

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE**

**BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER**

**ITA No.1442/PUN/2023
Assessment Year : 2017-18**

Surana Mutha Bhansali Developers 236, Patil Plaza, Near Saras Baug, Parvati S.O, Pune – 411009	Vs.	ACIT, Circle – 5, Pune
PAN: ABGFS1894K		
(Appellant)		(Respondent)

Assessee by : Shri Neelesh Khandelwal
Department by : Shri Sourabh Nayak, Addl.CIT
Date of hearing : 12-06-2024
Date of pronouncement : 28-06-2024

ORDER

PER R. K. PANDA, VP :

This appeal filed by the assessee is directed against the order dated 01.11.2023 of the CIT(A) / NFAC, Delhi relating to assessment year 2017-18.

2. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of promoters, builders and developers in civil construction. It filed its return of income on 23.09.2017 declaring total income at Rs.5,66,94,400/-. The case was selected for scrutiny under CASS for the following reasons:

- (i) *High turnover reported in service tax return as compare to ITR.*
- (ii) *Real estate business with high closing stock (verify whether assessee has done correct accounting of income.*

3. Accordingly, statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') were issued to the assessee, in response to which the assessee filed its submissions from time to time. During the course of assessment proceedings, the Assessing Officer observed from the Profit and Loss Account that the assessee has debited Rs.4 crores on account of provision for construction expenses. On being questioned by the Assessing Officer to justify the same, it was submitted that the amount of Rs.4 crores has been arrived at by making the fair estimation of amount required to be incurred for the purpose of completion of entire remaining work of the project. However, the Assessing Officer was not satisfied with the arguments advanced by the assessee and made addition of Rs.4 crores by recording as under:

“5.3. When the mercantile system of accounting being followed by the assessee, only crystallized liabilities are allowable and unascertained liabilities cannot be allowed. The future development expenses were claimed by the assessee on estimated basis and such estimated expenditure which had not been incurred cannot lead to crystallization of liability in the year under consideration. The amount in question thus represents provisions for meeting unascertained liabilities which was not allowable as a deduction in the case of the assessee.

5.4. The submission filed by the assessee has been considered. The contention of the assessee is not acceptable. As the assessee has done the estimation of the future expenditure and has not incurred during the year is not an allowable expenditure under the business head. It is important to note that in the case of the assessee, the assessee has unsold inventory and as per the assessee he is following the project completion method, so when the actual possession of the flats is given the contention of the assessee that post possession of the units certain expense was to be incurred is unacceptable. Also, the assessee has not stated as to when the expense was made and has not identified as to where the expense was supposed to be incurred. The assessee has given scant details and has not provided any documentary evidence for the same. The estimate for provisions thus made by the assessee are arbitrary and without any scientific basis.

5.5. Accordingly, an addition of Rs.4,00,00,000/- is hereby made on account of provision made in the profit and loss account on under provision for construction expenses being claimed on estimation basis and not on actual basis. This results in addition of Rs.4,00,00,000/- to the income of the assessee.

5.6. Since the assessee has debited Rs.4,00,00,000/- on account of provision for construction expenses whereas the assessee failed to produce any evidence on the claim of the same for the assessment year 2017-18. Hence, it is a fit case for initiating penalty u/s 270A(9) for misreporting of income. Accordingly, the penalty proceedings u/s 270A(1) r.w.s. 270A(9) of the Income-tax Act, 1961 are initiated for misreporting of income to the extent of Rs. 4,00,00,000/-.”

4. The Assessing Officer further noted that the assessee was holding unsold stock of flats and unsold shops to the extent of Rs.7,04,95,180/- but has not shown any deemed rent in respect of ‘K’ and ‘L’ building of project “Shantinagar”. In absence of any satisfactory reply filed by the assessee, the Assessing Officer made addition of Rs.14,80,398/- as deemed rent. Similarly, the Assessing Officer made addition of Rs.1,69,414/- u/s 43CA of the Act being the difference in the agreement cost and the stamp valuation, Rs.28,601/- being wrong claim of depreciation and denial of deduction u/s 80IB(10) of the Act to the extent of Rs.1,25,64,630/-. The Assessing Officer, accordingly, determined the total income of the assessee at Rs.11,09,37,440/-.

5. In appeal, the Ld. CIT(A) / NFAC partly allowed the appeal filed by the assessee wherein he sustained the addition of Rs.4 crores made by the Assessing Officer on account of provision made for construction expenses, restored the issue to the file of Assessing Officer in respect of deemed rent, deleted the addition of Rs.1,69,414/- made by the Assessing Officer u/s 43CA, sustained the addition on

account of disallowance of depreciation and partly allowed the claim of deduction u/s 80IB(10) of the Act.

6. Aggrieved with such order of CIT(A) / NFAC, the assessee is in appeal before the Tribunal by raising the following grounds:

1. *On facts and circumstances prevailing in the case and as per the provisions of law and scheme of the Act it be held that, the disallowance of Rs.4,00,00,000/- made by the Learned Assessing Officer ("Ld.AO") and further upheld by the First Appellate Authority on account of provision for construction expenses debited the Profit and Loss account is unjustified and warranted. It be held that no such disallowance is warranted in the case in the light of facts prevailing in the case. The disallowance so made by the AO be deleted. The appellant be granted just and proper relief in this respect*
2. *Without prejudice to Ground no. 1, on facts and circumstances prevailing in the case and as per the provisions of law and scheme of the Act it be held that, the disallowance of entire Rs.4,00,00,000/- made by the Learned Assessing Officer ("Ld.AO") and further upheld by the First Appellate Authority on account of provision for construction expenses debited to the Profit and Loss account is unjustified and unwarranted. It be held that appropriate relief be granted in this respect.*
3. *On facts and circumstances prevailing in the case and as per the provisions of law and scheme of the Act it be held that, the disallowance of Rs. 14,80,398/- made by the Learned Assessing Officer ("Ld.AO") on account of deemed rent ought to have been deleted. The first appellate authority has erred in remanding back the matter and the impugned act is unjustified and unwarranted. It be held that just and proper relief be granted in this respect.*
4. *On facts and circumstances prevailing in the case and as per the provisions of law and scheme of the Act it be held that the disallowance of Rs.28,601/- made by the Ld. AO and further upheld by the First Appellate Authority on account of depreciation on addition to fixed assets is unjustified and unwarranted. It be held that no such disallowance is warranted in the case in the light of facts prevailing in the case. The disallowance so made by the AO be deleted. The appellant be granted just and proper relief in this respect.*

7. The assessee has also filed the following additional ground:

1) On facts and circumstances prevailing in case and as per provisions of law; it be held that the Ld. CIT(A) erred in allowing proportionate deduction instead of full deduction claimed under section 80IB(10) of the Act, disregarding the decision of Hon'ble ITAT, Pune in the Appellant's own case for AY:12-13. Just and proper relief be granted to the appellant in this respect.

8. So far as the additional is concerned, the same relates to the order of CIT(A) / NFAC in allowing proportionate deduction u/s 80IB(10) of the Act. However, the Ld. Counsel for the assessee did not press the additional ground. Accordingly, the same is dismissed as not pressed.

9. So far as the grounds No.1 and 2 are concerned, the same relate to the order of CIT(A) / NFAC in sustaining the addition of Rs.4 crore made by the Assessing Officer on account of provision for construction expenses debited to the Profit and Loss Account.

10. The Ld. Counsel for the assessee referring to pages 1 to 14 of the paper book drew the attention of the Bench to the copy of signed financials for assessment year 2016-17. Referring to pages 15 to 22 of the paper book, he drew the attention of the Bench to the construction work in progress account as on 31.03.2018. Referring to pages 23 to 36 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the submissions filed before the CIT(A) / NFAC wherein it was stated that for the purpose of computing the income on matching principle when the entire revenue from the sale of units was being recognized, the total cost which included cost incurred till date and future costs to be incurred for

the completion of the building needed to be considered so that correct amount of revenue to be recognized could be computed. Referring to pages 37 to 38 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the details of provision for direct expenses amounting to Rs.4 crores. Referring to pages 39 to 51 of the paper book, the Ld. Counsel for the assessee drew the attention of the Bench to the Ledger account of provision for construction expenses. Referring to the completion certificate issued by the Pune Municipal Corporation dated 29.04.2017, he submitted that the completion certificate was received only on 29.04.2017.

11. Referring to the decision of the Hon'ble Supreme Court in the case of Calcutta Co. Ltd. vs. CIT (1959) 37 ITR 1 (SC), he submitted that the Hon'ble Supreme Court in the above decision has held that estimated expenditure, which had to be incurred by the assessee in discharging a liability which it had already undertaken under terms of sale deeds of lands in question, was an accrued liability which according to mercantile system of accounting, assessee was entitled to debit in its books of account for accounting year as against receipts which represented sale proceeds of said lands. Referring to the decision of the Hon'ble High Court of Jharkhand in the case of TRF Ltd. vs. CIT (2011) 241 CTR 45 (Jharkhand) and the decision of the Hon'ble High Court of Delhi in the case of CIT vs. Triveni Engg. & Industries Ltd. (2011) 336 ITR 374 (Del), he submitted that similar view has been taken wherein for recognizing the profit / loss in respect of the projects, where the assessee had made provision for expenses to be incurred upto the stage of

completion the same was held to be allowed. He accordingly submitted that when there is no deviation from the sanctioned plan and the expenditure incurred has direct nexus with the sale of flats and expenses are incurred by cheque and no other discrepancies were found by the Revenue authorities, the provision so made by the assessee in the Profit and Loss Account for the construction expenses should be allowed.

12. The Ld. DR on the other hand drew the attention of the Bench to para 4.3 of the order of CIT(A) / NFAC where the CIT(A) / NFAC while disallowing the expenditure has observed as under:

“4.3 I have considered the assessment order, facts of the case, grounds of appeal, statement of facts and the submissions made by the appellant during the appeal proceedings. Generally the provisions and reserves recorded in business financial statements are not tax deductible until the expenses are actually incurred. An expense will be incurred where there is a commitment or obligation to pay the actual expense. A provision is an estimate of expenditure which is expected to be incurred in a trade in respect of a particular item. Provisions are not allowable why because there would be a danger that a deduction could be claimed for expenses that had not actually been incurred or were never going to be incurred, thereby reducing taxable profits without justification. 'Provision for outstanding expenses' is an allowable expenditure as per the mercantile system of accounting. During the course of assessment proceedings, the appellant was failed to furnish the details such as to when the expenses was made and not identified as to where the expense was supposed to be incurred. The assessee has given scant details and has not provided any documentary evidence for the same. The estimate for provisions thus made by the assessee are arbitrary and without any scientific basis. In view of the above, I have no reasons to interfere with the decision of the Assessing Officer in making disallowance of provision for construction expenses and accordingly, the ground No.1 of the appeal is dismissed.”

13. He accordingly submitted that the order being in consonance with law should be upheld and the grounds raised by the assessee on this issue be dismissed.

14. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and Ld. CIT(A) / NFAC and the paper book filed by both the sides. We have also considered the various decisions cited before us. We find the Assessing Officer in the instant case disallowed an amount of Rs.4 crores being provision for construction expenses on the ground that since the assessee was following mercantile system of accounting, only crystallized liabilities are allowable and unascertained liabilities cannot be allowed. According to the Assessing Officer, future development expenses claimed by the assessee on estimated basis cannot lead to crystallization of liability in the year under consideration. We find the Ld. CIT(A) / NFAC sustained the addition made by the Assessing Officer, the details of which are already reproduced in para 11 above. It is the submission of the Ld. Counsel for the assessee that the assessee is following project completion method and more than 90% of the project has been completed and the assessee sold the flats in assessment year 2017-18, therefore, the provision for construction expenses which were incurred in subsequent year for the flats already sold during this year and where such expenses were incurred through proper banking channel and no other discrepancies were found, therefore, in order to ascertain the correct tax liability, such provision for construction expenses has to be allowed.

15. We find some force in the above arguments of the Ld. Counsel for the assessee. Admittedly, the flats were sold during the impugned assessment year which were not fully complete for which the assessee, in its Profit and Loss

Account has debited provision for construction expenses amounting to Rs.4 cores by making a fair estimate of amount required to be incurred for the completion of the remaining project following the matching concept. Further, such amount was spent in the subsequent year, the expenses incurred were through proper banking channel and no discrepancies were noticed by the Revenue. Under these circumstances, we have to decide as to whether such provision for expenses is an allowable expenditure during the year or not.

16. We find the Hon'ble Supreme Court in the case of Calcutta Co. Ltd. vs. CIT (supra) on an identical issue has held as under:

"The question which really arises for our determination in this appeal is whether having regard to the fact that the appellant's method of accounting, viz., the Mercantile method was accepted by the Income Tax Officer and the receipts appearing in the books of account included the unpaid balance of the sale price of the plots in question, the amount of liability undertaken by the appellant to earn those receipts was to be deducted even if there had not been actual disbursement made by it during the accounting year. Put in other words, the question was whether in view of the fact that the sum of Rs. 43,692-11-9 had been entered on the credit side in the books of account even though it was not money actually received but only money treated as received on the basis that it was due and receivable, the sum of Rs. 24,809 which had been entered as debit, being the liability of the appellant undertaken by it to earn those receipts, should be deducted in determining the taxable profits and gains of the appellant.

The mercantile system of accounting is well-known and this method has been explained in a judgment of this Court in Keshav Mills Ltd. v. Commissioner of Income-tax, Bombay (1953) 23 ITR 230.

" That system brings into credit what is due, immediately it becomes legally due and before it is actually received and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed."

The main ground on which the claim of the appellant for deducting this sum of Rs.24,809 was disallowed by all the authorities below was that the expenditure was not actually incurred in the year of account, it was by no means certain what

the actual cost would be when the developments were carried out and that there was as yet no accrued liability but only a contingent liability undertaken by the appellant, even though the undertaking was incorporated in the deeds of sale themselves.

The following were the developments undertaken to be carried out by the appellant as appears from the order of the Appellate Assistant Commissioner:-

" There was a condition in the Conveyance deeds that the appellant does hereby covenant with the purchaser that the appellant shall complete the construction of roads, drains, provide suitable pucca surface drains on both sides of the roads and shall also make arrangements for lighting up the said roads and shall maintain the said roads, drains, lights till the same are taken over by the municipality."

"Besides provision for roads, drains, etc., the Deed provides for filling up of low lands and there is a clause in the Conveyance Deed which shows that the appellant's shall at his own cost fill the low lands and tank with earth and bring the same to road level."

This undertaking having been incorporated in the deeds of sale themselves there was certainly a liability undertaken by the appellant to carry out these developments within six months from the dates of those deeds. Time was of course not of the essence of the contract and the appellant therefore was at liberty to carry out that undertaking within a reasonable time. That, however, did not absolve it in any manner whatever from carrying out the undertaking and the purchasers were in a position to enforce the undertaking by taking appropriate proceedings in that behalf.

Reliance was placed on behalf of the Revenue on the case of Peter Merchant Ltd. v. Stedeford (Inspector of Taxes) (1) in which a distinction was drawn between an actual i.e., legal liability, which is deductible, and a liability which is future or contingent and for which no deduction can be made. The facts of that case were that the Company which carried on the business of managing factory canteens, had contracted with a factory owner to maintain the crockery, cutlery and utensils used in the canteen otherwise known as the light equipment in its original quantity and quality. The cost of replacement was admittedly a proper deduction in computing profits, as was also any sum paid to a factory owner in settlement of the value of shortages on termination of the contract. Owing to war and other circumstances it was impossible or impracticable for the Company to obtain replacements in some cases, and the obligations under the contracts with the factory owners in those cases still remained to be performed in the accounts for the year deductions had been made both of the amounts actually expended on replacements and the amounts which the company was liable to expend when the equipment became available. The Company claimed to be entitled to deduct in computing its profits amounts representing at current prices, the liability to effect replacements as soon as the required equipment became obtainable. The former amounts were allowed as deductions, and the latter the Court of Appeal (reversing the decision of the Court below) held not to be deductible. The basis of the

decision was that the real liability under the contract was contingent, not actual, since the obligations of the company were not such that it might be sued for the cost of 'replacements at current prices, but only for possible damages for breach of contract in the event of the factory owner preferring a claim under the contract, and since no legal liability could arise until such a claim was made, the liability had-to be regarded as contingent and not deductible.

It is clear from the above that on the facts and circumstances of that case the Court held that it was not an accrued liability but was merely a contingent one and if that was the case only the sums actually expended could be deducted and not those which the company was liable to expend in the future.

Simon in his "Income-tax ", Second Edition, Vol. II, at page 204 under the caption "Accrued Liability" observes as under, after citing the case mentioned above:-.

"In cases, however, where an actual liability exists, as is the case with accrued expenses, a deduction is allowable; and this is not affected by the fact that the amount of the liability and the deduction will subsequently have to be varied. A liability, the amount of which is deductible for income-tax purposes, is one which is actually existing at the time of making the deduction, and is distinct from the type of liability accruing in Peter Merchant⁸ Ltd. v. Stedeford (Inspector of Taxes) which although allowable on accountancy principles, is not deductible for the purpose of income-tax."

Approaching the question before us in the light of the observations made above we have got to determine what was the nature of the liability which was undertaken by the appellant in regard to the development of the lands in question, whether it was an accrued liability or was one which was contingent on the happening of a certain event in the future.

There is no doubt that the undertaking to carry out the developments within six months from the dates of the deeds of sale was incorporated therein and that undertaking was unconditional, the appellant binding itself absolutely to carry out the same. It was not dependent on any condition being fulfilled or the happening of any event, the only condition being that it was to be carried out within six months which in view of the fact that the time was not of the essence of the contract meant a reasonable time. Whatever may be considered a reasonable time under the circumstances of the case, the setting up of that time limit did not prescribe any condition for the carrying out of that undertaking and the undertaking was absolute in terms. If that undertaking imported any liability on the appellant the liability had already accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was thus an accrued liability and the estimated expenditure which would be incurred in discharging the same could very well be deducted from the profits and gains of the business. Inasmuch as the liability which had thug accrued during the accounting year was to be discharged at a future date the amount to be expended in the discharge of that liability would have to be estimated in order that under the mercantile system of accounting the amount could be debited before it was actually disbursed.

The difficulty in the estimation thereof again would not convert an accrued liability into a conditional one, because it is always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case. That it can be so done is illustrated by Gold Coast Selection Trust Ltd. v Humphrey (Inspector of Taxes) (1) where a particular asset which could not be immediately realised in a commercial sense was valued in money for income-tax Purposes in the year of its receipt and it was observed by Viscount Simon:-

"It seems to me that it is not correct to say that an asset, such as this block of shares, cannot be valued in money for income-tax purposes in the year of its receipt because it cannot, in a commercial sense, be immediately realized. That is no reason for saying that it is incapable of being valued, though, 'if its realization cannot take place promptly, that may be a reason why the money figure set against it at the earlier date should be reduced in order to allow for an appropriate interval. Supposing, for example, the contract conferring the asset on the taxpayer included a stipulation that the asset should not be realized by the transferee for five years, and that if an attempt was made to realise it before that time, the property in it should revert to the transferor. This might seriously reduce the value of the asset when received, but it is no reason for saying that when received it must be regarded as having no value at all. The Commissioners, as it seems to me, in fixing what money equivalent should be taken as representing the asset, must fix an appropriate money value as at the end of the period to-which the appellant's accounts are made up by taking all the circumstances into consideration."

As in the case of assets received during the accounting year which could not be immediately realized in a commercial sense, so in the case of liabilities which have already accrued during the accounting year, though they may not have to be discharged till a later date. It will be always open to the Income-tax authorities to fix an appropriate money value of that liability as at the end of the accounting period by taking all the circumstances into consideration and the estimate of expenses given by the assessee would be liable to scrutiny at their hands having regard to all the facts and circumstances of the case.

The High Court was, therefore, clearly in error when it stated:-

"In view of all the circumstances of the case it must in my opinion, be held that the amounts of sale-price, not received in cash, were also received and for the purpose of earning the receipts the assessee spent, besides giving the lands, nothing more than a promise. Since the whole amount was actually received in the year of account before and without making the promised expenditure, no question of allowing a deduction of any expenditure from such receipts of the year arises."

If then the estimated expenses which would have to be incurred in duly discharging that liability which was undertaken by the appellant and was incorporated in the deeds of sale could be deducted in accordance with the

mercantile system of accounting adopted by the appellant and accepted by the I.T.O., is there anything in the Income-tax Act which would prevent this debit being allowed as a deduction in the computation of the profits and gains of the appellant's business? The appellant, had, it appears, claimed this deduction as and by way of expenditure wholly laid out for the purposes of its business under s. 10(2)(xv) of the Income-tax Act. On an interpretation of that provision, the-High Court was inclined to hold, though it did not decide the question, that to the extent that a definite liability had accrued about which all preliminary proceedings causing the accrual of the liability in a concluded form had already been gone through although the actual disbursement had not yet taken place, s. 10(2)(xv) would cover accrued liabilities though the amount may not actually have been expended on the footing that the liability being certain, the amount was as good as spent and on that basis there would be room in the clause for debits which are proper debits under the mercantile system of accounting. It, however, distinguished the present case on the ground that the liability here was a floating liability, the measure of which depended upon the will of the appellant and the discharge of which rested only in a promise and that the expenses were entirely at large and the development work itself merely so.

*Apart, however, from the question whether s. 10(2) (xv) of the Income-tax Act would apply to the facts of the present case, the case is in our opinion, well within the purview of s. 10 (1) of the Income-tax Act. The appellant here is being assessed in respect of the profits and gains of its business and the profits and gains of the business cannot be determined unless and until he expenses or the obligations which have been incurred are set off against the receipt's The expression profits and gains has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted therefrom-whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date. As was observed by Lord Herschell in *Bussel v. Town and County Bank, Ltd.*('):*

"The duty is to be charged upon I a sum not less than the full amount of the balance of the profits or gains of the trade, manufacture, adventure, or concern'; and it appears to me that that language implies that for the purpose of arriving at the balance of profits all that expenditure which is necessary for the purposes of earning the receipts must be deducted, otherwise you do not arrive at the balance of profits, indeed, otherwise you do not ascertain, and' cannot ascertain, whether there is such a thing as profit or not. The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts. That seems to me to be the meaning of the word "profits" in relation to any trade or business. Unless and until you have ascertained that there is such a balance, nothing exists to which the name " profits can properly be applied."

*A similar opinion was expressed in the *Gresham Life Assurance Society V. Styles*:*

" When we speak of the profits or gains of a trader we mean that which he had made by his trading. Whether there be such a thing as profit or gain can only be ascertained by setting against the receipts the expenditure or obligations to which they have given rise."

These are no doubt observations from the English cases dealing with English statutes of Income-tax, but the general principles which can be deduced therefrom (1) (1888) 13 App. Cas. 418, 424 (2) (1892) 3 T. C. 185 are, nevertheless, applicable here and it was stated by Lord Macmillan in Pondicherry Railway Co., Ltd. v. Commissioner of Income-tax, Madras (1) " English authorities can only be utilised with caution in the consideration of Indian Income-tax cases owing to the difference in the relevant legislation, but the principle laid down by Lord Chancellor Halsbury in Gresham Life Assurance Society v. Styles (supra), is of general application unaffected by the specialities of the English Tax system. " The thing to be taxed", said his Lordship, "is the amount of profits or gains ". The word " profits ", I think, is to be understood in its natural and proper sense in a sense which no commercial man would misunderstand." It may be useful to observe at this stage that prior to the amendment of the Indian Income-tax Act in 1939, bad and doubtful debts were not treated as deductible allowance for the purpose of computation of profits or gains of a business, The Privy Council in the Income-tax Commissioner v. Chitnavis observed:-

"Although the Act nowhere in terms authorises the deduction of bad debts of a business, such a deduction is necessarily allowable. What are chargeable to income-tax in respect of a business are the profits and gains of a year; and in assessing the amount of the profits and gains of a year account must necessarily be taken of all losses incurred otherwise you would not arrive at the true profits and gains."

The High Court in disallowing the claim of the appellant in the present case only considered the provisions of s. 10 (2)(xv) of the Act and came to the conclusion that on a strict interpretation of those provisions the sum of Rs. 24,809 was not an allowable deduction. Its attention was drawn by the learned Counsel for the appellant to the provisions of s. 10(1) of the Act also but it negated this argument observing that under the Indian Act, the profits must be determined by the method of making the statutory deductions from the receipts and any deduction from the business receipts, if it was to be allowed, must be brought under one or the other of the deductions mentioned in s. 10(2) and that there was no scope for any preliminary deduction under general principles. It was, however, held by this Court in Badridas Daga v. The Commissioner of Income-tax(1)

"It is to be noted that while s. 10(1) imposes a charge on the profits or gains of a trade, it does not provide how those profits are to be computed. Section 10(2) enumerates various items which are admissible as deductions, but it is well settled that they are not exhaustive of all allowances which could be made in ascertaining profits taxable under S. 10(1)."

Venkatarama Aiyar, J., who delivered the Judgment of this Court then proceeded to discuss the cases of Commissioner of Income-tax v. Chitnavis(2), Gresham Life Assurance Society v. Styles (3) and Pondicherry Railway Co. v. -Income-tax Commissioner(4), and observed:"

"The result is that when a claim is made for a deduction for which there is no specific provision in s. 10(2), whether it is admissible or not will depend on whether, having regard to accepted commercial practice and trading principles, it can be said to arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act.

Turning now to the facts of the present case, we find that the sum of Rs. 24,809 represented the estimated expenditure which had to be incurred by the appellant in discharging a liability which it had already undertaken under the terms of the deeds of sale of the lands in question and was an accrued liability which according to the mercantile system of accounting the appellant was entitled to debit in its books of account for the accounting year as against the receipts of Rs. 43,692-11-9 which represented the sale proceeds of the said lands. Even under s. 10(2) of the Income-tax Act, it might possibly be urged that the word "expended" was capable of being interpreted as "expendable" or "to be expended" at least in a case where a liability to incur the said expenses had been actually incurred by the assessee who adopted the mercantile system of accounting and the debit of Rs. 24,809 was thus a proper debit in the present case. We need not however base our decision on any such consideration. We are definitely of opinion that the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the appellant in the course of carrying on its business and was incidental to the same and having regard to the accepted commercial practice and trading principles was a deduction which, if there was no specific provision for it under section 10(2) of the Act was certainly allowable deduction, in arriving at the profits and gains of the business of the appellant under section 10(1) of the Act, there being no prohibition against it, express or implied in the Act.

It is to be noted that the appellant had led evidence before the Income-tax authorities in regard to this estimated expenditure of Rs. 24,809 and no exception was taken to the same in regard to the quantum, though the permissibility of such a deduction was questioned by them relying upon the provisions of s.10(2) of the Act.

It therefore follows that the conclusion reached by the High Court in regard to the disallowance of Rs. 24,809 was wrong and it should have answered the referred question in the affirmative.

Before we conclude, we are bound to observe that having accepted- the receipts of Rs.43,692-11-9 in their totality even though a sum of Rs. 29,392-11-9 only was actually received by the appellant in cash, thus making the' appellant liable for income-tax on a sum of Rs. 14,300 which had not been received by it during the accounting year, it was hardly open to the Revenue to urge that the sum of Rs.

24,809 should not have been allowed as a permissible deduction before arriving at the profits or gains-of the appellant which were liable to tax. Consistently enough with this attitude, the Revenue ought to have expressed its willingness to treat only a sum of Rs.29,392-11-9 as the actual receipt of the appellant during the accounting year and made up the computation of the profits and gains of the appellant's business on that basis. The Revenue, however, did nothing of the sort and insisted upon having its pound of flesh, asking us to delete the whole of the item of Rs. 24,809 from the debit side of the account which it was certainly not entitled to do.

We accordingly allow the appeal, set aside the judgment of the High Court and answer the referred question in the affirmative. The respondent will of course pay the appellant's costs throughout."

17. Similar view has been taken by the Hon'ble High Court of Jharkhand in the case of TRF Ltd. vs. CIT (supra) and the Hon'ble High Court of Delhi in the case of CIT vs. Triveni Engg. & Industries Ltd. (supra). Since the assessee in the instant case is following the project completion method and 90% of the project has already been completed and has sold the flats during the impugned assessment year and has recognized the revenue on the entire sale proceeds, therefore, provision for the construction expenses debited in the Profit and Loss Account amounting to Rs.4 crores which in turn has been incurred through banking channel and which is required to be incurred for the completion of the remaining work, in our opinion, needs to be allowed following the matching concept. In view of the above discussion, we set aside the order of Ld. CIT(A) / NFAC and direct the Assessing Officer to delete the addition of Rs.4 crores. The first two grounds raised by the assessee are accordingly allowed.

18. So far as the ground No.3 is concerned, the same relates to the order of the CIT(A) / NFAC in sustaining the addition of Rs.14,80,398/- on account of deemed rent.

19. After hearing both the sides, we find an identical issue before the Tribunal in assessee's own case in assessment year 2014-15 wherein the Tribunal has deleted the addition by observing as under:

“5. Heard both the parties and perused the material available on record. As stated above, the only issue is to be considered as to whether the deemed rent could be imposed on unsold flats which were treated as stock-in-trade. We find that the assessee relied on two decisions of Hon'ble High Courts of Gujarat and Orissa in the cases of Neha Builders (P.) Ltd. reported in 296 ITR 661 (Gujarat) and M.P. Bazaz & Ors. reported in 200 ITR 131 (Orissa), respectively before the AO for the proposition that the income from finished stock of flats is to be computed under the head income from business. The AO rejected the same, but however, placing reliance on the decision of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. reported in 354 ITR 180 (Delhi) imposed ALV on account of deemed rent on finished stock by adopting annual letting value at 7% of the investment cost of flats (WIP value). The CIT(A) confirmed the view of AO. On careful examination of the order dated 12-09-2018 in the case of M/s. Cosmopolis Construction (supra) by this Tribunal, we find the Tribunal considered the decisions of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) and in the case of Neha Builders (P.) Ltd. (supra) of Hon'ble High Court of Gujarat in detail. The Tribunal held the decision of Hon'ble High Court of Delhi in the case of Ansal Housing Finance & Leasing Co. Ltd. (supra) is against the assessee therein and followed the decision of Hon'ble High Court of Gujarat in the case of Neha Builders (P.) Ltd. (supra) which is in favour of the assessee. We find the Tribunal by discussing the issue in detail and also by referring to various decisions which were relied on by the rival parties therein, but however, following the decision of Hon'ble High Court of Gujarat in the case of Neha Builders (P.) Ltd. (supra) which is in favour to the assessee held no annual rental value could be levied on unsold flats which were shown as finished stock (stock-in-trade). The ld. DR did not bring on record any view contrary to the view taken by the Tribunal in the case of M/s. Cosmopolis Construction (supra). Therefore, as discussed above, admittedly, the assessee shown unsold flats as finished stock and no annual letting value of deemed rent could be imposed on such unsold stock which were treated as stock-in-trade. Thus, the order of CIT(A) is not justified and it is set aside. Thus, the grounds raised by the assessee are allowed.”

20. Respectfully following the decision of the Tribunal in assessee's own case for assessment year 2014-15, the ground relating to the disallowance of deemed rent is allowed.

21. The next issue that remains for adjudication is against the disallowance of depreciation.

22. We find the Assessing Officer disallowed the depreciation on the ground that due to certain calculation errors the assessee has claimed higher depreciation which was added to the total income by the Assessing Officer. We find the CIT(A) / NFAC also sustained the addition by observing as under:

“7.3 I have gone through the submissions of the appellant as well as the AO's assessment order. The submissions of the appellant are not convincing. In the appellate proceedings, burden of proof lies on the assessee to prove that facts and findings of the AO are incorrect. The appellant has not filed any documentary evidence or corrected invoices. If the assessee fails to prove or rebut with cogent evidence against such facts and findings, no interference is required with assessment order. Therefore, the addition made by the AO is sustained and the grounds raised in this regard is dismissed.”

23. It is the submission of the Ld. Counsel for the assessee that the payments have been made through account payee cheque on 16.02.2017 to M/s. House of Decor for Rs.1,30,000/- and Rs.26,000/- on 04.11.2016 to INIT INFOTECH. He submitted that given an opportunity, the assessee is in a position to substantiate its case before the Assessing Officer. Considering the totality of the facts of the case, we deem it proper to restore this issue to the file of the Assessing Officer with a direction to give an opportunity of being heard to the assessee to substantiate its

claim of depreciation by producing the relevant bills / vouchers and decide the issue as per fact and law. We hold and direct accordingly. The ground No.3 raised by the assessee is accordingly allowed for statistical purposes.

24. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 28th June, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 28th June, 2024
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The concerned Pr.CIT, Pune
4. DR, ITAT, 'B' Bench, Pune
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	25.06.2024		Sr. PS/PS
2	Draft placed before author	26.06.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			