

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3121/Mum./2022
(Assessment Year : 2006-07)

HREL Real Estate Ltd.
(Formerly HCC Real Estate Ltd.)
Hincon House, LBS Marg
Vikhroli (West), Mumbai 400 083
PAN – AABCH6060P

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-15(2)(1), Mumbai

.....Respondent

Assessee by : Shri Kalpesh Unadkat
Revenue by : Shri Rajeev Kumar Singh

Date of Hearing – 20/02/2023

Date of Order – 24/02/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 12/10/2022, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2006-07.

2. In its appeal, the assessee has raised the following grounds:-

"1. On facts and in the circumstances of the case and in law, the Learned CIT(A) erred in upholding the action of the Learned AO in determining the total

income of the appellant at Rs. 32,230/- as against the returned loss of Rs.56,97,977 Lakhs.

2. On facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming AO's conclusion that the appellant Company had not commenced and carried on its business activity during the financial year, relevant to the AY 2006-07.

3. On facts and in the circumstances of the case and in law, the Learned CIT(A) erred in confirming AO's conclusion that the Nil income amounts to no business activities during the year.

4. On facts and in the circumstances of the case and in law, the Learned CIT(A) erred in upholding AO's action of not accepting the certain activities as business activities even though the Honorable ITAT has decided that these activities are business activities.

5. The aforesaid grounds of appeal are without prejudice to one another.

6. The appellant craves leave to add, alter, amend modify or delete any or all the aforesaid grounds of appeal."

3. The brief facts of the case are: The assessee is engaged in the business of construction and development of building units, etc. For the year under consideration, the assessee filed its return of income declaring a loss of Rs. 56.97 crore. Vide order dated 29/08/2008, passed under section 143(3) of the Act the business expenditure claimed by the assessee was disallowed on the basis that business has not commenced. In further appeal, the coordinate bench of the Tribunal vide order dated 29/02/2016, following the order passed for the assessment year 2007-08 remanded the matter to the file of the Assessing Officer. Vide order dated 29/12/2017, passed under section 143(3) r.w.s. 254 of the Act the Assessing Officer observed that the assessee has been consistently showing NIL income from business even till the assessment year 2014-15 and claiming certain expenditures and carried forward losses against it. Accordingly, the Assessing Officer held that the assessee has not carried out any business activity for these years. The Assessing Officer also

referred to the assessment order for the assessment year 2011-12, wherein expenses were disallowed on the basis that assessee's business has not commenced.

4. Vide impugned order, the learned CIT(A) held that the Tribunal nowhere in the order held that the assessee had commenced business operations in the financial year 2005-06. The learned CIT(A) further held that the commencement certificate and permission for construction were applied by the holding company before the appellate authority and not by the assessee company. It was also held that the development right agreement was entered into with '*Hincon Reality Ltd*' and therefore it is not clear as to how the assessee was involved in same. Accordingly, the learned CIT(A) upheld the findings of the Assessing Officer that there is no commencement of business in the year under consideration. Being aggrieved, the assessee is in appeal before us.

5. We have considered the rival submissions and perused the material available on record. The assessee was incorporated on 15/06/2005 under the name of *Hincon Reality Ltd* and therefore the year under consideration is the 1st year of assessment. Subsequently, its name was changed to *HCC Real Estate Ltd* and the current name of the assessee is *HREL Real Estate Ltd*. The aforesaid fact is evident from the Certificate of Incorporation and the Certificate for change of name, forming part of the paper book from pages no.1-3. The assessee is a wholly owned subsidiary of *Hindustan Construction Company Ltd*. On 29/09/2005, a land development agreement was entered into between the assessee and *Hindustan Construction Company Ltd* to

develop 12.50 acres of land at Vikhroli, Mumbai. Hindustan Construction Company Ltd owns approximately 1,18,400 sq.m. of land in Vikhroli, Mumbai, out of which 28,000 sq.m. only is covered under the development right agreement. We find that Hindustan Construction Company Ltd filed an application for a commencement certificate to the Municipal Corporation of Greater Mumbai on 17/03/2006, which was granted on 16/10/2006. As per the assessee, since Hindustan Construction Company Ltd. was the owner of the land, therefore the aforesaid application could only be filed by it and not by the assessee. It is also the plea of the assessee that after signing the aforesaid land development agreement, the assessee entered into an agreement with M/s ICICI Property Services in February 2006 to conduct the feasibility study and alternative land use analysis, in respect of the said land, for the purpose of its redevelopment. M/s ICICI Property Services conducted number of analysis and number of meetings were also held by them with the assessee during the aforesaid period and submitted a report in the financial year 2006-07. For the aforesaid services, a consideration of Rs. 13,77,500, was paid to M/s. ICICI Property Services in the financial year 2007-08.

6. We find that the coordinate bench of the Tribunal in assessee's own case in HCC Real Estate Ltd vs ACIT, in ITA No. 4224/Mum/2011, vide order dated 04/01/2013, for the assessment year 2007-08, observed as under:-

"5. After considering the submission and perusing the material on record, I found that this issue should go back to the file of the AO to examine the same afresh. I noted that no doubt, one project was going on, however, many projects were in pipe line. It is seen that the assessee had entered into various agreement of Urban Development and entered into an agreement with the land owner for redevelopment of a prime property in the suburbs of Mumbai to conduct table survey census of the occupants etc. at Vikhroli. For this, various analysis were conducted by ICICI property services. The assessee made an

application to Municipal Corporation of Greater Mumbai on 17-6-2006. It was further submitted that out of development expenses of Rs.76 crores, the expenses related to development of industrial park property were carried forward under work in progress in the balance sheet and which were not directly related to the said development activity were charged to profit and loss account. I further found that business was very much in existing and, therefore, it cannot be said that there was no business activity carried out by the assessee. If by any reason in various other proceedings, where working was in pipe line and working could not be started then also the expenses claimed on these activities are to be allowed in accordance with the business activities. Hence, I therefore, restore this issue to the file of the AO to examine afresh after affording opportunity of being heard to the assessee. The AO also verified that software expenses claimed by the assessee are incurred on development of software or purchasing some parts of software and then will take a view that those expenses are capital in nature or revenue in nature. I order accordingly."

7. Thus, from the above, it is evident that the coordinate bench, inter-alia, after taking into consideration the project at Vikhroli, Mumbai, and the analysis conducted by M/s ICICI Property Services came to the conclusion that the business of the assessee was very much in existence in the assessment year 2007-08. It is undisputed that the aforesaid order passed by the coordinate bench was not challenged further by the Revenue. We further find that vide another order dated 14/06/2018, passed in assessee's own case for the assessment year 2011-12, the coordinate bench of the Tribunal following its earlier decision in the assessment year 2007-08 held that the assessee's business had commenced and therefore expenditure claimed by it on revenue account are allowable.

8. Thus, from the above, it is evident that in the very 1st year of its operation itself, the assessee not only entered into a land development agreement with its holding company but also received a commencement certificate in respect of the said land at Vikhroli, Mumbai from the Municipal Corporation of Greater Mumbai. From the copy of the note on administrative

cost as well as the invoices raised by Hindustan Construction Company Ltd, filed by the assessee, we find that in the year under consideration, the assessee incurred project-related administrative costs on personnel. Therefore, in the present case, there exists sufficient evidence to show that the business of the assessee had commenced in the year under consideration. Further, the fact that in subsequent years the assessee has been found to have entered into various agreements of urban development and many projects were in pipeline, also supports that the business of the assessee which started in the year under consideration continued in subsequent years. Accordingly, we find no merit in the impugned order upholding the findings of the assessing officer, and therefore the same is set aside. Since the business of the assessee had commenced during the year, therefore, the expenditures claimed by it on the revenue account are allowable. As a result, grounds raised by the assessee are allowed.

9. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 24/02/2023

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 24/02/2023

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai