

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ ITA No. 873 & 874/JP/2016
निर्धारण वर्ष / Assessment Years : 2011-12 & 2013-14

Assistant Commissioner of Income Tax, Central circle-1, Jaipur.	बनाम Vs.	M/s Mayura Infrastructure Development Company, House No. H-28, Khoda Ganesh Ji Colony, Khoda Ganesh Ji Road, Madanganj, Kishangarh, Ajmer-305801.
PAN No.: AAOFM 2867 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Mukesh Verma (CIT)
निर्धारिती की ओर से / Assessee by : Shri Nikhlesh Kataria (CA)

सुनवाई की तारीख / Date of Hearing : 17/04/2017
उदघोषणा की तारीख / Date of Pronouncement : 25/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

ITA 873/JP/2016 filed by the revenue emanates from the order of the Id. CIT(A)-4, Jaipur dated 18/07/2016 for the A.Y. 2011-12 and ITA No. 874/JP/2016 also filed by the revenue emanates from the order of the Id. CIT(A)-4, Jaipur dated 26/07/2016 for the A.Y. 2013-14. In both these appeals, the grounds of appeal is common except the difference in

figure of the amount. The grounds taken by the revenue in ITA No. 873& 874/JP/2016 is reproduced hereunder:-

Grounds of ITA No. 873/JP/2016

"1. *Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 13,61,02,357/- made by A.O. on account of disallowance of 'provision for development for development expenses' claimed by the assessee firm."*

Grounds of ITA No. 874/JP/2016

"1. *Whether on the facts and in the circumstances of the case the CIT(A) was right in deleting the addition of Rs. 11,07,83,044/- made by A.O. on account of disallowance of 'provision for development for development expenses' claimed by the assessee firm."*

2. The brief facts of the case are that a search and seizure operation U/s 132(1) of the Income Tax Act, 1961 (in short the Act) was carried on 29/03/2010 at the various premises of Mayura Group. Mayura Infrastructure Development Company (MIDC) is a partnership firm which is developing a integrated township named as "Mayura City" at Madanganj, Kishangarh. The Assessing Officer made addition for not allowing the provision for development expenses of Rs. 13,61,02,357/- in the assessment year 2011-12 and Rs. 11,07,83,044/- in the assessment year 2013-14.

3. In both the years, the additions were deleted by the Id. CIT(A). The relevant para of the Id. CIT(A)'s order for A.Y. 2011-12 is reproduced hereunder:-

"3.1.2 *I have duly considered assessee's submission and carefully gone through assessment order passed by the AO. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon.*

It is a fact that AO has not pointed out any mistake in detailed working nor done any physical verification of the site whether any such activity has taken by the assessee at the project site or not?. Apart from this, it is also pertinent to mention here that assessee has offered the same returned income in compliance of notice u/s 153A of the Act as it had furnished in original return filed u/s 139(1) of the Act on 31/10/2011. On careful perusal of assessment order, it is also seen that AO has not referred any incriminating documents seized during the year in support of his contention. Therefore, AO's action is simply based on the fact that assessee has created a provision for future expenses and he was required to examine whether it is a contingent liability or accrued liability to be incurred on a future date.

During the year in appeal, assessee is engaged is developing an integrated township named as "Mayura City" at Madanganj Kishangrah. The Map of the township was approved on 26.03.2010 and it started sale the land from 21.07.2010. However, if is submitted that assessee could not complete and develop its township project within the stipulated deadline which was committed to its customers, and for fulfillment of this commitment, assessee made a provision

against the sale in FY 2010-11 on the basis of prevailing accounting principles. MIDC is not having its own land except the land contributed by its partners, accordingly, it entered into the Development Agreements with the various Land Owners as Developer. Provision for land development expenses of Rs 13,61,02,357/- had been made in A.Y 2011-12. The provision were made for the project related expenses that had not been incurred against sales of land which had been made till the date of making the provision. The firm sold the land in F.Y. 2011-12 Area 1,64,456/- Sq. Yds. The whole sale deeds were made with the commitment to the buyers for the internal development of the township. Assessee has also provided a detailed working of the provision made for the AY 2011-12 in a Tabular Form, with detailed explanation to the each working.

As per the details given in above table, the total project cost as per the estimate made by the registered valuer was arrived at Rs 43,35,00,000/, therefore, the cost of development per squares yard comes to Rs 956/-. The development expenses up to 31.03.2011 were made up of Rs 5,81,63,781/- which works out at cost of development expenditure already incurred at Rs 128/- per sq yards on sale made. Therefore, provision of remaining development expenses to be incurred of Rs 828/= per sq yards (956-128=828} amounting to Rs 13,61,02,357/- was made on the area sold above. In support of its claim, assessee has relied upon the decisions of Hon'ble Apex Court in cases of Bharat Earth Movers & Calcutta Co Ltd (supra) and Hon'ble Rajasthan High Courts in case of Om Metals and Minerals P Ltd (supra).

It is pertinent to mention here that the Hon'ble Apex Court, in Om Metal and Mineral Pvt. Ltd (Supra) after considering the judgment

rendered in the case of Metal Box Co. of India Ltd. v. Their Workmen [1969] 73 ITR 53 (SC) culled out following principles for a claim like this (430 245 ITR):

For an assessee maintaining his accounts on mercantile system, a liability already accrued, though to be discharged at a future date, would be a proper deduction while working out the profits and gains of his business, regard being had to the accepted Principles of Commercial practice and Accountancy, it is not as if such deduction is permissible only in case of amounts actually expended or paid.

Therefore, in view of facts and circumstances of the case and most respectfully following aforementioned case laws, addition made of Rs. 13,61,02,357/= being the provision is hereby deleted.

Identical finding has also been given by the Id. CIT(A) in the case for A.Y. 2013-14 and deleted the addition.

4. Now the revenue is in appeals before us. The Id Sr. DR has relied on the order of the Assessing Officer and pleaded that the estimate of the provision was not based on any scientific method. He also pleaded the liability was contingent and it was not accrued liability hence provision is not allowable. On the contrary, the Id AR has relied on the order of the Id. CIT(A).

5. We have heard the rival contentions of both the parties and perused the material available on the record. The assessee is a partnership firm which has developed a integrated township named as

“Mayura City” at Madanganj, Kishangarh. The map of the township was approved on 26/03/2010. The assessee company could not develop fully all basic infrastructure in a short span of period, however, they have agreed in the terms and conditions for sales of plots to develop the township fully in the subsequent years. The total area of township was 4,53,530.92 Sq. Yards. The assessee had sold area 1,64,546 Sq yards in the F.Y. relevant to A.Y. 2011-12. The sale deeds were made with the commitment to the respective buyers for internal development of the township. Assessee had made provision by taking project cost estimate at Rs. 43,35,00,000/-, cost of development per Sq. yards has been worked at Rs. 956/-. The actual expenditure during the year incurred was only of Rs. 128/- per sq.yard and provision was made for balance amount. The assessee estimated the expenditure which was required to be incurred for the development. The facts of the case suggest that the payment realized on the sale of plots were for the developed township. The assessee came under obligation to develop land which has been sold out on the realization of sale proceeds. Assessee is following mercantile method of accounting. In this view of the matter, the assessee’s liability has accrued but the same is to be discharged at later date. The working of the provision for accrued liability has been made as under:-

Total Project Cost taken on the basis of estimate of consulting engineer/approved valuer (in Rs.)	A	43,35,00,000
Total Land Area available with MIDC(in Sq Yards)	B	4,53,530.92
Cost of development expenses(A/B)(per Sq Yards)	C	956
Actual development expenses upto 31.03.2011 (in Rs.)	D	5,81,63,781
Cost of development exp. per sq yards of actual expenses(D/B)	E	128
Provision to be made for more expenses(In Rs)(C-E)	F	828
Sales made during F.Y 2010-II(sq yards)	G	1,64,456.89
Amount of provision on sold area(In Rs)(F*G)		13,61,02,357

The claim of the expenditure for which the provision has been made was having direct nexus with the income as declared by the assessee, therefore, such provision made by the assessee was allowable during the year under consideration. In view of these facts and circumstances, we are in agreement with the order of the Id. CIT(A). For holding so, we also get support from the following case laws:-

1. Bharat Earth Movers v/s Commissioner of Income Tax (2000) 245 ITR 428 (SC).
2. Calcutta Co. Limited v CIT (1959)(37 ITR 1)(SC).
3. CIT v Triveni Engineering & Industries Limited ITA NO 56 OF 2009 in the High Court of Delhi, New Delhi.
4. EXL Service.com (India) Pvt. Ltd. V/s Asst. CIT (Del 'I')156.
5. Asstt. CIT vs Ashoka Buildcon Ltd. (Pune 'B')(UO)19

6. The Commissioner of Income Tax, Jaipur v/s Om Metals and Minerals (P) Ltd., Kota(DB income Tax Reference No. 16/1995) (As per Annexure 8)
7. (2015)278 CTR Reports CIT vs Sane & Doshi Enterprises (Bom.)
8. Rotork Contrals India(P) Ltd, V/s CIT(2009)314 ITR 62(SC).

In the case of Bharat Earth Movers Vs CIT (supra), the Hon'ble Supreme Court has held as under:-

If a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied the liability is not a contingent one. The liability is in praesenti though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain.

The assessee-company had two sets of employees. One set of employees was covered by the Employees State Insurance Scheme and was generally known as "staff". The other set of employees not so covered was known generally as "officers". The company had floated beneficial schemes for its employees for encashment of leave. The officers were entitled to earned leave calculated at the rate of 2.5 days per month, i.e., 30 days per year. The staff (other than officers) were entitled to vacation leave calculated at the rate of 1.5 days per month, i.e., 18 days in a year. The earned leave could be accumulated up to a maximum of 240 days while the vacation leave could be accumulated up to a maximum of 126 days. The earned leave/vacation leave could be encashed subject to the ceiling on accumulation. The officers could at their option avail of the accumulated leave or in lieu of availing of the leave apply for encashment whereupon they would be paid salary for the period of leave earned but not availed of. So did the scheme extend the facility of encashment to the staff in respect of vacation leave. The assessee-company had created a fund by making a provision for meeting its liability arising on account of the accumulated earned/vacation leave. In the assessment year 1978-79, an amount of Rs. 62,25,483 was set apart in a separate account as provision for encashment of accrued leave. It was claimed as a deduction. In the opinion of the Tribunal, the assessee was entitled to such deduction. The High Court had formed a different opinion and held that the provision for accrued leave salary was a contingent liability and

therefore was not a permissible deduction. On appeal to the Supreme Court :

Held, reversing the decision of the High Court, that the provision made by the assessee-company for meeting the liability incurred by it under the leave encashment scheme proportionate with the entitlement earned by the employees of the company, inclusive of the officers and the staff, subject to the ceiling on accumulation as applicable on the relevant date, was entitled to deduction out of the gross receipts of the accounting year during which the provision is made for the liability. The liability was not a contingent liability."

Similarly in the case of Calcutta Co. Ltd. Vs. CIT, West Bengal, the Hon'ble Supreme Court has held as under:-

In the relevant accounting year the appellant actually received in cash only a sum of Rs. 29,392 towards sale price of lands, but in accordance with the mercantile system of accounts adopted by it, it credited in its accounts the sum of Rs. 43,692 representing the full sale price of lands. At the same time it also debited an estimated sum of Rs. 24,809 as expenditure for the developments it had undertaken to carry out, even though no part of that amount was actually spent. The Department disallowed the expenditure.

Held, (i) that the undertaking to carry out the developments within six months from the dates of the deeds of sale (which, in view of the fact that time was not of the essence of the contract, meant a reasonable time) was unconditional, the appellant binding itself absolutely to carry out the same. That undertaking imported a liability on the appellant which accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was thus an accrued liability and the estimated expenditure which would be incurred in discharging the same could be deducted from the profits and gains of the business, and the amount to be expended could be debited in accounts maintained in the mercantile system of accounting before it was actually disbursed. The difficulty in the estimation thereof did not convert the accrued liability into a conditional one, because it was always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case.

(ii) That the sum of Rs. 24,809 represented the estimated amount which would have to be expended by the assessee in the course of carrying on its business and was incidental to the business and, having regard to the accepted commercial practice and trading principles, was a deduction which, if there was no specific provision for it under section 10(2) of the Income-tax Act, was certainly an allowable deduction, in arriving at the profits and gains of the business of the appellant, under section 10(1) of the Act, there being no prohibition against it, express or implied, in the Act.

The expression "profits or gains" in section 10(1) of the Income-tax Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted therefrom-whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date.

In view of the ratio laid down by the Hon'ble Supreme Court in the above judgments, we do not see any infirmity in the order of the Id. CIT(A), therefore, revenue's appeal being ITA No. 873/JP/2016 stands dismissed.

6. Since the facts of the case, arguments and submissions of parties made in ITA No. 874/JP/2016 is similar and identical as facts mentioned in ITA No. 873/JP/2016, therefore, findings given in ITA No. 873/JP/2016 shall be applicable in this case also. Accordingly, the revenue's appeal being ITA No. 874/JP/2016 is also stands dismissed.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 25/04/2017.

Sd/-
(कुल भारत)
(Kul Bharat)
न्यायिक सदस्य / Judicial Member

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 25th April, 2017
*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ACIT, Central circle-1, Jaipur.

2. प्रत्यर्थी/ The Respondent- M/s Mayura Infrastructure Development Company, Madanganj, Kishangarh.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 873 & 874/JP/2016)
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar