

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. KUL BHARAT, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.3208/Del/2017  
(Assessment Year : 2012-13)

M/s Logix Buildtech (P) Ltd., 301-A, World Trade Tower, Barakhamba Lane, Connaught Place, New Delhi - 110 001  PAN : AABCL 7527 R <b>(APPELLANT)</b>	Vs.	ACIT Circle – 15(2), CR Building New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri V. K. Agarwal, AR Ms. Shweta Bansal, C.A.
Revenue by	Shri Lakshminarayan, Sr. D.R.

Date of hearing:	25.10.2021
Date of Pronouncement:	17.11.2021

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order dated 22.03.2017 of the Commissioner of Income Tax (Appeals) - 5, Delhi for Assessment Year 2012-13.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of real estate. Assessee electronically filed its return of income for A.Y. 2012-13 on 30.09.2012 declaring loss of Rs.65,22,464/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) vide order dated 25.03.2015 and determining the business income of the assessee at Nil and income from other sources at Rs.5,47,305/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 22.03.2017 in Appeal No. Del/CIT(A)-5/0151/2015-16 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is in appeal before us and has raised the following grounds of appeal:

- “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 illegal 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.69,74,836/- which amount 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 depreciation claimed as per Income Tax Act 1961 amounting to Rs.2,87,743/-.*
4. *The appellant craves leave to add, alter, modify and withdraw any ground of appeal before or during the appellate proceedings.”*

4. Before us, at the outset, Learned AR submitted that **Ground No.1** is general in nature and requires no adjudication. In view of the submission of the Learned AR, **this ground is dismissed as not pressed.**

5. **Ground No.2** is with respect to disallowance of Rs.69,74,836/-.

6. AO on perusing the computation of income noted that assessee had claimed deduction of Rs.69,74,836/- on account of "Expenses as per Audit report". He noted that these expenses were not routed through Profit and Loss account. The submission of the assessee was that the expenses were allowable as those expenses are not eligible for capitalization in accordance with AS-10 "Accounting for Fixed Assets" notified under section 211(3C) of the Companies Act, 1956 and Guidance Note on Accounting by real estate companies. The submissions of the assessee was not found acceptable to AO. AO noted that assessee has shown land as intangible assets in its books and not shown it as stock-in-trade. He was of the view that once the land is shown as Capital Asset then the expenses relating to it cannot be allowed to be debited in Profit and Loss account. With respect to the reason for not routing the expenses through P&L account, the assessee's submissions of the accounts being qualified by the auditor was also not found acceptable to AO. He thereafter noted that since assessee has not reported any business income and it was in a

pre-operating phase of its business, he considered the business income at Nil. He thereafter observed that the balance expenses, other than the *suo moto* disallowance made by the assessee, amounting to Rs.3,16,240/- was to be allowed u/s 57 of the Act. He thereafter determined the net income from other sources at Rs.5,47,305/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

7. Before us, Learned AR at the outset submitted that issue in the present ground is identical to the issue in assessee's appeal for A.Y. 2013-14 which has been decided by Hon'ble ITAT. He pointed to the order of the Tribunal for A.Y. 2013-14 in **ITA No.3014/Del/2018 vide order dated 17.09.2021** and from that order he pointed to the ground raised in that year to be being identical to that of the year under consideration. He thereafter submitted that nature of expenses disallowed by AO in the year under consideration are identical to that of A.Y. 2013-14 and that expenses were not relatable to the project but were relatable to the business of the assessee. He therefore submitted that since the facts for the year under consideration are identical to that of A.Y. 2013-14, therefore following the order of Tribunal for A.Y. 2013-14, the ground of the assessee be allowed.

8. Learned DR on the other hand supported the order of lower authorities but however did not controvert the submissions of the

Learned AR that the issues raised in the year under consideration is identical to that of A.Y. 2013-14.

9. We have heard the rival submissions and perused the materials available on record. We find that the issue raised in the present ground is identical to the ground raised by assessee before ITAT in A.Y. 2013-14. We find that the Co-ordinate Bench of Tribunal while deciding the issue in ITA No.3014/Del/2018 dated 17.09.2021 for A.Y. 2013-14 has decided the issue in favour of the assessee by observing as under:

*8. Before us, it was argued by the ld. 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 ld. DR argued that the assessee is trying to con fuse 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 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.*

10. Since the facts in the year under consideration are identical to that of A.Y. 2013-14, therefore, following the decision of the Co-ordinate Bench of Tribunal in A.Y. 2013-14 and for similar reasons we hold that no disallowance was called for in the year under consideration therefore we direct its deletion. **Thus ground of the assessee is allowed.**

11. **Ground No.3** is with respect to the disallowance of depreciation of Rs.2,87,743/-.

12. Learned AR submitted that at the time of filing of return of income, though assessee had claimed depreciation of Rs.2,87,743/-, AO did not allow its set off against the assessed income. When the matter was carried before the CIT(A), he upheld the order of AO by noting that no depreciation was claimed by the assessee in the return of income as assessee has not commenced business. He thus upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now in appeal before us.

13. Before us, Learned AR pointed to the computation of income placed at Page 6 of the Paper Book and submitted that assessee had indeed claimed the depreciation and the AO should have allowed its set off. He therefore submitted that necessary directions may be given to AO to allow the claim of depreciation.

14. Learned DR on the other hand supported the order of CIT(A).

15. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the not allowing the claim of depreciation. Before us, it is assessee's submissions that assessee has claimed depreciation of Rs.2,87,743/- but the AO did not allow its set off. The claim of the assessee having made the claim of depreciation is supported by the computation of income filed by the assessee which is placed in the paper book. In such a situation, we are of the view that when the assessee has claimed depreciation, the

same should be allowed to the assessee in accordance with law. We therefore restore the issue back to the file of AO and direct the AO to allow the claim of depreciation after verification of the facts and in accordance with law. **Thus the ground of the assessee is allowed for statistical purposes.**

**16. In the result, appeal of the assessee is partly allowed.**

**Order pronounced in the open court on 17.11.2021**

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

*Date:- 17.11.2021*

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Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI