

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1350/Bang/2019
Assessment Year : 2014-15

The Deputy Commissioner of Income Tax, Circle- 2(1) (1), Bangalore.	Vs.	M/s. Chaithanya Projects Pvt. Ltd., No. 104, 3 rd Floor, Prestige Omega, EPIP Zone, Whitefield, Bangalore – 560 066. PAN: AABCC4930H
APPELLANT		RESPONDENT

Assessee by	:	Shri Nitish Ranjan, CA
Revenue by	:	Smt. H. Kabila, Addl. CIT (DR)

Date of Hearing	:	25-08-2021
Date of Pronouncement	:	11-10-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by revenue against order dated 25/03/2019 passed by the Ld.CIT(A)-2, Bangalore, for assessment year 2014-15 on following grounds of appeal:

“(i)CIT(A) erred in fact and law in holding that the expenditure incurred towards a new project of "Health Park", which was capitalized in the books of the assessee, was incurred towards the existing business of 'Development and construction of real estate property'.

(ii) CIT(A) erred in fact and law in holding that the expenditure incurred towards the new project of 'Health Park' is a revenue expenditure because the project did not subsequently materialize.

(iii) Without prejudice to the above grounds, CIT(A) erred in fact and law in allowing the expenditures incurred in earlier years as the revenue expenditure of FY 2013-14."

Brief facts of the case are as under:

2. The assessee a company and filed its original return of income for you under consideration declaring total income of ₹ 14,28,84,19/-. The case was selected for scrutiny and notice under section 143(2) was issued. In response to statutory notices, representative of assessee appeared before the Ld.AO and filed requisite details as called for.

3. The Ld.AO observed that, assessee is engaged in the business of construction, development, sale, management and operation of townships, housing projects, commercial prices and other related activities. Ld.AO on perusal of profit and loss account or observed that, sum of ₹ 3,47,31,040/- was debited as exceptional item towards legal and professional fees and other related costs, under the head capital work in progress written off. He was called upon to furnish details in respect of the expenditure incurred.

Assessee's letter dated 15/11/2016 submitted that, during financial year 2008-09, assessee conceived a plan for development and operation of health Park in Bangalore. It was submitted that assessee obtained consultancy services from professionals, regarding carrying out feasibility studies and master plans and designing the health Park. For such services, assessee incurred expenditure. Assessee subsequently submitted that during

financial year 2013-14, it was observed that revenue generation from the project would not be adequate enough to make the project viable and project was discontinued. The expenditure was therefore written off in financial year 2013-14 relevant to assessment are under consideration.

4. The assessee was asked to produce agreements for projects entered with consultants and project designers and subsequent development of termination to substantiate its claim of writing off of the capital expenditure during the financial year 2013-14. He could not produce any satisfactory evidence to substantiate the claim except for some mail transaction between the parties which were not treated as evidence by the Ld.AO. The Ld.AO disallowed the amount equal to the claim written off in the hands of assessee.

Aggrieved by the order of Ld.AO, assessee preferred appeal before the Ld.CIT(A).

5. The Ld.CIT(A) decided the issue as under:

“8. I have carefully considered the submissions made by the appellant, and also arguments put forth by the AR of the appellant during the course of the appellate proceedings and also perused the case laws relied on by the appellant. The only issue to be decided is whether the expenditures such as legal and professional fees, sub-contractor and labour charges, travelling and conveyance, purchase of project material and staff welfare incurred by the appellant towards a new project which did not subsequently materialize to be treated as Capital or Revenue in nature. The appellant has furnished the cancellation deed with permission letter from Karnataka Fire and Emergency Services, along with copy of the invoices, ledgers and email communication. It is seen from the submission of the assessee that the amount was paid by the assessee in order to explore the possibility of setting up of Health Park. The AO has given a finding that since the project did not materialize the expenditure was capital in nature. The AO in his remand report after having satisfied regarding the legitimacy and genuineness of the impugned expenditure, has stated that the since the project did not materialize,

the expenditure is capital in nature. The Appellant submitted that the contention of the AO that the impugned expenditure was incurred towards a project which would have resulted in creation of a new asset for the Appellant and the asset was not intended for sale and thus the cost incurred towards creation of the asset was capitalized in accordance with accounting standard 10 issued by the ministry of corporate affairs is not justified. It was after multiple negotiations with the prospective operator decided to call off the project since with the final offer made by Parkway Hospitals, the Appellant could have only operated at break-even. Since the project was called off in the year under consideration and the asset never came into existence, entire cost incurred towards creation of the asset was written off to the profit and loss account. Further submitted that the impugned expenditures comprises of legal and professional fees, travelling expenses etc. which are revenue in nature. These were incurred wholly and exclusively for the purpose of business of the appellant as the Appellant is engaged in development and construction of real estate property. Since the new asset did not come into existence, these expenditures are allowable in computation of income. This view has been upheld in various cases, such as the decision of High Court of Calcutta in the case of CIT v. Graphite India Ltd. [1996] 221 ITR 420 (Cal.). The relevant question referred by the Tribunal to this Court in that case was whether in the facts and circumstances of that case, the Tribunal was justified in holding that the expenditure incurred for the assessee's proposed petro-chemical project was revenue expenditure and to be allowed as a deduction? This Court in answering the question, held that the expenditure was allowable as incurred wholly and exclusively for the purpose of the assessee's business. No doubt that there was no asset created which would give rise to an enduring benefit nevertheless the expenditure incurred towards legal and professional fees, subcontractor and labour charges, travelling and conveyance, purchase of project material and staff welfare which are revenue in nature. However, the question will arise as to whether the impugned expenditure incurred was wholly and exclusively for the purpose of business. The appellant has submitted that it is engaged in development and construction of real estate property and in order to explore the new projects it has to incur certain expenditure irrespective of the project is materialized it would be in the course of business and therefore those expenditures incurred are wholly and exclusively for the purpose of the business only. In view of the facts and circumstances of the case and also the legal matrix as discussed above, I am of the opinion that the impugned expenditure incurred are in the nature of revenue and incurred wholly and exclusively for the purpose of the business and hence the grounds are allowed.”

Aggrieved by the order passed by the Ld.CIT(A), revenue is in appeal before the us now.

The Ld.Sr.DR relied on orders passed by the Ld.AO.

And the Ld.AR relied on orders passed by the Ld.CIT(A).

We have perused submissions advanced by both sides in light of records placed for us.

6. Admittedly, there is no dispute by the revenue that such expenditure were not incurred by assessee or that these are bogus expenditures. The Ld.AO was of the opinion that the expenditure was incurred towards a project which could have resulted in creation of an asset to the assessee. On perusal of order passed by the Ld.CIT(A), we know that various documents in terms of cancellation deed with permission letter from Karnataka Fire and emergency services along with copy of invoices, Ledger and email communication referred filed by assessee has away additional evidence which was remanded to the learned ao for you verification. The remand report by the Ld.AO dated 22/10/2018 is pleased at page 23 of the paper book. The Ld.AO categorically observed as under:

“These expenditure represent the legal and professional fees, subcontractor and labour charges, travelling and comments, purchase a project material and staff welfare expenses. The assessee has submitted the cancellation deed with AECOM India, the consultancy agreement, the no addition certificate taken from BWSSD, permission letter from Karnataka Fire and Emergency services, copy of the invoices, Ledger and email communication. It is seen from the submission of the assessee that the amount was paid by assessee in order to explore the possibility of setting up of health park. In fact the project did not materialise and therefore the expenditure was capital in nature.”

7. Further, there is no dispute that the assessee in the preceding year capitalised these expenditure as capital work in progress

and written off during the year, since the proposed project was abandoned. The revenue authorities have held the expenditure to be capital nature as it was incurred to creating a new asset.

8. In our view the expenditure incurred by assessee was towards expansion of its existing business, in view of which various statutory payments and contractual payments were incurred by assessee in order to obtain the feasibility reports, project plans etc., from various professionals. However, ultimately since the project was not found to be financially and technically viable the same was shelved. This was a commercial decision by assessee. Therefore in our view the finding that no new asset came into existence by the Ld.AO for treating the expenditure as capital is not acceptable. Following decisions have been relied on by the Ld.AR in order to substantiate that the expenditure incurred by assesseees and allowable expenditure:

- Decision of Hon'ble Madras High Court in case of Tamil Nadu Magnesite Ltd vs. ACIT reported in (2018) 95 taxman.com 239
- Decision of Hon'ble Madras High Court in case of Chemplast Sanmar Ltd. vs. ACIT reported in (2018) 97 taxman.com 347
- Decision of Hon'ble Delhi High Court in case of CIT versus Priya Village Roadshows Ltd., reported in (thousand nine) 185 taxman 44
- Decision of Hon'ble Delhi High Court in case of CIT versus Hindustan Times reported in (2012) 27 taxman.com 191

9. There is no dispute that assessee undertook a project which was unrelated to its regular business activity. Admittedly, the assessee is in the business of construction, development, seal, management and operation of townships, housing projects etc., as observed by the Ld.AO in the assessment order, and developing health Park forms part of assesseees existing business

activity as one of the project undertaken. We draw our support from decision of *Hon'ble Karnataka High Court* in case of *Asia Power Projects (P.) Ltd. Vs. DCIT* reported in (2015) 370 ITR 257 and *Hon'ble Calcutta High Court* in case of *Binani Cement Ltd. Vs. CIT & Anr.* reported in (2016) 380 ITR 116.

10. Based on the above discussion, we do not find any infirmity in the view taken by the Ld.CIT(A). We therefore do not find any merit in the ground raised by revenue.

Accordingly the ground raised by revenue stands dismissed.

In the result, appeal filed by revenue stands dismissed.

Order pronounced in the open court on 11th October, 2021.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 11th October, 2021.
/MS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.