

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER  
AND  
SH. SUDHIR KUMAR, JUDICIAL MEMBER**

ITA No.1893/Del/2020  
Assessment Year: 2015-16

<b>M/s R-Tech Housing Private Limited Plot No.44, First Floor Sector -44 Gurgaon 122001 PAN No. AADCV9578B</b>	<b>Vs</b>	<b>ACIT Central Circle - 20(2), Delhi</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellants by	<b>Sh. Ved Jain Advocate Sh. Aman Garg, CA</b>
Respondent by	<b>Ms Harpreet Kaur Hansra, Sr. DR.</b>

Date of hearing:	29/01/2025
Date of Pronouncement:	12/02/2025

**ORDER**

**PER SUDHIR KUMAR, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Delhi, [hereinafter referred to as "CIT(A)"], vide order dated 24.09.2020 pertaining to A.Y. 2015-16 and arises out of the assessment order dated

29-12-2018 passed by the Assessing Officer under Section 143(3)/ 92CA of the Income Tax Act, 1961 [hereinafter referred as 'the Act'].

2. The assessee has raised the following grounds of appeal :

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*

2. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 3,18,63,611/- made by the AO on account of Commission expenses claimed by the assessee.*

(ii) *That the disallowance has been confirmed arbitrarily rejecting the detailed explanation and evidences brought on record by the assessee in this regard.*

3. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 63,44,468/- made by the AO on account of selling and Promotion expenses claimed by the assessee*

*(ii) That the disallowance has been confirmed arbitrarily rejecting the detailed explanation and evidences brought on record by the assessee in this regard.*

*4. (i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs. 55,00,000/- made by the AO on account of Loan Processing fees claimed by the assessee treating the same as capital in nature.*

*(ii) That the abovesaid disallowance has been confirmed ignoring the detailed submissions and explanation brought on record by the assessee to explain that the expenditure claimed is revenue in nature.*

*5. That the appellant craves leave to add, amend or alter any of the grounds o appeal.*

3. Brief facts of the case are that the assessee is a private limited company and is engaged in the business of real estate. The assessee company e-filed its return of income for A.Y. 2016-17 declaring a loss of Rs 5,76,68,745/-. The case of the assessee was selected for complete scrutiny assessment under CASS and notice u/s 143(2) of the Act was issued on 17-03-2016. The assessee company was filed the reply and audited balance sheet before the Assessing officer. After considering the

reply filed by the assessee the Assessing officer has completed the assessment after making the following additions/disallowance as under:

1. *Addition on account of commission paid on sale of Flat bookings Rs 3,18,63,611/-*
2. *Disallowance of expenses incurred on selling and promotions Rs 63,44,468/-.*
3. *Disallowance of various expenses viz. Loan Processing Fees, ROC Fees and corporate Social Responsibility Rs58,20,602/-*
4. *Addition u/s 56(2) (viib) of the Act Rs 19,98,70,555/-*

4. Aggrieved the order of the AO the assessee has filed the appeal before the Ld CIT(A), who vide his order 24-09-2020 partly allowing the appeal, deleted the addition made by AO u/s 56(2) (viib) of the Act and rest was confirmed. Being aggrieved by the order of the Ld. CIT(A), the assessee has come in appeal before the Tribunal.

Ground No. 1 in general in nature and does not require any specific adjudication.

**In Ground No. 2 and 3:** *Addition on account of commission paid on sale of Flat bookings Rs*

*3,18,63,611/- & Disallowance of expenses incurred on selling and promotions Rs 63,44,468/-.*

5. The Ld. Counsel for the assessee has submitted that genuineness of the expenses has not been doubted by the AO or Ld CIT(A). He has further submitted that selling costs cannot be attributed to contract activity and cannot be allocated to a contract and are excluded from the cost of construction contract. He also submitted that the observation of the lower authorities that expenses which are directly related to the construction project of the assessee can't be allowed as expenses, as long as revenue is not recognized by the assessee was wrong. Ld counsel has relied upon the Accounting Standard -7 issued by ICAI which clearly spells out the selling and general administrative cost are required to be excluded from the contract costs while preparing the financial statements.

6. The Ld. Counsel has also stated that issue of ground No 2&3 are squarely covered by the decision of the coordinate bench of the tribunal in the case of **M/s Hiranandani Palace Gardens P. Ltd. Mumbai Vs the Assistant commissioner of Income Tax (OSD) Mumbai 2015(12) TMI 1649- ITAT Mumbai**. Reliance has also placed on the following decisions:

*i. ASSISTANT COMMISSIONER OF INCOME TAX -3 (2) (2), MUMBAI VERSUS PALACE GARDENS CHENNAI SEZ PRIVATE LIMITED, 2019 (1) TMI 929 ITAT MUMBAI, Dated, July 4, 2018*

*ii. SUNNY VISTA REALTORS PVT. LTD. VERSUS THE ACIT, CIR. 3 (3), MUMBAI, 2017 (2) TMI 954, ITAT MUMBAI*

*iii. M/S. LODHA PALAZZO, MUMBAI VERSUS ACIT, 15 (1), MUMBAI, 2014 (12) TMI 1272, ITAT MUMBAI*

*iv. M/S. HIRANANDANI PALACE GARDENS P. LTD., MUMBAI VERSUS THE ASSISTANT COMMISSIONER OF INCOME TAX (OSD), MUMBAI, 2015 (12) TMI 1649, ITAT MUMBAI*

*v. M/S. MACROTECH CONSTRUCTION PVT. LTD. VERSUS ACIT, CIRCLE 6 (3) AND CENTRAL CIRCLE 42, MUMBAI, 2019 (4) TMI 259, ITAT MUMBAI*

*vi. M/S PRAGNYA CREST PROPERTIES PVT. LTD., (EARLIER KNOWN AS HABITAT PRAGNYA PROPERTY PVT. LTD), VERSUS THE DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-3 (1) (2), BANGALORE, 2020 (4) TMI 224, ITAT BANGALORE*

*vii. M/S. PRINCETON INFRASTRUCTURE (P) LTD. VERSUS ITO, WARD-20 (4), NEW DELHI., 2023 (6) TMI 280, ITAT DELHI*

7. The Ld DR has vehemently supported the order of the lower authorities and sought the dismissal of the appeal.

8. We have considered the rival contentions and have gone through the records and also the decision of the co-ordinate bench of the Tribunal in the case of M/s Hiranandani Palace

Gardens P. Ltd. Mumbai Vs the Assistant commissioner of Income Tax (OSD) Mumbai 2015(12) TMI 1649, wherein the Tribunal after deliberating upon the various clauses of Accounting Standard AS-2 and AS. 7 and the provisions of section 145A of the act has held that as per the accounting method consistently followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing and selling expenses was as per the recognized principles of accountings and as such the claim of the assessee deserved to be allowed. In the case of M/s Hiranandani Palace Gardens P. Ltd. Mumbai Vs. the Assistant commissioner of Income Tax (OSD) Mumbai 2015(12) TMI 1649- ITAT Mumbai the Co-ordinate bench held as under :

*“6. We have heard the rival contentions and gone through the records. The Ld. counsel for the assessee has relied upon the "Expert Advisory Committees Report (EAC) on applicability of revised AS 7 to enterprises under taking the construction activities on their own account as a venture commercial nature" (copy placed at page 49 & 50 of paper book) wherein it has been stated the revised AS-7 shall not be applicable to the builders undertaking the commercial activity on the own and it was also stated that the*

*work in progress shall constitute inventory for the builders a shall be valued as per AS-2 issued by the Institute of Chartered Accountant of India (ICAI). The L Counsel has further submitted that the assessee has accordingly followed the Accounting Stand -2 for determining the work in progress. He has further brought our attention to para 13 of As wherein it has been mentioned that the following expenses have to be excluded from the cost Inventories being work-in-progress: "(a) abnormal amounts of wasted materials, labour or other production costs; (b) storage costs, unless those costs are necessary in the production proc before a further production stage; (c) administrative overheads that do not contribute to bring inventories to their present location and condition; and (d) selling costs."*

*7. The Ld. Counsel has further relied upon para 2.4 of the "Guidance Note on Accounting for Real Es Transaction issued by the Institute of the Chartered Accountants wherein it has been stated that*

*"The following cost should not be considered part of construction cost and development cost if are material:*

- (a) General administration costs; Selling cost;*
- (b) Research and development cost;*
- (c) Depreciation of idle plant and equipment;*
- (e) Cost of unconsumed or uninstalled material delivered at site; and*
- (f) Payment made to sub-contractors in advance of work performed."*

*8. The Ld. Counsel therefore has stated that as per the above guidelines, the administrative and selling expenses have been specifically excluded from the cost of inventory for work for closing WIP. The Counsel has further submitted that even as per AS -7 vide paragraph 19 it has been mentioned that the general administrative cost and selling cost does not constitute the cost of the project. He, therefore, mitted that as per Guidance note, AS 2 and even AS 7, the general administrative expenses and selling expenses are not project cost and are to be charged to the profit & loss account in the very same year in which they are incurred. In view of the above facts and following the*

*Guidance Notes and Accounting standards, the assessee has individually worked out the expenses directly related to work in progress and expenses not related to work in progress and accordingly debited in respected head. Ld. Counsel has further relied upon section 145A of the Act, which read as under*

*[Method of accounting in certain cases.*

*145A. Notwithstanding anything to the contrary contained in section 145.-*

*(a) the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be-*

*(i) in accordance with the method of accounting regularly employed by the assessee; and*

*(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation."*

9. The Ld. Counsel, therefore, has contended that the assessee has been regularly following the method of accounting recognized by the accounting principles to value the inventory. The assessee had followed the same method of valuing the inventory in preceding year as well as in succeeding years. Even in the assessment year 2010-11, it has debited and claimed the identical nature of expenses which had been accepted as deductible expenses in assessment order passed u/s 143(3) of the I.T. Act. The assessee being regularly following the accounting method duly recognized by the accounting principles and guidelines as stated above and in view of the provisions of section 145A has rightly claimed the proportionate salary expenses, administrative expenses and selling expenses as revenue expenditure. The Ld. counsel has further contended that the Special Bench decision of the Tribunal relied upon by the lower authorities in the case of "Wall Street Construction Ltd. Vs JCIT [101 ITD 156] is relating to interest expenditure identifiable with the project. In assessee's case, dispute is not with respect to interest as the assessee itself has added the interest cost to the work-in-progress and claimed it in subsequent year in the proportion of revenue offered.

*Thus, the facts in assessee's case are quite distinguishable and the decision of Special Bench (supra) is not applicable to the facts of the assessee's case*

*10. The Id. DR on the other hand has relied upon the findings of the lower authorities. He has stressed that the Ld. CIT(A) has rightly appropriated the indirect expenses to the WIP in proportion to the percentage of completion in respect of the area sold.*

*11. We have considered rival contentions and carefully gone through the orders of the authorities below. The percentage completion method of accounting has been regularly followed by the assessee. In the succeeding assessment year 2010-11, the AO has accepted the deductibility of the identical nature of expenses in the assessment order passed u/s 143(3) of the I.T. Act. We agree with contention of the Ld. Counsel for the assessee that the employee cost refers to salary paid to the employees who are looking after the administration of office and not directly related to construction of the project but is part of the administrative expenses. Similarly, the office and administrative expenses and selling and marketing*

*expenses are to be charged to the profit & loss account in the very same year in which they are incurred and have to be excluded from the cost of inventories for working out closing WIP as per the guidelines issued by the ICAI, Accounting Standard AS-2 and AS-7. The assessee has regularly and consistently been following the said method of accounting as per the provisions of section 145A of the I.T. Act. The AO has not assigned any cogent reason as to why the method, which has been consistently followed by assessee and accepted by the department in past as well in succeeding assessment years and which is in accordance with the recognized principles of accounting by ICAI, is being rejected. In our view, the action of the Revenue Authorities in rejecting the assessee's accounting method, without assigning any reason is not justified. The accounting method followed by the assessee and thereby excluding the indirect expenses such as office employees' salary, administrative expenses and marketing and selling expenses is as per the recognized principles of accounting and as such the claim of the assessee deserves to be allowed. We hold accordingly. The additions made by the lower authorities on this issue are hereby ordered to be deleted.*

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 locations 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 the Tribunal for the sake of consistency, this issue is decided in favour of the assessee.”

9. We find that in the facts and circumstances of the case in hand the decision of Hon'ble ITAT in case of M/s Hiranandani Palace Gardens P. Ltd. Mumbai Vs. the Assistant commissioner

of Income Tax (OSD) Mumbai is squarely applicable. The grounds No.2 and 3 taken by the assessee are decided in the favour of the assessee and addition /disallowances made by the AO and confirmed by the Ld. CIT(A) on account of commission paid on sale of Flat bookings Rs.3,18,63,611/-and disallowance of expenses incurred on selling and promotions Rs. 63,44,468/- are deleted.

10. Ground no 4: Disallowance of loan processing fee of Rs 55,00,000/- by treating the same as capital in nature?

11. The Ld. Counsel for assessee company has stated that loan processing fee is one time processing fees and same has been incurred for getting the finance business operations and does not provide any enduring benefit to the assessee and same must be allowed as revenue expenditure. Reliance has placed the decision of DCIT Circle -11 (1) New Delhi Versus Indus Towers Ltd. and Indus Towers Ltd. Versus Addl. CIT (A) Range-11, New Delhi, 2019 TMI 474 – ITAT Delhi, dated June, 7 2019. Ld. Counsel has further stated that the order of the Hon'ble Tribunal in the above case was affirmed by the Hon'ble Jurisdictional High Court. Relevant finding of the Hon'ble Tribunal in the is as under:

"19. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee had taken loans from banks and financial institutions amounting to 1850 crores for operating its business and banks charges 21,87,50,000/- as one time processing fees (upfront fee). The entire amount of loans processing fees was claimed as revenue expenditure u/s 37 of the Act. The Ld. AR contented that for accounting purposes assessee amortised the total fees over the period of respective loan by debiting an amount of ₹ 4,45,38,521 to its P&L, based on number of years for which loan was used in this assessment year. The aforesaid expense incurred for getting the finance for normal business operations and does not provide any enduring benefit to the assessee. Business need funding from time to time and thus this expense is routine business expense claimed as revenue in nature. In fact, CIT(A) gave finding with respect to disallowance of interest and depreciation that "none of the loans related to incomplete towers shown as CWIP as the appellant has yet to make payment for such suppliers" i.e. loans were not utilized for construction of telecom towers. In view of this finding, expense related to loan cannot be capital in nature and allowable as revenue expenditure. These contentions of the Ld. AR are acceptable as the funding is required in business necessities from time to time and these expenses are regular business expenses claimed by the assessee."

12. The Ld. Sr DR submitted that loan processing fee is a one-time expenses which is capital in nature. She also submitted that both the lower authorities rightly held that loan processing fees is capital in expenses in nature.

13. In the instant case the assessee has failed to prove that the loan processing fees was the revenue expenditure The Ld. CIT(A) relying the decision of the Bilt Power Ltd. New Delhi vs Department of Income Tax, rightly held that the loan processing fees expenses is capital in nature. The ld CIT(A) observed in his order as under:

*“ We therefore, do not find any infirmity in the order of AO in treating the entire loan processing fee paid for obtaining loan being capital in nature. The assessee however, would be entitled to claim depreciation by capitalizing this figure with the cost of asset acquired by it”*

14. The decision of the New Delhi Versus Indus Towers Ltd. and Indus Towers Ltd. Versus Addl. CIT (A) Range-11, New Delhi, 2019 TMI 474 – ITAT Delhi, dated June, 7 2019 is not applicable in the instant case and does not help the assessee.

15. From the above discussion we find that the assessee has failed to prove that loan processing fees was the revenue expenditure. The ground raised by the assessee is decided against the assessee. The appeal of the assessee is liable to be partly allowed.

16. In the result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 12.02.2025.

**Sd/-**

**(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

\*NEHA, Sr. PS\*

Date:-12.02.2025

Copy forwarded to:

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

**Sd/-**

**(SUDHIR KUMAR)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT NEW DELHI