**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI**

**BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**&**

**SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.92/Mum/2018**
(**Assessment Year: 2012-13**)

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| Highstreet Developers Private Limited<br>SP Centre, 41/44<br>Minoo Desai Marg,<br>Colaba<br>Mumbai-400 005 | Vs. | ITO-3(1)(4)<br>Aaykar Bhawan<br>M.K.Road<br>Mumbai-400 020 |
| **PAN/GIR No.AABCH6648H** | | |
| **Appellant**) | .. | **Respondent**) |

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| Revenue by | Shri Sachchidanand Dube, DR |
| Assessee by | Dr. K.Shivaram &<br>Rahul K. Hakani, AR's |
| **Date of Hearing** | **07/01/2020** |
| **Date of Pronouncement** | **29/01/2020** |

## आदेश / O R D E R

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Ld. Commissioner of Income Tax (Appeals)–08, Mumbai, dated 11/09/2017 and it pertains to Assessment Year 2012-13.

2. The assessee has raised the following grounds of appeal.

*1. On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals), Mumbai had erred in confirming the disallowance of project management expenses claimed by the assessee of Rs. 48,16,592/- u/s 37 of the Income Tax Act, 1961 without appreciating the fact that the expenditure incurred after 01/07//2011 i.e.. after the suspension of the business cannot be capitalized as the property construction was not in existence during this period and there was no work in progress during this period.*

*The decision arrived at by the learned Commissioner of Income Tax (Appeals) without properly considering and appreciating the facts was wholly unwarranted, uncalled for and in Law.*

*1.1 The learned Commissioner of Income-Tax (Appeals) had also erred in not appreciating the that though the business of the assessee has not ceased permanently but the fact that there was no business during this period and the assessee has not adopted a different method of accounting from the dale of suspension of the business moreover the assessee continued the accounting principles followed by them up to 30/06/2011. As per the accounting principles followed by the assessee, the expenditure incurred during the period of suspension has been claimed as revenue expenditure as the same cannot be capitalized with the cost of the investment in property as the property construction was not in existence.*

*There would have been no occasion to claim the deduction if the work in progress had continued. Because the project was suspended, the work in progress did not proceed any further. The decision to suspend the project was the cause for claiming the deduction.*

*2. The assessee craves leave to add, alter, amplify, modify or delete any of the aforesaid grounds of appeal at or before the hearing of the appeal.*

3. The brief facts of the case are that the assessee company is engaged in real-estate development projects, such as Special Economic Zone (SEZ), Information Technology Parks (IT Park) and other commercial establishments. The company currently engaged in the project for development for IT Park at Mysore. For this purpose, it has got allotment of land from Karnataka Industrial Area Development Board (KIADB). The assessee has entered into development agreement for development of industrial park with Shapoorji Pallonji & Co. Ltd. and aslo for providing various project management and office management services. The assessee has capitalized project management expenses into work in progress account and shown under the head investment in property under construction. Due to certain legal hurdles, allotment of entire land by KIADB, as per agreement was not complete. Therefore, the assessee has temporarily suspended its project from 01/07/2011.

Further, the project management expenses incurred up to 01/07/2011 was capitalized to work in progress account, but from 01/07/2011 onwards said expenditure has been debited into profit and loss account as reveune expenditure.

4. For the year under consideration, the assesse has filed its return of income, declaring total loss of Rs. 1,39,027/-. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO after considering relevant submissions of the assessee and also, taking note of the fact that the project management expenses has been capitalized during the earlier years did not accept the contention of the assesee and disallowed project management expenses debited into profit and loss account amounting to Rs. 48,16,592/- and added back to capital work in progress account shown under the head investment in property under construction. The relevant observations of the Ld. AO are as under:-

> *I have gone through the submission of the assesee which is not found to be acceptable. The assesee has claimed that the Project Management Expenses of Rs. 48,16,592/- debited during the year to the P &L account should be allowed u/s 37(1) as its auditors insisted to park a part of Project Management Expenses to Profit and Loss account instead of CWIP. As per previous records it is found that, the assessee is consistently following the project completion method of accounting and till A.Y. 2011-12, the assessee was regularly and wholly capitalizing the project Management expenses towards CWIP, but as there is no substantial improvement of the project and the project is stalled and delayed, the sudden and arbitrary decision taken by the assesee without following standard accounting method, to charge certain portion of the said expenses to the P&L account from AY 2012-13 onwards, is incorrect and not acceptable. The assessee has admitted that its project business has temporarily suspended with effect from 1 July, 2011 and it is taking all necessary steps for getting the possession of the land and to review its business activity. Since, the assesee has itself not completed the land acquisition formality the project is still in preliminary stage of land acquisition, the expenses incurred towards the running project are liable*

> *to be capitalized towards CWIP and the same cannot be allowed to be debited to the profit and loss account. The assessee also could not substantiate its claim showing standard accounting method, on the basis of which part of the project management expenses have been charged to P &L account in AY 2012-13 which were earlier consistently capitalized towards CWIP. The assesee also could not explain the basis on which it has suddenly changed its regular and accounting method in AY 2012-13. The assesee has relied upon various judicial pronouncements and has claimed that part of the project Management Expenses amounting to Rs. 48,16,592/- should be allowed as revenue expenditure u/s 37(1) of the I.T.Act. The facts and circumstances of the cases relied upon by the assessee in various judicial pronouncements are clearly distinguisible and are not similar to the facts and circumstances of the assessee, therefore, the claim of expenses of Rs. 48,16,592/- out of project management expenses as expenses u/s 37(1) is not allowable and therefore, the same is disallowed and added to the total income of the assese. Further, the expenses of Rs. 48,16,592/- on account of Project Management Expenses is capitalized towards CWIP and accordingly, the work in progress of the Investment property under construction as on 31/03/2012 is revised as under;-*

5. Aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has filed elaborate written submissions on the issue, which has been reproduced at para 4 on pages 3 to 11 of Ld.CIT(A) order. The sum and substance of arguments of the assesse before the Ld.CIT(A) are that expenditure debited under the head project management expenses are revenue in nature and the genuineness of said expenses has never been doubted by the Ld. AO. The reasons disallowances of said expenditure and added back to work in progress account is that the assessee has in the past capitalized said expenditure into work in progress account. But, fact remains that the business of the assesee has been already setup and once, business has been set up relevant revenue expenditure incurred for the purpose of business, which are in the nature of revenue expenditure shall be allowed as deduction irrespective of the fact that whether, the business has been commenced or not. Further, there is no estoppel against law. Although, the assesee has

capitalized said expenditure to capital work in progress account in earlier year, but it can very well change the method of accounting, if such change in method of accounting is in accordance with law and bonafide and also, it has continuously following said method of accounting in subsequent years.

6. The Ld.CIT(A) after considering relevant submissions of the assessee and also, taken note of various facts brought out by the Ld. AO and also by relied upon certain judicial precedents held that once, it is accepted and established that the business of the assessee has not ceased, there is no justification for adopting a different method of accounting from a certain date, during the relevant period. There is no change in the nature or status of the business activity at that point. Even, earlier project was in work in progress stage and even, after 30/06/2011, it remains the same. Denial of renewal of lease of land by KIADB or any other reason for temporarily lull in business is not important for following consistent accounting principles. Therefore, he opined that there is no reason to interfere with the conclusion arrived by the Ld. AO and accordingly, confirmed the action of the Ld. AO in disallowed project management expenditure claimed as revenue in the profit and loss account and added back to capital work in progress account. The relevant findings of the Ld.CIT(A) are as under;-

> *5.2.1 This ground relates to disallowance of Rs. 43,16, 592/- on account of Project Management expenses. The appellant had debited the impugned amount on account of Project Management expenses. In the Balance Sheet, the appellant has shown Work in Progress under the head "Investment in Property under construction" at Rs.18,07,09,163/ as on 31/03/2011 and after incurring various expenses totaling to Rs.1,78,31,674/-, the appellant has shown Work in Progress at Rs.1 9,85,40, 837/- as on 31/03/2012, The Assessing Officer held that Project Management expenses related to the Project should be disallowed and capitalized towards the running Project. The Assessing Officer has further*

*held that the appellant also could not substantiate its claim showing standard account method, on the basis of which part of the Project Management Expenses has been charged to Profit and Loss Account in assessment year 2012-13 which were earlier consistently capitalized toward CWIP Accordingly, She Assessing Officer capitalized the expenses of Rs.48,16,592/- towards CWIP and consequently, the work in progress of the L Investment in Property' was revised as on 31/03/2012 al Rs.20,33,57,428/- which was shown by the appellant in the Balance Sheet at Rs.19,85,40,836/- .*

*5.2.2 It is noted that there is no dispute on the amount or fact of payment. The appellant had incurred Rs 62,79,039/- towards project management services rendered by M/s Shapoorji Pallonji & Co. Ltd. (SPCL). It is also not disputed that the appellant has consistently followed project completion method of accounting and has been capitalizing project management expenses towards CWIP. The only dispute is over the different Treatment to par] of the above mentioned fees paid to SPCL during the instant year. According to the appellant, the project was temporarily stalled as on 30/06/2011. Therefore, expenses incurred up to that date were capitalized but subsequent project management expenses are debited to P&L account.*

*5.2.3 I find that the Assessing Officer has not disputed the accounting practice followed by the appellant. Further, the appellant has itself stated that the business is not wound up or discontinued but was "a lull in business' and the company has "temporarily suspended its business activity". The appellant, inter alia, has relied on decision of Hon'ble Bombay High Court in Hindustan Chemical Works Ltd., 124 ITR 561 to assert that a lull in business is not closure of business and therefore, any revenue expenditure related to business activity is allowable. I find the case laws relied upon by the appellant are not disputed at all. This position has been endorsed by numerous jurisdictional decisions including in Bechtel International Inc. Vs. ADIT (ITAT Mumbai), Appeal Number: ITA No. 4120/Mum/2GQ7wherein Hon'ble ITAT Mumbai held, "Mere inactivity for a limited period does not mean that the assessee's business ceased to exists or that it did not carry on business al a//,' The Assessing Officer has not concluded that the business or the appellant consistent project completion method of recording revenue and expenditure, the appellant must accord consistent treatment to project management expenses in the instant year as it did in earlier years*
*5.2.4 Once it is accepted and established that the business of the appellant has not ceased, there is no justification for adopting a different method of accounting from a certain date during the relevant period. There is no change in the nature or status of the business activity at that point. Even earlier, the project was work-in-progress stage and even after 30/06/2011 it remained so. Denial of renewal of lease of land by Karnataka industrial Area Development Board or any other reason for temporary "Lull in business" is not important for following consistent accounting principles. In earlier years and up to 30/06/2011, the appellant itself has capitalized project management expenses, if is. therefore, incumbent upon the appellant to follow this accounting principle till there*

*is any material change in status of business activity such as closure of business.*

*5 2.5 The principle of consistency has been laid down in Shapoorji Pallonji & Co (Rajkot) (P) Ltd. vs. ITO, 49 ITD (Bom) 479 wherein it was held, 'The profits of business mast be computed in accordance with method of accounting regularly employed by the assesses The choice of the method of accounting, like the choice to the previous year, lies with the assessee. The only thing is that the assessee must show that he has followed the chosen method of accounting regularly."*

*5.2.6 In view of the ratio of above jurisdictional judgment and in the facts and circumstances discussed above, I find no reason to interfere with the conclusion arrived at by the Assessing Officer on this issue. Accordingly, this ground is dismissed.*

7. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in confirmed disallowances of project management expenses claimed by the assessee u/s 37(1) of the I.T.Act, 1961, without appreciating the fact that expenditure incurred after 01/07/2011, after suspension of business cannot be capitalized as construction was not in progress during this period and there was no work in progress. The Ld. AR, further submitted that the Ld.CIT(A) had also erred in not appreciating the fact that the business of the assesee has not ceased permanently, but there was no business during this period and assesse has not adopted a different method of accounting from the date of suspension of the business, but continued the accounting policies followed by it up to 30/06/2011. He, further, submitted that, as per accounting principles followed by the assessee, the expenditure incurred during the period of suspension shall be treated as revenue expenditure, because the same cannot be capitalized to work in progress account due to temporary suspension of construction activities. The Ld. AR, further submitted that it is an admitted fact that once, business has been set up, then relevant revenue expenditure needs to be allowed as deduction, whether or not the business is commenced and revenue has been generated

from the business during the relevant period. Further, the assessee can change its method of accounting from a particular period, in respect of any item of income or expenditure due to changed circumstances, but such change in principles of accounting should be bonafide and continued in subsequent financial years. Since, the assessee has explained reasons for change in method of accounting for project management expenses and such changes is on account of bonafide reasons, there is no reason for the revenue authorities to doubt the change in method of accounting only for the reason that the assessee has followed said method of accounting in the previous financial years.

8. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that there is no merit in arguments of the Ld. AR of the assesee, because the assessee has failed to make out a case of change in facts and circumstances, which was existed prior to 01/07/2011, when it has changed method of accounting to give different treatment to project management expenses. Therefore, the Ld. AO, as well as the ld.CIT(A) were right in coming to the conclusion that the assessee has not explained reasons for change in method of accounting for project management expenses from capital in nature to revenue in nature. Hence, their order should be upheld.

9. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The assesse company is engaged in the business of development, operation and maintenance of industrial park at Mysore. For the above purpose, it was allotted lease of industrial land by KIADB. The

assessee has entered into an agreement with Shapoorji Pallonji & Co.Ltd., for development of industrial park, for which it has paid project management and office management service charges. The assessee has capitalized said expenditure into capital work in progress account up to 30/06/2011. But, from 01/07/2011, it has changed its accounting method for accounting project management expenses and accordingly, debited said expenses into the profit and loss account as revenue in nature. The assessee has explained the reasons for change in method of accounting of particular expenditure from capital in nature to revenue in nature. According to the assessee, the change in accounting method for accounting project management expenses is due to temporarily suspension of construction activities for non allotment of entire parcel of land by the KIADB, as per agreement for more than three years. As a result, the project was temporarily suspended and all construction activities are suspended from 01/07/2011. Therefore, it has debited said project management expense into the profit and loss account and claimed deduction u/s 37(1) of the I.T.Act, 1961.

10. Having considered arguments of both the sides, we find that there is no dispute with regarding the nature of expenditure incurred by the assessee and the genuineness of said expenditure. In fact, the Ld. AO has not doubted expenditure incurred under the head project management services charges. There is no dispute that the business was temporarily suspended from 01/07/2011, due to certain legal hurdles in the project, as per which the KIADB was not able to handover the land allotted for the project. In view of the above, the company has temporarily suspended its business activity w.e.f. 01/07/2011. Therefore, we are of the considered view that

there is a changed circumstance, which forced the assese to rethink its accounting policies, in order to give a fair and better treatment in its financial statements, in respect of various expenditure incurred for the project. As, we noted in earlier paragraphs, the assessee has capitalized project management expenses on the basis of an agreement with the developer and said expenditure was debited into capital work in progress account up to 30/06/2011. The assessee has changed its method of accounting to give better treatment to said expenditure and accordingly, it has debited project management expenses into profit and loss account, because the particular expenses cannot be capitalized, when the construction work has been temporarily suspended during the relevant period. Therefore, we are of the considered view that if, the change in method of accounting was necessary in the given facts and circumstances of the case and was also bonafide, then there is no restriction under the law to change method of accounting to treat particular item of income or expenditure during the relevant period, but such changes should be bonafide and it should be continued in subsequent financial years. In this case, there is no doubts with regard to the fact that the assessee has followed a consistent method of accounting for accounting project management expenses in the past, but due to changed circumstances, it has changed its method of accounting from a particular date and such changes was bonafide and need of the hour. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in coming to the conclusion that the assessee has changed its method of accounting without there being any changes in facts and circumstances and such changes was not bonafide.

11. Having said so, let us examine, whether expenditure claimed by the assessee is revenue in nature and which can be allowed as deduction u/s 37(1) of the I.T.Act, 1961. The business of the assessee has been set up long back. If the business was set up, then any revenue expenditure incurred shall be allowed as deduction u/s 37(1), whether or not, the business was commenced and revenue was generated from said business. In this case, the Ld. AO never doubted the fact that the business of the assessee was set up. The Ld. AO has also not doubted the fact that the expenditure incurred are in the nature of revenue expenditure. The only ground for the Ld. AO to deny the deduction claimed u/s 37(1) is change in method of accounting. There is no estoppel against law. If, an assessee follows a particular method of accounting to account an item of income and expenditure for a particular date, it can very well change its method of accounting for accounting said item of income and expenditure from a particular date, if such changes is in accordance with law and is within the provisions of principles of accounting. Further, the change in method of accounting was bonafide and such changes is continued in subsequent years, then there is no restriction under the law to change a method of accounting from a particular date to give different treatment to a particular of item of expenditure or income. This legal proposition is supported by the decision of Hon'ble Karnataka High Court, in the case of CIT vs Corporation Bank Ltd. (1988) 174 ITR 616, where it was held that the assessee had the right to change over the present method, provided such change was bonafide and followed regularly. Thereafter, the Hon'ble Bombay High Court, in the case of Bajaj Auto Limited vs CIT(supra) had taken similar view and held that the assesee was well within its rights to bring about changes, so long as

the assesse adopts such change bonafide and propose to employee the new method regularly. In this case, the assessee has changed method of accounting inrespect of project management expenses from a particular date and said method of accounting has been continued in subsequent years and which has been accepted by the revenue. Further, the change in method of accounting was also supported by a reason of temporarily suspension of business activity due to circumstances beyond the control of the assessee. Therefore, we are of the considered view that the assesee was well within its right to change method of accounting for accounting particular expenditure. The Ld. AO and Ld.CIT(A) without appreciating the fact that has simply rejected the claim of the assessee, without assigning any reasons, how the changed method of accounting was not in accordance with the principles of accounting followed by the assesse. Hence, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in disallowed, project management expenses claimed by the assessee u/s 37(1) of the Act and accordingly, we delete additions made by the Ld. AO towards project management expenses and direct the Ld. AO to allow deductions as claimed by the assessee.

12. In the result, appeal filed by the assesee is allowed.

Order pronounced in the open court on this 29 /01/2020

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| **Sd/-** | **Sd/-** |
| **(RAM LAL NEGI)** | **(G. MANJUNATHA)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai; Dated : 29 /01/2020
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
**ITAT, Mumbai**