

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 4325/Mum/2019  
(A.Y: 2014-15)

Monarch Realty & Developers Pvt Ltd., 410/411 Janki Centre, Dattaji Salvi Road, off Veera Desai Road, Andheri (W), Mumbai- 400053	Vs.	DCIT 10(2)(2) 209, 2 <sup>nd</sup> Floor, Aayakar Bhavan, MK Road, Mumbai – 400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCH2236F		
Appellant	..	Respondent

Appellant by :	Mr.Pankaj Toprani.AR
Respondent by :	Mr.Sanyam Joshi. Sr.DR

Date of Hearing	25.01.2022
Date of Pronouncement	15.02.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-17, Mumbai passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal:

- 1. Under the facts and circumstances he Ld. DCIT erred in disallowing expenses aggregating to Rs. 52,73,625/- on the ground that there is no business activity during the year.*

*The LD. DCIT failed to appreciate that the company was active till 2012-13 and there was a temporary disruption in business and that the expenses were revenue in nature, pertained to the business and were not personal in nature hence are allowed.*

2. The brief facts of the case are that, the assessee company is engaged in the business of construction works. The assessee has filed the return of income for the A.Y 2014-15 on 24.09.2014 disclosing a total loss of Rs. 1,05,27,236/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. In compliance, the assessee has filed the details and the case was discussed. On perusal of the financial statements the Assessing officer (A.O) find that the assessee has credited interest income of Rs. 2,94,247/- and in computation of income it was disclosed under income from other sources. Further there was miscellaneous income credit in the profit and loss account. Whereas the assessee has claimed expenditure of Rs.91,40,725/- and depreciation of Rs. 17,41,124/- in the profit and loss account. The A.O observed that since there was no revenue/income credited to profit and loss account which is taxable as a business income, therefore the expenses debited to the profit and loss account should not be allowed as revenue

expenditure. The assessee has filed the explanations on 08.12.2016 referred at Para 4.3 of the A.O. order. Finally the A.O. is of the opinion that the assessee has not commenced any business operations and there is no business activity carried out even prior to this assessment year. Hence the claim of expenditure cannot be allowed and the A.O has made disallowance of expenses pertaining to the construction related expenses, salary paid, rent paid, professional and other miscellaneous expenses out of the total claim, depreciation claim and also disallowance of interest payment to financial institutions as no TDS was deducted and assessed the total loss of Rs.6,79,909/- and passed the order u/s 143(3) of the Act dated 14.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, submissions of the assessee, findings of the assessment proceedings and confirmed the additions made by the A.O, whereas in respect of interest paid to financial institutions disallowed u/s 40(a)(ia) of the Act, the CIT(A) has granted the relief and partly allowed the appeal. Aggrieved by

the order of the CIT(A), the assessee has filed an appeal before the Honble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the assessee is in the business of construction and there was temporary lull in the business activities. The CIT(A) has not considered the explanations filed in respect of the claims and has confirmed the action of the A.O. in sustaining the disallowances except granting relief in interest disallowance u/s 40(a)(ia) of the Act. Further there is no specific finding of the A.O for making disallowance. The Ld.AR substantiated the submissions with the evidence supporting the business activities, paper book and judicial decisions and prayed for allowing the appeal. Contra, the Ld. DR supported the order of the CIT(A).

5. We heard the rival submissions and perused the material available on record. The sole crux of the disputed issue envisaged by the Ld. AR is that the CIT(A) has erred in sustaining the addition of the consolidated expenses aggregating to Rs. 52,73,625/- as there is no business activity carried on during the financial year

2013-14. The Ld.AR emphasized that the assessee's business was very active till A.Y 2012-13, but there was temporary lull in the business in the F.Y.2013-14 due to various external factors and the A.O. has presumed that no business activity was carried out by the assessee and made disallowance of expenses and the CIT(A) has granted relief in interest disallowance u/s 40(a)(ia) of the Act. The Ld. AR submitted that the A.O has not disbelieved the claims but disallowed the claim of expenses on the presumption that the assessee is not engaged in business activities.

6. In the course of hearing proceedings, the Ld.AR has filed the details to substantiate that the assessee could not take up the projects in various places due to high flood levels, and the assessee has got the plan sanctioned for construction. We find that the assessee company was in active business of construction works in the earlier years but in the said assessment year, the projects could not commenced. The A.O has made presumption of temporary and slow movement of construction activity as no business activity and disallowed the expenses. The fact remains that the assessee has made investments in sister concern firm as per the financial statements. The

assessee company is following mercantile system of accounting and books of accounts are audited. On perusal of the balance sheet at page 37 of the paper book, we find that the assessee has invested in the fixed assets and provided the long term loans and advances. Prima-facie there is no categorical findings by the A.O that the assessee has not conducted any business. The expenses are incurred wholly and exclusively for the purpose of business. On perusal of the audited financial statements and auditor report of the assessee company, the assessee has profit before tax (-) Rs.1,03,52,092/- as on 31.03.2014 which was carried forward to the subsequent year. On verification of balance sheet, there is increase in non current investments from the earlier years and long term capital borrowings. Further the other current liabilities are reduced in comparison to earlier year. The observations of the A.O. that the assessee company is not actively engaged cannot be acceptable. The fact remains that various financial transactions have been incorporated in the accounts for the fund flow and these transactions are part and parcel of the business activities as the finance/ working capital plays a vital role in the construction activity and the projects are delayed due to external factors and real estate market. We support our view on the ratio of decision of Honble High Court of

Madras in L.V.E.Vairavan Chettiar Vs CIT 72 ITR 114 (Madras). Accordingly, the order of the CIT(A) on the disputed issue is set-aside and direct the Assessing officer to delete the addition and allow the grounds of appeal in favour of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 15.02.2022.

Sd/-  
(PRAMOD KUMAR)  
**VICE PRESIDENT**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 15.02.2022

KRK, PS

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai