(2013) 12 DEL CK 0224

In the Delhi High Court

Case No : I.T.A. No. 506 of 2013

Rangoli Projects P. Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision : 11-12-2013

Acts Referred:

Citation : (2014) 363 ITR 192

Hon'ble Judges : Sanjiv Khanna, J;Sanjeev Sachdeva, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

C.M. No. 16704 of 2013 (exemption)

Exemption allowed subject to all just exceptions.

C.M. No. 16705 of 2013 (delay)

For the reasons stated in the application, the delay of 30 days in re-filing of the appeal is condoned.

ITA No. 506 of 2013

1. This appeal u/s 260A of the income tax Act, 1961, relates to the assessment year 2008-09. Having heard counsel for the parties, we are inclined to frame the following substantial question of law:

Whether the income tax Appellate Tribunal was right in holding that the expenses incurred by the appellant assessee in respect of the project should be capitalised?

2. With the consent of the parties, the appeal is taken up for hearing today itself.

3. The appellant for the assessment year 2008-09 had filed return on August 26, 2009, declaring nil income. They had claimed expenses of Rs. 32,33,814 and had shown interest income and miscellaneous receipts but no business income. The assessment order records that the assessee had shown closing stock of land of

Rs. 12,91,08,447, an increase from Rs. 9,22,54,986 from the previous year.

4. The assessment order mentions that as no income from business was derived during the year, the entire expense of Rs. 32,33,814 should be capitalised. The expenses debited to the profit and loss account had been incurred in relation to a real estate project. In the assessment order, it is also observed that the expenses should be added to the cost of the project.

5. In the first appeal, the Commissioner (Appeals) has recorded that the appellant had been granted licence by the Haryana Urban Development Authority to start development of a residential colony. But the appellant was not given the right to sell the land and no land was sold in the relevant year or in subsequent years. The land allotted to the assessee-company was still under development. However, the Commissioner (Appeals) contradicted himself when he observed that the project had not commenced and, therefore, the entire expenses relating to the project should be capitalised.

6. In the impugned order dated January 11, 2013, the Tribunal has recorded as under:

4.1 Coming to the facts of the present case, from the findings of the Assessing Officer, extracted supra, it reveals that the Assessing Officer has capitalised the expenses and added to the cost of the project. From the details of expenses available on page 2, we find that the assessee itself has capitalised the expenses incurred on advertisement of project, site development, bank guarantee, process charging paid to the bank, etc. Apart from development of this project, it has not carried out any other business. It itself is capitalising the expenses which axe relatable to the project. No doubt, the business of the assessee has been set up. It is entitled for the expenses which are necessary for day-to-day business activity of the assessee but the expenses which are relatable to the project for which assessee itself capitalising the expenses such expenses are to be capitalised. From the analysis of the details, it revealed that the assessee has a interest income. It has worked out the loss by claiming certain expense equivalent to the interest income so that both can be set off. In our opinion, after taking into consideration the details of expenses, available on page 2, the following expenses can be allowed to the assessee as revenue expenses:

4.2 These are the expenses which are necessary for day-to-day maintenance of the company. Therefore, the ground of appeal raised by the assessee is partly allowed. Learned Assessing Officer is directed to allow the above expenses to the assessee.

7. It is clearly recorded in paragraph 4.1 that the business of the appellant-assessee had been set up and, therefore, in accordance with law, the expenses incurred had to be allowed. This means that the expenses should be allowed as per the accounting standards and section 145/145A of the Act.

8. Learned senior standing counsel for the respondent has submitted that the

Tribunal may not be right in holding that the expenses should be capitalised but Accounting Standard No. 7 has to be followed and applied. It is submitted that this was the intention of the Tribunal as well as the authorities, thus resulting in confusion. The said confusion and ambiguity should be rectified and corrected.

9. We find merit in the contention raised and the submission made by the senior standing counsel. It is the case of the appellant that they were/are engaged in the real estate development business and had undertaken development of the project. It has to be examined whether the expenditure incurred on development of the project should be taxed by applying Accounting Standard No. 7 and in case, the said Accounting Standard has not been followed, the effect thereof has to be ascertained and considered. The said exercise has not been undertaken in this case. The Tribunal in the impugned order without dwelling on the said aspect, held that the expenditure was capital, as corresponding income from the project was not recorded or brought to tax.

10. Learned counsel for the appellant has drawn our attention to the fact that certain expenses have been allowed by the Tribunal. This is correct, but the primary question, whether the development expenses can be allowed under the applicable accountancy standards read with section 145/145A and commercial principles remains unexamined. Keeping in view the aforesaid position and the submission made by the senior standing counsel and counsel for the appellant, we feel that the matter should be remitted to the Assessing Officer for a fresh decision. The Assessing Officer will examine the whole issue afresh without touching upon the expenses which have been allowed by the Tribunal and it will be examined whether other expenses can be allowed as expenditure, in accordance with law, i.e. Accounting Standard as applicable, read with section 145/145A of the Act. The substantial question of law framed above is accordingly answered. The appeal is disposed of. No order as to costs.