

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 6116/DEL/2017  
[Assessment Year: 2013-14]**

M/s. Princeton Infrastructure (P) Ltd., GF-3, Naurang House, Plot No.5, Block 134, Kasturba Gandhi Marg, New Delhi-1100 01	<u>Vs</u>	ITO, Ward-20(4), New Delhi.
PAN: AADCP9178Q		
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Assessee represented by</b>	Shri Sukh Sagar, Adv.	
<b>Department represented by</b>	Sh. Atiq Ahmed, Sr. DR	
<b>Date of hearing</b>	17.05.2023	
<b>Date of pronouncement</b>	31.05.2023	

**ORDER**

**PER KUL BHARAT, JUDICIAL MEMBER:**

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-VII, New Delhi, dated

11.07.2017, pertaining to the assessment year 2013-14. The assessee has raised following grounds of appeal:

*“1. The Ld. CIT(A) has erred in upholding the order of Ld. A.O capitalizing of selling expenses amounting to Rs.29,36,588/- and other expenses amounting to Rs.1,44,312/-.*

*2. The Ld. CIT(A) has erred in upholding the order of Ld. A.O capitalizing depreciation amounting to Rs.3,59,892/-.*

*3. The appellant craves leave to add or delete any ground of appeal before the appeal is heard or at the time of hearing of appeal.*

2. The facts giving rise to the present appeal are that assessee are that the assessee e-filed its return of income on 27.09.2013 for assessment year 2013-14 declaring loss of Rs.26,06,006. The case was selected for scrutiny assessment under the CASS. The statutory notices under Section 143(2) of the Income-Tax Act, 1961 was issued on 04.09.2014 which was duly served upon the assessee. In response thereto, the learned authorized representative of the assessee attended the proceedings.

3. During the course of assessment proceedings, the Assessing

Officer noticed that in the profit and loss account, the assessee has declared receipt of Rs.7,42,155 comprising interest of Rs.6,75,226 on fixed deposit and interest of Rs.66,929 on income-tax refund. The assessee has claimed expenses of Rs.35,28,251 which included Rs.29,36,588 under the head 'selling expenses Rs.2,45,435 on loss on sale of fixed assets and Rs.1,44,312 under the other head.

4. The assessee was called upon as to why it did not capitalize the expenses claimed in P & L account, since, the Assessing Officer was of the view that the expenses of Rs.34,40,792 were required to be capitalized under the head 'capital work in progress'. Thus, he assessed income at Rs.9,34,790 and recomputed it as under:

Loss declared as per computation of income	Rs.25,06,006
Add: As discussed in para-4	Rs. <u>34,40,792</u>
Revised taxable income	Rs. 9,34,786
Round off to	Rs. 9,34,890
	=====

5. Aggrieved against this, the assessee preferred an appeal before the

learned Commissioner of Income-Tax(Appeals) who dismissed the appeal.

6. Apropos to grounds of appeal, learned counsel for the assessee vehemently argued that lower authorities failed to appreciate in the light perspective. He submitted that both the grounds related to allowability of selling expenses and depreciations are squarely covered in favour of the assessee. To buttress his contention, learned counsel submitted that that selling expenses have been claimed revenue expense as per the Accounting Standard. He pointed out that as per AS 7 that the expenses that are not actually connected with cost of construction should not be included into the cost of construction.

7. He placed reliance on various decisions of Co-ordinate Benches of this Tribunal rendered in the cases of DCIT vs. M/s. Puma Realtors Pvt. Ltd. ITA No.1734/Del/2015, M/s. Hiranandani Palace Gardens P . Ltd. Vs. ACIT – ITA No.2298/M/2012 and Pragnya Crest Properties (P) Ltd. vs. DCIT – 115 Taxman.com 90 (Bangaluru). On the other hand, learned Departmental Representative supported the orders of lower

authorities.

8. We have heard the rival contentions. The issue relates to allowability of expenses claimed by the assessee, selling expenses as revenue expenditure. It is the contention of the assessee that such expenditure is not connected with the construction, hence allowable as revenue expenditure in terms of AS-7. We find that the learned Commissioner of Income-Tax(Appeals) has decided the issue by observing as under:

*“3.3 The Ld. AR has argued that it has consistently followed the accounting policy of claiming as revenue expenditure such expenses which are not related to the project in consonance with AS-7, construction contract and guidance note on Accounting for Real Estate Transaction which provides that costs which cannot be attributed to a contract are to be excluded from the cost of construction. Further, since the appellant is following the completion percentage method, it has allocated all direct and indirect construction overheads relating to the project which is inventorised as VVIP. The Ld. AR has further stated that though at a single location, the project is not one and each building is a separate project for recognizing revenue from the project. The AO , however, rejected appellant’s claim holding that the selling expenses as well as depreciation and other expenses are attributable to the project in progress and therefore, the same is to be capitalized under the head “Capital Work in Progress” (CWIP).*

*3.4 I have carefully considered the assessment order and written submission filed by the Ld. AR. The Ld. AR has admitted that is following Percentage Completion Method for recognizing revenue from the project. The submission that every building is a project and since expenditure of the nature claimed, do not have any nexus with the project under construction the same is claimed as deductible revenue expenditure during the year is however, not borne out from the statement of accounts. The appellant has disclosed construction VVIP at Rs.29,44,97,152 as on 31.03.2013. This is a consolidated VVIP wherein expense incurred during the year of approximately Rs.3.3 crores is also capitalized. There is nothing in the nature of expenses that is capitalized to show that it pertains to any specific project. The annual accounts do not disclose any building wise accounting as argued by the Ld. AR. It is evident therefore that VVIP pertains to one project as a whole against which no revenue is recognized during the year. In terms of the Project Completion Method, as no percentage of VVIP is recognized as revenue during the year, there is no basis to the Ld. AR's assertion that individual expenses which are not related to the project, should be excluded from the cost of construction. Since there is only one project as is discernible from the accounts, all the costs are directly relatable to this project only. There is therefore, no justification of claiming expenditure on revenue account when no revenue is recognized during the year in consonance with the Percentage Completion Method of Accounting followed by the appellant. The Ld. AR's reliance on the case laws is misplaced, as they are not applicable to the facts of the case. Selective capitalization of expenses incurred during the year resorted to by the company is not in compliance with any accounting standard. The Ld. AR has not demonstrated as to how part of the expenses incurred during the year is on revenue account and part capitalized in VVIP. In view of these facts, no interference is called for with the finding of the A.O, accordingly disallowance of Rs.34.40,702 is held to be in order,*

*and is confirmed. These grounds of appeal are ruled against the appellant.”*

9. We find that the under the identical facts, the Co-ordinate Benches of the Tribunal in the cases of DCIT vs. M/s. Puma Realtors Pvt. Ltd. ITA No.1734/Del/2015 and Pragnya Crest Properties (P) Ltd. vs. DCIT – 115 Taxman.com 90 (Bangaluru) have decided the issue in favour of the assessee. Further, it is vehemently pleaded by the assessee that in ITA No.2298/M/2012 the case of M/s. Lodha Palazzo Vs. ACIT, 15(1), Mumbai, the Mumbai Bench of the ITAT has held by observing as under:

*“11. We have considered rival contentions and carefully gone through the orders of the authorities below. The percentage completion method of accounting has been regularly followed by the assessee. In the succeeding assessment year 2010-11, the AO has accepted the deductibility of the identical nature of expenses in the assessment order passed u/s 143(3) of the I.T. Act. We agree with contention of the Ld. Counsel for the assessee that the employee cost refers to salary paid to the employees who are looking after the administration of office and not directly related to construction of the project but is part of the administrative expenses. Similarly, the office and administrative expenses and selling and marketing expenses are to be charged to the profit & loss account in the very same year in which they are incurred and have to be excluded from the cost of inventories for working out closing WIP as per the guidelines issued by the ICAI, Accounting Standard AS-2 and AS-7. The assessee has regularly and consistently been following the said method of accounting as per the provisions of section 145A of the I.T. Act. The ITA No.2298/M/2012 has not assigned any cogent reason as to why the method, which has been consistently followed by assessee and accepted by the department in past as well in succeeding*

*assessment years and which is in accordance with the recognized principles of accounting by ICAI, is being rejected. In our view, the action of the Revenue Authorities in rejecting the assessee's accounting method, without assigning any reason is not justified. The accounting method followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing & selling expenses is as per the recognized principles of accountings and as such the claim of the assessee deserves to be allowed. We hold accordingly. The additions made by the lower authorities on this issue are hereby ordered to be deleted."*

10. Further, the Tribunal in the case of Pragnya Crest Properties (P) Ltd. Vs. DCIT ( IT Appeal No.1576(BANG) of 2017, where one of us was the author Members. The Bangaluru Bench 'A' of the Tribunal has decided the same issue and held as under:

*"11. We have carefully considered the rival submissions. The substantive issue for determination is whether the selling expenses incurred by the assessee are allocable to the specific development contract under taken by the assessee and thus required to be added to the contract costs in progress or such expenses can be allowed as revenue expenditure. On perusal, it is noticed that the Accounting Standard -7 issued by ICAI clearly spells out that the selling and administrative cost are required to be excluded from the contract costs while drawing financial statements. Hence, the action of the assessee resonates that the parameters of AS-7 referred to in the instant case.*

*12. We also find merit in the plea of the assessee that expenses incurred in the normal course of business is required to be allowed, after setting up of business irrespective of the fact whether the revenue is not yet earned in view of the decision of the Hon'ble Bombay High Court in the case of Western India Vegetable products Ltd. 26 ITR 151 (Bom.). The action of the assessee in any case is a revenue neutral affair and the revenue is not put to any tax loss per se by such alleged premature claim.*

*13. We further find that the controversy is no longer resintegra and clearly covered by the decision of the co-ordinate Bench of the Tribunal in Sunny Vista Realtors Pt. Ltd. vs ACIT in ITA No.4580/Mum/2013 vide order dated 11-01-2017. In the similarly placed situation, the co-ordinate Bench has adjudicated the issue in favour of the assessee by a detailed order.*

*14. In parity with the view taken by the co-ordinate Bench and having regard to the tax neutrality, we find considerable merit in the objection raised by the assessee.”*

11. Therefore, we respectfully following the aforementioned orders of the Tribunal, we hereby direct the Assessing Officer to delete the impugned additions.

12. In the result, the appeal of the assessee is allowed.

**Order pronounced in open court on 31 .05.2023.**

**Sd/-  
( PRADIP KUMAR KEDIA )  
ACCOUNTANT MEMBER**

**Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**Dated: 31<sup>st</sup> May, 2023  
Mohan Lal**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI