the view that the assessee is making

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this kind of provision for the first time and further, the assessee could not furnish any material to substantiate the claim. Accordingly, he disallowed the claim of provision for labour charges and purchases. The Ld. CIT(A) also confirmed the same.

6. We heard the parties and perused the record. The Ld. A.R. invited our attention to page Nos.13 to 17 of the paper book and submitted that the assessee has been making provision for outstanding labour charges and purchases in the past years also. The provision so made are paid in the subsequent years. Accordingly, the Ld. A.R. submitted that the A.O. was not correct on facts in observing that provision has been made for the first time during the year under consideration.

7. On perusal of the details furnished by the assessee is page Nos.13 to 17 of the paper book, we notice that the assessee had created provision of Rs.87.18 lakhs for labour charges and other expenses as on 31.3.2010 i.e. in the year immediately preceding the year under consideration. During the year under consideration, the assessee has created the provision of Rs.46.77 lakhs. At page No.15 of the paper book, the assessee has shown the details of payment made out of the above said provisions. The assessee is following mercantile system of accounting. Under mercantile system of accounting, the assessee is required to provide for known losses and expenses. Under "matching principle" also, corresponding expenses are required to be provided for. Since the assessee is following mercantile system of accounting, the assessee has provided for labour charges, purchases and other expenses, which were outstanding as on 31.3.2011. We notice that the details of expenses have been furnished by the assessee before the tax authorities and they are placed from page Nos.13 to 17 of the

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paper book. The assessee has also furnished the details of payments made in the subsequent year out of the provision so created. Accordingly, we are of the view that the tax authorities are not justified in disallowing the provisions for expenses so created by the assessee. Accordingly, we set aside the order passed by Ld. CIT(A) and direct the A.O. to delete the disallowance of provision for labour charges and purchases.

8. The next issue relates to disallowance of professional charges of Rs.25 lakhs claimed by the assessee. The A.O. noticed that the assessee has claimed professional charges of Rs.25 lakhs during the year under consideration. The A.O. noticed that the assessee had claimed professional expenses of Rs.1.82 lakhs only in the immediately preceding year, when the turnover was Rs.48.73 crores. However, during the year under consideration, the turnover has fallen down to Rs.20.65 crores but the assessee had claimed professional expenditure of Rs.25 lakhs. The AO also expressed the view that the assessee has not proved the expenses. Accordingly, he disallowed the above said claim. The Ld. CIT(A) also confirmed the same. The Ld CIT(A) also expressed the view that the professional charges may relate to any new business that may be started by the assessee or it may relate to capital activity of the assessee.

9. We heard the parties on this issue. The Ld. A.R. submitted that the above said amount of Rs.25 lakhs was paid to M/s. Deloitte Touche Tohmatsu India Pvt. Ltd., for carrying out following works:-

1. Review of the business plan of Buildmet Ltd.
2. Preparation of a detailed information memorandum about Buildmet Ltd.

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3. Assistance in Price/value Analysis Buildmet Ltd.
4. Suggest changes in the financial structure of the Company, if any.
5. Identification and discussions with potential strategic partners for Buildmet Ltd.

The Ld A.R submitted that the above said analysis carried out by the consultant related to the business carried on by the assessee and hence it is expenditure has been incurred for the purpose of business carried on by the assessee. Accordingly, the Ld A.R submitted that the amount of Rs.25.00 lakhs is allowable as deduction.

10. On the contrary, Ld. D.R. submitted that the assessee did not furnish proper details before the tax authorities. Further, the Ld. CIT(A) has also expressed the view that the professional charges may relate to any new business that may be started by the assessee or it may relate to capital activity of the assessee. She submitted that a proper examination of the report, if any, given by the consultant would help to decide the nature of expenses. Accordingly, the Ld. D.R. submitted that this matter may be restored to the file of the A.O. for examining the same afresh.

11. Having heard the rival submissions, we are of the vie that this issue requires fresh examination at the end of the A.O. for examining the nature of professional services rendered by M/s. Deloitte. We notice that the assessee has not furnished the copies of report furnished by the consultant to the AO. When it was pointed out, the Ld. A.R. also agreed for restoring this issue to the file of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O. for

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examining it afresh. The assessee is directed to furnish all the details in support of this claim.

12. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 2<sup>nd</sup> Dec, 2020

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**

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

Bangalore,  
Dated 2<sup>nd</sup> Dec, 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

**Asst. Registrar,**  
**ITAT, Bangalore.**