



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 26, 2014

+ ITA 410/2014
COMMISSIONER

..... Appellant

Through: Ms.Suruchi Aggarwal, Sr.
Standing Counsel

versus

T.G. BUILDWELL PVT. LTD.

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short) impugns order dated 26.12.2013 passed by the Income Tax Appellate Tribunal (Tribunal, in short) in the case of T.G.Buildwell Pvt. Ltd. in relation to the assessment year 2009-10.

2. The contention of Revenue as stated in the appeal is that the expenditure incurred by the respondent assessee of Rs.4,29,06,605/- on the Tivoli Holyday Village Project should have been capitalized. It is submitted that the project was at the initial stage and the expenditure should be treated as pre-operative expenditure. Reliance is placed on the fact that the assessee had agreed that the advertisement expenditure of



Rs.32,026,589/- should be capitalized. In the assessment order dated 19.12.2011 the Assessing Officer while dealing with the issue in question had observed and held as under:-

“4.1 Pre- Operative Expenses

During the year, the assessee company has shown receipts to the tune of Rs. 65,66,199/- and against this claimed expenditure of RS. 5,01,19,431/-. Since the project is in initial stage, the assessee company should capitalize the expenditure claimed. Accordingly the A.R. of the assessee company vide order sheet entry dated 09-08-2011 was asked to show cause as to all expense should not be treated as capital expenditure / pre-operative as no business activity has begun.

4.2 The A.R of the Assessee Company vide his letter dated NIL submitted that:-

"To

*The Dy. Commissioner of Income Tax,
Circle 16 (1), New Delhi*

Reg:M/s T.G. Buildwell Private Limited,

*D-601, Central Park 1, Golf Course Road Sector-42,
Gurgaon, Haryana*

Sub: Assessment Year 2009-10

Dear Sir,

In the above mentioned case, we further here with the following Details/Information:-

In the case of the assessee the requirements of AS-7 “Construction Contracts” does not apply to the company as it is not applicable to accounting for construction contracts in the financial statements of contractors. The company is undertaking construction on its own account and therefore will treat construction of building as inventory under AS-2 “Valuation of Inventories”. We enclose herewith the extracts of commentaries of accounting standards and their treatment in financial statements for your perusal.



Therefore the case of the assessee is squarely covered under AS-2 and revenue can be recognized only, in accordance with AS-9. Since in the case of the assessee as the construction activity has not even commenced, no revenue can be recognized.

As per para 6 of AS-2, 'Cost of inventories should comprise all cost of purchase, cost of conversion and other costs incurred in bringing the inventories to their present location and condition'. Para 13 of the standard provide specific exclusions from cost of inventories. Para 13 is reproduced as under:-

In determining the cost of inventories in accordance with paragraph 6, it is appreciate to exclude certain costs and recognize them as expenses in the period in which they are incurred. Examples of such costs are:

- 1) Abnormal amounts of wasted material, labour or other production cost;*
- 2) Storage costs unless those costs are necessary in the production process prior to the further production stage;*
- 3) Administrative overheads that do not contribute to bringing the inventories to their present location and condition; and*
- 4) Selling & Distribution costs.*

Therefore Para 13 provides for exclusion of above costs and these costs should be immediately charged off to the Profit and loss account.

In the case of the assessee advertisement costs have been incurred and the same cannot be included in the cost of inventories as per AS-7 is not applicable the same cannot be carried under Work under progress. Even otherwise, Para 19 of AS -7, also excludes selling costs from contract costs. Para 19, of AS -7 is reproduced as under:-

Costs that cannot be attributed to contract activity or cannot be allocated to a contract. Such cost included:

- 5) General administration costs.*
- 6) Selling Costs.*
- 7) Research & Development Costs.*
- 8) Depreciation of idle plant and equipment that is*



not used on a particular contract.

Therefore in view of above, selling and distribution costs such as advertisement cannot be carried as cost of inventory and are to be amortized immediately in the Profit & Loss Account.

Without prejudice to our above submissions, and to avoid litigation we would like submit to that if the department deems fit, advertisement costs of Rs. 32,026,589/- may be included under project work in progress to be carried forward and set off against sales made in future years.

Thanking You

Yours Faithfully

*For TG Buildwell Private Limited
(Director)"*

4.3 The reply filed by the assessee is not found tenable. Moreover, the assessee himself offered expenditure claimed as advertisement cost amounting to Rs. 3,20,26,589/- for including under project work in progress. As the assessee company is in initial stage, and no revenue has been recognized during the year, all the expenditures incurred by the assessee should be included in project work in progress. Therefore, the loss amounting to Rs. 4,31,66,001/- is being disallowed and added back to the project work in progress. However, the income declared as bank interest is assessed as income from other sources and taxed accordingly."

3. It is clearly noticeable that except for stating that the contention of the assessee was unacceptable or untenable, no reason and ground has been mentioned by the Assessing Officer to treat the expenses as capital in nature being pre-set up or pre-commencement expenses.

4. On the other hand, there is a contradiction in the finding of the



Assessing Officer, who has recorded that the assessee had received receipts to the tune of Rs.65,66,199/- and had also incurred expenditure of Rs.5,01,19,431/-. More affirmatively, it stands recorded that the project was at initial stage i.e. the project had started and commenced. The contention of the assessee that Accounting Standard 7 was not applicable at the said stage was specifically raised in the letter written by the respondent-assessee to the Assessing Officer but has not been dealt with in the assessment order. The Assessing Officer also did not invoke and compute the income of respondent assessee by applying Accounting Standard 7 or hold that the assessee was wrong in applying Accounting Standard 2 in the present case. Income was not computed by the Assessing Officer by applying Accounting Standard 7.

5. Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal have both decided the issue in favour of respondent-assessee.

6. In the findings recorded by them are that the respondent assessee was formed on 26.10.2007 and had entered into an agreement with Wellworth Homes (P) Ltd. on 05.11.07 for purchase of land measuring 7.781 acres in Village Dharuhera, Tehsil and District Riwani, Haryana. Thereafter the respondent assessee became absolute and exclusive owner of the land and licenses were granted for development of the said land



under Haryana Development and Regulation of Urban Area Act, 1975 vide license issued on 14.02.07. For purchase of the said land with licenses and approvals, expenditure of Rs.24.58 Crores was incurred and these payments had been made. The Group Housing Project has been launched on the land in the month of December, 2007 and bookings were accepted from customers and details of these customers were made available. Commission was paid to the brokers and agents for booking said flats. The Appellate Authorities have accepted that Accounting Standard 7 would not be applicable as the specified stage for application of Accounting Standard 7 had not been reached.

7. As noted above, the stand of the Assessing Officer in the present case was that the project was at the initial stage. Thus, it was accepted that the project had taken off and commenced. Assessing Officer had stated that receipts of Rs.65,66,199/- had been received. This amount was not capitalized. The expenditure incurred in question is not in dispute and is not projected as bogus or fictitious in nature. We have also observed that the Assessing Officer did not follow or apply Accounting Standard 7 for computing the income and has not commented why Accounting Standard 2 applied by the assessee was not applicable. The return filed by the assessee was declaring loss of Rs.4,29,06,605/- In other words, this amount had to be carried forward and taken into consideration in the next



year etc. Details for assessment of the next year are not on record though opportunity was granted to Revenue to place the said details.

8. In view of the aforesaid, we are not inclined to interfere with the impugned order. The appeal is, accordingly, dismissed.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

AUGUST 26, 2014/km