

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "फ", मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL BENCH "F" MUMBAI**  
**BEFORE SHRI D.T.GARASIA, JM AND SHRI RAJESH KUMAR, AM**

I.T.A. No.1733/Mum/2014  
(निर्धारण वर्ष / Assessment Year : 2010-11)

Income Tax Officer-25(2)(4), C-11, Pratyakshakar Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai-400051	<b>बनाम/</b> Vs.	Shri Vivek Ramrao Parashkar, 2, Mayur Makrupa CHSL, Opp Gokhale College, Shimpoli Road, Borivali (W), Mumbai-400092
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**स्थायी लेखा सं./ PAN :AGUPP5590J**

अपीलार्थी ओर से / Revenue by	Ms.Pooja Swaroop
प्रत्यर्थी की ओर से/ Assessee by	Shri Vipul Joshi

सुनवाई की तारीख / **Date of Hearing** : **14.2.2017**  
घोषणा की तारीख / **Date of Pronouncement** : **27..2.2017**

**आदेश / ORDER**

**PER RAJESH KUMAR, Accountant Member:**

The assessee has filed this appeal challenging the order dated 23.12.2013 passed by the Id.CIT(A)-35, Mumbai for the assessment year 2010-11 wherein he has raised following grounds of appeal:

*Grounds of Appeal*

*"(i) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the addition made on account of disallowance of loss amounting to Rs.34,40,284/- . "*

*(ii) "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in following Accounting Standards 37 issued by ICAI while allowing relief to the assessee instead of Income tax Act."*

*(iii) "On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the addition on account of interest u/s 40a(ia) amounting to Rs.50,01,960/- paid to non-banking financial institutions without considering the fact that the assessee failed to produce documentary evidences to show that the institutions are into banking business and registered under the banking regulations Act, 1949 and not liable to deduct tax at source u/s 191A of the IT Act"*

2. Ground no.1 and 2 are against the deletion of addition of Rs.34,40,284/- by the appellate authority.
3. The brief facts of the case are that the assessee is a Developer and engaged in the business of construction, running and operation of hotels, dealers in all types of Hero Honda two wheelers and gas agency, etc. The AO during the course of assessment proceedings, found that under the proprietary concern M/S. Paraskar Developers which was proprietary concerns of the assessee, net loss of Rs.34,40,284/- was shown. The said proprietary concern was engaged in the business of construction. During the year it undertook a project to construct bus stand and commercial complex at Manora, Dist Washim of Maharashtra on BOT basis with MSRTC. The AO found that the part of the expenses incurred during the year on account of purchases and direct expenses were capitalized to Work-In-Progress and part of expenses was shown as revenue expenditure. There was no sales during the year and resultantly the assessee suffered loss of Rs.34,40,284/- as current year loss which set off

against the income from other proprietary concerns. The AO vide order sheet entry, dated 1.3.2013 called upon the assessee to show cause as to why this entire loss should not be added to the WIP as the assessee was following contract completion method which was replied by the assessee vide letter dated 19.3.2013 by submitting that the loss was sustained due to flood and its negative consequences. The assessee submitted that due to flood which happened in the year 2002, the entire construction done by the assessee had collapsed, and the loss shown during the year was primarily on account of expenses on maintenance of bus stand and commercial shops constructed by the assessee which were not to be reimbursed to the assessee under the MOU and accordingly shown the current year loss. The AO rejected the contentions of the assessee by rejecting the said claim of Rs.34,40,284/- and added the same to the total WIP.

4. In the appellate proceedings, the FAA allowed the appeal of the assessee after taking into account the contentions and submissions as incorporated in para (V) under the heading Appellant's submissions in Ground No.1. Aggrieved by the conclusion drawn by the Id.CIT(A), the revenue is in appeal before us.

5. The Id.DR submitted before us that the FAA has allowed the claim of the appellant without appreciating the facts in correct perspective and the claim made by the assessee was not correct for the reasons that the assessee was following project completion method. The Id. DR submitted that during the year

the assessee was engaged in the business of BOT Bus stand and commercial complex awarded by the Government of Maharashtra and under the said system of accounting, the recognition of revenue has to be done after completion and therefore expenses claimed by the assessee were not allowable during the year and the AO has rightly added these expenses to the work-in-progress of the assessee. Finally it was prayed that the order of the Id.CIT(A) should be reversed and that of AO should be restored on this issue.

6. On the other hand, the Id.AR heavily relied upon the order of the FAA and submitted that the expense were correctly accounted for as revenue expenses by following Accounting Standard-7. The Id. AR specifically drew our attention to para 35 of the said accounting standard which provided for treating the revenue expenses a business loss where the contract costs is likely to be exceeded contract revenue. The Id. AR submitted that due to flood in 2002 the construction of the assessee was badly damaged and expenses incurred were not recoverable under the BOT and therefore whatever expenses had incurred to maintain the bus stand and shops was treated as revenue expenses. The Id. AR finally submitted that in view of the AS-7 and facts of the case the order of the FAA was correct as per law and should be upheld.

7. We have heard the rival parties and perused the relevant materials placed before us . We find that the assessee was engaged in the business of construction and has undertaken a project under BOT for construction of bus

stand and commercial complex at Manora awarded by the Government of Maharashtra. It is undisputed fact that the construction was badly damaged due to floods and its negative effect and the expenditures incurred to maintain bus stand and commercial complex was not recoverable under BOT. As per AS-7 when the cost of contract is likely to be exceed the contract revenue then the loss incurred on the contract should be recognized as revenue expenditure immediately. Taking all these facts into account, we are of the considered opinion that the conclusion drawn by the Id.CIT(A) is correct as per law. Accordingly, we uphold the order of the Id.CIT(A) by dismissing the appeal of the revenue.

8. The issue raised in ground no.3 is against the deletion of addition on account of interest under section 40a(ia) of the Act amounting to Rs.50,01,960/- paid to non-banking-financial Institute on the ground that the assessee failed to deduct tax at sources in terms of the provisions of section of section 194A of the Act.

9. At the outset, the Id.AR pointed out that the issue raised by the revenue in this appeal stands covered in favour of the assessee by the decision of the Coordinate Bench of the Tribunal in assessee's case in ITA No.2808/Mum/2013 (AY-2009-10) dated 6.11.2015, wherein the similar issue was restored to the file of the AO. The Id. AR requested the Bench this issue also be restored to the file of the AO in the same line as laid down in the assessment year 2009-10.

10. The Id. DR fairly agreed with the submissions of the Id.AR.

11. We find that the similar issued had come up before this Tribunal in assessee's own case in ITA No.2808/M/2013 (supra), wherein the identical issue had been restored to the file of the AO for denovo decision as per law after providing necessary opportunity of hearing to the assessee. Accordingly, we restore this issue to the file of the AO.

12. In the result, the appeal of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 27 .2.2017.

**Sd**  
**(D.T.GARASIA)**  
**Judicial Member**

**sd**  
**(RAJESH KUMAR)**  
**Accountant Member**

**मुंबई Mumbai; दिनांक Dated : 27.2.2017**

Sr.PS:SRL:

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

True copy

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**