

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D", MUMBAI  
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
**ITA No. 6689/Mum/2017 (A.Y. 2012-13)**

ITO-4(2)(4),  
Room No. 647, 6<sup>th</sup> Floor,  
Aayakar Bhavan, M.K.Road,  
Mumbai-400020.

..... Appellant

Vs.

M/s M.W.Corp. Pvt. Ltd.  
99, Niranjana, Marine Drive,  
Marine Lines, Mumbai-400002.

**PAN: AAFCM1365G**

..... Respondent

Appellant by	:	Smt. Mahita Nair- CIT(DR)
Respondent by	:	None
Date of hearing	:	25/07/2022
Date of pronouncement	:	20/10/2022

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the Revenue is directed against the order of Ld. Commissioner of Income Tax(Appeals)-9, Mumbai [hereinafter referred to as ['CIT(A)'] dated 14.09.2017 passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ['the Act'] for the Assessment Year (AY) 2012-13. The Revenue has raised the following grounds of appeal:

1. *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition of guarantee commission of Rs. 1,30,00,000/- without appreciating the fact that the assessee is not engaged in the business of giving guarantee to other companies and the same is not ancillary to the assessee's main business of construction of infrastructure projects and, therefore, income generated through guarantee commission has to be treated as incidental income and taxable under Income from Other Sources u/s 56 of the Income Tax Act.*
2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of various expenses amounting to Rs. 2,21,85,914/- without appreciation the fact that since the assessee's project was not yet started, all related expenses has to be capitalized."*
3. *"The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

2. Brief facts of the case are that the assessee-company is engaged in Builders, Developers Construction, Civil Engineers, Contractors etc. has e-filed its return of income for A.Y. 2012-13 on 29.09.2012 declaring income of Rs. 17,14,804/-. The case was selected for scrutiny and AO on perusal of P&L A/c found that assessee received bank guarantee of Rs 1.3 Cr. bank interest of Rs 16,37,583/- and rent of Rs 84,32,800/-. In the same P&L assessee claimed expenses of Rs 2,21,85,914/-.

3. AO. Considered guarantee commission amounting to Rs 1.3 Cr. under the head income from other sources and the same treatment he gave to the interest income on FD amounting to Rs. 16,37,583/-. Expenses claimed by the assessee, disallowed and same were added to be considered as WIP of the project in hand. Against this order of AO assessee preferred an appeal before the Ld. CIT(A).

4. The Ld. CIT(A). reversed the order of the AO w.r.t. the treatment of bank guarantee commission amounting to Rs 1.3 Cr. treatment of expenses claimed by the assessee in its P&L A/c of Rs. 2,21,85,914/- and sustained the treatment the

AO give to the interest earned on FD amounting to Rs. 16,37,583/-. Against this reversal revenue preferred this appeal before us.

5. We have gone through the order of the AO, order of the Ld. CIT(A). and submissions of the assessee before the authorities below. AO raised two grounds of appeal relating to reversal of treatment given by AO to guarantee commission earned and expenses claimed in P&L A/c.

6. In our observation this is not the first year of the operation by the company and guarantee commission earned by the assessee is with reference to credit facility availed by its subsidiary for the purpose of business activity. The guarantee given by the assessee is a corporate guarantee which is being continued from the earlier year with regard to the credit facility availed by the subsidiary company. The assessee company and its subsidiary are in the same line of business hence it can be concluded that corporate guarantee given by the assessee is in due course of business and is a regular business practice amongst the holding and subsidiary company. The contention of the AO that it should be assessed under the head income from other sources as providing bank guarantee is not a regular business of the assessee doesn't have any force. Further in the immediate preceding assessment year the same bank guarantee commission assessee offered under the head income from business and profession and the same was accepted by the department under section 143(3) without any variation.

7. So many judicial pronouncements are there from various judicial forums and law is almost established in the favour of the assessee such type of transaction i.e. bank guarantee commission earned from subsidiary company in the same line of business. Furtherance of the interest of the subsidiary company

is ultimately goes in favour of assessee itself. It enhances the value of investments made by the holding company in its subsidiary company. Holding company is duty bound to protect and enhance the value of investments made in subsidiary company to protect the investments made by its own shareholders. Nothing prevents holding company in entering into such type of transaction with its subsidiary company rather it's an essential part of corporate value addition and enrichment. On the given facts considering the contentions of AO, facts of the case and law applicable we don't find any anomaly in the order of Ld. CIT(A). Hence, order of Ld. CIT(A) on this aspect is upheld resultantly the ground no -1 raised by the revenue is dismissed.

8. The next ground of appeal raised by the revenue is with reference to treatment of expenditure claimed by the assessee in its P&L A/c as regular business expenditure. But the AO found that the assessee is not declaring any income from the operations hence he disallowed the same and added it back to the WIP of the ongoing projects. The contention of the AO doesn't hold water as discuss (supra) assessee has income under the head business and profession from bank guarantee commission amounting to Rs. 1.3 cr. Further the treatment given by the AO is revenue neutral as the same will enhance the value of WIP which is chargeable to P&L A/c of the assessee in future on completion of project and as such there is no advantage to revenue even after giving this treatment. The expenditure under consideration is not under challenged u/s. 37 as the same are not personal in nature, incurred wholly and exclusively for the purposes of business and the same are not capital in nature. The genuineness of these expenses is also not in challenge.

9. In its support, assessee relied upon the following case laws of honourable Supreme Court, High Courts and coordinate benches of ITAT as under:

- i. Western express Industries Ltd vs ACIT (ITA NO 3013/M/2012)
- ii. CIT Vs Rajendra Prasad Moody 115 ITR 519(S.C).
- iii. Daljit Exports (India) Pvt Ltd Vs ITO 36 ITD 0305.
- iv. CIT. Vs Lohore Electricity Supply Co Ltd [60 ITR 1(S.C)]
- v. L.Ve. Vairavan Chettiar Vs CIT (Mad) 72 ITR 0114.

10. As observed supra this is not the first year of operation of the assessee and previous years results were also assessed under scrutiny and assessee declared income under the head business and profession. Accordingly, it doesn't require the presence of the receipt from operation on the credit side to justify the deduction of expenses. In view of the above we didn't find any defect in the findings of the Ld. CIT(A).Consequently, his decision to reverse the action of AO is upheld. In the light of above ground no-2 raised by the revenue is dismissed.

**11. In the result, appeal filed by the Revenue is fully dismissed.**

Order pronounced in the open court on 20<sup>th</sup> day of October, 2022.

Sd/-  
(ABY T VARKEY)  
JUDICIAL MEMBER

Mumbai, दिनांक / Dated: /10/2022

SK, Sr.PS

**Copy of the Order forwarded to:**

1. अपीलार्थी/ The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) /The CIT(A)-
4. आयकर आयुक्त CIT

Sd/-  
(GAGAN GOYAL)  
ACCOUNTANT MEMBER

5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

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BY ORDER,

(Dy. /Asstt.Registrar)  
**ITAT, Mumbai**