

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. K. N. Chary, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 3014/Del/2018 : Asstt. Year : 2013-14

Logix Buildtech (P) Ltd., 301-A, World Trade Tower, Barakhamba Lane, Connaught Place, New Delhi-110001	Vs	ACIT, Circle-15(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCL7527R		

**Assessee by : Sh. V. K. Agarwal, AR
Revenue by : Ms. P. Biswas, CIT DR**

Date of Hearing: 09.09.2021	Date of Pronouncement: 17.09.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-5, Delhi dated 08.03.2018.

2. Following grounds have been raised by the assessee:

"1. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the assessment order passed by the Ld. AO which is ex-facie illegal, arbitrary and without jurisdiction being against the principles of natural justice and against the provisions of IT Act, 1961.

2. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of Rs. 2,27,16,104/- which does not pertain to the project

but is in the nature of general administration expenses as well as selling expenses.

3. The Ld. CIT(A) has grossly erred on facts as well as in law in confirming the disallowance of Rs. 2,27,16,104/- on the basis of order passed by his predecessor in AY 2012-13 without considering the fact that the predecessor's order is purely based on two case laws which are clearly distinguishable as explained by the appellant before him."

3. Facts of the case in brief are that the assessee company is engaged in the business of real estate. The return of income was e-filed on 30.09.2013 declaring loss of Rs.2,19,39,670/-.

4. It is a fact on record that the assessee has already capitalized Rs.92.75 crores on account of "capital work in progress" in addition to an amount of Rs.13.69 crores under "preoperative expenses" totaling to Rs.106.44 crores.

5. Further, the assessee company has claimed deduction of Rs.2,27,16,104/- on account of expenses deemed to have been revenue in nature. The said expenses are as under:

S. No.	Particulars	Amount
1	Advertisement Expenses	1,97,58,028/-
2	Brokerage	25,86,877 / -
3	Depreciation	1,72,280/-
4	Foreign Fluctuation A/C	41,492/-
5	Miscellaneous Expenses	47,150/-
6	Office Expenses	3,647/-
7	Postage & Courier	803/-
8	Printing & Stationery Charges	97,277/ -
9	Sundry Bal W/ O	1,148/ -
10	Telephone Expenses	7,402 /-
Total		2,27,16,104/-

6. The Assessing Officer held that these expenses also needs to be capitalized as no business activity was carried out by the assessee during the year under consideration. Hence, no business expenditure is allowable.

7. The Id. CIT (A) confirmed the addition holding that computation of income required is to be done in accordance with the Income Tax Act, hence resorting to any Accounting Standard cannot negate the taxability of the assessee.

8. Before us, it was argued by the Id. AR that the assessee has already started business operations, construction is in progress and an amount of Rs.106.44 crores has already been capitalized. Hence, it cannot be said that the assessee has not commenced business operations. The expenses being advertising, brokerage and commission for booking of the flats which is in the nature of revenue expenses cannot be treated as capital expenditure. He relied on the judgment of Hon'ble High Court of Bombay in the case of CIT Vs Piem Hotel Pvt. Ltd., 209 ITR 0616 wherein it was held that once business is set up, expenditure incurred relating to such business have to be treated as revenue expenditure and allowed as deduction. As soon as an activity which is essential to carrying on the business is started the business must be said to have commenced. He relied on the Accounting Standard-7 and Accounting Standard-16 to buttress his argument.

9. On the other hand, the Id. DR argued that the assessee is trying to confuse by quoting the Accounting Standard-7, 10 & 16 whereas the fact is that there were no sales reflected in the

P&L Account. Hence, the matching concept of income to the expenditure is faltered by the assessee.

10. Heard the arguments of both the parties and perused the material available on record.

11. The project cost in relation to a project comprises of cost of land and cost of development rights, borrowing cost, construction and development cost. In relation to land, the entire cost of land and development rights, stamp duty registration charges and other incidental expenses have to be capitalized. With relation to the borrowing cost, the interest directly related to the project is to be capitalized. Further, all the direct costs relating to the construction and development of the specific project have to be capitalized. The construction cost includes conversion cost, municipal sanction fee, expenses incurred, site labour cost, cost of material, cost of hiring plant & machinery, cost of designs and claims of the third party. The general administrative cost, advertisement, brokerage, selling cost, depreciation of the vehicles and office expenditure are part of the revenue expenditure and need not be capitalized.

12. There is difference between commencement of the business and setting off of the business. All the expenses incurred pre-commencement are to be treated as pre-operative expenses and the expenses incurred which do not form the part of the "work in progress" (WIP) like office expenses, salaries, advertising, travelling expenses which are incurred for running of the business operations are to be treated as revenue expenditure. Hence, the disallowance made by the AO is liable to be obliterated.

13. In the result, the appeal of the assessee is allowed
Order Pronounced in the Open Court on 17/09/2021.

Sd/-

(K. N. Chary)
Judicial Member

Dated: 17/09/2021

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR