

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1089/Bang/2022
Assessment year : 2017-18

M/s Beau Jhelum Traders and Developers Pvt. Ltd., No.414, 3 <sup>rd</sup> Cross, SG Palya, Lavelle Road, Bangalore-560 029.  <b>PAN - AACCB 4201 B</b>	Vs.	The Asst. Commissioner of Income Tax, Circle-1(1)(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Sunaiana Bhatia, C.A
Revenue by	:	Shri Sunil Kumar Singh, CIT (DR)

Date of hearing	:	04.07.2023
Date of Pronouncement	:	31.08.2023

**ORDER**

***Per Beena Pillai, Judicial Member***

The present appeal arises out of order dated 20/07/2022 passed by the Ld.CIT(A)-11, Bengaluru for assessment year 2017-18 on the following grounds of appeal:-

*“1. The Learned CIT erred in sustaining addition of Rs. 70,43,053/- on the reason that the appellant is following percentage completion method with accordance with Accounting Standard 7 issued by Institute of Chartered Accountants of India, New Delhi.*

2. *The Learned CIT erred in holding that expenditure of Rs. 2,00,00,000/-incurred in AY2016-17 instead of AY2017-18 as the expenditure was incurred in January,2017 as per cancellation of 'Memorandum of Agreement' dated 1801-2016 Clause No 2 of the said agreement.*

3. *The Learned CIT erred in holding that the said expenditure is in nature of Capital Expenditure and not Revenue Expenditure, though the said expenditure incurred for carrying out business operations of appellant and is allowance u/s 37 if Income Tax Act.*

4. *The Learned CIT erred in not examining the issue in true prospective as the expenditure incurred not for purpose of acquiring of any Capital Assets rather was incurred for compensating the loss suffered by Mr. Dev Roy and which is in revenue nature.*

5. *The Learned CIT erred in not considering the fact that the impugned expenditure is incurred and paid to the buyer on the reason that appellant failed for untimely delivery of constructed area to the buyer and resorted to buy back due to failure of fulfilling commitment within the time frame.*

6. *That the appellant craves leave to add to, alter, and amend modify, substitute, delete and or rescind all or any of the grounds of appeal on or before the final hearing, if necessary, so arises. Your appellant humbly prays that the appeal may be allowed and Justice rendered.”*

2. **The Brief facts of the case are as under:-**

The assessee is a private limited company and said to be engaged in the business of construction of commercial buildings for the purposes of sale and letting out. For the year under consideration, it had filed return of income declaring total income of Rs.5,91,38,960/-. The return was selected for scrutiny and statutory notices were issued to the assessee. In response to the statutory notices, the assessee filed submissions, which were

examined by the Ld.AO. The Ld.AO noted that the assessee had claimed project expenses amounting to Rs.20,09,00,560/-. In the breakup of the expenses the Ld.AO noted that the assessee had paid a sum of Rs.2 crores as compensation. The Ld.AO was of the opinion that the compensation cannot be considered as project cost as it is directly linked to buy back of built up area of the assessee, which is attributable directly to cost of capital. The Ld.AO arrived at such conclusion as assessee had shown brought back built up space as capital assets. The Ld.AO opined that as the 75% of project is capital asset, the amount paid acquiring the asset should have been capitalized as cost for capital asset. He thus, disallowed the sum of Rs.2 crores being compensation for buying back of built up space.

3. Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the ld.CIT(A).

4. Before the Ld.CIT(A), it was submitted that the assessee had claimed expenditure relating to certain compensation claimed to have been paid to a buyer with whom it had entered with agreement to sell some of built up area. The assessee had submitted that it had entered into an agreement to sell built up area with one Mr. Dev Roy on 02/05/2012. It is submitted that over the years, the assessee had received advance payment of

Rs.9,69,77,000/- as on 01/04/2015. The assessee submitted that during the year under consideration, it had to pay compensation of Rs. 2 crores over and above the advance paid to the said buyer who cancelled the agreement. It was submitted by the assessee that the agreement was cancelled as assessee was unable to timely deliver of the constructed built up area to the buyer. The assessee had restored to buy back and thus returned the amount received from the buyer along with the compensation for non fulfilling the agreement.

4.1 The assessee submitted before the Ld.CIT(A) that assessee had claimed Rs.70,40,053/- as revenue expenditure during the year under consideration as against Rs.2 crores. The assessee thus submitted that the compensation was paid due to assessee's default in non delivering the project within the time and that the amount also paid towards breach of sale agreement, where the buyer had right to sue for specific performance. The assessee relied on the following decision in support of its claim:-

- 1) *Kellogg India Pvt. Ltd., Vs. ACIT [2020] 121 taxmann.com 303 (Mum-Trib)*
- 2) *PCIT Vs. Mazda Ltd [2017] 250 Taxman 510 (Guj)* 3) *Gopal Das Estates & Housing Pvt. Ltd., Vs. CIT [2019] 103 taxmann.com 334 (Delhi)*

4.2 The Id.CIT(A) after considering the argument of the assessee and on perusal of cancellation agreement dated

03/02/2016 and 18/01/2016 observed and held as under:-

*The cancellation agreement dt.18.01.16 specifies the amount to be paid by the buyer. As per the same the appellant had agreed to pay back an advance amount of Rs.9,69,77,000/- and an additional amount of Rs.2,00,00,000/- towards cancellation of the agreement and buy back of built up space to the buyer. The amount was to be paid in 5 installments spread over FY 2016-17. The relevant part of the agreement is reproduced as follows:*

DEED OF CANCELLATION OF MEMORANDUM OF AGREEMENT

THIS DEED OF CANCELLATION OF MEMORANDUM OF AGREEMENT IS MADE AND EXECUTED ON EIGHTEENTH OF JANUARY TWO THOUSAND AND SIXTEEN (18.01.2016) AT BANGALORE:

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4. **AND WHEREAS** now the Third Party due to unavoidable circumstances has decided to withdraw from the aforesaid agreement and has decided to cancel the same. The Developer / Promoter / First Party has expressed their no objection for the same and the Parties have decided to reduce their Agreements into writing. Hence, this Deed of Cancellation.

NOW THIS DEED WITNESSETH AS FOLLOWS:

1. In pursuance of the foregoing, the parties hereto agree that an Construction of Agreement dated 02.05.2012 is hereby cancelled.
2. The Second Party has agreed to pay back a advance amount of Rs.9,69,77,000/- (Rupees Nine Crore sixty nine lakh seventy seven thousand only) and additional amount of Rs.2,00,00,000/- (Rupees two crores only) towards cancellation of agreement and buyback of built-up space to the third party as follows:
  - A) Rs.1,00,00,000/- during May, 2016
  - B) Rs.2,00,00,000/- during August, 2016
  - C) Rs.1,50,00,000/- during October, 2016
  - D) Rs.5,19,77,000/- during December, 2016
  - E) Rs.2,00,00,000/- during January, 2017

For BEAU JHELIUM TRADERS,  
DEVELOPERS P. LTD.

*However, a perusal of the ledger account relating to the buyer namely Mr Dev Kumar Roy in the books of the appellant shows that as on the date of cancellation agreement (executed on 18.01.2016) the advance payment received was Rs 11,69,77,000/- and not Rs 9,69,77,000/- as mentioned in that agreement. The account as in books of the appellant is reproduced as follows:*

Beau Jhelum Traders & Developers Pvt Ltd- 2015-16  
No 41/4, 3rd Cross,  
S G Palya,  
Bangalore

Adv- Dev Kumar Roy  
Ledger Account

1-Apr-2015 to 31-Mar-2016

Date	Particulars	Vch No.	Debit	Page 1 Credit
1-4-2015	Dr Opening Balance			11,69,77,005.00
29-1-2016	Cr Ktda Mahesh Bank-D114021 Cheque 832	29-1-2016	50,00,000.00 Cr	
	Being amount transferred to Dev Kumar roy Entered By prakash			
	Cr Ktda Mahesh Bank-D114021 Cheque 831	29-1-2016	75,00,000.00 Cr	
	Being amount transferred to Dev Kumar roy Entered By prakash			
2-2-2016	Cr Ktda Mahesh Bank-D114021 Cheque 835	2-2-2016	75,00,000.00 Cr	
	Being RTGS made to Dev Roy Entered By prakash			
			2,50,00,000.00	11,69,77,005.00
			2,69,77,005.00	
	Cr Closing Balance		11,69,77,005.00	11,69,77,005.00

*From this it is further noted that an amount of Rs 2 crore was paid by the appellant to the buyer in FY 2015-16 itself after the execution of the cancellation agreement. The details of such payments are as follows:*

*29.01.2016 Rs 50,00,000/- vide cheque no 832  
29.01.2016 Rs 75,00,000/- vide cheque no 831  
02.02.2016 Rs 75,00,000/- vide cheque no 835*

*This shows that the agreement was actually executed after 02.02.2016 but pre dated to 18.01.2016. The other cancellation agreement was executed on 03.02.2016, but the same does not refer to any compensation.*

*4.3 The above facts reveal that the compensation, if any, had already been paid by the appellant during the FY 2015-16 relevant to the AY 2016 17 and not in the year under consideration. The cancellation agreement refers to*

*total payment of Rs 1 1,69,77,000/-, which relates to the amount outstanding as on the date of such agreement and not the compensation which had already been paid, although a reference to the same is included in the cancellation agreement. However, the entries in the books of account were altered to show that compensation was paid on 21.01.2017 i.e. in FY 2016-17 rather than in FY 2015-16. As such the payment made does not relate to the year under consideration. It accrued in FY 2015-16 and paid in that year itself. For this reason alone, the same could not have been claimed as expenditure during the year under consideration even if it was revenue expenditure. So the action of the AO in disallowing the same needs to be upheld, although for the reasons as above.*

Aggrieved by the order of the Ld.CIT(A), the assessee preferred appeal before this *Tribunal*.

5. At this juncture, the Ld.AR submitted that there is delay of 82 days in filing the present appeal before this Tribunal. The reason for delay in filing the appeal has been submitted in the Affidavit filed by the Director of assessee company dated 04/11/2022. It is submitted that the Director of assessee company had handed over the appellate order passed by the Ld.CIT(A) to the Tax Consultant to be handed over to the concerned CA for

necessary steps and actions. He has submitted that CA has filed the present appeal due to prior professional commitments and thus the delay of 82 days has been caused. In support, he placed reliance on the decision of *Hon'ble Supreme Court* in the case of *Collector, Land Acquisition vs. Mst. Katiji reported in (1987) 167 ITR 47*.

5.1 The Ld.DR on the contrary vehemently did not agree with the reasoning provided by the assessee to be bonafide.

5.2 We perused the submission advanced by both sides. Admittedly, there is a delay of 82 days in filing the present appeal before this Tribunal. The bonafide reason for such delay was stated by the assessee in the Affidavit dated 04/11/2022 is due to the illness of the assessee and that assessee could not inform his authorized representative regarding the receipt of the impugned orders. We do not find any malafide intention of the assessee in causing such delay to file the present appeal.

6.3 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non deliberate delay. We have to prefer substantial justice rather than technicality in deciding the issue. As observed by *Hon'ble Supreme Court* in case of *Collector*

*Land Acquisition Vs. Mst. Katiji & Ors.(supra)*, if the application of the assessee for condoning the delay is rejected, it would amount to legalise injustice on technical ground when the *Tribunal* is capable of removing injustice and to do justice. We are satisfied that the delay in filing the appeal was due to reasonable and sufficient cause and the delay in filing the appeal deserves to be condoned. **Respectfully following the above view, we condone the delay of 82 days in filing the appeal before this Tribunal and allow the application filed by the assessee on 28/11/2022.**

6. Coming to the merits of the case, the only issue to be considered is whether the compensation paid by the assessee to the buyer on account of delay in handing over possession of property is to be considered as revenue expenditure or to be capitalized as capital, work in progress.

6.1. The Ld.AR submitted that the assessee and the said buyer had entered into an agreement for purchase of property along with the construction agreement on 02/05/2012. Subsequently, over a period of time due to non fulfilment of the condition, this agreement was cancelled on 18/02/2016, which was as per the terms of the agreement. The Ld.AR submitted that for the year under consideration, the assessee had claimed a sum of

Rs.70,43,053/- to be expenses as additional cost paid to the buyer under the cancellation agreement dated 18/01/2016. The reliance is placed by the Ld.AR at page 92, wherein deed of cancellation has been placed. The Ld.AR brought to the notice of this *Tribunal* that the assessee was suppose to pay towards cancellation of the agreement and buy back of built up space in a particular schedule more particularly mentioned in clause (ii) of the deed. The same is reproduced here under:-

*“2. The Second Party has agreed to pay back a advance amount of L. Rs.9,69,77,000/- (Rupees Nine Crore sixty nine lakh seventy seven thousand only) and additional amount of Rs.2,00,00,000/- (Rupees two crores only) towards cancellation of agreement and buyback of built-up space to the third party as follows:*

- A) Rs. 1,00,00,000/- during May, 2016*
- B) Rs.2,00,00,000/- during August, 2016*
- C) Rs. 1,50,00,000/- during October, 2016*
- D) Rs.5,19,77,000/- during December, 2016*
- E) Rs.2,00,00,000/- during January, 2017*

6.2 It has submitted by the Ld.AR that the entire advance amount paid by Shri Dev Roy amounting to Rs.9,69,77,000/- was returned back by the assessee with an additional amount of Rs.2 crores towards the cancellation of the said agreement. It is submitted that a sum of Rs.2 crores was to be paid on 07/01/2017, which is relevant to the financial year under consideration. It is

submitted that the Ld.AR that the compensation amount does not have any relation with the cost towards the sale of area and, therefore, cannot be treated as capital expenditure. It is submitted that the said amount was payable by the assessee was towards extraneous consideration and, therefore, has to be allowed as expenditure in the hands of the assessee.

7. On the contrary, the Ld.DR submitted as under:-

*“2. It is seen from the ledger account submitted by the assessee pertaining to the buyer Dcv Kumar Rai on Page no 44 and 45 in its written submission that the payment for the property was made in Financial Year 2013-14 and 2014-15. The assessee contends that this advance was already offered to tax as revenue recognized for the financial year 2013-14 and 2014-15. The assessee claims that since the advance was already offered to tax, therefore, the compensation paid to the buyer is eligible to be claimed as a revenue/project expenditure by the assessee.*

*In the written submissions the assessee has also submitted the details of the total saleable area revenue recognized during the year and the expenses claimed against the said revenue on Page no 49 of the written submission. The assessee follows percentage completion method for revenue recognition.*

*3. The contentions of the assessee have been duly perused. However, it is observed that the agreement to sale was entered into in Financial Year 20.12-13. The ,payment was made by the buyer in different tranches in FY 2013-14 and 201.4-15 as evident from the ledger account submitted by the assessee. The assessee has not explained how and to what extent this advance received from the assessee was offered to tax. On Pg No. 30 of his written submission the assessee has clearly stated that at the time, of entering into agreement of sale with the buyer i.e. on 02.05.2013, the project had not begun and no specific area had been identified with the buyer towards the purchase. The assessee further states on Page 30 para 2 of written submission that the agreement for*

sale was for the purchase of the built up space in the completed building. Thus, at least till FY 2012-13 till the time of entering into the agreement for sale on 02.05.2012, no construction work had started by the assessee. On page no 49 of its written submission, the assessee has submitted that in FY 2013-14, the total advance received was 53.66 Cr against which the assessee had recognized revenue of 22.87 Cr and claimed expenses of Rs 21.29 Cr. Similarly, in FY 2014-15, the total advance received was 45.64 Cr against which the assessee had recognized revenue of 9.04 Cr and claimed expenses of Rs 8 Cr. The assessee as per the table on Page 49 has mentioned that in FY 2016-17, the project got completed. When the assessee completed the project in FY 2016-17, the rationale behind cancellation of agreement on 18.01.2016 cannot be fathomed since the assessee would have been in position to hand over the possession of the built up space to the buyer anytime soon. This fact gets further elucidated from page no 26 of the written submission wherein the assessee has mentioned that it had originally planned to construct 1,70,000 sq ft as per the JDS dated 9.11.2009 and supplementary JDA dated 07.03,2011. However, it was unable to complete construction of 20,000 sq ft due to height restrictions by AAI. Thus, the constructed space available with the assessee was 1,50,603 out of which it capitalized 80,000 to be rented out and 53,709 sq ft was disclosed as revenue. Balance 16,894 sq feet remained as closing stock for sale. On 31.3.2017 the assessee sold the entire 53,709 sq feet. It may be noted that the assessee paid back the compensation amount to the buyer only on 21.01.2017. By that time the assessee had completed the entire project. Thus, there was no rationale behind cancelling the agreement with the buyer when the property could have been duly handed over.

4. Moreover, the assessee has capitalized 80,000 sq feet of space. Whether the space which was bought back from the buyer falls in this space which was capitalized? This fact cannot be ascertained as the assessee at the time of entering into agreement for sale with the buyer had not specified the space, a fact which has been admitted by the assessee in its written submission page no 29 Para 2. Thus, how can the assessee contend that this compensation cannot be ascribed to the portion of the property which was capitalized? Moreover, the cancellation agreement provided at page no 96

of the written submission mentions that the buyer had entered into agreement for sale of commercial area admeasuring 11325 sq ft. The assessee has capitalized the commercial area of 80,060 sq feet which it is offering for rent. Hence, the compensation paid for this space should be capitalized.

5. Further, the assessee has furnished copy of the construction agreement. The terms and conditions of the construction agreement Para 5 of the said document on Page 84 of the Written Submission, mentions that the property is required to be completed within 36 months of from the day of construction agreement with a grace period of 6 months. In case of delay in delivery of the unit the interest @ 8% per annum from the date of default till the compliance of obligation by the assessee and the damages are to be paid on 5th day of every English Calendar Month. Further, as per para 5.3 of the construction agreement on Page 85 of the written submission, it is mentioned that over and above this amount a sum equivalent to 10% of the amount paid under this agreement shall be paid as liquidated damages if the assessee is unable to complete the construction as per the terms and conditions of the contract. The cancellation agreement however, does not mention the reason for which the construction and agreement to sale has been cancelled except for mentioning unavoidable reasons. Moreover, how the amount of Rs 2 Cr was decided as compensation has also not been mentioned and clarified by the assessee when the agreement clearly mentions the reason for which it can be cancelled and the compensation to be paid by the assessee to the buyer in the event of such cancellation.

6. The saleable area of 53000 sq feet already sold by 31.3.2017. The assessee had also offered entire revenue to tax in FY 16-17 itself. The construction agreement was signed on 02.05.2012. This means that the construction should have been completed by Nov- Dec 2015 after taking into consideration the grace period of 6 months. Thus, there does not appear to be a prima facie cause for cancellation of the agreement.

7. Further, the agreement to sale was cancelled on 03.02.2016 and the construction agreement was cancelled on 18.01.2016 whereas the compensation was paid by the assessee only on 21 January 2017. The compensation ought

*to have been paid in AY 2016-17. Even if the assessee wanted to claim it as a business expenditure it should have been in AY 2016-17 and not in AY 2017-18 as the assessee follows Mercantile System of accounting. This is not a contingent liability which can be deferred but ascertained liability which should have been booked in AY 2016-17 itself once the agreement got cancellation.*

*8. Notwithstanding the above, by returning back the advance received from the buyer the assessee has taken over the possession of the commercial space its books and capitalized the same and any expenditure incurred on it should be capitalised.”*

7.2. We have heard the rival submissions and perused the materials on record. Admittedly, the assessee is a developer and builder and is in the business of construction. The assessee during the year 2012-13 entered into agreement of sale and construction with one Mr. Dev Roy on 02/05/2012. As per the said agreement, Shri Dev Roy paid advance to the assessee sum of Rs.9,69,77,000/- towards purchase of built up space in the completed buildings. The agreement was subsequently cancelled in asst. year 2016-17 and the entire money received from Shri Dev was refunded along with compensation that was paid on 21/01/2017. The relevant clause of the construction agreement dated 25/02/2012 is necessary to be noted at this juncture that reads as under:

*“5.2) In case of delay in delivery of the unit other than for reasons constituting force majeure, the Second Party shall pay the First Party interest on the amounts paid up to that date by*

*the First Party to the Second Party both under the Agreement to Sell and under this Construction Agreement at the rate of 8% per annum from the date of default till compliance of the obligations by the Second Party and the damages being payable every month on or before 55<sup>th</sup> day of every English Calendar Month. The Second Party is aware that the First Party has made and will make substantial payments for both purchase of Schedule ' B' Property and also towards cost of construction of Schedule ' C' Unit and hence payment of interest is stipulated at the rate stated above. The Second Party agrees to pay the said interest accordingly without any default. It is further agreed that without prejudice to what is stated above, the First Party is entitled to offset the defaulted payment of interest with the future payments but this will not entitle the Second Party to avoid payment of interest as aforesaid. However, if the delay is on account of First Party seeking modifications in Schedule ' C' Property there is no liability on the Second Party to pay any damages as aforesaid.*

*5.3) The Second Party assures the First Party that they would sincerely adhere to the time lines stipulated under this agreement and in any event comply with their obligations in Para-5.1 without delay. If in the event of the Second Party not meeting the schedule of construction in terms of this agreement as a result of which the Second Party is unable to comply with their obligations in Para-5.1, the First Party in addition to the entitlement of damages stipulated in Para-5.2 above, is also entitled to take such action as is appropriate at his discretion including withdrawal from this Construction Agreement and the Agreement to Sell and securing refund of the amounts paid herein with the damages at the aforesaid 8% per annum interest and also a sum equivalent to 10% of the amounts paid under this Agreement, till then as liquidated damages on account of default by the Second Party.*

7.3. A perusal of the above clause of the agreement, clearly show that the covenant for payment of compensation for delay in handing over of possession of constructed built-up area is contained in the agreement and, the assessee was bound to compensate the Shri

Devin the case of delay in handing over of possession of the constructed built up area beyond a reasonable time. It is noted from the assessment order that disallowance was made by observing as under:-

*“4.2 Assesse submission is examined, it was observed that, project expenses claimed during the year for the revenue declared is Rs.20,09,00,560/-.The breakup of expenses were examined and observed that there 2 expenses like compensation & rates & taxes were more than crore When further enquiry it was observed that compensation of Rs.2Cr and Taxes on occupancy certificate of Rs.3.15Cr was paid during the year. As rates & taxes is related to complete building and paid during the year same is accepted as project cost. Where as compensation is not project cost. Compensation is directly linked to the buy back of built up area by assessee, which is attributable directly to cost of capital but not into project.*

*4.3 Assessee is showing the brought back built up space as capital assets. When there is no sale of asset, all the pending inventory is capitalized by the company .Same was declared in ITR also stating balance work in progress is only for capital asset. Hence, in matching principle also the compensation paid is not linked to the revenue declared but for the capital work in progress which is capitalized.*

*4.4 As the 75% of project is capital assets and the amount paid is for acquiring the asset for capital asset, it should have been capitalized as cost for capital asset. Expenditure claimed as project expenses is capital in nature not for the revenue declared during the year. Hence, same is disallowed u/s 37 of IT Act as capital in nature and also on matching principle as not linked to the; revenue declared during the year. Therefore, a sum of Rs. 2,00,00,000/- being compensation for buy back of built up space is disallowed and brought to tax.”*

7.4. Also on perusal of the impugned order, the Ld.CIT(A) is not doubting the compensation having paid by the assessee. The Ld.CIT(A) is dismissing the claim of assessee by observing that the date of agreement for

cancellation related to payment of compensation that falls in the asst. year 2016-17 and, therefore, assessee could not claim it in asst. year 2017-18. It is noted that the compensation was paid for delay in handing over of possession of the property, the liability to pay such compensation arose in the course of business of assessee. The amount paid by the assessee was certainly on account of business expediency.

7.5. The assessee is placed, bank account where payment has been made to Shri Dev towards compensation at page 48. We note that the date of payment is 20/01/2017, and, therefore, the observation of the Ld.CIT(A) that payment is to be commensurate to the date of cancellation agreement cannot be accepted. Though the agreement to cancel the construction was entered into by assessee with Shri Dev in the year 2016 but the payment was actually made in the year 2017 relevant to the assessment year under consideration. We, therefore, direct the Ld.AO to allow the claim towards proportionate compensation of Rs.70,053/- made by the assessee for the year under consideration as business expenditure in the hands of the assessee.

**Accordingly the grounds raised by the assessee stands allowed.**

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

Order pronounced in court on 31<sup>st</sup> August, 2023

Sd/-

**(CHANDRA POOJARI)**

Accountant Member

Sd/-

**(BEENA PILLAI)**

Judicial Member

Bangalore,  
Dated, 31<sup>st</sup> August, 2023  
/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.