

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 366/Del/2019  
Asstt. Year: 2014-15

Assotech Moonshine Urban Developers Pvt. Ltd. 148-F, Pocket-IV, Phase-1, Mayur Vihar, Delhi 110 091 PAN AAECM8184A	Vs.	ACIT Circle-3(2) New Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by:	Ms. Rano Jain, Advocate
Department by :	Shri Zafarul Haque Tanweer, CIT DR
Date of Hearing	25/01/2024
Date of pronouncement	21/ 02/2024

**ORDER**

**PER ASTHA CHANDRA, JM**

The appeal filed by the assessee is directed against the order dated 16.11.2018 of the Ld. Astt. Commissioner of Income Tax, Circle-3 (2), New Delhi ("**AO**") pertaining to the Assessment Year ("**AY**") 2014-15.

2. The assessee has raised the following grounds:

"1. That on the facts and in the circumstances of the case and in law, the Order passed by the Learned AO assessing the total income of the Appellant at INR 63,88,750 as against the returned loss of INR 5,10,67,809 in pursuance to the directions given by the Hon'ble Dispute Resolution Panel (DRP) is bad in law and void ab-initio.

2. *That on the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in sustaining the additions/ disallowances of INR 5,12,89,562 made by the Ld. AO on account of advertisement expenses being capital in nature and disregarded the evidences submitted by the Assessee and disallowed the same holding that these are not project expenses done for earning revenue during the year is erroneous and bad in law;*

3. *That on the facts and in the circumstances of the case and in law, the Hon'ble DRP erred in sustaining the additions/ disallowances of INR 61,67,000 made by the Ld. AO on account of brokerage expenses being capital in nature and disallowed them holding that these are not project expenses done for earning revenue during the year is erroneous and bad in law;*

4. *Without prejudice to the above grounds, that on the facts and circumstances of the case and in law, AO erred in issuing demand notice under section 156 of the Act, without appreciating that once they allow complete credit of TDS as appearing in the Form 26AS of the Assessee no demand will be payable and refund will arise payable to the Assessee.*

5. *That on the facts and circumstances of the case and in law, the AO has erred in levying / charging interest under sections 234A and 234B of the Act.*

6. *That on the facts and in the circumstances of the case and in law, the Id. AO has erred in not initiating penalty proceedings under section 271(1)(c) of the act mechanically and without recording any adequate satisfaction of such initiation;*

*The above grounds are independent and without prejudice to each other.*

*The Appellant craves leave to alter, amend, modify, or withdraw all or any of the grounds herein or add any further grounds as may be considered necessary at any time either before or during the hearing."*

3. Briefly stated, the assessee company is engaged in the business of development and sale of real estate related activities. For AY 2014-15, it e-filed its return declaring loss of Rs. 5,07,42,314/- on 29.11.2014, later on revised to Rs. 5,10,67,809/-. The case was selected for scrutiny under CASS. Statutory notice(s) issued/served upon the assessee. Necessary details called for were submitted and examined by the Ld. AO. He completed the assessment on total income of Rs. 63,88,750/- in pursuance to the directions given by the Hon'ble Dispute Resolution Panel ("**DRP**") including

therein disallowance of Rs. 5,12,89,562/- on account of advertisement and business promotion expenses and disallowance of Rs. 61,67,000/- on account of brokerage expenses in his order dated 16.11.2018 passed under section 143(3) r.w. section 144C of the Income Tax Act, 1961 **(the "Act")**.

4. Aggrieved by the said disallowances, the assessee is in appeal before the Tribunal and Ground No. 2 and 3 relate thereto. Ground No. 1 is of general nature. Ground No. 5 relating to charging of interest under section 234A and 234B is consequential. Ground No. 6 is about initiation of penalty proceedings under section 271(1)(c) of the Act which is pre-mature and is subject matter of separate proceedings. The remaining grounds are adjudicated herein below.

5. Ground No. 2 - Disallowance of Advertisement and business promotion expense. Ground No. 3 – Disallowance of Brokerage expenses.

Since the findings of the Ld. AO/Hon'ble DRP are common in respect of both these disallowances, these are taken up together for consideration.

The Ld. AO disallowed advertisement and business promotion expenses of Rs. 5,12,89,562/- and Rs. 61,67,000/- as project expense(s) not done for earning revenue during the year and added the same to the income of the assessee in Draft Assessment Order under section 144C r.w. section 143(3) of the Act dated 31.12.2017. The assessee filed objection before the Hon'ble DRP against treating the said expenses as capital in nature and not incurred for earning revenue during the year. The Hon'ble DRP agreed with the said findings of the Ld. AO who made the impugned disallowance in the final assessment order dated 16.11.2018.

6. The Ld. AR submitted that the assessee being in the business of real estate is following the percentage completion method (**POCM**) of accounting. Since during the year the project was completed only to the extent of 0.14%,

the assessee did not book any revenue in its books of account. It is further submitted that the advertisement and brokerage expenses have been claimed by the assessee in the year as these do not relate directly to the project but these do directly relate to the business of the assessee. These expenses have been incurred not for the purpose of the project but for the purpose of marketing and selling of flats. Therefore, these expenses have been debited to the profit and loss account for the year.

7. The Ld. AR relied on the decision of Hon'ble Delhi High Court in CIT vs. Somnath Buildtech Pvt. Ltd. in ITA No. 494/2018 dated 13.10.2022; Gopal Das Estate and Housing Pvt. Ltd. vs. CIT (2019) 412 ITR 489 (Del); CIT vs. Mangal Tirth Estate Ltd. (2008) 303 ITR 366 (Mad) and Tribunal's decision in PCIT vs. Puma Realtors Pvt. Ltd. (ITA No. 488/2019) dated 13.05.2019 (Del).

8. The Ld. CIT-DR relied upon the order of the Ld. AO duly approved by the Hon'ble DRP.

9. We have carefully considered the rival submissions and perused the records. The facts are not in dispute. The assessee is real estate developer and is following Percentage Completion Method of accounting (POCM) and in the year of account the project has been completed to the extent of 0.14% only. This has not been disputed by the Revenue. This is the rationale on the basis of which the assessee did not account for any revenue in its books in the year.

10. The only reason assigned by the Ld. AO/Hon'ble DRP for the impugned disallowances is that such expenses were not incurred for earning revenue during the year. In our view this is not a valid reason having regard to the nature of assessee's business and the method of accounting followed by it. These expenses have necessarily to be incurred for the purpose of marketing

and selling of flats. It is not the case of the Revenue that the said expenses have not been incurred for the purposes of assessee's business. Genuineness of the said expenses have also not been doubted by the Revenue.

11. The assessee's case is that it has followed Accounting Standards in respect of its project and the same has not been disputed by the Revenue authorities.

12. The observations and findings of the Hon'ble Delhi High Court in Somnath Buildtech Pvt. Ltd. (supra) squarely apply to the facts of the assessee's case. For the sake of ready reference the same is extracted below:-

*"12. The Revenue in these proceedings admits to the genuineness of the expenditure. There is also no dispute that the Assessee is bound to draw up its Profit and Loss account and balance sheet in compliance with the accounting standards of the ICAL. The learned counsel for the Respondent has failed to point out any ground for contending that the Guidance Note issued by ICAI for applying the Accounting Standard (AS-7) is not applicable to the Assessee. The contention of the Revenue that the disallowed expenses are of an enduring nature' and should therefore be capitalized to the cost of the project is not based on any legal principle. The Revenue does not dispute that these expenses are not a direct cost of the specific project but are indirect costs incurred by the Assessee for development of its real estate business. The Revenue does not dispute that these expenses are admittedly not incurred as cost towards completion of the on-going real estate project and therefore in our considered view these expenses cannot be added toward the cost of valuation of the specific asset. The expenses such as advertising expenses, business promotion and brokerage and commission have been incurred by the Assessee towards building its reputation and network in the real estate market and so also the software development charges are incurred towards administrative expenses.*

*13. We do not find any error in the findings of the ITAT, which holds that the said expenses incurred by the Assessee are in the nature of general administration cost and selling cost as classified by the Guidance Note issued by ICAI. The said expenses has been incurred by the Assessee for its business and therefore, it qualifies for deduction as revenue expenditure, as per the decision of this court in Gopal Dass (Supra).*

*14. Further, the appellant's contention that the expenses should be capitalised and added to the value of the project in effect postpones the realization of the said expenses to the year of sale and would be liable for deduction in the hands of the Assessee in wear of sale of the project. The admissibility of the*

*deduction is therefore not denied by Revenue but it is only the year of deduction which is sought to be postponed. It is in these facts the ITAT has held the classification of the expense is revenue neutral. It would be pertinent to note the decision of the Supreme Court on the issue of "revenue neutrality" wherein the Apex Court in the decision of Excel Industries Ltd. (Supra) held as follows:*

*"...*

*28. Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did derive benefits under the advance license and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.*

*..."*

*15. We, therefore, do not find any infirmity in the order of the ITAT and that any substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed."*

13. For the reasons set out above and following the decision of Hon'ble Delhi High Court in Somnath Buildtech (supra), we allow Ground No. 2 and 3 of the assessee and direct the Ld. AO to delete the impugned disallowances.

14. Ground No. 4 relate to denial of credit of TDS as appearing in Form 26AS. This needs verification. We, therefore, direct the Ld. AO to verify the assessee's claim. If found to be correct, he should take remedial action and allow appropriate relief to the assessee.

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

**Order pronounced in the open court on 21<sup>st</sup> February, 2024.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMEBR**

Dated: 21/02/2024  
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Copy forwarded to-

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi

Date of dictation	19.02.2024
Date on which the typed draft is placed before the dictating Member	19.02.2024
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	