

आयकर अपीलीय अधिकरण
मुंबई पीठ "ई", मुंबई
श्री जी.एस.पन्नु, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " E", MUMBAI
BEFORE SHRI G.S.PANNU, PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 6776/मुं/2019(नि. व.2014-15)
ITA NO.6776/MUM/2019(A.Y.2014-15)

ACIT, Circle -3(3),
Room No.628, 6th Floor,
Aaykar Bhavan, M.K.Road,
Mumbai – 400 005

..... अपीलार्थी /Appellant

बनाम Vs.

M/s. Skyscape Developers Pvt.Ltd.
Shapoorji Pllonji Centre,
41/44, Minoo Desai Marg,
Colaba, Mumbai – 400 005

PAN: AAJCS- 8938-H

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Vinod Tanwani

प्रतिवादी द्वारा/Respondent by : Dr. K.Shivram, Sr. Advocate

सुनवाई की तिथि/ Date of hearing : 16/12/2021

घोषणा की तिथि/ Date of pronouncement : 10/03/2022

आदेश/ ORDER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals)-8, Mumbai [in short 'the CIT(A)'] dated 13/08/2019 for the assessment year 2014-15.

2. The Revenue has raised following grounds assailing the order of CIT(A) :

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance of depreciation of Rs.9,97,11,787/- holding that building Block C was put to use without appreciating the findings of the AO that building Block C was not completed for lease out as flooring margin, duct of ACs and other amenities were not finished and thus, the building was not put to use?

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance of interest expenses of Rs.20,05,29,277/- without appreciating that the building Block C was not completed for lease out and business operations has not commenced for the year?

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the disallowance of administrative expenses of Rs.92,98,042/- without appreciating that no business was conducted during the year?

4. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of Assessing Officer be restored.

5. The appellant craves leave to amend, alter, delete or add grounds which may be necessary."

3. Dr. K.Shivram, Id.Counsel for the assessee narrating the facts of case submitted that the assessee is engaged in the business of development, operation and maintenance of Information Technology Park. The assessee developed an Industrial Park at Manesar, Haryana. The Industrial Park comprised of five commercial buildings/towers, out of which Block-C was ready to be leased out in preceding assessment year. The assessee had received Occupation Certificate in respect of the said tower on 17/03/2011. During the assessment year 2013-14 assessee had claimed interest expenditure, depreciation and administrative expenditure aggregating to Rs.39,97,18,225/-. In assessment proceedings for assessment year 2013-14, the Assessing Officer held that since only Block-C was complete, interest expenditure and administrative expenditure attributable to Block-C only can

be allowed and the balance expenditure is to be capitalized. Accordingly, interest expenditure of Rs.17,08,72,034/- and administrative expenses Rs.45,35,076/- incurred during the period relevant to the assessment year 2013-14 were capitalized. The Id.Counsel for the assessee referred to the copy of the assessment order dated 27/02/2016 for assessment year 2013-14 at pages 166 to 168 of the Paper Book. The assessee in original return of income filed on 30/09/2014 had declared loss of Rs.47,83,14,775/-. The assessee revised its return of income for the impugned assessment year i.e. 2014-15 in accordance with the assessment order for assessment year 2013-14. In revised return filed on 31/03/2016 the loss was reduced to Rs.23,62,63,740/-.

3.1 During the course of assessment proceedings the assessee had explained reasons as to why Block-C could not be leased out during the relevant period. It was on account of low demand for rental premises that there were no takers. The assessee furnished evidence to show efforts made by the assessee to lease out the premises. The same are at pages 37 to 159 of the Paper Book. The Id.Counsel for the assessee pointed that once having accepted that Block-C was complete and the same was added to the block of assets in the assessment year 2013-14, the Assessing Officer in the subsequent assessment year i.e. 2014-15 cannot retract to disallow depreciation and hold that Block -C was not "put to use". The Assessing Officer has grossly erred in disallowing assessee's claim of depreciation Rs.9,97,11,787/- and capitalizing interest expenses Rs.20,05,29,277/- and administrative expenses Rs.92,98,048/- on the ground that property was not leased out.

3.2 The Id.Counsel for the assessee submitted that once depreciation has been allowed in the immediate preceding assessment year after having accepted that the asset is “ready to use”, the Assessing Officer cannot change its stand without there being anything contrary on record. The Id.Counsel for the assessee asserted that the principle of consistency demands that without there being any change in the facts, the Assessing Officer cannot make disallowance deviating from its earlier stand. The Id.Counsel for the assessee placed reliance on the following decisions to contend that assessee is eligible for claiming depreciation in respect of asset which is “ready to use” and “not actually used”:

(i) Whittle Anderson Ltd. v. CIT, 79 ITR 613(Bom)

(ii) CIT vs. Nahar Export Ltd., 296 ITR 419(P&H)

(ii) DCIT v. Agile Electric Sub Assembly (P) Ltd. 188 ITD 870(Chennai)(Trib)

3.3 In respect of interest expenses, the Id.Counsel for the assessee pointed that the assessee has only claimed interest expenditure in respect of Block-C. The interest expense was allowed to the assessee in assessment year 2013-14 in assessment made under section. 143(3) of the Income Tax Act, 1961[in short ‘the Act’].

3.4 The Id.Counsel for the assessee submitted that similar is the situation for administrative expenses. The assessee has claimed administrative expenses attributable to Block-C only. The administrative expenses pertaining to Block – C were allowed by the Assessing Officer in assessment year 2013-14. Thus, the principle of consistency demand that the same should be allowed in assessment year 2014-15, as well. In support of his contention the Id.Counsel

for the assessee placed reliance on the decision rendered in the case of CIT vs. Excel Industries 358 ITR 295(SC).

4. On the other hand, Shri Vinod Tanwani representing the Department vehemently supported the assessment order. The Id.Departmental Representative submitted that assessee has claimed interest expenditure, administrative expenses and depreciation in respect of Block –C, which was allegedly complete in all respect , but not actually “put to use”. However, depreciation is allowable only if the asset is “put to use”. The assessee has not been able to furnish any documentary evidence to show that any part of Block-C was leased out/put to use during the relevant period. The Id.Departmental Representative prayed for reversing the findings of CIT(A) and restoring the assessment order.

5. We have heard the submissions made by rival sides and have perused the orders of authorities bellow. The assessee’s claim of depreciation, interest expenditure and administrative expenditure in respect of Block-C were disallowed by the Assessing Officer on the ground that the asset was not “put to use”. We find that in assessment year 2013-14 the Assessing Officer had accepted the contention of assessee that Block-C is complete and allowed assessee’s claim of depreciation, administrative and interest expenditure qua Block-C. In respect of the remaining project the administrative and interest expenditure was allowed to be capitalized. The CIT(A) in the impugned assessment year allowed assessee’s claim in respect of depreciation, interest and administrative expenditure pertaining to Block-C on the ground that Department has accepted in assessment year 2013-14 that Block-C has been

“put to use”. Once having accepted this position, the Assessing Officer cannot change his opinion in immediate next assessment year without there being any change in facts and circumstances. We find no infirmity in the impugned order, hence, the same is upheld.

6. In the result, appeal by the Revenue is dismissed being devoid of any merit.

Order pronounced in the open court on Thursday the 10th day of March, 2022.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 10/03/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai