आयकर अपीलीय अधिकरण, मुंबई " ई" खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं, अमरजीतसिंह, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Amarjit Singh,Judicial Member
आयकर अपील सं./I.T.A./5974/Mum/2013, निर्धारण वर्ष /Assessment Year: 2010-11

ACIT –CC-29 411,Aaykar Bhavan, M K Road,Mumbai-20.	Vs.	M/s.Samudra Developers Pvt. Ltd. Raheja Center Point,4th floor,294 CST Rd. Viya Nagari Marg,Santacruz, Mumbai-400 098. **PAN:AAACS 7992M**

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent**)

Revenue by: Shri. Vishwas Mundhe,DR.
Assessee by: Shri Virag H Shah-AR.

सुनवाई की तारीख **/ Date of Hearing: 24.03.2017**
घोषणा की तारीख **/ Date of Pronouncement: 26.04.2017**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dated 28/11/2014,of the CIT(A)-44,Mumbai the Assessing Officer (AO) has filed the present appeal.Assessee-company,engaged in the business of real estate,filed its return of income on 15/10/2010,declaring income of Rs. 1.33 crores.The AO completed the assessment u/s.143(3)of the Act,on 22/02/2013,determining its income at Rs. 5.34 crores.

During the year under consideration, the assessee had undertaken construction of a residential project at Bandra(East)Mumbai.While completing the assessment the AO made additions/ disallowances under the heads Sales Support Services (Rs.2.03 crores),Sponsorship Fees(Rs. 16. 21lakhs),Management Fee(Rs.6.08 lakhs),travelling expenses Rs.1.14 crores)Allocation of Management Expenses(Rs. 19.45 lakhs),Excess Amount Received (Rs.34.40 lakhs) and amount paid to Hariani & Co.(Rs.7.77 lakhs). All the grounds of appeal, raised by the AO, pertain to additions/disallowances mentioned above.

2.First ground of appeal is about deleting the disallowance on account of Sale Support Service and Allocation of Management Fees.During the assessment proceedings,the AO observed that the assessee was following percent is completion method of accounting,that it had completed only 26.32% of the project, that expenditure only to that extent was required to be allowed, that the remaining expenses were to be disallowed and were to be capitalised as part of the work in progress as per Accounting Standard (AS-7),that same were to be claimed in the subsequent

years, that the management fees was a capital expenditure, that same was true intangible asset, that the assessee was entitled to claim depreciation At the rate of 25%. Accordingly, out of the management fees of Rs.8.11 lakhs, he made a disallowance of Rs.6,08,533/-.

2.1. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA).Before him it was argued that expenditure of Rs. 2.75 crores had been incurred in respect of salaries of 23 employees, that those persons were looking after the construction work is also sales and marketing on day-to-day basis, that the expenditure incurred by it was purely of revenue in nature, that identical expenditure had been incurred in subsequent AY.s namely 2011-12 and 2012-13,to the tune of Rs. 2.53 crores and Rs. 7.94 crores respectively,that it was not one-time expenditures incurred in the year that would provide assessee any benefit of enduring nature, that it was day-to-day expenditure incurred on project staff and sales team which was necessary for exhibition of a construction project, that there was no justification for restricting the expenditure to 26.32% only.

After considering the submission of the assessee and the assessment order, the FAA held that there was no doubt about the genuineness of the incurring of expenditure, that expenditure had been incurred through the flagship company which acted as an umbrella organisation, that expenditure was incurred for various personnel, that the expenditure was necessary for education of the construction project, that it had direct correlation to the business of the assessee, that logic given by the AO about allowing only 26.32% of the expenditure was unjustified and flawed, that expenditure was not incurred during the year only, it was a regular business expenditure and was not of capital in nature, that no construction business would run without incurring such kind of expenditure,that the stand taken by the AO that assessee should carry forward the expenditure as part of work in progress was also not justify, that the expenditure was having direct coalition with the sales of the current year from which it had shown significant profits. Finally he deleted the disallowance made by the AO, amounting to Rs. 2,03, 26, 390/-.

2.2. During the course of hearing before us, the Departmental Representative (DR) supported the order of the AO and stated that assessee had completed only 26.32% of the project, that the AO had rightly allowed proportionate expenditure, that there was no justification in deleting the addition made by the AO,that he had rightly included the balance expenditure a part of work in

progress.The Authorised Representative(AR)relied upon the order of the FAA and stated that expenditure incurred by the assessee was of revenue nature.He relied upon the cases of Ashish Builders Private Ltd.(ITA/310/Mum/2012 and ITA/1566/Mum/2011 AY.s 2008-09 and 2007-08 and other appeals, dated 23/09/2016), Sunny Vista Realtors Private Ltd. (ITA/ 4580/Mum/2013-AY.2009-10,dated 11/01/2017)and Hiranandani Palace Gardens Private Ltd. (ITA/4579/ Mum/ 2013 AY. 2009-10,date 30/12/2015).

2.3. We have heard the rival submissions and perused the material before us. We find that the AO had held that assessee could claim 26.3% of the expenditure incurred by it under the heads Sales Support Services and Management Fee, that it had completed roughly 26% of the project, that the balance expenditure was to be capitalised under the head work in progress, that he had made a reference to AS -7 for making the disallowance. It is true that AS-7 stipulates proportionate allowance of expenditure. But, certain expenditures are not covered by the provisions of the said accounting standard. Expenses related with the day-to-day business of the assessee cannot be capitalised.Depending upon the nature of the job undertaken by the assessee certain expenses have to be incurred on capital side,whereas some expenditure has to be incurred for running the business.What the AS-7 has envisaged is that expenditure of first category have to be capitalised-other expenses have to be allowed like any other revenue expenditure.It would be useful to refer to the AS-7,issued by the ICAI.We are reproducing the relevant portions of the AS and same read as under:

> *"Scope 1. This Statement should be applied in accounting for construction contracts in the financial statements of contractors.*
> *Definitions 2. The following terms are used in this Statement with the meanings specified:*
> *A construction contract is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.*
> *A fixed price contract is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which in some cases is subject to cost escalation clauses.*
> *A cost plus contract is a construction contract in which the contractor is reimbursed for allowable or otherwise de n costs, plus percentage of these costs or a fixed fee."*

A perusal of the above reveals that that AS-7 deals with contractor whereas the assessee before us is a builder /developer.Therefore, it can be said AS-7 is not strictly applicable to the facts of the case.Leaving the issue of applicability of AS-7 aside,we would now like to refer to the clauses relevant for deciding the issue and same read as follow:

"Contract Costs 15. Contract costs should comprise: (a) costs that relate directly to the specific contract; (b) costs that are attributable to contract activity in general and can be allocated to the contract; and (c) such other costs as are specifically chargeable to the customer under the terms of the contract.

16. Costs that relate directly to a specific contract include: (a) site labour costs, including site supervision; (b) costs of materials used in construction; (c) depreciation of plant and equipment used on the contract; (d) costs of moving plant, equipment and materials to and from the contract site; (e) costs of hiring plant and equipment; (f) costs of design and technical assistance that is directly related to the contract; (g) the estimated costs of rectification and guarantee work, including expected warranty costs; and (h) claims from third parties. These costs may be reduced by any incidental income that is not included in contract revenue, for example income from the sale of surplus materials and the disposal of plant and equipment at the end of the contract.

17.Costs that may be attributable to contract activity in general and can 10 be allocated to specific contracts include: (a) insurance; (b) costs of design and technical assistance that is not directly related to a specific contract; and (c) construction overheads. Such costs are allocated using methods that are systematic and rational and are applied consistently to all costs having similar characteristics. The allocation is based on the normal level of construction activity. Construction overheads include costs such as the preparation and processing of construction personnel payroll. Costs that may be attributable to contract activity in general and can be allocated to specific contracts also include borrowing costs as per Accounting Standard (AS) 16, Borrowing Costs.

18. Costs that are specifically chargeable to the customer under the terms of the contract may include some general administration costs and development costs for which reimbursement is specified in the terms of the contract.

19. Costs that cannot be attributed to contract activity or cannot 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.

20. Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the [mal completion of the contract. However, costs that relate directly to a contract and which are incurred in securing the contract are also included as part of the contract costs if they can be separately identified and measured reliably and it is probable that the contract will be obtained. When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period."

From the above discussion one thing is clear that that entire cost of a project is not required to be added while determining the tax liability of an assessee. AS-7stipulates that only those costs should be considered that are directly attributable to a project.Other costs like general administration costs,selling costs, depreciation on those assets which are not used in construction activities,are not be considered for capitalization or proportionate allowance.In the case under consideration the AO had held that only 26.32% of the impugned expenses were to be allowed.In our opinion expenses incurred by the assessee on salary of the office employees/management fees cannot be disallowed on proportionate basis.They do not have any direct nexus project.Such

expenditure fall in the category of expenses incurred for running of day-today business.So,we do not find any legal or factual infirmity in the orders of the FAA.Confirming the same,we decide First ground of appeal against the AO.

3.Second ground of appeal pertains to deleting the disallowance on account of sponsorship fees and management fees.In the earlier part of our order,we have mentioned the facts about the various disallowances made by the AO including the capitalisation of sponsorship.Treating it as an intangible asset,he allowed depreciation on it @25%.

3.1. The FAA after considering the elaborate submissions of the assessee,held that it had entered into an agreement with the sports company namely India-Win in the month of March, 2010,that the assessee-group became cosponsor of Mumbai Indian IPL cricket team as an associate partner, that as per the agreement the ground logo of the assessee group was displayed permanently in the cricket stadium is also on the playing gear of the players,that in the terms of the agreement and amount of Rs.4.50 crores was paid towards sponsorship fees during the year under consideration, that the sponsorship fees for different years had been apportioned and allocated to 3 entities of the assessee group which were using the brand logo in the ratio of their respective turnovers during the year, that out of the expenditure of Rs. 2.50 crores and amount of Rs. 21.61 lakhs was allocated to the assessee, that the expenditure incurred on IPL sponsorship did not provide it any benefit of enduring nature,that the expenditure had been incurred year after year by the assessee group with a view to get visibility, that it was in nature of some kind of advertisement expendi - ture,that same should be allowed as revenue expenditure. Referring to the case of Delhi Cloth and General Mills Co.Ltd.(115 ITR 659) of the honorable Delhi High Court,the FAA allowed the appeal filed by the assessee.

3.1.a. With regard to management fee,the FAA observed that there was no doubt about the genuineness of expenditure,that the expenditure was incurred for availing infrastructure facilities administrative support,like manpower recruitment, HR services, uses of computer, telephone, photo copiers,infrastructure set up etc. in order to carryout business operations smoothly, that the parent company had allocated a certain amount to the account of the assessee in the ratio of its turnover. He finally held that expenditure had to be allowed as revenue expenditure.

3.2. Before us,the DR supported the order of the AO and the AR relied upon the order of the FAA.

We find that the assessee group had entered into an agreement with India Win,that it was a co-sponsor of Mumbai Indian IPL team, that it had incurred similar expenditure in the subsequent two years,that out of the total expenditure the assessee had claimed a very small proportion under the head sponsorship expenses. Such an expenditure is for advertising the brand name of the Group.Being a recurring expendiuture,it had to be allowed as revenue expenditure.We find that in the case of Delhi Cloth and General Mills Co.Ltd.(supra)the Hon'ble Court had held that expenditure incurred for organizing sports events are allowable items of revenue expenditure as such events publicise the names of the sponsor.The AO was not justified in capitalising the expenses.The entire expenditure was rightly allowed by the FAA as revenue expenditure.

After going through the details of expenditure incurred by assessee under the head managerial expenses, we are of the opinion that it had not got any enduring benefit from the expenditure incurred nor did the expenditure create any capital asset.Therefore, we do not want to interfere with the order of the FAA.Considering the above,we decide second ground of appeal against the AO.

4.Next ground deals with deletion made on account of travelling expenses.During the assessment proceedings the AO found that the assessee had debited Rs.1.14crores on account of travelling expenses.He directed it to show cause as to why expenses should be allowed.Vide its leters dt.29.10.2012 & 18/2/2013 the assessee made its submissions.After considering the same,he held that the assessee had failed to substantiate its claim, that the expenses were not incurred for carrying out its day to day business activities,that expenses were purely of personal nature,that it had failed to co-relate and prove that expenses were spent wholly and exclusively for business activities.Finally he made disallowance1,14,09,190/- and held that expenses were of personal nature and were not incidental to the business of the assessee.

4.1. During the appellate proceedings before the FAA,the assessee made elaborate submissions. After considering the available material,he held that perusal of the travelling expenditure proved that major part of expenditure had been incurred in respect of the directors namely,-Dheeraj Wadhwan and H.Bindra,that they have travelled inside and outside India, that the journeys were claimed to have been undertaken for business purposes.He further found that the directors had

travelled with their family members on certain occasions.He held that such journeys were undertaken for personal purposes or that element of personal use could not be totally denied. Finally,he restricted the disallowance to 25% of total expenditure i.e. 28.52 lakhs.

4.2. The DR supported the order of the AO.The AR stated that the FAA already upheld disallowance of Rs. 28.52 lakhs.

We find that the AO have disallowed the entire expenditure,that the FAA verified the details of travelling expenses,that he found that personal element was there in the expenditure incurred by the assessee,that he deleted 75% of the disallowance.In our opinion,his order does not suffer from any infirmity.After considering available material he estimated the disallowance,whereas the AO had disallowed entire claim.Confirming the order of the FAA,we decide third ground against the AO.

5.Last ground is about deleting the addition of excess amount received by the assessee. During the assessment proceedings, the AO found that the assessee had paid Rs. 3.65 crores to Karma Ispat Private Ltd. (KIPL) for purchase of steel to be used in construction work, that one of the sister concern had also advance Rs. 1 crores to KIPL,that because of fluctuation in the rate of steel the supplier could not supply the goods and the assessee asked for the refund, that KIPL issued two cheques of Rs. 2 crores each, totalling to Rs. four crores to the assessee group. The AO proposed to add an amount of Rs. 34.40 lakhs,being the difference in the amount advanced by the assessee and the amount refunded to it by KIPL. Before him, the assessee explained that the supplier had issued two cheques,that the assessee had paid Rs. 65.60 lakhs to its sister concern, that there was no discrepancy or excess payment in the transaction. However, the AO did not agree with the submissions made by the assessee and added and amount of Rs. 34.40 lakhs to the income of the assessee.

5.1. During the appellate proceedings,before the FAA,the assessee made elaborate submissions and file confirmation from KIPL stating that amount advanced to it was returned to the assessee and its sister concern, that the excess amount of Rs. 34.40 lakhs paid to the assessee had to be adjusted against amount payable to the sister concern.It referred to the letter of the KIPL,dated 6/ 02/2013, in that regard.

After considering the submission of the assessee and the assessment order,the FAA held that excess amount of Rs. 84.14 lakhs was meant to be adjusted against short amount paid in respect of sister concern, that KIPL had, in its letter, confirmed the transaction,that there was no discrepancy in the position taken by the assessee or the supplier of the goods, that the amount refunded by KIPL to the assessee and its sister concern was equal to the amount paid as advanced by the group, that no excess payment was received by the assessee. Finally, he deleted the addition made by the AO.

5.2. Before us,the DR stated that matter could be decided on merits.The AR supported the order of the FAA.

We find that the assessee had advanced Rs. 3.65crores to the KIPL for supply of steel, that one of the sister concern also had advanced money to the supplier,that KIPL returned the money to the group by issuing two cheques of Rs. 2 crores each, that the assessee had paid Rs. 65.60 lakhs to its sister concern.The FAA has given a categorical finding of fact that the total amount paid to the assessee and its sister concern,put together, was same as that total advances given by them to KIPL.There is nothing on the record to controvert the finding given by the FAA. Therefore, we are not inclined to interfere with his order.Confirming the same,we decide last ground of appeal against the AO.

As a result,appeal filed by the AO stands dismissed.
फलतःनिर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.
Order pronounced in the open court on 26th April, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 26 अप्रैल, 2017 को की गई.

Sd/-	Sd/-
(**अमरजीतसिंह /Amarjit Singh**)	(राजेन्द्र / **Rajendra**)
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 26.04.2017.
Jv.Sr.PS.
आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :
1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR "E" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, **6.** खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**