

**IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCHES : “A”, BENGALURU**

**BEFORE SHRI PRADIP KUMAR KEDIA, AM
&
SMT.BEENA PILLAI, JM**

**ITA No.1576(Bang)/2017
(Assessment year : 2012-13)**

M/s Pragnya Crest Properties Pvt.Ltd.,
(Earlier known as Habitat Pragnya Property Pvt.Ltd)
Opp: Zuri Hotel, Rajapalya Hoodi,
Mahadevapura Post,
Bangalore-560 048
Pan No.AAECM0660kK

Appellant

Vs.

The Deputy Commissioner of Income tax,
Circle-3(1)(2), ,
Bangalore

Respondent

**Appellant by : Shri Sathyanarayanamurthi, CA
Revenue by : Shri B.R.Ramesh, JCIT**

**Date of hearing : 25-02-2020
Date of pronouncement : 03-03-2020**

ORDER

PER PRADIP KUMAR KEDIA: AM

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Bengaluru dated 12-04-2017 arising in the order passed by the Assessing Officer u/s 143(3) of the IT Act, 1961 (*'The Act'*) relating to assessment year 2012-13.

2. Grounds of appeal raised by the assessee reads as under;

1. On the facts and circumstances of the case, the ld.CIT(A) in not appreciating the fact that the assessee company has not incurred any expenditure towards earned exempt income and the investment made were out of surplus fund and disallowance under section 14A of Rs.1,86,900/- is not warranted.

2.1 On the facts and circumstances of the case the ld.CIT(A) erred in not appreciating the fact that the assessee company is in the business of construction business and selling expenses incurred is revenue in nature.

2.2 On the facts and circumstances of the case, the ld.CIT(A) erred in not appreciating the fact that selling and promotion expenses are revenue in nature and are allowable expenditure.

3. On the facts and circumstances of the case, the ld.AO erred in initiating penalty proceeding under section 271 of IT Act, 1961.

3. Ground no.1 concerns disallowance u/s 14A of the Act which is dismissed as not pressed.

4. By way of ground no.2, the assessee seeks to impugn the action of the revenue authorities in treating the selling expenses as part of the project cost and thus capital in nature as against the claim of the assessee as revenue expenditure.

5. Briefly stated, the assessee is engaged in the business of real estate development and construction of commercial and residential building near Whitefield, Bengaluru. The company while selling its residential apartments, claims to have entered into two agreements namely; agreement

to sell and construction agreement. It is further claimed that the possession of the apartment will be given to the customers on completion of the construction. As per the accounting policy adopted, the revenue from real estate under development is recognized upon transfer of all significant risks and rewards of ownership of such real estate as per the terms of the contract entered into with buyers. The contracts where the company is under obligation to perform substantial acts, even after the transfer of significant risk and rewards, the revenue is recognized on percentage of completion method when the state of completion of each project reaches a reasonable level of progress.

6. The AO, at the time of framing the assessment under s.143(3) observed that the assessee has *interalia* claimed selling expenses of Rs.1,38,22,515/- in the previous year relevant to assessment year 2012-13 in question as revenue expenses. It was further observed by the AO that the assessee has not recognized any revenue from sale of units in the year. It was observed that the assessee is engaged in the development of single project where the sales have been recognized only in the subsequent years. The AO further observed that the selling expenses were mostly comprised of advertising expenses of 'White field project'. In the absence of any revenue recognized from the project, the AO applied doctrine of matching principles and held that only those expenses relatable to sales revenue recognized in a year can be claimed as revenue expenses. It was thus held by the AO that selling expenses claimed as revenue expenditure requires to be capitalized with the project cost and cannot be regarded a expenditure in revenue nature. The claim of selling expenses as the revenue expenses were thus disallowed by the AO and added to the total income of the assessee. The total loss was thus assessed at Rs.29,97,445/- as against return loss of Rs.1,70,06,860/-

7. The CIT(A) in first appeal mainly reiterated the observations of the AO and confirmed the action of the AO.

8. Further aggrieved, the assessee preferred appeal before the Tribunal.

9. Before the Tribunal, the learned counsel for the assessee at the outset submitted that the assessee being engaged in the business of real estate development, the revenue from the project can be recognized based on percentage completion method. As per the Accounting Standard AS-7 issued by the Institute of Chartered Accountants of India (ICAI) towards accounting for construction/contract, the relevant revenue recognition parameters are yet to be met at the end of the financial year on 31-03-2012. It was thus submitted that revenue could not be recognized due to non-fulfillment of parameters laid down in AS-7. In the same vain, the learned counsel pointed out that substantial revenue has been duly recognized (89.12 Crores) in the financial year 2013-14 when the parameter notified in the accounting standard were broadly met. In elaboration, it was submitted that revenue could not be recognized in the absence of transfer of significant risk and rewards to the potential buyers.

9.1 The ld.AR, further referred to para-19 & 20 of the accounting Standard-7 which reads as under;

19. Costs that cannot be attached to contract activity or cannot be allocated to 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 final 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 recognized 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.

9.2. With reference to the above clause of AS-7 issued by ICAI, the ld. counsel submitted that the period costs are not attributable to the contract activity. It was pointed out that selling cost incurred in construction contract is specifically excluded from the cost of the construction contract. It was further stated that the selling cost incurred also cannot be regarded as cost incurred in securing the contract, as such selling costs were incurred to achieve sale of a project and not for securing contract *per se*. Under these circumstances, it was pointed out that the action of the assessee in treating the selling costs as revenue expenditure is in conformity with the prescribed accounting Standard.

9.3 It was thereafter contended in the alternative that all expenses incurred in the normal course of business is required to be allowed as revenue expenditure after 'setting up' of business irrespective of the fact whether revenue is yet earned or not. It was submitted that in the instant case, the real estate development business has not only been set up but also commenced and is in vogue. In this situation, the expenses as claimed are required to be allowed.

9.4 It was further submitted in the alternative that the assessee has filed return of loss for the assessment year 2012-13 in question at Rs.1,70,06,860/- and therefore, the assessee does not stand to any benefit by wrongly claiming selling expenses at a premature stage and inflate the losses. It is not the case of the revenue that the selling expenses are not bonafide and therefore, the losses incurred on account of selling expenses are eventually allowable in the year of profits. Thus, the whole exercise is revenue in neutral and therefore, it does not call for any interference.

10. The Id.DR on the other hand, pointed out that in the absence of any sale revenue, the whopping amount of selling expenses cannot be allowed in the light of matching concept, as held by the lower authorities. It was further submitted that the selling expenses are attributable to the project in progress and therefore, the expenses can be claimed in the relevant year when the revenue is recognized.

11. We have carefully considered the rival submissions. The substantive issue for determination is whether the selling expenses incurred by the assessee are allocable to the specific development contract under taken by the assessee and thus required to be added to

the contract costs in progress or such expenses can be allowed as revenue expenditure. On perusal, it is noticed that the Accounting Standard -7 issued by ICAI clearly spells out that the selling and administrative cost are required to be excluded from the contract costs while drawing financial statements. Hence, the action of the assessee resonates that the parameters of AS-7 referred to in the instant case.

12. We also find merit in the plea of the assessee that expenses incurred in the normal course of business is required to be allowed, after setting up of business irrespective of the fact whether the revenue is not yet earned in view of the decision of the Hon'ble Bombay High Court in the case of Western India Vegetable products Ltd. 26 ITR 151 (Bom.). The action of the assessee in any case is a revenue neutral affair and the revenue is not put to any tax loss *per se* by such alleged premature claim.

13. We further find that the controversy is no longer *resintegra* and clearly covered by the decision of the co-ordinate Bench of the Tribunal in Sunny Vista Realtors Pt.Ltd. vs ACIT in ITA No.4580/Mum/2013 vide order dated 11-01-2017. In the similarly placed situation, the co-ordinate Bench has adjudicated the issue in favour of the assessee by a detailed order.

14. In parity with the view taken by the co-ordinate Bench and having regard to the tax neutrality, we find considerable merit in the objection raised by the assessee.

15. Ground no.2 of the assessee's appeal is accordingly, allowed.

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

Order pronounced in the open court on 03-03-2020

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Place: Bengaluru

Dated: 03-02-2020

*am

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
- 6.Guard File

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

By Order

Asst.Registrar

