

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B", NEW DELHI
BEFORE SH. J. S. REDDY, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**I.T.A. No. 2491/Del/2012
(Assessment year 2006-07)**

Emaar MGF Land Pvt. Ltd. (Now Known as Emaar MGF, Land Ltd.) First Floor, ECE House, 28, Kasturba Gandhi Marg, New Delhi GIR/PAN : AABCE4308B (Appellant)	Vs	ACIT Central Circle-7 New Delhi (Respondent)
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**AND
I.T.A. No. 2725/Del/2012
(Assessment Year 2006-07)**

ACIT Central Circle-7 New Delhi (Appellant)	Vs	Emaar MGF Land Pvt. Ltd. (Now Known as Emaar MGF, Land Ltd.) First Floor, ECE House, 28, Kasturba Gandhi Marg, New Delhi GIR/PAN : AABCE4308B (Respondent)
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Assessee by : Sh.G. C. Srivastava, Adv.
Sh. Daksh S. Bhardwaj, Adv.
Department by : Ms.Rachna Singh, CIT, DR

Date of hearing : 11.01.2017
Date of Pronouncement : 27.01.2017

ORDER

PER BEENA A. PILLAI, JM:

1. These are cross appeals filed by assessee as well as revenue against order dated 12.03.2012 passed by Ld. CIT(A)-1, New Delhi, for assessment year 2006-07, on the following grounds of appeal:

Assessee's Appeal – ITA no. 2491/Del/2013

Ground No. 1:

The Ld, Commissioner of Income Tax (Appeals) - 1, New Delhi (hereinafter referred to as 'CIT(A)') has erred in law and in the fact & circumstances of the case by passing the order dated 12.03.2012 under section 250 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act'). The order passed by the CIT(A) is illegal being against the principles of natural justice and against the provisions of the Act.

Ground No. 2:

The CIT(A) has erred on facts and circumstances of the case in confirming the addition made by the Assessing Officer (hereinafter referred to as "AO") amounting to Rs. 2,67,78,997 on account of share capital being received against issue of shares to M/s Kallarister Trading Limited and M/s Loupen Services Limited.

The total addition confirmed at Rs. 2,67,78,997 is only on surmises, conjectures and should be deleted.

Ground No. 3:

The CIT(A) has erred on facts and circumstances of the case in confirming the addition made by the AO amounting to Rs. 2,63,00,000 on account of expenditure incurred by way of legal expenses and finance expenses holding that it is capital expenditure.

The total addition confirmed at Rs. 2,63,00,000 is only on surmises, conjectures and should be deleted.

Ground No. 4:

The appellant prays that he may be allowed to add, amend, alter or forego any of the above grounds of appeal as the circumstances may warrant.

Ground No. 5:

The above grounds are without prejudice to each other.

ITA no.2725/Del/2012

- 1. The order of the Id. CIT (A) is not correct in law and facts.*
- 2. On the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the addition of Rs.*

1,73,00,000/- made by the Assessing Officer on account of expenditure pertaining to current year as the same have not crystallised during the year under consideration but claimed in the revised return.

3. The order of Ld. CIT(A) is perverse in law and on facts.

4. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.

2. The brief facts of the case are as under:

A search and seizure operation under section 132 of the Act was carried on in the case of assessee on 12.09.2007. Subsequently, the case was transferred to circle and an order under section 127 of the Act was passed. Thereafter notice under section 153A of the Act was issued, dated 08.10.2008 and was served upon the assessee. In compliance to the said notices, assessee filed return of income on 17.02.2009 declaring a loss of Rs. 5,19,63,589/-. Ld. AO observed that assessee has received share capital money amounting to Rs. 2,22,81,320/-, Rs. 44,97,676/- from M/s Kallarister Trading Ltd and M/s. Loupen Services Ltd., respectively. It was observed that these were Cyprus-based companies and Sh. Sudhir Sareen along with Sh. Sharvan Gupta were beneficiaries. On further verification assessing officer observed that these two gentlemen were also directors of the assessee before us.

3. Assessing officer called for various details in order to verify the genuineness and creditworthiness of these companies, who have made such payments on account of share capital to assessee. Various details by way of cash statements were filed by assessee in respect of these companies. However, Assessing Officer made addition on the ground that the assessee did not produce bank statements of these companies, in order to establish the creditworthiness

4. Assessing officer also observed that assessee has claimed an amount of Rs.1.73 crores as prior period expenses. Ld. AO disallowed these expenses on the ground that these had not crystallized during the year and therefore, has to be treated as revenue. Assessing officer further made disallowance in respect of the legal expenses incurred by assessee to the tune of Rs.2,63,00,000/- by holding that these were not for the purposes of business.

5. Aggrieved by the order of Ld. AO, assessee preferred an appeal before Ld.CIT(A). Ld. CIT(A) allowed the disallowance made by Assessing Officer to an extent of 1.73 crore, however, upheld the addition made by him in respect of share capital and legal expenses claimed.

6. Aggrieved by the order of Ld. CIT (A) the assessee as well as revenue are in appeal before us now.

ITA No. 2491/del/2012: (Assessee's Appeal)

Ground No. 1 –

7. General in nature. Hence, no adjudication is called for.

Ground no. 2

8. Ld. Counsel for assessee submitted that Cyprus based Companies who advanced funds by way of share capital, do not have bank statement even today. It has been submitted that the cash accounts maintained by these companies have been placed before the lower authorities, which has not been rejected. He further submitted that all payments made by these companies have been routed through RBI's approval.

9. Ld. Counsel thus submitted that Assessing Officer do not have any basis/evidence/material on record to allege that these Companies are shell companies, and the money deposited by way of share capital are unaccounted money is of Sh. Sudhir Sareen and Sh. Sharvan Gupta. He submitted that the addition u/s 68 cannot be made on mere surmises and conjunctures.

10. On the contrary, Ld. DR submitted that Assessing Officer has disallowed the alleged share application u/s 68 on the basis of categorical reasoning. She further submitted that Sh. Sudhir Sareen and Sh. Sharvan Gupta, who are the beneficiaries of Cyprus based Companies, are also Directors of assessee before us. Mere routing of money through RBI

cannot authenticate the genuineness and creditworthiness of these shell companies. She submitted that Cyprus having been categorized as tax heaven, it cannot be ignored that these may amount to be unaccounted money of Sh. Sudhir Sareen and Sh. Sharvan Gupta, more so when assessee has not been able to establish the creditworthiness of these companies. She thus supported the orders passed by the authorities below.

Ground No. 3

11. Ld. Counsel for assessee submitted that assessee has incurred expenses towards payment of security services, legal services, recruitment of manpower, land acquisition consultancy, publicity brochure is, selling expenses, accounting charges etc. He submitted that all these expenses are revenue in nature and have been incurred for the purposes of carrying on business of the assessee. Ld. Counsel also submitted that expenses which pertain to pre-operative expenses have been capitalized by assessee which is evident from the balance sheet submitted before us. Ld. Counsel submitted that Assessing Officer has made disallowance without considering the submissions advanced by the assessee.

12. Ld. DR supported the order passed by the authorities below and submitted that assessee itself has capitalized the expenses on an estimate basis without identifying the exact

items which do not relate to the carrying of day-to-day business activity. She has also submitted written submissions in support of here arguments.

13. We have perused the records placed before us the light of the submissions advanced by both the parties.

14. In respect of ground No. 2 raised by assessee, it is observed that Assessing Officer has not denied the cash flow statement of the Cyprus Companies submitted by assessee. Merely because Directors of the assessee are same as the beneficiaries of these Cyprus-based companies, cannot lead to a conclusion that these are unaccounted money is in the hands of assessee. It is also observed that Assessing Officer has not conducted any further enquiry or called for any further details of these companies to establish his reasoning in the assessment order. We are therefore, unable to decipher regarding creditworthiness and genuineness of the Cyprus Companies as assessee has still not discharged its liability of proving the same. Under such circumstances we are inclined to set aside this issue back to the file of the assessing officer for *de novo* verification as per law.

15. In respect of ground No. 3, we agree with the submissions advanced by Ld. DR that assessee has capitalised the expenses on an ad hoc basis. Assessee has placed list of expenses incurred at page 137 of the paperbook. Neither assessee nor Ld. AO has undertaken the exercise of

verifying each and every expenses incurred before making the addition. We are, therefore, inclined to set aside this issue to the assessing officer for *de novo* verification as per law.

16. In the result the appeal filed by the assessee stands allowed for statistical purposes.

ITA No. 2725/del/2012 (Department's Appeal)

17. The only issue that been raised by revenue is in respect of addition that has been deleted by Ld. CIT(A), pertaining to expenditure claimed in the revised return.

18. It has been submitted by Ld. DR that Assessing Officer had disallowed Rs. 1.73 crore on the ground that the expenditure has not crystallised during the year and under consideration and therefore, assessee could not have capitalised these expenses. She submitted that Ld. CIT (A) has dealt with the issue in para 5.3 as under:

5.3 1 have gone through the contention of the appellant as well as the observation of the Assessing Officer. It is seen that the Assessing Officer has disallowed the entire amount of Rs 1.73 crore by stating that these expenses have not crystallized during the year and that they are capital in nature. However, a perusal of the assessment order shows that Assessing Officer has assigned no reasons for coming to such a conclusion. Once the appellant had furnished the

details of the expenses which it has claimed in the revised return, the Assessing Officer should have discussed the reasons for concluding that these expenses had not crystallized during the year. No such exercise has been carried out by the Assessing Officer. Even for treating these expenses as capital in nature, each and every expenditure has to be analyzed and without carrying out such an exercise no disallowance can be made. The appellant has rightly pointed out that the nature of expenses which are mentioned in para 5 of the assessment order itself goes to show that they are revenue in nature. Further, the genuineness of these expenses have not been questioned by the Assessing Officer. Considering these facts, the disallowance of Rs 1,73,00,000/- made by the Assessing Officer is hereby deleted. This ground of appeal is decided in favour of the appellant.

19. She submitted that as there is a categorical finding by Ld. CIT (A) regarding non-verification and analysis of the nature of expenses, by Assessing Officer the claim of the assessee could not be allowed. She had requested for setting aside this issue to the assessing officer for a de novo verification and analysis of each and every expenses before allowing the claim of the assessee.

20. Ld. Counsel for assessee do not object for this issue to be set-aside to Assessing Officer.

21. In the light of the above discussion we therefore set aside this issue to the assessing officer for *de novo* verification of each and every expenses incurred by assessee as per law.

In the result the appeal filed by the assessee as well as revenue stands allowed for statistical purposes.

Order pronounced in the open court on 27th January, 2017.

Sd/-
(J. S.REDDY)
ACCOUNTANT MEMBER
Date: 27.01.2017

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

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Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi)