

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.3491/Chny/2019**
(निर्धारण वर्ष / **Assessment Year: 2016-17**)

ACIT Corporate Circle-1(2), Chennai.	बनाम/ Vs.	M/s. Casa Grande Homes Pvt. Ltd. NPL Devi, New No.111, Old No.59, LB Road, Tiruvanmayur, Chennai – 600 041.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AAGCC-1182-Q		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Assessee by	:	Shri Reddy Prakash (C.A) – Ld. AR
प्रत्यर्थी की ओरसे/ Revenue by	:	Shri ARV Sreenivasan (Addl.CIT) – Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	30-06-2022
घोषणा की तारीख / Date of Pronouncement	:	06-07-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals)-1, Chennai [CIT(A)] dated 20-09-2019 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 27-12-2018. The grounds raised by the Revenue read as under:

1. The order of the learned CITA) is contrary to law, facts and circumstances of the case.

2. Whether on fact and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition w.r.to Advertisement, Consultancy expenses classified as other expenses without considering the fact that the expenses were directly related to a construction project ECR-14' for which no revenue has been offered for AY 2016-17, hence rightfully disallowed by AO by following guidelines of percentage completion method and matching concept?

3. Whether on fact and circumstances of the case and in law, the Ld. IT(A) was right in deleting the addition w.r.to Advertisement, Consultancy expenses classified as other expenses by considering it as general administrative and selling cost as per the decision in the case of Vardhaman Developers Ltd Vs. ITO [2015] 55 taxman.com 370 (Mumbai the expenses were Tribunal), whereas in the relied upon case law incurred in relation to redevelopment/construction proposals that did not materialize and the said expenses either represented a loss or a selling cost not relatable directly to expresses of any particular project, on the contrary in this case of assessee as explained in the assessment order the expenses were directly related to a construction project ECR-14 for which no revenue has been offered, hence the facts of the relied upon case law is different than the present case of assessee?

4. Whether on fact and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the addition w.r.to Advertisement. Consultancy expenses classified as other expenses by considering it as general administrative and selling cost as per the decision in the case of Vardhaman Developers Ltd Vs. 110 [2015] 55 taxmtan.com 370 (Mumbai Tribunal), whereas in the relied upon case law ,in view of the fact that although having multiple ongoing construction projects, the managerial and supervision expenses, consultancy in nature, were not allocated it was decided under this circumstances that 50% of this project wise, project wise unallocated cost of consultancy is to be capitalised in WIP, hence the partial order of the relied upon case law is in favour of present case of revenue rather than present case of assessee?

5. For these and other grounds that may be adduced at the time of it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

As evident, the revenue is aggrieved by allowance of expenditure by Ld. CIT(A). Having heard rival submissions, our adjudication to the subject matter of appeal would be as under.

2. The material facts are that the assessee is resident corporate assessee. During assessment proceedings, it transpired that the assessee claimed expenditure of Rs.5,15,44,310/-, whereas there was no revenue from operations and the construction activity was going on. The assessee submitted that its project 'ECR-14' had not commenced. The expenditure so claimed are in the nature of professional /

consultancy charges and advertisement charges. The advertisement expenses were towards project 'ECR-14' against which no revenue was offered. The assessee defended the claim on the ground that all direct costs of constructions activity have been classified as construction cost whereas indirect costs not specifically allocable to any specific project have been debited to Profit & Loss Account. Indirect costs are mandatory and necessary cost for the purpose of business though they may not fall under the ambit of construction cost. The said treatment was stated to be in accordance with ICDS-III as introduced by the legislatures. However, observing that aforesaid standards were applicable only from AY 2017-18, the expenditure thus claimed by the assessee was disallowed and loss was reduced to that extent.

3. During appellate proceedings, the assessee submitted that as per guidance note on Accounting for Real Estate Transactions as issued by the Institute of Chartered Accountants of India (ICAI), the assessee has to follow percentage of completion method to recognize the revenue. The project cost would include cost of land, borrowing costs and construction cost and development costs. However, General administration costs, selling costs, R & D Costs, depreciation of idle plant, cost of unconsumed / uninstalled material delivered at site and payments made to sub-contractors in advance of work performed was not to be considered as part of construction and development costs and thus, the same would be charged to the Profit & Loss Account in the year of occurrence. It was also submitted that the principles laid down in guidance note as well as in ICDS were one and the same. Reliance was placed, inter-

alia, on the decision of Hon'ble Delhi High Court in **CIT V/s Dhumketu Builders and Development Ltd. (368 ITR 680)** to support the same.

4. The Ld. CIT(A) concurred with the assessee's submissions and held as under: -

The submissions of the appellant were examined vis-à-vis the findings of the Assessing Officer. In his order u/s. 143(3) dated 27/12/2018, the AO disallowed the 'Other expenses' amounting to Rs.5,15,44,310/- on the ground that construction cost cannot comprise indirect expenses when there was no revenue recognition in the appellant's case. Per contra, the appellant relied on the Guidance Note on Accounting for Real Estate Transaction and submitted that the said expenses fall into the category of general administrative and selling cost and that they are not to be included in the project cost, for computation of percentage of completion. The appellant has also rested on various judicial decisions which declare that once the business has commenced, the expenditure incurred wholly and exclusively for the purpose of business has to be allowed whether or not the appellant was having any income during the year. In the case of **Vardhaman Developers Ltd vs. ITO [2015] 55 taxmann.com 370 (Mumbai-Trib)** it was held that expenses such as advertisement, sponsorship and brand-building expenses are only in the nature of selling costs of the construction business which would not therefore stand to be capitalised in as much as the same could only be in respect of a direct cost which adds value to or otherwise adds to its cost of production to the assessee. It was also held that the argument of there being no corresponding income or it being not relatable to any revenue stream, the same was of little consequence. In the light of this decision, the appellant's contentions are found to be tenable. During the appellate proceedings, the A.R furnished ledger extracts pertaining to the advertisement cost of Rs.3,99,76,615/- incurred by the appellant during F.Y.2015-16. Details of other expenditure such as Bank charges, rates & taxes, payment to Auditor, professional and consultancy fees and sales promotion expenses were also submitted. Taking into account the facts, circumstances, evidences and the judicial decisions pertaining to this case, the "other expenditure" amounting to Rs. 5,15,44,310/- is to be treated as admissible revenue expenditure for the A.Y 2016-17. This ground of appeal is **allowed**.

Aggrieved as aforesaid, the revenue is in further appeal before us.

5. Upon careful consideration, it could be observed that the assessee is following percentage of completion method of accounting to recognize the revenue under the project. Since the project has not commenced, the assessee has capitalized the direct costs. However, indirect costs which are in the nature of selling costs and professional costs could not be attributed to any specific project and it is a period

cost. The applicable guidance note issued by ICAI mandate the assessee to claim the same as period cost and the assessee has followed the same treatment. The action of the assessee is in consonance with the mandatory guidance note and therefore, the same could not be faulted with. The case law of Mumbai Tribunal as cited by Ld. CIT(A) also supports the case of the assessee. Hence, no infirmity could be found in the impugned order on the state issue.

6. The appeal stands dismissed

Order pronounced on 06th July, 2022.

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-07-2022

EDN/-

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF