

आयकर अपीलिय अधिकरण
मुंबई पीठ "ए" मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य, एवं
श्री एस. रिफौर, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" BENCH
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER
आ.आ.सं. २३७८/मुंबई/२०२१ (नि.व. २०१७-१८)
ITA No.2378/MUM/2021 (A.Y.2017-18)

Assistant Commissioner of Income Tax, CC-6(4)
Room No.1925, 19th Floor,
Air India Building, Nariman Point
Mumbai-400 0021

..... अपीलार्थी/ Appellant

बनाम Vs.

Airmid Real Estate Limited
M-62 & 63, 1st Floor,
Cannought Place, New Delhi
Delhi-110 001
PAN No. AAGCA3346L

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Manoj Kumar Sinha, Sr. AR

प्रतिवादी द्वारा/ Respondent by : Shri K. Gopal, Advocate

सुनवाई की तिथि/ Date of hearing : 15/03/2023

घोषणा की तिथि/ Date of pronouncement : 23/05/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-54, Mumbai (hereinafter referred to as "the CIT (A)") dated 28.09.2021, for the assessment year 2017-18.

2. The facts of the case in brief as emanating from records are: The assessee is a real estate developer. The assessee filed its return of income for AY 2017-18

declaring total income as Nil. The return of assessee was selected for scrutiny under CASS. In assessment proceedings, the Assessing Officer (AO) *inter-alia* disallowed following expenditure claimed by the assessee:

1. Advertisement Expenses of Rs.19,47,928/-;
2. Brokerage & Marketing Expenses of Rs.4,96,03,997/-.

The reason for disallowing aforesaid expenditure by the AO was, since, the assessee has not recognised any revenue from its real estate project during the year, the assessee ought to have capitalised advertisement expenses, brokerage and marketing expenses. Aggrieved by the assessment order dated 24.12.2019, the assessee filed appeal before the CIT(A). The First Appellate Authority after considering the submissions of assessee, ICDS as notified by the CBDT, provisions of the Act and various decisions, held that even if no income is earned from the business during the year, the business expenditure which is otherwise allowable has to be allowed. Thus, the CIT(A) reversed the findings of AO and held that Advertisement, Brokerage and Marketing Expenses are allowable u/s 37 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Hence, the present appeal by the Revenue.

3. Shri Manoj Kumar Sinha appearing on behalf of the Revenue supporting the assessment order submitted, that since the assessee has not recognised revenue from the project, the expenditure towards advertisement, brokerage and marketing cannot be allowed. The AO has rightly observed that such expenditure have to be capitalised and should be added to work in progress. The Ld. Departmental Representative (DR) prayed for reversing the findings of CIT(A) on this issue.



4. Per contra, Shri K. Gopal appearing on behalf of the assessee vociferously defended the impugned order. The Ld. Counsel submitted that the assessee is engaged in the business of real estate development and is following Project Completion Method for recognising the profit. Admittedly, no profit/revenue was received by the assessee from the business of real estate development in the impugned assessment year. Whereas, the assessee had incurred expenditure towards advertisement, brokerage and marketing of the project. The quantum of expenditure has not been doubted by the Assessing Officer (AO). The only reason for disallowing aforesaid expenditure by the AO is that the assessee has not recognised any revenue from real estate project. The Ld. Counsel submitted that during FY 2016-17, the assessee paid total brokerage and marketing expenses of Rs.4,96,03,997/-. Substantial amount of brokerage Rs.4,92,11,508/- was paid to Indiabulls Distribution Services (hereinafter referred to as "Indiabulls"). The Ld. Counsel referred to details of brokerage and marketing expense (at page 15 of the paper book). He pointed that brokerage has been paid to Indiabulls in accordance with agreement dated 17.03.2019 between assessee and Indiabulls. The said agreement is at page 86 to 95 of the paper book. The Ld. Counsel submitted that Indiabulls was engaged as consultant for marketing and selling residential units for the housing project namely "Indiabulls Sierra". Indiabulls was entitled to commission/brokerage on the booking of units sold through them at a rate mutually agreed between the parties specified in Annexure-B to the agreement. The Ld. Counsel further referred to debit notes raised by Indiabulls (at page 51, 56, and 64 of the paper book). He further asserted that advertisement, brokerage and marketing expenses are towards the sale of finished units. Hence, such expenditure cannot be capitalised. The expenditure are wholly and exclusively for the purpose of business and are revenue in nature, hence, allowable u/s 37 of the Act. In

support of his submissions, the Ld. Counsel placed reliance on the decision in the case of DCIT vs. Macrotech Developer Limited, 192 ITD 438 (Mumbai-Trib.).

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. We have also considered the documents and the decision on which the Id. Counsel for assessee has placed reliance. The short issue in appeal before us is with respect to allowability of advertisement, brokerage and marketing expenses as revenue expenditure. There is no dispute with regard to quantum of expenditure. The assessee is engaged in the business of real estate development. Undisputedly, in the period relevant to the assessment year under appeal, the assessee has not recognised any revenue from real estate business. However, the assessee has claimed advertisement expenses Rs.19,47,928/- and expenditure towards brokerage and marketing Rs.4,96,03,997/-. The contention of the Revenue is that since, no profit has been recognised from the real estate project in the impugned assessment year, the aforesaid expenditure cannot be allowed as revenue, the assessee ought to have capitalised it. In First Appellate Proceedings, the CIT(A) decided the issue in favour of assessee holding expenditure as revenue allowable u/s 37 of the Act. We are of considered view that the assessee is following project completion method for recognising revenue, any expenditure incurred towards advertisement, marketing and sales of completed units cannot be held as capital in nature. Method of recognition of revenue would not determine the nature of such expenditure. Advertisement and marketing expenditure are revenue in nature, hence, cannot form part of work in progress.

6. In the case of DCIT vs. Macrotech Developer Limited (supra), the AO had disallowed sales promotion expenses and advertisement expenses and capitalised the same to work in progress. The CIT(A) reversed the findings of AO. The Revenue

carried the issue in appeal before Tribunal. The Tribunal upheld the findings of CIT(A) by observing as under:

"8. We have deliberated at length on the issue in hand in the backdrop of the orders of the lower authorities and the contentions advanced by the Id. Authorized representatives for both the parties. Admittedly, the assessee had incurred the sales promotion expenses of Rs.2,02,86,4524 and advertisement expenses of Rs.6,68.13.114/- for launching of its project and attracting the customers. The AO had treated the aforesaid expenses as a part of the project cost i.e. WIP cost, and thus, declined the assessee's claim for deduction of the same as a revenue expenditure. In our considered view, as observed by the Id. CIT(A), and rightly so, the safes promotion expenses, advertisement etc. cannot be capitalized to work-in-progress as per the Accounting Standards prescribed for the real estate sector as well as the accepted accounting policies and judicial pronouncements. The assessee had consistently been following the method of valuing its inventory in accordance with AS-2. We find that Accounting Standard 2 (AS 2) provides as under:

"Other costs are included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition. For example, it may be appropriate to included overheads other than production overheads or the costs of designing products for specific customers in the cost of inventories."

Further, Para 13 of the AS-2 provide for some exclusions from the cost of inventories as under:

"Exclusions from the Cost of Inventories:

In determining the cost of inventories in accordance with paragraph 6, it is appropriate to excluded certain costs and recognise them as expenses in the period in which they are incurred. Examples of such costs are:

- (a) Abnormal amounts of wasted materials, labour, or other production costs;*
- (b) Storage costs, unless those costs are necessary in the production process prior to a further production stage;*
- (c) Administrative overheads that do not contribute to bringing the inventories to their present location and condition, and*
- (d) Selling and distribution costs."*

On a perusal of the aforesaid, we find that the selling and distribution costs, advertisement expense etc. are to be excluded from the cost of inventories as they do not contribute towards bringing the inventories to their present location



and condition. Our aforesaid view that selling costs are no to be considered as a part of the project cost i.e. WIP cost is also supported by the "Guidance Note on Accounting for Real Estate Transactions" (Revised 2012) wherein at Para 2.4(b) it is provided that selling costs are not to be considered as part of the construction costs and development costs. Further, we find that the Hon'ble High Court of Delhi in the case of Gopal Das Estates & Housing (P) Ltd. v. CIT [2019] 103 taxmann.com 334/263 Taxman 8/412 ITR 489, had observed, that that the expenditure incurred on advertising being necessary for promotion of its business is to be allowed as a business expenditure and would not form part of the project cost."

(Emphasized by us)

7. The Co-ordinate Bench after considering Accounting Standard 2, decision of Hon'ble Delhi High Court and various other decisions, concluded that advertisement and sales promotion expenses incurred by assessee engaged in real estate development are allowable as revenue expenditure u/s 37(1) of the Act.

8. We find no infirmity in the findings of CIT(A). The impugned order warrants no interference on this issue, ergo, appeal of the Revenue is dismissed.

Order pronounced in the open court on Tuesday the 23rd day of May 2023.

Sd/-

(S RIFAUR RAHMAN)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai,

दिनांक/Dated: 23/05/2023

Mahesh R. Sonavane

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER



प्रतिलिपी अग्रेषित Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/The Respondent.
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधी, आय. अपी. अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाईल/Guard file.

BY ORDER,

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(Dy. /Asst. Registrar)/
Sr. Private Secretary
ITAT, Mumbai