

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "C", BANGALORE**

Before Shri George George K, JM & Ms.Padmavathy S, AM

ITA No.1368/Bang/2018 : Asst.Year 2011-2012

M/s.VBHDC Value Homes Pvt.Ltd. 74,75, VBHC House Millers Road, Vasanth Nagar Bangalore - 560 052. PAN : AADCV1386Q.	v.	The Additional Commissioner of Income-tax, Range-12 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ramasubramaniyan, CA
Respondent by : Smt.Priyadarshini Besaganni, JCIT-DR

Date of Hearing : 01.02.2022	Date of Pronouncement : 01.02.2022
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 16.02.2018. The relevant assessment year is 2011-2012.

2. The grounds raised read as follows:-

"1. That the order of the learned Commissioner of Income Tax (Appeals) is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the expenditure of Rs.1,57,99,757/- for construction of temporary structure is not eligible for deduction on the ground that the structure is not made of wood.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the expenditure incurred is capital in nature even though such asset does not have enduring benefit in nature.

4. *Without prejudice to the above grounds, the learned Commissioner of Income Tax (Appeals) erred in law and on facts in allowing depreciation at 10% even though the life of the structure is less than 3 years.*

Each of the above grounds is without prejudice to one another, the appellant seeks the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise each of any of the grounds either before or at the time of hearing this appeal."

3. The brief facts of the case are as follows:

The assessee is a private limited company. It is engaged in the business of development and construction of low cost budget homes. For the assessment year 2011-2012, the return of income was filed declaring loss of Rs.1,68,13,957. The assessment was selected for scrutiny. The assessment was completed vide order dated 31.01.2014 u/s 143(3) of the I.T.Act, determining total loss of Rs.7,39,538. In the assessment completed, the A.O. had disallowed expenditure incurred for construction of model house, project office, marketing office, stores etc., amounting to Rs.1,57,99,757. According to the assessee, for the purpose of its business, these structures were put up and were destroyed / dismantled once the project was completed. It is submitted that the structure did not have life for more than three years and were temporary in nature and hence, entitled to 100% depreciation. The A.O. after verification of the details held that the nature of assets are not in the nature of purely temporary erection such as wooden structures as provided in the I.T.Rules. It was further held by the A.O. that when the asset is used for three to four years, it cannot be called as a temporary structure. Accordingly, the A.O. allowed

depreciation at the rate of 10% and excess depreciation claimed at Rs.1,57,99,757 was disallowed.

4. Aggrieved, the assessee filed an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follows:-

4.4 Under significant accounting policies in the financials of the appellant, it is mentioned in point 1.5 that temporary structures (including sample homes .site offices, stores etc are) are depreciated over the life of the project for which they are constructed. Admittedly, the life of the project is 3 to 4 years. It is observed that sample homes, offices and staff quarters constructed with regular construction material such as bricks, cement and steel can be considered as assets having self-life of several years and have enduring benefit to the appellant. Hence, it cannot be disputed that the construction raised by the appellant had life of more than a year and even if it has to be dismantled after the construction / contract was over, it had value. The contract was not over in a year from which it is evident that the expenditure incurred for such construction resulted in an asset of enduring nature of more than a year.

4.5 In Rule 1 of Appendix 1 of the Income Tax Rules, depreciation at 100% was allowed on temporary erection. Under the head temporary erection, the legislature has given an example of wooden structure. By giving an example of wooden structure, the legislature makes it clear that if the life span of an erection is short, it should be called a temporary erection, otherwise it may fall under the head part of building or furniture and fittings on which depreciation at 10% is allowable. The decisions relied upon by the appellant will not be of help as facts in the case at hand are different. Having considered the facts, the action of the assessing officer in restricting the depreciation @ 10% per cent is held to be justified and is confirmed.”

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The assessee has filed a petition to admit additional evidence. The additional evidence which is sought to be admitted is a certificate of the Architect.

It is stated that the construction on which 100% depreciation has been claimed is temporary structure and the same has been demolished at the fag-end of the completion of the project. The learned AR submitted that by incurring expenditure on these temporary structures the assessee has not earned any enduring benefit and the same ought to be allowed as a revenue expenditure. It was further submitted that allowing depreciation of 10% on an asset which has life span for less than 3 years is not in accordance with law.

6. The learned Departmental Representative, on the other hand, submitted that if the additional evidence is admitted, necessarily, the same needs to be examined by the A.O., in the interest of justice and equity.

7. We have heard rival submissions and perused the material on record. The assessee has filed additional evidence in the form of a certificate of the Architect which clearly states that the expenditure incurred on construction amounting to Rs.1,75,55,286 are temporary structures such as model house, project office, marketing office, storage of building material, etc. It is further stated in the Architect's letter that these were demolished immediately after the completion of the project. In the petition for admission for additional evidence, the assessee states that the assessee was under the bonafide belief that its explanation, ledger extracts and submissions would be sufficient to allow the claim. It was stated that for interest of justice and equity since the additional evidence

goes to the root of the issue, the same may be admitted on record.

7.1 We find that the additional evidence now sought to be admitted goes to the root of the issue. Therefore, for substantial cause and justice, we admit the same on record. The assessee has now claimed before the Tribunal that the expenditure incurred is revenue expenditure. Alternatively, it is submitted that the expenditure incurred is for putting up temporary structures and entitled to 100% depreciation. In the interest of justice and equity since the additional evidence has been admitted on record, it is necessary that the issue now raised before the Tribunal needs to be examined afresh by the A.O. The A.O. is directed to take into consideration the certificate of the Architect and come to a conclusion whether the expenditure incurred amounting to Rs.1,75,55,286 is a revenue expenditure or not. Alternatively, the A.O. shall also examine afresh whether the said expenditure has been incurred for setting up the temporary structures which is entitled to deduction of 100% depreciation. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 01st day of February, 2022.

Sd/-
(Padmavathy S)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 01st February, 2022.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bangalore.
4. The Pr.CIT-7, Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore