IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.1137/Del/2017
[Assessment Year : 2012-13]

DCIT, Circle-16(1), New Delhi.	vs	M/s. Mahatta Towers Pvt.Ltd., 614, Plot No.54, Mahatta Towers, B Block, Community Center, Janakpuri, New Delhi-110058. ***PAN-AAACM2109F***
APPELLANT		**RESPONDENT**
Appellant by		Shri Koushlender Tiwari, CIT DR
Respondent by		Shri Ved Jain, Adv.
Date of Hearing		13.08.2024
Date of Pronouncement		10.10.2024

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A)-6, Delhi dated 02.12.2016 for the assessment year 2012-13.

2. The Revenue has raised following grounds of appeal:-

1. *"Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 42,87,770/-, Rs. 1,26,24,770/- and Rs. 7,63,807/- on account of expenditure and depreciation respectively relating to construction activity in the year even when the assessee had not offered income during the year under consideration following Complete contract Method of accounting?*

2. *Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in allowing expenditure and depreciation during the year under consideration even when the assessee had not disclosed revenue as it was following Complete Contract Method of accounting?*

3. *Whether in facts and circumstances of the case, Ld. Cit (A) is legally justified in not holding that application of Rule 8D of the Income Tax Rule, 1962 (the Rule) to compute quantum of disallowance u/s 14 A of the Income Tax Act 1961 (the Act) is mandatory?*

4. *Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in not holding the disallowance u/s 14 A by ignoring legislative intend of section 14 A of the Act that disallowance u/s 14 A of the Act is not dependent upon earning of exempt income as explained vide CBDT Circular No. 5/2014 dated 10.02.2014?*

5. *Whether in facts and circumstances of the case, the Ld. CIT(A) is legally justified in deleting the disallowance of Rs. 5,961/- u/s 14 A of the Act without considering legal principles that allowability or disallowability of expenditure under the Act is not conditional upon the earning of the income as upheld by Hon'ble Supreme Court in case of CIT Vs Rajendra Prasad Moody (1978) 115 ITR 519?*

6. *That the appellant craves leave to add, amend, alter or forgo any ground/(s) of appeal either before or at the time of hearing of the appeal."*

3. Facts giving rise to the present appeal are that the assessee is a company and engaged in the business of construction of commercial properties and sale and purchase of flats etc., electronically filed its return of income on 22.09.2012, declaring total income of INR 1,20,22,330/-. The case of the assessee was selected for scrutiny assessment u/s 143(2) of the Income Tax Act, 1961 ("the Act"). The statutory notices u/s 142(1) and 143(2) of the Act,

were issued to the assessee. In response thereto, Ld. Authorized Representative ("AR") of the assessee company attended the proceedings and filed the requisite information as and when called for by the Assessing Officer ("AO"). The AO thereafter, proceeded to frame the assessment by making various additions in the income of the assessee i.e. on account of ROC fee of INR 6,00,000/- incurred for increase in Authorized capital. Further, the AO made addition in respect of disallowance of expenses of INR 42,87,770/- claimed to have been paid as assured rental income to the customers/buyers. The AO made proportionate disallowance of expenditure with the ratio of sales booked with entire project amounting to INR 1,26,24,770/- on the basis that the assessee follows complete contract method, he restricted the depreciation to the extent of INR 18,560/- and made addition of INR 7,45,247/- on account of excess claim of depreciation. The AO further made addition of INR 5,961/- by invoking the provision of section 14A of the Act. Thus, the AO after having made afore-mentioned addition(s)/disallowances computed and assessed income at INR 3,02,86,080/- against the declared income at INR 1,20,22,329/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, partly allowed the appeal of the assessee. Thereby, he deleted the additions related to the addition of INR 6,00,000/- in respect of ROC fee, disallowance u/s 14A of the Act depreciation, proportionate disallowance of expenditure and rental income. In sum and substance, Ld.CIT(A) deleted all the additions made by the AO.

5. Aggrieved against the order of Ld.CIT(A), the Revenue preferred appeal before this Tribunal.

6. **Ground No.6** raised by the Revenue is general in nature, needs no separate adjudication hence, dismissed

7. **Ground Nos. 3, 4 & 5** raised by the Revenue are inter-connected and against the deletion of addition made by the AO by invoking the provision of section 14A of the Act. .

8. Apropos to these grounds, Ld.CIT DR for the Revenue supported the orders of the authorities below and submitted that Ld.CIT(A) was not justified in deleting the addition.

9. On the other hand, Ld. Counsel for the assessee relied upon the order of Ld.CIT(A) and submitted that Ld.CIT(A) has followed the judicial pronouncements. He drew our attention to the finding of Ld.CIT(A). He further submitted that the assessee do not have income which does not part of the total income and has made no expenditure /claimed expenditure which has been incurred by the assessee for earning exempt income. He submitted that earning of exempt income is a pre-requisite for making disallowance by invoking provision of section 14A of the Act. Thus, the action of Ld.CIT(A) is justified in the present case.

10. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities

below. For the sake of clarity, the relevant contents of the finding of Ld.CIT(A) are reproduced as under:-

3.6.3. "The facts of the case and the relevant decisions have been carefully considered. From the submissions, the following facts emerge:-

(i) The appellant has invested Rs.30 lakhs as a strategic investment. There is no change in the investment in the current year. The assessee's own funds are Rs.30.53 Cr. i.e. Rs.8 Cr. as equity and Rs.22.50 Cr. as Reserves & Surplus.

(ii) The jurisdictional Delhi High Court in the case of CIT vs. Holcim India P. Ltd., ITA No. 486/2014 & ITA No. 299/2014 dated 5th September, 2014 has held that no disallowance can be made under section 14A when there is no tax free income.

(iii) The Hon'ble Bombay High Court in the case of CIT vs. HDFC Bank Ltd., ITA No. 330 of 2012 dated 23.07.2014 has held that when assessee's own funds and other no interest bearing funds were more than the investment in tax free securities, the investment made by the assessee would be out of the interest free funds available with the assessee. Further interest paid of Rs.81,68,764/- by the appellant as per details furnished has no relation with the investment made.

(iv) The Hon'ble High Court of Delhi in CIT vs. Taiksha Engineering India Limited, ITA No. 115/2014 & 119/2014 dated 25.11.2014 has held that the AO has to record his satisfaction on examination of assessee's accounts before making any disallowance.

Further, Hon'ble Allahabad High Court in the case of CIT vs. Shivam Motors(P) Ltd. 230 Taxman 63 have held that in absence of tax free income corresponding expenditure could not be worked out. Hon'ble Gujarat High Court in the case of CIT vs. Corrtech Energy Pvt. Ltd. 45 taxmann.com 116

(Gujarat) for the assessment year 2009-10 and the Hon'ble High Court of Bombay in the case of CIT vs. Delite Enterprises have also held that assessee had not claimed any exempt income in this year, in such a situation section 14A could have no application in the case of appellant. The similar controversy has been addressed by the Hon'ble High Court of Delhi in the case of M/s Cheminvest Limited vs CIT-378 ITR 0033 wherein the court has analysed the meaning of exempt income as enumerated in Sec 14A of the Act. The Hon'ble Court held as under:

> *"the question framed by holding that the expression "does not form part of the total income" in Section 14A of the envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income. In other words, Section 14A will not apply if no exempt income is received or receivable during the relevant previous year."*
>
> *Respectfully following the decision of the Jurisdictional High Court I am of the view that the claim of the appellant needs to be upheld. Therefore, provisions of Section 14A read with rule 8D are not applicable. Accordingly, disallowance of Rs 5,961/- is deleted.*

Charging of Interest u/s 234B and 234C is mandatory and consequential in nature and the AO is directed to take suitable action accordingly."

11. From the above finding, it is clear that Ld.CIT(A) had followed judicial pronouncements. Coupled with the fact that the Revenue has not brought any material suggesting that the contention of the assessee that the assessee do not have any income which does not part of the total income and did not make any expenditure/claimed expenditure for earning exempt income, is not true. The finding of Ld.CIT(A) is in consonance with the binding precedents. Therefore, we do not see any reason to interfere in the findings of Ld.CIT(A), the

same is hereby affirmed. The Grounds of appeal raised by the Revenue on this issue are dismissed.

12. **Ground Nos. 1 & 2** raised by the Revenue relate to deletion of disallowances of INR 42,87,770/- being the assured rental/interest paid by the assessee, INR 1,26,24,770/- on account of expenditure claimed by the assessee without sustaining corresponding Revenue and INR 7,63,807/- on account of depreciation.

13. Apropos to these grounds, Ld.CIT DR for the Revenue supported the orders of the Assessing Authority and submitted that Ld.CIT(A) was not justified in deleting the impugned additions. He submitted that Ld. CIT(A) failed to appreciate that assured rentals cannot be equated with the interest. He submitted that the AO was therefore, justified in making addition. Thus, he strongly supported the assessment order.

14. On the other hand, Ld. Counsel for the assessee re-iterated the submissions as made before Ld.CIT(A) in respect of addition of INR 42,87,770/- . He submitted that the issue is squarely covered in favour of the assessee and Ld.CIT(A) has given an elaborate finding and relied upon the binding precedents.

15. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) after considering the submissions in respect of addition made by the AO of INR 42,87,770/-, deleted the same by observing as under:-

3.3.3. "The assessment order and the submissions of the appellant have been carefully considered. The appellant's representative, during the course of hearing of appeal explained that the nature of business of the appellant is developer. The project being built by the appellant is his stock in trade till the same is sold out. The appellant raises loans while entering an MOU with the prospective buyer for purchase of property which is to be constructed. The prospective buyer in return is offered assured return against the deposit made till the property is transferred to him as per the MOU. This assured rental due to the prospective buyer is interest as per Section 2(28A) and TDS under section 194A has been deducted and deposited by the appellant.

Further the judgment of the Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation Ltd. (225) ITR 802 (SC) relied upon by the AO; in fact supports the case of the appellant because the Hon'ble Court has held that discounts on debentures to be paid at the time of maturity is revenue expenditure and is allowable proportionately over the life of the debentures.

The appellant relied on the decision of Hon'ble High Court of Bombay in the case of C.I.T. vs. Lokhandwala Construction Inds. Ltd, wherein it has been held that Construction project undertaken by the assessee-builder constituted its stock-in-trade and the assessee was entitled to deduction under s. 36(1)(iii) in respect of interest on loan obtained for execution of said project.

The relevant extract of the decision is as under:-

"4. From the facts found by the Tribunal on record, it is clear that assessee undertook two-fold activities. It bought and sold flats. Secondly, the assessee was also engaged in the business of construction of buildings. The profits from both the activities were assessed under s. 28 of the IT Act. In this case, we are concerned with the second activity (hereinafter referred to, for the sake of brevity, as "Kandivali project").

According to the CIT, loan was raised for securing land/development rights from the Mandal. That, the loan was utilised for purchasing the development rights, which, according to the CIT, constituted a capital asset. According to the CIT, since the loan was raised for securing capital asset, the interest incurred thereon constituted part of capital expenditure. This finding of the CIT was erroneous. In the case of India Cements Ltd. vs. CIT (1966) 60 ITR 52 (SC), it was held by the Supreme Court that in cases where the act of borrowing was incidental to carrying on of business, the loan obtained was not an asset. That, for the purposes of deciding the claim of deduction under s. 10(2)(iii) of the IT Act, 1922 [s. 36(1)(iii) of the present IT Act), it was irrelevant to consider the purpose for which the loan was obtained. In the present case, the assessee was a builder. In the present case, the assessee had undertaken the project of construction of flats under the Kandivali project. Therefore, the loan was for obtaining stock-in-trade. That, the Kandivali project constituted the stock-in-trade of the assessee. That, the project did not constitute a fixed asset of the assessee. In this case, we are concerned with deduction under s. 36(1)(iii). Since the assessee had received loan for obtaining stock-in-trade (Kandivali project), the assessee was entitled to deduction under s. 36(1)(iii) of the Act. That, while adjudicating the claim for deduction under s. 36(1)(iii) of the Act, the nature of the expense-whether the expense was on capital account or revenue account-was irrelevant as the section itself says that interest paid by the assessee on the capital borrowed by the assessee was an item of deduction. That, the utilization of the capital was irrelevant for the purposes of adjudicating the claim for deduction under s. 36(1)(iii) of the Act (see judgment of the Bombay High Court in the case of Calico Dyeing & Printing

Works vs. CIT (1958) 34 ITR 265 (Bom)). In that judgment, it has been laid down that where an assessee claims deduction of interest paid on capital borrowed, all that the assessee had to show was that the capital which was borrowed was used for business purpose in the relevant year of account and it did not matter whether the capital was borrowed in order to acquire a revenue asset or a capital asset. The said judgment of the Bombay High Court applies to the facts of this case."

In the light of above facts and legal position, the claim of interest expenditure by the appellant cannot be deferred till the booking of revenue and allowed in the year of sale of property. It needs to be understood that in the case of business of a developer the construction of property is his stock-in-hand and the interest paid on the capital raised by the appellant in its business is finance charges and the same will not form cost of the property.

I have carefully considered the observations of the Assessing Officer and submissions of the appellant and the judgments on the issue the addition of Rs.42,87,770/- made on account of assured return paid on the advance payment to the appellant as per the agreed MOU with the buyers of property to be constructed and deduction of TDS u/s 194A on such assured return, treating the same as interest is therefore, allowable under section 36(1) (iii). Accordingly, addition of Rs 42,87,700/- is deleted and this ground is decided in favour of the appellant."

16. The issue is with regard to the treatment of amount paid to the buyers as assured return. It is the case of the assessee that before handing over the possession to the buyer as stock-in-trade and money so received from the buyers being advance only, thus any payment made as assured return would be nothing else but the interest. The AO made disallowance on the basis that such deduction of expenses as claimed by the assessee, could be allowed only

in the year in which corresponding sale takes place. In this year since there was no corresponding sale therefore, the deduction as claimed by the assessee would not be allowable. For the sake of clarity, the relevant observations/findings of Assessing Authority is reproduced as under:-

4.3. "The submission filed by the assessee has been considered and is not acceptable in view of the following:

1. *Assessee is in business of builders that is construction of commercial properties and sale and purchase of flats.*
2. *It has not carried out any construction activity during the year.*
3. *Sales during the year has been made out of stock in hand.*
4. *The expenses claimed during the year are cost of sale of flats, administrative expenses, staff cost and finance charge.*
5. *As per significant accounting policy annexed with the audited balance sheet, the company follows mercantile system of accounting and recognized income and expenditure on accrual basis as stipulated under AS-9 issued by ICAI. The assessee has shown Revenue from sale of flats which comprised income from material and services. The company is following "complete contract method" for recognizing the revenue in accordance with the terms of AS-7 relating to "construction contract" issued by ICAI.*

   Matching Principle requires that expenses incurred by the assessee must be charged to the Profit and Loss account in the financial year in which the revenue, to which those expenses relate, is earned.

   It is an accounting practice whereby expenses are recognized in the same accounting period as the related revenues are recognized.

The matching concept thus helps avoid misstating earnings for a period. The matching concept, or matching principle, is not an alternative to accrual accounting, but rather a fundamental element of it.

This argument is based on the judgment of the Apex Court in Madras Industrial Investment Corporation Ltd. (225 ITR 802) (SC) In that case, the Supreme Court had referred to this 'matching concept. It was held that ordinarily revenue expenditure incurred wholly or exclusively for the purpose of business, can be applied in the year in which it is incurred. However, the facts may justify spreading the expenditure and claiming it over a period of ensuing years, where allowing the entire expenditure in one year could give a very distorted picture of the profits of a particular year.

The assured rental must have been paid on advances received from customers amounting to Rs. 13,88,46,123/- shown in note no. 6 of audited balance sheet. As the assessee is following the 'complete contract method' the expenditure related to any project should be allowed in the year in which the corresponding revenue is booked. During the current year the assessee has claimed the expenditure in the shape of assured rental, however, the corresponding revenue has not been booked.

6. *It can be seen from above that there is no basis for claiming assured rentals in shape of interest because there is no corresponding revenue. The assessee has failed to justify the basis on which assured rental is being paid and why should be allowed during the year under consideration.*

4.4 In view of the above ad that the assessee has failed to furnish any justification on what basis assured rental is paid, a sum of

Rs.42,87,770/-is disallowed and added to the income of the assessee.

4.5. From the above, it is ample clear that the assessee has concealed particulars of its income, therefore, I am satisfied that this is fit case for initiation of penalty proceedings u/s 271(1)(c) for concealing the particulars of income."

17. During the course of hearing, it was contended by the Ld. Counsel for the assessee that the issue of assured rental is covered in favour of the assessee by the decision of the Hon'ble Tribunal rendered in the case of ***DCIT, Circle-26(2), New Delhi vs M/s. Vipul Infracon Pvt. Ltd. [2019] (11) TMI 655-ITAT, Delhi*** vide order dated ***07.11.2019***. It was further contended that the judgement of Hon'ble Supreme Court rendered in the case of ***Madras Industrial Investment Corporation Ltd. vs CIT, 1997 (4) TMI 5*** was infact supported the case of the assessee. The issue therefore, is to be decided whether the assured rentals would be interest in terms of section 2(28A) of the Act and is allowable business expenditure. There is no dispute about the nature of receipt is concerned. The treatment of payments made to the prospective buyers as assured rental is in dispute. For the sake of clarity, section 2(28A) of the Act is extracted herein below:-

2(28A) "interest" means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized."

18. From the above, it is clear that *"interest means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit,*

claim or other similar right or obligation) and includes any service fee or other charge in respect of money borrowed or debt incurred by the assessee". The Co-ordinate Bench of this Tribunal rendered in the cases of ***M/s. Vipul Infracon Pvt. Ltd. vs Addl. CIT, Range-17, New Delhi*** in ***ITA No.6480/Del/2016*** and ***ACIT, Circle-26(2), New Delhi vs M/s. Vipul Infracon Pvt.Ltd.*** in ***ITA No.891/Del/2017,*** both dated ***09.08.2023*** wherein Hon'ble Tribunal has decided the issue by observing as under:-

9. *"As regards the addition of Rs. 72,11,000/- on account of interest and rent expenses claimed by the assessee is concerned, it is submitted by the Ld. AR that this issue is squarely covered by the decision of the ITAT for the assessment year 2010-11 in assessee's own case decided in ITA No. 6141/Del/15 in Revenue's appeal wherein, it has been observed that "the payment made to the parties was verified by the Ld. CIT(A) and the funds received from these parties were received by way of cheques and same were utilized by the assessee for its business purposes for completing the project. The payment of assured return in the form of interest to Dinesh Nandini Ram Krishna Dalmia Foundation and assured rental to Sh. Arun Khanna and Kailash Khanna have been made after 6 deducting TDS, therefore, there is no dispute about incurring of expenditure. Since the funds received from these parties were on the basis of valid MOUs against booking of space and on the basis of fixed return plans offered by the assessee, hence the expenditure incurred was for commercial expediency and is a requirement of the business." The aforesaid contention of the Ld. AR was not controverted by the Ld. DR. Similarly, in the case in hand that payments made to the parties is fully verifiable and the fund received from the parties were received by way of cheques and the same were utilized by the assessee for its business purpose for*

completing the project and the assessee has also made the TDS on interest payment and the funds received were on the basis of valid MOU against booking of space and on the basis of fixed return plan offered by the assessee, hence, the expenditure incurred was for the purpose of commercial expediency and meeting the fund requirement of the business. We further find that ld. CIT(A) has deleted the addition by following the order of his predecessor in appeal no. 233/14-15 dated 20.7.2015. In view of above and respectfully following the precedents as aforesaid, we do not find any infirmity in the order of the Ld. CIT(A), hence, we affirm the same and dismiss the ground no. 1 raised by the Revenue."

19. Thus, the CO-ordinate Bench of this Tribunal in the case of ***M/s. Vipul Infracon Pvt. Ltd. vs Addl. CIT*** **(supra)** has under the identical facts and the issue has ruled in favour of the assessee. The Revenue has not brought to our our notice any other binding precedent that may impel us for deviating from the decision of the Co-ordinate Bench. We therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal hereby affirm the impugned order on the issue and reject the plea of the Revenue.

20. In respect of addition of INR 1,26,24,770/-, Ld.CIT DR for the Revenue submitted that Ld.CIT(A) was not justified in deleting the addition as it is admitted fact that the assessee is following complete contract method. Therefore, the proportionate disallowance of expenditure was rightly made by the AO. The expenditure would be allowable if it is wholly and exclusively incurred for the project. But for claiming such expenditure, the assessee is required to offer corresponding revenue. He contended that in the absence of

Revenue being offered by the assessee, no expenditure would be allowable. Ld. CIT DR for the Revenue thus, rely on the findings of the AO.

21. On the other hand, Ld. Counsel for the assessee opposed these sub missions and supported the order of Ld.CIT(A). He contended that the AO has grossly erred in making impugned additions purely on assumption basis. By making the impugned disallowance of INR 1,26,24,770/-, the AO has disallowed administrative expenses and staff cost. He contended that as per AS-7, the expenses are allowable as administration cost and staff cost incurred by the assessee, are not directly related to a construction of project and same are to be charged to profit and loss account. Thus, the contention of the assessee that administration cost and staff cost incurred by assessee which are not directly related to a construction of project are to be charged to the profit and loss account in the very same year. Ld. Counsel for the assessee placed reliance on following judicial pronouncements:-

[i] "M/s. Lodha Palazzo, Mumbai vs ACIT, 15(1), Mumbai [2014] (12) TMI 1272, ITAT Mumbai dated 10.12.2014;

[ii] M/s. Hiranandani Palace Gardens P.Ltd., Mumbai vs The ACIT (OSD), Mumbai [2015] (12) TMI 1649-ITAT Mumbai, dated 30.12.2015;

[iii] ACIT-3(2)(2), Mumbai vs Palalce Garden Chennai SEZ Limited, [2019] (1) TMI 929-ITAT Mumbai dated 04.07.2018; and

[iv] M/s. Macrotech Construction Pvt.Ltd. vs ACIT, Circle6(3) and Central Circle 42, Mumbai [2019] (4) TMI-ITAT, Mumbai dated 27.12.2018."

He submitted that there is no such legal basis. He further took us through the assessment order and the order of Ld.CIT(A).

22. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a finding on fact by observing as under:-

> *3.4.3. "I have examined the facts at hand and duly heard the counsel. The appellant has booked the direct expenses incurred on cost of material and labour for construction of property in the cost of inventory and claimed the indirect expenses such as office employees' salary, administrative expenses and marketing & selling expenses as revenue expenditure. I am of the considered view that the facts of the case of appellant are congruous with the facts of the case of Lodha Palazzo (ITA No. 2298/M/2012), as decided by the ITAT Mumbai. Respectfully following the said judgment, it is decided that the basis adopted by the A.O. to allow indirect expenses in the ratio of 2.43% based on the cost of material consumed of Rs.50,27,080/- with the total inventories of Rs.20,67,77,874/- is not in accordance with the provisions of the Act and accordingly the addition of Rs. 1,26,24,770/-made on this ground is hereby deleted."*

23. The Revenue has not controverted the finding that the assessee has booked the direct expenses incurred on the cost of material and labour for construction of property in the cost of inventory and claimed the indirect expenses such as office employee's salary, administrative expenses and market and selling expenses as revenue expenses. As per AS-7, these expenses would be allowable. For the sake of clarity, relevant contents of para 19 of AS-7 are reproduced as under:-

19. *"Costs that cannot be attributed to contract activity or cannto be allocated to a contract are excluded from the costs of a construction contract. Such costs include:*

(a) general administration costs for which reimbursement is not specified in the contract;

(b) selling costs;

(c) research and development costs for which reimbursement is not specified in the contract; and

(d) depreciation of idle plant and equipment that is not used on a particular contract."

24. Similarly in the case of ***M/s. Hiranandani Palace Gardens P.Ltd., Mumbai vs The ACIT (OSD), Mumbai [2015] (12) TMI 1649-ITAT Mumbai,*** dated ***30.12.2015***, the Co-ordinate Bench of the Tribunal decided the issue by observing as under:-

6. *"Both the Ld. representatives of the parties have submitted that the issue is squarely covered by the above decision of the Tribunal. We find that rather the case of the assessee is on better footing as the assessee was carrying out different projects though at the same location, hence it was not a case of single project. Even otherwise the resultant income from the project is a loss even after capitalisation of expenditure by the AO to work in progress. Hence, there is no tax implication, so far as the year under consideration is concerned and the loss otherwise also has to be carried forward. Under such circumstances, it cannot be said that the assessee has adopted the above stated accounting method to avoid tax on income for the year under consideration. The assessee, thus, has followed the accounting method which has been consistently followed by it and which is as per the recognized principles of accounting. In view of the above discussion of the matter and following the above*

decision of M/s. Hiranandani Palace Gardens P. Ltd. the Tribunal for the sake of consistency, this issue is decided in favour of the assessee."

25. The Revenue has not brought out any other binding precedent to our notice that may impel for deviating from the decision of the Co-ordinate Bench that the expenses would be allowable if the assessee has consistently followed the method which is as per the recognized principles of accounting. It is rebutted by the Revenue that the assessee has not been following consistently method prescribed u/s AS-7. Hence, respectfully following the above decisions of the Co-ordinate Benches of the Tribunal hereby, we affirm the impugned order on the issue and reject the plea of the Revenue. Ground raised by the Revenue is accordingly, dismissed.

26. In respect of addition of INR 7,63,807/-, Ld.CIT DR for the Revenue placed reliance on the assessment order.

27. On the other hand, Ld. Counsel for the assessee supported the order of Ld.CIT(A).

28. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Ld.CIT(A) has given a finding on fact by observing as under:-

3.5.3. "The disallowance of depreciation by applying a percentage as considered by the AO has no relevance. Depreciation is allowed to an assessee based on use of vehicles by the company. In case the vehicles have been used for official purposes then the depreciation

has to be allowed as a whole. The AO has ignored and overlooked the provisions of depreciation as applicable under the Income Tax Act. Depreciation is a statutory liability and has to be allowed to the assessee. The quantum of depreciation would not change on the basis of use of car.

The Hon'ble ITAT, Mumbai in the case of Mukesh K. Shah vs. ITO 303 ITR 409 has held as under:- 13. But as far as depreciation is concerned there is no justification in making any disallowance. If the car is used by the Assessee for the purpose of his business, then the depreciation need to be allowed as per the rate suggested by the statute. Depreciation is a statutory allowance. The statutory allowance cannot be restricted on the basis of the volume of business use and volume of personal use. The condition to be satisfied is that the asset should be owned by the Assessee and it should be used for the business or profession. Both the conditions are satisfied here. Personal use of the car cannot fetter the granting of statutory allowance. Therefore the disallowance made on account of depreciation is deleted.

Based on the facts of the case, submissions made by the assessee and the legal position on the issue, I am convinced that the disallowance of depreciation made by the AO by applying a percentage to eligible amount of depreciation is not well founded. Therefore, the aforesaid addition made by the AO amounting to Rs.7,45,247/- is hereby deleted."

29. Ld. Counsel for the assessee further submitted that the assessee had calculated depreciation of INR 7,63,807/- on computers, office equipment, vehicles etc. which are used for the purpose of business and the same is evident from schedule of fixed assets and depreciation has been computed as per provision of section 32 of the Act.

30. The above finding on facts, Ld.CIT(A) is not controverted by the Revenue by bringing any adverse material therefore, we do not see any reason to interfere in the findings of Ld.CIT(A), the same is based upon the statutory provisions and settled law. Ground raised by the Revenue is accordingly, dismissed.

31. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 10th October, 2024.

Sd/- ***Sd/-***

(BRAJESH KUMAR SINGH) **(KUL BHARAT)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

** Amit Kumar **

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1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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