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IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH (D), KOLKATA
[Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. No. 714/Kol/2018
Assessment Year: 2013-14

DCIT, Circle – 8(1)Kolkata..Appellant
Aayakar Bhawan, 5th Floor,
P-7, Chowringhee Square,
Kolkata – 700 069.
[PAN: AADCA 9093 P]

M/s. Ashiana Housing Limited..Respondent
11G, Everest, 46C,
Chowringhee Road,
Kolkata – 700 071.

Appearances by:
Shri Shankar Halder, JCIT, Sr. DR appearing on behalf of the Revenue.
Shri Arvind Agarwal, Advocate & Shri Rajat Agarwal, FCA appearing on behalf of the Assessee.

Date of concluding the hearing : January 08, 2019
Date of pronouncing the order : March 06, 2019

ORDER

Per P.M. Jagtap, Vice President

This appeal is preferred by the revenue against the order of Ld. CIT(A) – 3, Kolkata dated 23.02.2018 and the solitary issue involved therein is raised by the revenue by way of the following ground:

> *"That on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing the future development expenses amounting to Rs. 2,25,01,129/- by ignoring the fact that the said expenses was provision for unascertained liability."*

2. The assessee in the present case is a company which is engaged in the business of real estate development & rendering hospitality services. In the revised return of income filed for the year under consideration on 02.09.2014, the total income of Rs. 46,14,17,450/- was declared by the assessee. In the profit and loss account filed along with the said return, a sum of Rs. 2,25,01,129/- was debited by

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the assessee on account of future development expenses. During the course of assessment proceedings, the assessee was called upon by the AO to explain as to why the future development expenses should not be disallowed as the assessee was following the mercantile system of accounting. In reply, it was submitted by the assessee that the provisions for future development expenses was made in accordance with the AS-29 and similar provisions were also contained in ICDS-X applicable w.e.f. 01.04.2015 u/s 145 of the Act. It was also submitted on behalf of the assessee that the relevant projects were completed in the year under consideration and non-accounting of such future development expenses would lead to incorrect amount of completion of the phase. It was further submitted that the cost provided as future development was not unascertained liabilities. This contention of the assessee was not found acceptable by the AO. According to him, when the mercantile system of accounting was being followed by the assessee, only crystallized liabilities were allowable and unascertained liabilities could not be allowed. He held that the future development expenses were claimed by the assessee on estimated basis and such estimated expenditure which had not been incurred could not lead to crystallization of liability in the year under consideration. He held that the amount in question thus represented provision for meeting unascertained liabilities which was not allowable as deduction in the case of the assessee. He accordingly made a disallowance of Rs. 2,25,01,129/- on account of future development expenses and made addition to that extent to the total income of the assessee in the assessment completed u/s 143(3) vide an order dated 31.03.2016.

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3. The disallowance made by the AO on account of future development expenses was challenged by the assessee in the appeal filed before the Ld. CIT(A) and after considering the submissions made by the assessee as well as the material available on record, the Ld. CIT(A) deleted the disallowance made by the AO for the following reasons given in his impugned order:

> *I have considered the submissions of the assessee carefully. The only issue in this appeal is disallowance of Rs.2,25,01,129/- made by the AO on account of future development expenses by treating them as contingent in nature. The main contention of the AO was that the appellant is following mercantile system of accounting and under this system only those liability which had crystallized were allowable as an expense. The AO was of the opinion that the estimated liability cannot be treated as an ascertained liability as the expenditure has not actually been incurred. He therefore treated the future development expenses as unascertained liability and disallowed the same.*
>
> *It has submitted before me that Future Development Expenses comprises of costs which are duly ascertained but not incurred at the time of handing over possession of the completed flats to the buyers. However the liabilities for these expenses are contractual based on the agreement signed with the buyers. Such expenses mostly relate to common facilities like Club House, Sewerage Treatment Plant, Landscaping, Roads and Fire Fighting Equipments etc. It was further submitted as the revenue with respect to the sold flats have already been realized and booked in the sales account; these costs need to be allocated amongst all the flats the possession of which is handed over during the financial year.*
>
> *It was further submitted that the expenses are not unascertained and ontingent in nature. The cost of such unfinished work is ascertained on the basis of purchase orders placed on vendors and orders placed on service suppliers. The computation of such expenses is supported by sanction plan, project engineers' drawings and requirements of materials & labour etc. Accordingly it was stated that the provision made for future expenses is in accordance with the AS-29 and similar provisions contained in ICDS-X under sec 145 of the Act.*
>
> *It was further submitted that the assessee has consistently been following the same method of accounting for a number of years.*

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The A/R of the appellant placed reliance on the decision in the case of Consulting Engineering Services (India) Limited, 250 ITR 849 (Delhi) for the proposition that "Where a system of accounting (which includes allocation of indirect expenses) is consistently adopted and followed, the same cannot be altered in subsequent years".

On going through the submissions of the assessee it has been stated that this method of accounting regularly followed by the assessee has always been accepted by the department and variation has been made only in three assessment years namely Asst. Years 2012-13 to 2014-15. Therefore it was argued that there is no basis for the AO to change the method of accounting regularly adopted by the assessee in the earlier years. Hence it was argued that the addition made by the AO should be deleted.

In this case before analyzing the issue the methodology adopted for computing the future development expenses requires to be seen. It was stated that proportionate amount of future expenses debited to the P/L Account is based on the percentage of inventory sold during the year. In this respect the computation, project wise is depicted in the table below:

S. No.	Branch	Amount
1	Lavasa Phase I	80,05,000
2	Ashiana Aangan Ph. V	-
3	Ashiana Aangan Ph. IV	
4	Ashiana Aangan Ph. VI	12,74,000
5	Aangan Development	83,82,000
6	Brahmananda	10,15,000
7	Village Centre	38,25,129
	Total	2,25,01,129

The allocation of above expenses are debited to P/L Account on the basis of sales made is shown below:

Statement showing Impact of future expenses in profit and loss account								
Project details	Future expenses	Net sales booked	Cost of goods sold	Inventory(area)	Inventory sold during the year (Area)	% of Inventory sold	Proportionate amount of future expenses in P & L Account	Proportionate amount of future expenses in inventory/Capitalised
	(A)	(B)	(C)	(D)	(E)	(F=E/D)	(G=A*F)	(H=A-G)
Lavasa	80,05,000	46,09,56,325	26,75,40,873	2,12,820	1,47,970	69.53%	55,65,736	24,39,264

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Phase I								
Ashiana Angan Phase IV	33,59,146	85,31,20,684	45,49,71,350	3,75,025	3,75,025	100.00 %	33,59,146	-
Ashiana Aangan Ph. V	30,56,097	82,12,38566	40,16,38,403	3,42,145	3,42,145	100.00 %	3,56,097	-
Ashiana Aangan Ph. VI	32,40,757	15,15,13,862	12,32,81,846	64,613	59,192	91.61%	29,68,859	2,71,898
Brahmananda Ph II	10,15,000	24,73,88,253	16,37,70,612	1,45,130	1,42,610	98.06%	9,95,318	19,682
Village Centre	38,25,129	-						38,25,129
	2,25,01,129	2,53,42,17,690	1,41,12,03,085	11,40,033	10,66,942	-	1,59,45,156	65,55,973

From the above table it can be seen that only an amount of Rs.1,59,45,156/- has been debited to the P/L account. The expenses with respect to Village Centre was never charged to the P/L Account as it has been reflected as an investment. Therefore the future development expenses capitalized during the year is Rs.65,55,973/- which is proportionate to the inventory of unsold flats. Only to the extent the flats have been sold, the revenue realized, there being a contractual liability the proportionate expenses have been charged to the profit and loss account. This has been consistently done on the accounting principle AS-29 which is now recognized in the ICDS provisions. On these facts it is to be seen whether the expenses are allowable or not.

In this regard the assessee has placed reliance on the decision in the case of Mayura Infrastructure Development Company - ITA No.873 & 874/JP/2016 A.Y. 2011-12 & 2013-14, order dated: 25/04/2017, where the issue before the Hon'ble Tribunal was regarding future development expenses. The, Hon'ble Tribunal has considered the issue and has held as under:

> *"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*

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> *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, v)as 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. 10 ITA 873 & 874/JP/2016 ACIT Vs. Mayura Infrastructure Devlp. Co. The expression "profits or gains" in section 10(l) 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 there from-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 ld. CIT(A), therefore, revenue's appeal being ITA No.873/JP/2016 stands dismissed."*

It is observed in the above order that it has been held that the claim of the expenditure, for which the provision was 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 the impugned case also it is seen that there is direct nexus with the income booked in the P/L account and the expenditure allocated.

Further, the assessee has placed reliance on the decision in the case of Ranka Colonizers Pvt. Ltd. ITA No.787/JP/2016, order dated: 24/03/2017, where the issue before the Hon'ble Tribunal was regarding provision for future development expenses. The Hon'ble Tribunal has considered the issue and has held as under:

> *"It is further submitted that the assessee has shown fulfilment of three elements (i) Reasonableness of the provision (ii) Honesty of Provisioning of expenses (iii) A fair basis/estimation of expenses for making provisions. It is also a fact that the AO has not brought any material to show that the provision made by the assessee is excessive. Further, AO has examined the books of account but books of account were not rejected by him. It is submitted that the assessee has filed complete details of actual expenses and the AO has verified the same with vouchers and no deficiency has been pointed out by*

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> *him. The provision for the development expenses were made at the same rate which was applied by the assessee in previous year, Therefore, in view of facts and circumstances of the case as well as respectfully following above case laws, addition of Rs.62,67,210/- made by the AO in total income of the assessee by disallowing 'Provision made for development expenses is hereby deleted. Assessee's appeal stands allowed."*

Further, the assessee has placed reliance on the decision in the case of M/s. Green Triveni Developers – ITA No.304/JP/2016 A.Y. 2012-13 - Date of Pronouncement: 27/09/2016. The facts of the case and the findings of the Hon'ble Tribunal summarized in short are as follows:

Issue: Disallowance of the provision for Development Expenses of Rs.43,23,423/-.

Facts: The AO disallowed the provision for development expenses on account of it only being a provision and the expenditure not actually incurred. The AO treated the provision as an unascertained liability.

Held: The cost of these expenses were already included in the sale price of the plot and the developer
could not charge any extra amount from the customers in future for complete development of the poroiect.

The Hon'ble Tribunal relied on the Apex Court decisions in the case of Calcutta Co. Ltd. V CIT (1959) 37 ITR (SC), Rotork Controls India (P) Ltd. vs CIT (2009) 23 DTR (SC) 79 and in the case of Bharat Earth Movers vs. CIT (2000) 162 CTR (SC) 325/(2000) 245 ITR 428 (SC) and held that the liability is allowable if it has arisen in the year though it may be quantified and discharged at a future date.

Further, the assessee has placed reliance on the decision in the case of M/s. Spytech Buildcon vs. A.C.l.T. Circle -6, Jaipur - ITA No. 149/JP20l5 & 205/JP/20l5 - A.Y. 2010-ll - Date of Pronouncement – 14/09/2016, where the issue before the Hon'ble Tribunal was regarding provision for "expected expenses". The Hon'ble Tribunal has considered the issue and has held as under:

24. Here, it is seen that in spite of the assessee followingthe mercantile system of accounting, the ld. CIT(A) held the provision made by the assessee to be justified. The ld. CIT(A) has held that since till 31/3/2014, there was incurrence of expenditure to the tune of Rs. 4,68,43,199/- and that the sum of Rs. 43,06,801/- remained unspent even four years from

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the end of the year in which the provision was made. It was on this basis, that the provision made was taken to be excessive to the extent of Rs. 29/- ITA 149 & 205/JP/201 5_ M/s Spytech Buildcon Vs ACIT 4 3,06,801 /-. The question is as to whether this action of the ld. CIT(A) is justified.
25. It remains undisputed that the provision was made by the assessee for certain expected expenditure. As such, the provision was made due to the arising of the possibility of the expenditure in future. This was what had prompted the estimation. Now, if the provision does not stand exhausted even four years from the end of the year in which it was made, this does not mean that the provision to that extent was ill conceived. The details of the expenditure intended were duly made available. That such incurrence of expenditure did not come about, cannot put to naught the provision which was made bonafide. The legal position remains that the amount unutilized would be available for being offered to tax in the next assessment year. The basis of the provision made has not been observed by the ld. CIT(A) to be irrational. In this regard, the decision of the Hon'ble Suprente Court in the case of 'Bharat Earth Movers Vs CIT', (2000) 245 ITR 428 (SC), which was Spytech Buildcon, Tonk vs Assessee on I 4 September, 2016 Indian Kanoon - http://indiankanoon.org/doc/30155795/ l3 followed by the Hon'ble Delhi High Court in the case of 'Yum Restaurants (l)(P) Ltd.', (2015) 371 ITR 139 (Del), under similar circumstances, is directly attracted. 30 ITA 149 & 205/JP/2015_M/s Spytech Buildcon Vs ACIT 26. Therefore, we are of the considered opinion that the ld. CIT(A) has gone wrong in sustaining the addition to the extent of Rs. 43,06,801/-. The same should also have been deleted. We order so now. Therefore, the addition of Rs. 5,11,50,000/- is deleted in toto.

It is observed in the impugned case that the appellant has an obligation towards his customers to whom the flats have been sold and payment received to complete the pending work relating to common facilities, as a result of the sale deeds. The fulfilling of this obligation would result in an out flow of resources. An estimate of this expenditure has been made by the assessee, the basis of which was given during the course of assessment proceedings. In this case the sale deed creates a contractual obligation on the assessee to provide the common amenities and facilities as promised to the buyers. As the revenue has been booked as per matching principle the expenses are also required to be booked to that extent Accordingly, in my considered opinion the disallowance made by the AO of the future development expenses is not proper. Further the assessee has been following this method of accounting which has been accepted by the AO in

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Asst. Years 2010-11 and 2011-12. Therefore, in view of the facts and decisions discussed above, the addition made by the AO of Rs. 2,25,01,129/-.

Aggrieved by the order of the Ld. CIT(A), the revenue has preferred this appeal before the Tribunal.

4. The learned DR strongly relied on the order of the AO in support of the revenue's case on the issue under consideration. He contended that the provision for future development expenses was made by the assessee on estimated basis and since the said liability was not ascertained or crystalised during the year under consideration, the assessee following the mercantile system of accounting was not entitled to claim it as deduction as rightly held by the AO.

5. The learned counsel for the assessee, on the other hand, strongly relied on the impugned order of the Ld. CIT(A) giving relief to the assessee and submitted that the well discussed and well reasoned order passed by the Ld. CIT(A) while giving relief to the assessee on the issue under consideration deserves to be upheld. He also submitted that similar deduction claimed by the assessee on accounting of provision for future development expenses was allowed by the AO himself in the assessment completed u/s 143(3) for A.Y. 2009-10. He contended that the revenue of its real estate development business was recognised by the assessee as per the project completion method and provision was made for the expenses to be incurred in respect of the projects which were already

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completed in the year under consideration and revenue of the same was duly recognised. He also contended that such expenses to the extent they were in respect of flat sold were debited to the profit and loss account whereas the expenses to the extent they were in respect of unsold flats were added to the cost of unsold flats shown in the closing stock. He contended that since these expenses were pertaining to the projects, the revenue of which was recognised in the year under consideration by following the project completion method, the deduction for the same was rightly claimed by the assessee and allowed by the Ld. CIT(A) by following the concept of matching principle.

6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the assessee in the present case is carrying on the business of real estate development and revenue from the said business was being recognised by it by following the project completion method. As per the said method, the revenue of 7 projects which were completed or substantially completed was recognised by the assessee in the year under consideration, out of the said 7 projects, 2 projects were fully completed and since no expenditure in relation to the said projects was to be incurred by the assessee, no provision for such expenditure was made. In respect of remaining 5 projects which was substantially completed, certain expenditure was still to be incurred by the assessee and details of the same in respect of each and every projects were furnished by the assessee during the course of assessment proceedings before the AO. It was also pointed out by the assessee

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that the said expenditure to the extent it was in respect of unsold flats of the projects completed was added to the cost of unsold flats lying in the closing stock and the remaining amount was claimed as deduction. Since the entire revenue from the relevant projects was recognised by the assessee during the year under consideration as per the project completion method followed by it, the corresponding expenses still to be incurred in respect of the said projects as identified and provided by the assessee were claimed as deduction as per the matching principle and the same in our opinion was rightly claimed by the assessee as per the method of accounting consistently followed by it.

7. The matching principle is one of the most fundamental principles in accounting. It is an integral part of the accrual accounting system and requires that a company must record expenses in the period in which the related revenues are earned. The matching principle states that expenses should be recognised and recorded when those expenses can be matched with the revenues those expenses helped to generate. In other words, expenses should be recorded as the corresponding revenues are recorded and the matching principle recognises the expense as the revenue recognition principle recognises income. It is important to match expenses with revenue because net income i.e. the net amount earned in a period is calculated by subtracting expenses from revenue. If expenses are not properly recorded in the correct period, the net income from a particular period may be either understated or overstated and so are the related balance sheet balances.

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8. It appears that the AO could not appreciate the claim of the assessee in the light of method of accounting followed by the assessee perspective and disallowed the claim of the assessee on the ground that the provision made by the assessee represented unascertained liability which was not allowable as deduction in the case of the assessee following mercantile system of accounting. He however ignored the fact that the provision was made by the assessee for the expenses in relation to the projects completed of which the revenue was recognised and since such expenses were duly identified by the assessee in respect of each and every projects and details of the same were also furnished before the AO, the provision made by the assessee represented ascertained liability. Moreover, the expenditure so provided was to be incurred in respect of the projects substantially completed, the entire revenue of which was duly recognised by the assessee in the year under consideration. The said expenditure thus was related to the revenue already recognised by the assessee in the year under consideration by following the project completion method and the same was allowable as deduction in the year under consideration as per the concept of matching principle. It is pertinent to note here that the similar method of accounting was followed by the assessee consistently even in the earlier years and as submitted by the learned counsel for the assessee, similar provision made for the expenses to be incurred in respect of project substantially completed in respect of which revenue was recognised was allowed by the AO even in the assessment completed u/s 143(3). In our opinion, the Ld. CIT(A) appreciated the claim made by the assessee in the right perspective and rightly allowed the same after taking into

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consideration, the method of accounting followed by the assessee, in the light of relevant accounting standard as well as case laws relied upon by the assessee in support. We, therefore, find no infirmity in the impugned order of the Ld. CIT(A) giving relief to the assessee on this issue and upholding the same. We dismiss this appeal filed by the revenue.

9. In the result, the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 6th March, 2019.

Sd/-	Sd/-
(A. T. Varkey)	(P.M. Jagtap)
JUDICIAL MEMBER	VICE PRESIDENT

Dated: 06/03/2019
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Ashiana Housing Limited, 11G, Everest, 46C, Chowringhee Road, Kolkata – 700 071.
2. DCIT, Circle – 8(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy, By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata