

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'B', BANGALORE

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1365/Bang/2015
(Assessment Year : 2007- 08)

M/s. Chaitanya Properties P. Ltd,
No.17, Sankey Road, Bengaluru 560 020 .. Appellant
PAN : AACCC5900A

v.

Deputy Commissioner of Income-tax,
Circle -11(2), Bengaluru .. Respondent

Assessee by : Shri. V. Chandrashekar, Advocate
Revenue by : Smt. Swapna Das, JCIT

Heard on : 20.06.2016
Pronounced on :30.06.2016

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee, it has taken altogether eight grounds. Grievance raised through these grounds assails the disallowance of professional charges of Rs.3,51,73,740/- made by the AO and confirmed by the CIT (A).

02. Facts apropos are that assessee a property developer and contractor had filed its return of income declaring nil income. Assessee was following completed contract method for computing its income. It had during the relevant previous year claimed an expenditure of Rs.575,45,866/-. AO noted that the above amount included professional charges of Rs.3,57,52,872/-. When explanation of the assessee was sought, it was stated by the assessee that such amount was paid to M/s. Prestige Estates Projects Ltd, in pursuance to joint development agreement entered with them to develop a residential and commercial complex called Prestige Shantiniketan. As per the assessee, the sum of Rs.3,51,73,740/- out of the total professional charges of Rs.3,57,52,872/- comprised of brokerage, documentation and booking collection charges collected by the said developer for assessee's share in the project. AO was of the opinion that assessee having not declared any income from the project Prestige Shantiniketan, expenditure claimed by it ought have gone into the work-in-progress. As per the AO assessee was following project completion method and therefore expenditure incurred for Prestige Shantiniketan should enter the work-in-progress till such time the project was complete. He therefore held that out of the total claim of professional charges, a sum of Rs.3,51,73,714/- was not allowable. An addition was made accordingly.

03. In its appeal before the CIT (A), argument of the assessee was that the expenditure claimed by it was towards development of its business arranging sales on behalf of the assessee. As per the assessee, it was a revenue expenditure. CIT (A) after going through the submission of the assessee found that assessee had made a similar claim in assessment year 2005-06. As per the CIT (A), for the said year the issue had reached the Tribunal and this Tribunal in its order in ITA.1141 & 1183/Bang/2008, dt.31.03.2010, held that by virtue of AS-7 laid down by ICAI, assessee would be entitled to set off expenditure only in the year when revenue was realised from the work-in-progress. He thus confirmed the order of AO.

04. Now before us, Ld. AR assailing the order lower authorities submitted that even if the assessee was following the completed contract method only direct cost was to be allocated to the work-in-progress. According to him, payments made to M/s. Prestige Estates Projects Ltd, was in the nature of administration and selling expenditure and this could not be considered as work-in-progress. In so far as the decision of coordinate bench for A. Y. 2005-06 was concerned, Ld. AR submitted that it was a claim of advertisement expenditure and not similar to the claim for the impugned assessment year.

05. Per contra, Ld DR supported the orders of authorities below.

06. We have perused the orders and heard the rival contentions. What was held by this Tribunal in assessee's own case for A. Y. 2005-06 is reproduced hereunder :

“9.2.5. The AO has rightly observed that the income from construction contracts disclosed in its return of income consists of management development fees arising from execution of a turn key civil contract for construction of a campus on behalf of M/s. TESCO which was executed during the course of the year. The payment of Rs.37.5 crores is not attributable to this income. This expenditure is attributable to the project Shanthiniketan since it was incurred to perfect the title of the land on which this project was to be implemented. On accounting such projects, the projects cost method has to be followed as laid down in the Accounting Standards 7 by the Institute of Chartered Accountants of India. Being so, this expenditure of Rs.37.5 crores (viz., net amount Rs.14,27,65,043) has to be added to the work in progress of the project as rightly found by the AO. The revised (2002) AS 7; relates to construction contracts; issued by the Council of the Institute of Chartered Accountants of India and came into effect in respect of all contracts entered into during accounting periods on or after 1.4.2003. The primary object of AS 7 is the allocation of contract revenue and contract costs to the accounting periods in which construction work is performed. This statements of Accounting Standards uses the recognition criteria established in the frame work of the preparation and presentation of the financial statements to determine when contract revenue and contract costs should be recognized as revenue and expenses in the statement of profit & loss. Further AS 7 covers the contracts for the rendering of services which are directly related to the construction of an asset i.e., those for the services or project managers etc. as in the case on hand. AS 7 stipulate that any claim from third parties could be included in the cost of the project if it

is attributable to the project. Therefore the amount of Rs.14.27 crores paid for the release of the land from legal complexities, on which the project Shanthiniketan was to be executed, will definitely form part of the cost of the project Shanthiniketan and it is has to be recognized as such. This expenditure of Rs.14.27 crores cannot be written off against profit derived from other contracts as the assessee has claimed. Needless to mention that AS 7 is mandatory in respect of financial statements audited u/s. 44AB of the Income-tax Act, 1961, as prescribed by the Council of Institute of Chartered Accountants of India.

9.2.6. Well, to put it in a nut-shell, we reaffirm the AO's stand that, the assessee is entitled to set off the expenditure in the year in which revenue is realized from the work-in-progress. In essence, the finding of the AO is in order which requires no interference. It is ordered accordingly.

07. There is no dispute that assessee was following project completion method. Tribunal has clearly held that when project completion method is followed, expenditure could be claimed only in the year in which revenue is realised from the work-in-progress. It is not disputed by the assessee that no income was returned from the project 'Prestige Shantiniketan' during the relevant previous year. Therefore, the expenditure incurred by the assessee during the relevant previous year on the said project would only go to increase its work-in-progress and cannot be charged to the profit and loss account. Nothing was brought on record by the assessee to show that these were purely in the nature of general administrative expenditure and

not connected to the specific project of Prestige Shantiniketan. I am of the opinion that the lower authorities were justified in making the disallowance. No interference is called for.

08. In the result, appeal of the assessee stands dismissed.

Order pronounced in the open court on 30th day of June, 2016.

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar