IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES " **C** " BENCH: BANGALORE

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1124/Bang/2018
(Assessment Year: 2012-13)

M/s. Lalith Gangadhar Constructions Pvt. Ltd.,
121, Rest Giyse Riad,
Bengaluru-560 001 ....Appellant
PAN AABCL 3625L

Vs.

Dy. Commissioner of Income Tax,
Circle 4(1)(1), Bengaluru. ......Respondent.

Assessee By:	Shri V. Srinivasan, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	05.10.2020.
Date of Pronouncement :	09.10.2020.

O R D E R

PER SHRI B.R. BASKARAN, A.M. :

The appeal filed by the assessee is directed against the order dated 05-01-2018 passed by Ld CIT(A)-9, Bangalore and it relates to the assessment year 2012-13.

2. The assessee is aggrieved by the decision of Ld CIT(A) in confirming disallowance of claim of Rs.2,51,54,293/-, being loss arising on valuation of inventory (which is nothing but accumulated expenses of earlier years included as part of work-in progress).

3. The assessee is a private limited company and is engaged in housing and real estate development. It was incorporated in the financial year 2007-08. According to Ld A.R, the business of the assessee was set up in that year itself. It was incorporated for carrying on the business of housing and real estate developments. It did not report any business income till the

assessment year 2011-12. Only during the year under consideration, i.e., in the year relevant to assessment year 2012-13, it reported business income, since it undertook construction of a residential project.

4. The assessee has been incurring expenses over the years under various heads. Till financial year 2009-10, those expenses were accumulated under the head "Preliminary & Pre-operative expenses" and shown in Asset side of the Balance sheet as "Miscellaneous Expenditure – Preliminary & Preoperative expenses (To the extent not written off or adjusted). The pre-operative expenses so accumulated upto 31.3.2010 was Rs.2,50,08,083/-. However, in financial year 2010-11 relevant to the assessment year 2011-12, the assessee transferred the above said pre-operative expenses to "Work in Progress" account. The balance shown under work in progress as on 31.3.2011 was Rs.3,71,09,319/-.

5. During the year under consideration, the assessee wrote of Rs.2,83,02,889/- out of the above said "work in progress" amount of Rs.3,71,09,319/-. Following note was appended to the Annual report:-

> "Certain preoperative expenditure amounting to Rs.2,51,54,293/- incurred by the company during earlier years towards various activities with regard to various proposed projects hitherto considered as part of work in progress has been expenses out during the year by duly adjusting the carrying cost of project work in progress in view of discontinuance of those projects."

6. The above said claim of Rs.2,51,54,293/- came to be considered by the Assessing officer. The discussions made by the AO are extracted below:-

> "2. During the year the company has expenses off certain pre-operative expenditure amounting to Rs.2,51,54,293/- incurred during the earlier years towards various activities with regard to various projects proposed hitherto considered as part of work in progress by adjusting the carrying cost of projects work in progress in view of discontinuance of the projects. Sri Ramachandra Bhat P was required to furnish a justification for the claim as an allowable expenditure in

response to which it is submitted that this expenditure was in relation to a project cancelled for which the company had entered into a JDA for construction of villa. Though the land owner could not fulfil his obligation, the company had incurred various expenses in connection with the project which was shown as WIP pending commencement of the projects. The company finally called off the project and during the year the expenses hitherto considered as WIP was expensed out.

3. The expenditure incurred in relation to an abandoned project cannot be allowed as an allowable expenditure. Further, it represents a write off of an asset. The expenditure was incurred in respect of a new source of income which had to be abandoned. The same is disallowed u/s 37 as not being a revenue expenditure."

7. Before Ld CIT(A), the assessee submitted that the expenditure of Rs.2,51,54,293/- was accounted as "inventory" was actually consisted of expenditure of revenue nature. Hence it was reduced from the value of closing stock as on 31.3.2012, as the policy of the assessee company is to value the inventory at lower of cost or net realisable value. The assessee further submitted that it had entered into an agreement for construction of a major project under Joint Development Agreement entered with Mr. Jayaram Shetty, which was later abandoned. The assessee furnished following documents in support of the same before Ld CTI(A):-

a) Copy of Joint Development Agreement dated 21.05.2008

b) Copy of Mutual Termination Agreement dated 04.01.2010

c) Copy of Deed Discharge of Mortgage dated 04-01-2010.

It was submitted that all the expenditure incurred in respect of projects till 31.3.2011 have been treated as work in progress/inventory. Since income from operations were recognised for the first time in the FY 2011-12, it was necessary for the assessee to review the value of inventories as on 31.3.2012 and in that process, an amount of Rs.2,51,54,293/- was reduced from the value of work in progress as the net realisable value was NIL, since the above said amount represented only revenue expenditure. The assessee placed its reliance on the decision rendered by Hon'ble Jharkhand High Court in the case of CIT vs. Tata Robins Fraser Ltd (2012)(211 Taxman 257/27 taxmann.com 15), wherein it was held that the expenditure incurred on unaccomplished project was allowable as revenue expenditure.

8. The Ld CIT(A) noticed that the Joint Development Agreement entered with Mr. Jayaram Shetty was terminated in FY 2009-10 itself, as per the agreements filed by the assessee. Hence he took the view that the assessee should have written off the expenses in FY 2009-10 itself and not two years later in FY 2011-12. The Ld CIT(A) also called for details of expenses relating to the claim of Rs.2.51 Crores. The details furnished by the assessee have been extracted by Ld CIT(A) and his discussions are extracted below, for the sake of convenience:-

LALITH GANGADHAR CONSTRUCTIONS PRIVATE LIMITED
Yearwise details of Pre operative expense written off

Sl. No.	Particulars	FY 2007-08	FY 2008-09	FY 2009-10	Total
1	Advertisement Expenses	1,27,216	-	1,35,120	2,62,336
2	Audit Fees	28,090	30,000	30,000	88,090
3	Bank Charges	-	6,244	111	6,355
4	Business promotion	-	-	2,307	2,307
5	AMC - Systems	-	53,936	-	53,936
6	Car Hire Charges	2,375	-	-	2,375
7	Commission & Brokerage	-	1,50,000	-	1,50,000
8	Travelling and Conveyance Charges	1,58,108	52,808	50,791	2,61,707
9	Newspapers & Periodicals	11,900	5,344	-	17,244
10	Interest on Car Loan	37,545	2,32,334	3,75,814	6,45,693
11	Debenture Interest	4,167	50,317	60,603	1,15,087
12	Office Maintenance	72,616	635	-	73,251
13	Telephone Charges	97,677	1,10,681	28,039	2,36,397
14	Professional Charges	3,40,162	9,42,125	78,221	13,60,508
15	Printing and Stationery	49,474	40,355	-	89,829
16	Postage & Courier Charges	3,615	4,904	-	8,519
17	Registrations & Renewals	-	17,000	-	17,000
18	Salaries & Wages	49,08,282	1,00,05,461	46,86,903	1,96,00,646
19	Staff Welfare & Uniform	64,522	53,128	1,700	1,19,350
20	Stamp Papers & Legal Expenses	-	-	1,100	1,100
21	Survey Expenses - Rayasandra property	-	-	19,303	19,303
22	Rent Paid	1,12,500	3,55,000	4,11,750	8,79,250
23	Rates & Taxes	1,968	11,743	2,800	16,511
24	Electrical Maintenance	3,131	5,254	-	8,385
25	Vehicle Maintenance	33,197	73,998	1,10,716	2,17,911
26	Depreciation	65,832	6,46,579	6,19,420	13,31,831
27	Vehicle Usage Charges	-	-	(3,64,200)	(3,64,200)
28	Interest Received	-	-	(66,427)	(66,427)
	Total	61,22,376	1,28,47,846	61,84,071	2,51,54,293

Year wise details of Salary Expense

Summary	2007-08	2008-09	2009-10	Total
Girish Puravankara	30,53,250	71,24,250	37,99,600	1,39,77,100
Others	18,55,032	28,81,211	8,87,303	56,23,546
Total	**49,08,282**	**1,00,05,461**	**46,86,903**	**1,96,00,646**

15. On the year wise details filed it is seen that the Appellant has incurred expenditure as under

Financial Year 2007-08	61,22,376
Financial Year 2008-09	1,28,47,846
Financial Year 2009-10	61,84,071
Total	2,51,54,293

9. The Ld CIT(A) noticed that the contentions of the assessee are not appreciable and against the facts. The relevant discussions made by Ld CIT(A) and the decision taken by him are extracted below:-

17. On examination of this I find that no significant project specific expenses are being written off. In fact the advance of Rs. One crore has been recovered by the appellant. Similar is the case with other expenses.

18. None of these expenses claimed to have been written off relate to any specific project. Major part of the write off is the salary paid to the 'Managing Director'. This does not relate to any project. Even a query was raised during the hearing that when there was no project what was the need to pay such high salary to the 'Managing Director'. There was no satisfactory response to the same. However, no adverse finding (like disallowing the salary of the managing director) is being arrived at on this ground.

19. To summarize the initial argument of the appellant during the course of hearing was that the project being called off is the reason for write off. Factually this was disproved during the course of hearing before me. It is clear that the project was called off during financial year 2009-10 whereas the write off is proposed by the appellant during the financial year 2011-12.

20. In the case of Asia Power judgment on which the Appellant has relied, it is seen that Asia Power debited immediately the expenditure in the year in which the agreement was cancelled. However, in the case of Appellant it has been debited after two years from the date of transactions. The Appellant has failed to show anything during this Financial Year (i.e. FY 2011-12) which triggered the write off i.e. transfer of amount from work- in – progress to debiting the P&L Account.

21. Further, only project specific expenses that can be linked to a particular project can be written off in the event of failure of that particular project. This has not been the present case.

22. In the method of accounting followed by the appellant (or other similar cases of real estate construction) common expenses have to be carried forward as WIP and must be distributed across all the projects. These common expenses can be spread across and allocated to all the running projects as and when these projects are completed in part or full (based on percentage

completion method). Thus, these common expenses are to be charged to the P&L account based on the percentage of revenue received.

23. Therefore, I find that the appellant has been unable to prove that there was any specific project which failed during the current financial year and the appellant lost money on that and therefore, the same needs to be written off and therefore charged to the P&L account during this year itself. What I find instead is that there are common expenses like salary to managing director, salaries to staff, advertisement expenses and other expenses which cannot be related to any specific project. Therefore, the write off proposed by the appellant during the current year is not correct. The action of the AO is correct and the grounds of appeal are rejected.

24. Any way this will not result in any loss to the appellant and the common expenses which are charged to the P&L account (after write off) will continue to remain a part of WIP and can be charged to the P&L account based on percentage completion method in future years.

10. The Ld A.R submitted that the income tax is to be charged on real income. He submitted that the assessee has treated the revenue expenses as work in progress and did not write off the same, since no business income was available. Only during the year relevant to AY 2012-13, the assessee has executed a project and could declare business income. Hence the assessee has written off accumulated expenses/work in progress, as it is

not related to the project under execution. The said claim is in consonance with the accounting policy followed by the assessee, being cost or net realisable value, whichever is less. In the instant case, the accumulated expenses/WIP does not carry any net realisable value and hence it has been written off during the year under consideration.

11. The Ld A.R submitted further submitted that the assessee could have declared all the expenses as business loss in the past years and in that case, brought forward losses should have been allowed against current year's income, in which case, the net result would remain the same. Accordingly he contended that the claim of the assessee should be allowed.

12. The Ld A.R submitted that the view taken by Ld CIT(A) in paragraph 24 of his order that there will not be any loss to the assessee is not correct, since the AO has already disallowed the amount and did not state that it will form part of work in progress. Accordingly he submitted that the assessee's claim for deduction in this year should be allowed.

13. The Ld D.R submitted that the Ld CIT(A) has analysed the facts relating to the issue correctly and has taken a decision in accordance with law. Accordingly, she submitted that the order passed by Ld CIT(A) does not call for any interference.

14. We heard rival contentions and perused the record. The Ld CIT(A) has noticed that the expenditure of Rs.2.51 crores consisted of only "revenue expenses". He has further given a finding that, if at all these expenses are related to any abandoned project, the claim should have been made by the assessee in FY 2009-10, since the Joint Development Agreement was terminated in that year only. We have earlier noticed that the assessee has treated these expenses as "pre-operative expenses" till 31.3.2010 and only in the financial year 2010-11, the assessee has converted the same as "work in progress".

15. It is a well settled proposition of law that the accounting treatment given in the books of account is not binding on the assessee/revenue to determine the correct amount of total income under the Income tax Act.

However, in order to claim any amount as expenditure or loss, the conditions or procedures prescribed under the Income tax Act should have been followed by the assessee. The Ld A.R submitted that the accumulated amount of Rs.2.51 crores represented only revenue expenses and hence the assessee could have claimed the same as business loss in the earlier years. In that case, the brought forward business loss would have been allowed as deduction. This submission of the assessee appears to be attractive. However, the Income tax Act prescribes conditions for filing of loss returns and for carry forward of losses. None of those conditions have been followed by the assessee and no loss was claimed or determined in any of the past years. Hence it cannot be presumed or deemed that the claim of the assessee represented brought forward loss. Accordingly, this contention of the assessee is liable to be rejected.

16. It can be noticed that the amount of Rs.2.51 crores represented expenses incurred by the assessee upto 31.3.2010. As observed by Ld CIT(A), the claim should have been made by the assessee in FY 2009-10 relevant to A.Y. 2010-11, since the Joint development agreement was terminated in that year. Hence we agree with the view of the Ld CIT(A) that this amount cannot be claimed during the year under consideration. In view of the above, we do not find it necessary to interfere with the order passed by Ld CIT(A).

17. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	Sd/-
(N.V. VASUDEVAN) **VICE PRESIDENT**	**(B.R. BASKARAN)** **ACCOUNTANT MEMBER**

Dated: 09.10.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore