

**THE INCOME TAX APPELLATE TRIBUNAL
DELHIBENCH 'E', NEW DELHI**

**Before Dr. B. R. R. Kumar, Accountant Member
Sh. Yogesh Kumar US, Judicial Member**

ITA No. 2511/Del/2017 : Asstt. Year: 2012-13

DCIT, Circile-16(1), New Delhi	Vs.	Magnum International Trading Company Pvt. Ltd, 48/12, Commercial Centre, Malcha Marg, Chanakyapuri, New Delhi-110021
(APPELLANT)		(RESPONDENT)
PAN No. AAACM8173B		

Assessee by: Sh. Anil Bhalla, CA

Revenue by : Sh. Ajay Kumar Arora, Sr. DR

Date of Hearing: 08.12.2022

Date of Pronouncement: 03.03.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order of Id. CIT(A)-6, Delhi dated 23.02.2017.

2. The revenue has raised the following grounds of appeal:

"1. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of claim of deduction of expenditure of Rs. 2,26,87,597/- and Rs. 5,22,74,3471- u/s 37 (1) of the Income Tax Act, 1961 (the Act) by ignoring a finding of facts recorded by the Assessing Officer (the AO) that the assessee had not recognized revenue earned by it from its customer on sale of real estate during year under consideration on the ground that it was following percentage completion method, accordingly, the assessee was not entitled claim deduction of expenditure of real estate business?"

2. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of claim of deduction of expenditure of Rs. 2,26,87,597/-

and Rs. 5,22,74,347/- u/s 37(1) of the Act by ignoring a fact that the assessee had not even disclosed basis of capitalizing a part of total expenditure and claiming deduction of another part of total expenditure under percentage completion method followed by the assessee?

3. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of claim of deduction of expenditure of Rs. 2,26,87,597/- and Rs. 5,22,74,347/- u/s 37(1) of the Act by accepting additional evidence even when the assessee had not fulfilled the condition as laid down under Rule 46A of the Income Tax Rule, 1962 (the Rule) and without affording opportunity of being heard to the Assessing Officer (the AO)?

4. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 5,53,840/- u/s 14A of the Act by ignoring provisions of section 14A of the act which stipulates mandatory computation of direct and indirect expenses relating to the income not forming the part of total income under all the clauses (i), (ii) and (iii) of Rule 8D (2) of the rule?

5. Whether on facts and in circumstances of the case, Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 5,53,840/- u/s 14A of the Act by ignoring provisions of section 14A of the act on the presumption that the assessee had itself disallowed expenditure of Rs. 9,33,884/- under Rule 8D which was higher than amount disallowed by the AO by not taking into account finding of facts recorded by the AO that actual disallowance under Rule 8D was at Rs. 14,87,724/- and only excess amount of Rs. 5,53,840/- was disallowed by the AO?"

3. The assessee company was set up in 1975 dealing in business of export of textiles, garments, leather and other products.

4. Disallowance of Expenditure:

During the year the assessee incurred total expenditure of Rs. 3.8 crores out of which Rs. 61.28 crores has been capitalized

against expenses of project under execution. The AO issued show cause to the assessee why not the remaining amount of Rs. 2.62 crores be disallowed as no revenue has been recognized by the assessee during the year from the project under execution. The assessee submitted that an amount of Rs. 40.37 lacs has already been added back in the computation of income. Hence, the AO disallowed an amount of Rs. 2.26 crores. The matter travelled to Id CIT(A). The Id CIT(A) held that development of real estate project that to efficiently carryout the above activities the appellant company has to employ personnel, incur administrative expenses marketing expenses and depreciation on assets employed for undertaking the above activities. Further the company has to co-ordinate and liaison with the Project Development company namely Alpha G Corp. Development Pvt. Ltd. for development of Group Housing project at sector - 84, Gurgaon which requires constant review of the various activities undertaken at various stages of construction. The Id CIT(A) further observed that the business of the appellant company was set up during AY 2010-11 which has been accepted by the AO u/s 143(3) wherein he has allowed the revenue expenses claimed in the Profit & Loss Account of the company. Copy of assessment order along with computation of income and audited annual accounts for the year ended 31.3.2010 has been examined by the Id CIT(A). Placing reliance on the following judgments,

- "1) *Western India Vegetable Products Ltd 26 ITR 151 (Bom.)*
- 2) *CIT vs Whirlpool of India Ltd. 185 Taxman 387,*
- 3) *CIT vs Club Resorts (P) Ltd. 287 ITR 552 (Mad.)*
- 4) *Jcdecaux Advertising India Pvt Ltd. 166 TTJ 121 (Del)*
- 5) *Interlink Petroleum Ltd. 83 TTJ 274 (Ahd.)*

6) *Eitve Funds International India 162 Taxman 1 (Del)*”

the Id CIT(A) held that revenue expenses are allowable after the date of set up in terms of Section 3 of the Act.

5. Heard the arguments of both the parties and perused the material available on record. On perusal of the entire facts we find that the similar issue has been adjudicated by the various judicial forums wherein, it was held that the business expenditure incurred by the assessee is allowable. Placing reliance on the following judgments,

- i. TAT Delhi in the case of Darrameks Hotels & Co Developers Pvt. Ltd. - TS-548-ITAT-2022 (Del)
- ii. ITAT Delhi in the case of HMS Real Estate Pvt. Ltd.- ITA No.3289/Del/2018 (A.Y. 2012-13)
- iii. ITAT Delhi in the case of Hike Pvt. Ltd.- ITA No.2906/Del/2018 (A.Y. 2012-13)
- iv. High Court of Delhi in the case of Dhoomketu Builders & Development (P) Ltd. - 368 ITR 680 to (Delhi)

we hereby decline to interfere with the order of the Id CIT(A) on this issue

6. Disallowance of expenditure u/s 14A :

The AO disallowed an amount of Rs. 5,53,840/- on account of expenses incurred u/s 14A of the Act in relation to income not includible in total income. The facts reveal that the assessee has disallowed Rs. 9,33,884/- which is higher than the disallowable amount of Rs. 9,20,219/-. There has been a calculation mistake by the AO in determining the average value

of investments at Rs. 27,41,46,241/- instead of Rs. 16,06,44,980/-. Hence, we hold that no further disallowance is warranted on this ground.

7. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 03/03/2023.

Sd/-

(Yogesh Kumar US)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/03/2023

Ajay Kumar Keot, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR