

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI VIKAS AWASTHY, HON'BLE JUDICIAL MEMBER &
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA NO. 200/MUM/2023 (A.Y: 2009-10)

DCIT- 15(1)(2) 459, Ayakar Bhavan M.K. Road, Mumbai- 400020	v.	HREL Real Estates Ltd. (Formerly known as M/s HCC Real Estate Ltd.) Hincon House, LBS Marg Vikroli (W), Mumbai-400083 PAN: AABCH6060P
(Appellant)		(Respondent)

Assessee Represented by	:	Mr. Mayank Thosar
Department Represented by	:	Smt. Sujatha Iyengar
Date of conclusion of Hearing	:	16.03.2023
Date of Pronouncement	:	31.05.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 12.10.2022 for the A.Y.2009-10.

2. Revenue is in appeal before us raising following grounds in its appeal: -

"1. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred in holding the assessee's business activity to be in existence on the basis of Hon'ble ITAT's observation for an year much antecedent to the year under consideration, without giving any credence to the fact that in subsequent many years, the assessee has not shown any business income, whatsoever.

2. On the facts and circumstances of the case and in law, the ld. CIT(A) has erred with respect to the commencement of business as mere commencement of business in one year does not lead to an automatic allowance of expenses in successive years irrespective of the existence or its continuance of business activities.

3. On the facts and circumstances of the case and in law, the ld. CIT(A) was right to allow the appeal on the issue under consideration during the year without appreciating the fact that on similar issue in assessee's own case for AY 2011-12, the Revenue has not accepted the decision of Hon'ble ITAT and filed an appeal before the Hon'ble High Court and the same is pending.

4. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

5. The appellant craves leave to amend, or alter any grounds of add a new ground, which may be necessary."

3. At the time of hearing, Ld.DR fairly accepted that ITAT in assessee's own case in earlier Assessment Years i.e., A.Y. 2006-07, 2007-08 decided the issue in favour of the assessee and also in

A.Y.2011-12 in which the revenue has filed appeal before Hon'ble High Court against the order of the ITAT.

4. On the other hand, Ld. AR submitted its written submissions vide letter dated 20.03.2023, for the sake of clarity it is reproduced below: -

"1. The Assessee is a limited company incorporated on 15-06-2005 under the name of Hincon Reality Limited, formed with the main object of carrying out the business of construction, development, or management of a wide array of real estate and immovable property. Subsequently, its name was changed to HCC Real Estate Limited in the year 2006 and the current name of the Assessee is HREL Real Estate Ltd since 2019 (this fact has been captured in the ITAT order dated 24-02-2023 for the A.Y. 2006-07 attached at page 68 -75 in the paperbook).

2. A snapshot of the business activities carried on by the Assessee in the initial years of its business operations are as follows:

2.1. A land development Agreement dated 29-09-2005 was entered into between the Assessee and M/s. Hindustan Construction Co. Ltd. ('HCCL'), to develop 12.50 acres of land at Vikhroli, Mumbai ('Vikhroli Project').

2.2. After signing of the aforesaid agreement, M/s. ICICI Property Services ('ICICIPS') was appointed to conduct feasibility study and alternative land use analysis, in respect of the said land, for the purpose of its re-development. A number of analysis were conducted by ICICIPS and a number of meetings were also held by them with the Assessee during the aforesaid period. For the aforesaid services, a consideration of Rs 13,77,500, was paid to ICICIPS, which was accounted in the FY 2006-07, under the account head 'Advances and taken to work-in-progress (WIP).

2.3. The Assessee also made an application to the Municipal Corporation of Greater Mumbai (MCGM), dated 17-03-2006 and thereafter, commencement certificate dated 16-10-2006 was issued by MCGM

2.4. In the meanwhile, the Assessee started negotiations for the appointment of architects for the preparation of drawings and pre-tender activities for the purpose of appointment of contractors, etc.

2.5. *In the application made by the Assessee to MCGM on 17-03-2006 for the issuance of commencement certificate in respect of the Vikhroli Corporate Park or Vikhroli Project, number of documents had been enclosed and all the aforesaid documents clearly established that the business of the Assessee had already commenced before 31-03-2006*

2.6. *It can, thus, be observed that the Assessee made efforts for getting some contracts for the development of land parcels. The Assessee made a number of presentations, submitted financial bids, entered into negotiations with various land owners and negotiated for various real estate projects. The Assessee had also entered into negotiations with CIDCO in the year 2006, for the development of a large piece of land at Kharghar. For this purpose, the Assessee arranged for a tie-up with GVK Developmental Projects Pvt. Ltd. as well as HCC Ltd. for execution of the aforesaid projects.*

2.7. *It is, thus, clearly established that the Assessee's business was set up and also business activities had commenced.*

3. *In the assessment proceedings for the A.Y. 2006-07, the Assessing Officer (AO) disallowed the business expenditure incurred by the Assessee on the ground that Assessee has not commenced its business. The matter came up before this Hon'ble Tribunal, wherein the matter was remanded to the file of the AO, following the order passed by co-ordinate bench of this Hon'ble Tribunal in the AY 2007-08. In remand proceedings, the Ld. AO observed that the Assessee has been consistently showing 'NIL' income from business up till AY 2014-15 and accordingly, held that the Assessee has not carried out any business activity for these years (AY 2006-07 to AY 2014-15).*

In the second round of appeal, when the matter came up before this Hon'ble Tribunal, wherein, this Hon'ble Tribunal vide order dated 24-02-2023, in para 8 held as under (copy of the said order dated 24-02-2023 for the AY 2006-07 is at page 68-75 of the paperbook).

"8.

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."

4. In AY 2007-08, as stated above, this Hon'ble Tribunal was dealing with the similar issue, wherein, this Hon'ble Tribunal, vide order dated 04-01-2013 remanded the matter to the file of the AO, with following observations (copy of the said order dated 04-01-2013 for the AY 2007-08 is at **page 76-81 of the paperbook**):

"5.....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..."

Pertinently, in the remand proceedings, the AO, in his order dated 07-12-2013 passed under section 143(3) r.w.s. 254 of the Act, did not dispute and brought on record any material which would suggest contrary to the claim of the Assessee that business of the Assessee was in existence and there were business activities carried out by the Assessee (copy of the AO's order dated 07-12-2013 for the AY 2007-08 is at page 82-85 of the paper book).

5. Further, in the AY 2011-12, the AO had disallowed the expenses on the ground that the Assessee had not shown any income from business operation and accordingly, Assessee's business did not commence during the year. The order of the AO was reversed by the Ld CIT(A), which was further confirmed by this Hon'ble Tribunal

vide order dated 14-06-2018, thereby accepting that the Assessee's business had commenced (copy of the said order dated 14-06-2018 for the AY 2011-12 is at page 86-95 of the paperbook). Although, the Revenue has challenged the said order dated June 14, 2018 before the Hon'ble Bombay High Court in ITXA No. 702 of 2019, the matter is yet to be admitted before the Hon'ble High Court (copy of the screenshot of the status as shown by the official website of the Hon'ble Bombay High Court for the AY 2011-12 is at page 105-107 of the paperbook).

6. Now, coming to the facts for the year under appeal, the Assessee has filed its return of income declaring a loss of Rs. 4.21 crores. The AO passed an order dated 24-12-2011 under section 143(3) of the Act, disallowing the following business expenditure totaling to Rs. 4,50,30,273 (erroneously mentioned by the AO as Rs. 4,80,27,222 in computation), stating that Assessee's business has not commenced:

- (i) Employee's remuneration and benefit- Rs. 61,00,149*
- (ii) Administrative cost- Rs. 76,07,436*
- (iii) Depreciation- Rs. 27,71,642*
- (iv) Finance cost- Rs. 2,87,51,046*

7. In the appeal, the Ld. CIT(A) upheld the order of the AO, vide order dated 30-01-2014. Against this order, the Assessee had filed an appeal before this Hon'ble Tribunal, wherein this Hon'ble Tribunal vide order dated 29-02-2016, held that the facts of the case are identical to the facts in the AY 2007-08 and remanded the matter to the file of the AO for fresh adjudication.

8. In the remand proceedings, the AO vide order dated 29-12-2017 has once again concluded that no business activity was commenced in the earlier years as well as during the AY under appeal. Thus, the AO capitalised the above expenses as work-in-progress of Vikhroli Project and assessed the interest income under income from other sources at Rs. 59,67,512.

9. In appeal, the Ld. CIT(A) vide order dated 12-10-2022 has decided the matter in favour of the Assessee and the Revenue has filed the present appeal which has come for hearing before Your Honours.

10. The Assessee submits that once the factual finding of commencement of business has been rendered by this Hon'ble Tribunal in initial years of business i.e., in the AY 2006-07 and AY 2007-08 and also accepted by the assessing authorities themselves

in AY 2007-08, there is no scope for the AO to then verify the fact of commencement of business once again in subsequent years. Moreover, even more critically, the Revenue has not challenged the order passed by the AO for the AY 2007-08 in the remand proceedings, i.e. the order passed under section 143(3) r.w.s. 254 of the Act. Even the appeal of the Revenue for the AY 2011-12 before the Hon'ble Bombay High Court, has not been admitted as yet. In these circumstances, it is respectfully submitted that, the Ld. CIT(A) has rightly allowed the appeal of the Assessee in the AY under appeal.

Existence of the Assessee's business in AY under appeal

11. The Assessee submits that the business activities of the Assessee has continued during the previous year relevant to the AY under appeal. In this regard, the Assessee draws Your Honours' kind attention to the annual report of the Assessee for the financial year (FY) 2008- 09 (AY 2009-10) (copy of the financials of the Assessee for the AY 2009-10 is at page 1-58 of the paperbook), which evidences that the Assessee has incurred various expenditure (discussed below) for its business purposes:

Sr. No.	Nature of expenditure	Amount (in Rs. lacs)	Particulars
A)	Employees remuneration and benefits (Schedule 'K')		
i)	Salaries and benefits	61.00	During the year, the Assessee had incurred expenditure on personnel who were engaged in projects at Vikhroli, Hinjewadi(Pune), Thane, Nashik etc. The expenditure was in the nature of salaries, contribution to staff welfare funds, full and final settlement etc.
ii)	Contribution to PF & Superannuation Funds		
iii)	Staff recruitment and welfare expenses		
B)	Administrative and other expenditure (Schedule 'L')		
i)	Auditor's remuneration	76.07	During the year, the Assessee had incurred various administrative expenses which included major expenses towards- i) auditors' fees covering appointment of new auditor, other limited review assignments, certification work etc.;
ii)	Rent		
iii)	Electricity charges		
iv)	Car hire charges		
v)	Director's sitting fees		
vi)	Franking and stamp duty charges		

vii)	Insurance			
viii)	Maintenance charges			
ix)	Motor car expenses			
x)	Printing and stationery			
xi)	Professional charges			
xii)	Repairs and maintenance – others			
xiii)	Rates & taxes			
xiv)	Software expenses			
xv)	Telephone expenses			
xvi)	Travelling and conveyance			
xvii)	General expenses			
C)	Finance Cost (Schedule 'M')			
i)	Interest on unsecured loans	287.51		
ii)	Bank charges			
		424.58		Claimed in the Return of income as business expenditure

12. To elaborate more on the facts narrated in brief in para 2.1 above, in September 2005, HCCL had transferred Development Rights (DR) in respect of 3,10,000 sq. ft FSI available for the land owned by it at Vikhroli (West), Mumbai to the Assessee for a consideration of Rs. 40 crores. HCCL had however retained 1,47,075 sq. ft. or FSI for itself.

During the earlier FY 2007-08 (i.e. AY 2008-09), it was decided between HCCL and the Assessee to form a partnership firm, where Assessee would bring its full share of 3,10,000 sq. ft. FSI for the land at Vikhroli to the partnership firm as non-cash capital contribution and HCCL would bring in 1,00,000 sq. ft. of FSI of the said land to the partnership firm as non-cash capital contribution. Accordingly, the Assessee has transferred its Vikhroli Project work-in-progress worth Rs. 137.88 crores (refer Schedule F of the annual

report/financials appended at page 47 in the paperbook) to a partnership firm by the name "Vikhroli Corporate Park", formed with HCCL in the profit-sharing ratio of 80:20, where the Assessee's share was 80%).

Under the said partnership firm, the Assessee was actively involved in the management of the affairs of the firm. The total constructed area was around 1.8 million sqr. Ft. with commercial space spread over 3 towers.

The partnership firm also applied to the Ministry of Commerce & Industry, Government of India, for approval of the IT Park at Vikhroli under the Industrial Park Scheme and for exemption under section 80IA of the Act.

13. Therefore, during the FY 2008-09 relevant to AY under appeal, the Assessee, as a partner, was actively involved in the progress of the undergoing construction of the Vikhroli Project, which is being developed by the said partnership firm. The said Vikhroli Project was substantially completed during the FY 2008-09 and the firm had started offering the same for fit-outs to the lessees as per the agreements signed with such lessees (refer page 7 of the paperbook- internal page 5 of the annual report/financials).

14. In view of the aforementioned facts, the Assessee submits that the action of the Revenue disputing the existence of business of the Assessee is contrary to the facts on record, as the AO himself has capitalized the expenses with work-in-progress of Vikhroli Project, thereby accepting the fact, that the Vikhroli Project was ongoing.

15. Your Honour's kind attention is also drawn to other transactions in the financials for the year under consideration (please refer page 1-58 of the paperbook), such as follows,

(i) Funds raised through issuance of additional equity shares- Rs. 100.27 crores (inclusive of securities premium)

(ii) Funds raised through loan taken from Infrastructure Development Finance Company Ltd.-Rs. 50 crores.

(iii) Additional (net) investment made in equity shares of Lavasa Corporation Ltd. - Rs. 62.71 crores.

(iv) Additional investment made in preference shares of Lavasa Corporation Ltd. - Rs. 4.341 crores.

(v) Investment made in equity shares of Powai Real Estate Developers Ltd. - Rs. 0.05 crores

(vi) Sale of investment in Panchkutir Developers Ltd. - Rs. 0.10 crores.

16. As stated above, the Assessee is in the business of real estate development and carries on the business through itself or through its partnership firms or the subsidiaries/joint ventures companies, which are also engaged in real estate development business. In this regard, a reference to object 17 & 20 of the Memorandum of Association is made (copy of Memorandum of Association of the Assessee is at page 110-127 of the paperbook).

17. To state more particularly from the financials of the Assessee about the activities undertaken during the year, from the Directors Report at page 23 in the paperbook-internal page 21 of the financials under para. 3 pertaining to 'Operations') it can be seen that,

I) Vikhroli Project was nearly brought to the completion during the year.

II) Lavasa Corporation Ltd., in which the Assessee had increased its investments during the year and was strategically involved, had in turn entered into various tie ups with world renowned tourism, hospitality, leisure as well as education brands.

iii) The Assessee also had other ongoing projects at Nashik, Pune and Thane, where documentation work was afoot during the year under consideration.

IV) The Assessee had a project of developing a vineyard at Nashik named Charosa Wines. The plantation activity was nearly completed on 80 acres do land and infrastructure requirements were predominantly completed.

V) The assessee had undertaken Environmental Impact Assessment (EAI) study and master plan of the region near Dholera in Gujarat State in view of Delhi-Mumbai.

Vi) The Assessee had also formed 100% subsidiary company under the name 'Powai Real Estate Developers Ltd. to undertake real estate business in Powai area of Mumbai.

18. Furthermore, in the AY under appeal, the Assessee has filed a suit bearing no. SS/1344/2008 of 2008 before the Civil Court at Mumbai, against a land agglomerate, namely, M/s. Swati Enterprises, for recovery of certain advances made for the purpose of land acquisition in Panvel and Bhiwandi-A screenshot of the status of the suit from the website of the Civil Court is appended at page 108-109 of the paperbook).

19. It is also pertinent to note that during the FY 2008-09 relevant to AY 2009-10, there was an economic meltdown which began at the end of FY 2007-08 and was dubbed a Global Financial Crisis, namely, 'Subprime Mortgage Crisis', which was very much connected to global real estate market, which naturally, had its impact on Indian market as well. The demand curve was badly affected, further exacerbated by the reduced liquidity and fall in credit. The originating factor for the crisis was bad loans on immovable property and this aspect did affect issue of credit in India as well. This is also a relevant factor to be considered for AY 2009- 10 in terms of extent of impact on the business activities that could be performed.

20. The Assessee submits that, based on the abovementioned facts, it is clearly established that the business activities of the Assessee has already commenced in the AY 2006-07 and also continued during the previous year relevant to AY under appeal in continuation of business as carried out in the earlier years. Thus, the contentions of the Revenue in relation to non- existence of business activity of the Assessee are contrary to facts on record and are not tenable.

21. Without prejudice to what has been stated hereinabove, in addition and in the alternative. the Assessee further submits that even if the business is not considered as being continued during the year, the expenses incurred by the Assessee are allowable as deduction under section 37(1) or 57(iii) of the Act, since the same are very basic expenditure required for the general functioning of the Assessee and retaining its corporate entity status.

In this regard, reliance is placed on the judgment of Delhi ITAT in case of ACIT vs, LS. Cable India Pvt. Ltd. (ITA No. 1257/Del/2012, AY 2008-09)-page 128-134 of the paperbook, wherein it has been held that expenses towards audit fees, salaries, legal and professional charges, bank charges etc. are allowable as deduction under the provisions of the Act since such expenditure was essential for retaining the assessee's corporate entity status. The relevant extract of the judgment is reproduced as under:

"8. AO does not speak anything against the genuineness of these expenditures. Only ground of disallowance of these expenses is on the ground that they relate to the period prior to the commencement of the business by the assessee. On this aspect the decisions relied upon by the assessee and enumerated (supra) are applicable on all fours. The sum and substance of these decisions is that the company had to file various statements and returns and has to perform various functions to retain its status as a company and had to incur certain expenditure, is allowable as deduction. While respectfully following the ratio of the above decisions, we find that the order of the Ld. CIT(A) is in conformity with the settled position of law as such does not warrant any interference. We, therefore, uphold the same."

In the present case, having regard to the Assessee's operational path and history, the expenditure disallowed by the AO are in the nature of very basic expenditure required for the general functioning of the Appellant and retaining its corporate entity status, that are required to be expended at all times irrespective of the state of affairs of the Appellant. Thus, Assessee submits that the Ld. CIT(A) has rightly allowed the appeal in favour of the Assessee and thus, the order of the CIT(A) deserves to be upheld and the present appeal of the Revenue be dismissed, accordingly. Rebuttals to the AO's observations in the assessment order-

22. The sum and substance of the AO's order dated 29-12-2017, under paras 5 to 8, is that

22.1 a) the Assessee has shown NIL income from business and so business has not started in operating:

b) the development agreement, negotiations etc. are only pre-operative activities;

c) the AO in the AY 2007-08, in the second round, has only followed the order of the ITAT, Mumbai but has not certified that business activities have started and in order for AY 2011- 12, which was passed immediately after the order for AY 2007-08 passed, has disallowed expenses for the year;

d) The whole project was work-in-progress.

22.2 Against these contentions made by the AO in the assessment order, the Assessee respectfully submits as under-

a) Generation of business income is not the sole criterion on which one can decide whether business activities have indeed commenced or otherwise. This is even more evident in the real estate industry, wherein business income is generated only on completion or near completion of construction or development of property. Hence, real estate business ought not to be compared with other types of businesses, such as trading or service industry etc.

b) The Hon'ble ITAT, Mumbai for the AY 2006-07 and 2007-08 has categorically observed and held that business of the Assessee had commenced its business and therefore, the AO cannot co-relate only generation of business income with commencement of business activity and he has to behold Assessee's activities as a whole to come to a conclusion. Even otherwise, the orders for the aforementioned years make the case of the Assessee beyond doubt. Hence, the AO cannot neglect the binding precedent to once again raise a settled question of fact.

c) As narrated in detail above, the activities undertaken by the Assessee cannot be considered as pre-operative especially when not only development agreement and negotiations but also raising of capital and investment activities have been performed by the Assessee. Furthermore, expenditure has also been incurred on salaries, rent, electricity charges, professional fees, repairs and maintenance, travelling expense and finance cost etc., which cannot simply be brushed aside by the AO without asserting reasons for denial of such expenditure.

d) For the AY 2007-08, the ITAT in its order has categorically mentioned that business activities were afoot and the AO, while following the said order, not brought any material or evidence on

record to establish that business of the Assessee had indeed not commenced except for the only logic that 'no business income was generated. Now, the position is further buttressed by the order of this Hon'ble ITAT vide order dated 24-02- 2023 for the AY 2006-07.

e) The AO has allowed himself to be misdirected by considering that Vikhroli Project was the only activity undertaken by the Assessee. As mentioned above, other than Vikhroli Project. the Assessee was invested in projects at Pune, Nashik, Thane etc. Moreover, the Assessee had also undertaken investment activity, which is clearly evidenced and can be witnessed through bare perusal of investment schedule-'Schedule E' in the financials, which clearly shows increase in investments made during the year.

22.3 On the conspectus of the whole case, it can be seen that notion, as harbored by the AO, of generation of business income as the sole proof of commencement of business is grossly erroneous and deserves to be struck down. The Assessee, accordingly, prays that the order of the CIT(A) be upheld and appeal of the Revenue be dismissed.

23. The Assessee humbly requests Your Honours to kindly take the above submissions on record and kindly consider the contentions of the Assessee while passing a suitable order as a conclusion of the present appeal and oblige.

24. For this act of kindness, the Assessee shall forever remain grateful."

5. Considered the rival submissions and material placed on record, we observe from the record that similar issue was considered and decided by the Coordinate Bench in A.Y. 2006-07 and 2007-08, for the sake of clarity, the decision of the Coordinate Bench in assessee's own case in ITA.No. 3121/Mum/2022 dated 24.02.2023 for the A.Y. 2006-07 is reproduced below: -

"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 1 st 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."

6. Further, it is brought to our notice that in consequent to the order of the ITAT in A.Y. 2007-08 the consequential order u/s. 143(3) r.w.s. 254 of the Act is passed for the A.Y. 2007-08 in which the Assessing Officer has passed the consequential order accepting the findings of the ITAT which is reproduced below: -

"5. Upon hearing, considering the submissions made, documents/evidences produced, and information available on record, as discussed herein-in-above, the total income of the assessee for assessment year 2007-08 is recomputed as under:-

6. *Computation of total income:*

<u>I</u>	<u>Business Income</u>	<u>In Rs.</u>
	<i>Loss as per Computation</i>	<i>(-) 98,47,450/-</i>
<i>Less:</i>	<i>Interest Income Treated separately</i>	<i>1,20,912/-</i>
		<i>(-) 99,68,362/-</i>
<i>Add:</i>	<i>Software Expenses (Para 4)</i>	<i>1,80,180/-</i>
	<i>Business Loss</i>	<i>(-) 97,88,182/-</i>
	<i>Income From Other Sources</i>	
	<i>Interest Income</i>	<i>1,20,912/-</i>
	<i>Assessed total Loss</i>	<i>(-) 96,67,270/-</i>

Since there is a book loss the computation of book profits u/s. 115JB is not done."

7. Similarly, the Coordinate Bench in A.Y. 2011-12 has accepted the plea of the assessee and decided the issue in favour of the assessee. The relevant order is placed on Paper Book filed by the assessee.

8. Respectfully following the above said decision, we are inclined to decide the issue under consideration for the A.Y. 2009-10 in favour of the assessee and it is also fact on record that revenue has proceeded to file the appeal before Hon'ble High Court in A.Y. 2011-12, however, it does not alter the status of the issue decided in favour of the assessee by the Coordinate Benches. Accordingly, appeal filed by the revenue is dismissed.

9. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 31st May, 2023

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER
Mumbai / Dated 31/05/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum