

आयकर अपीलिय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लक्ष्मणसदस्य कासमक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.4090/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2012-13)

DCIT-CC-4(2), R.No. 1918, 19 th Floor Air India Building Nariman Point Mumbai-400 021	बनाम/ Vs.	M/s Magna Warehousing & Distribution Pvt. Ltd. Raheja Tower, Plot No.C-30, G-Block, Bandra Kurla Complex, Bandra(E), Mumbai-400 051
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AAECM-4101-H		
(आपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Bharat Andhale– Ld. Sr. DR
Assessee by	:	Shri Madhur Agarwal- Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	02/06/2021
घोषणा की तारीख / Date of Pronouncement	:	17/06/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2012-13 contest the order of Learned Commissioner of Income-Tax (Appeals)-21, Mumbai [CIT(A)], dated 28/02/2019 which has held that the business expenditure of Rs.201.56 Lacs as incurred by the assessee was an allowable expenditure as against the stand of Ld. AO that the expenditure was to be capitalized in view of the fact that the project was

at under-construction stage and the operational activities had not commenced. The stated expenditure was in the nature of employee benefit expenses, depreciation, interest expenses & other expenses etc. as enumerated in the impugned order. The assessee incurred aggregate expenditure of Rs.677.84 Lacs out of which an expenditure of Rs.201.56 Lacs was claimed in the Profit & Loss Account during the year. The assessee being resident corporate assessee is stated to be engaged in real estate development.

2. From impugned order, it could be seen that Ld. CIT(A), relying upon certain judicial pronouncements, held that the business would commence with the acquisition of land, obtaining all necessary approvals / certificates from government authorities, appointment of project manager and procurement of plant & machinery etc. Since all these formalities were completed, the business was already set up and therefore, the expenditure would be an allowable expenditure. Aggrieved, the revenue is in further appeal before us.

3. As rightly pointed out by Ld. AR, this issue is recurring in nature and covered by the earlier decision of Tribunal in assessee's own case for AY 2010-11, ITA No.7430/Mum/2013 dated 21/08/2019 wherein it was held as under: -

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 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.

No factual distinction could be pointed out by revenue in this year. Since the issue is squarely covered in assessee's favor, no interference is called for in the impugned order.

4. The appeal stands dismissed.

Order pronounced on 17th June 2021

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 17/06/2021

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.