

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SMT. DIVA SINGH, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 787/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Income Tax Officer, Ward-1(2), Jaipur.	बनाम Vs.	M/s Ranka Colonizers Pvt. Ltd., 939-940, Ranka Mansion, SBBJ Street, Chaura Rasta, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 8260 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl. CIT)
निर्धारिती की ओर से / Assessee by : Shri Vijay Goyal (CA)

सुनवाई की तारीख / Date of Hearing : 15/03/2017
उदघोषणा की तारीख / Date of Pronouncement : 24/03/2017

आदेश / ORDER

PER: DIVA SINGH, J.M.

The present appeal has been filed by the Revenue assailing the correctness of the order dated 16/06/2016 of Id. CIT(A)-4, Jaipur pertaining to assessment year 2011-12 on the following ground:-

"1 Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in deleting the addition of Rs. 62,67,610/- made by the A.O. by disallowing the unascertained liability towards the 'Provision made for development expenses.'"

2. Briefly stated facts of the case are that the assessee is a private limited company engaged in the business of real estate. The subject matter of dispute in the present proceedings is that the assessee debited to its P&L account under the head "development expenses" a sum of Rs. 62,67,210/-. The Assessing Officer

required the assessee to explain the same. The record shows that the assessee as per reply dated 11/12/2013, which has been extracted by the Assessing Officer in his order, had offered the following justification:

The development expenses of Rs. 6267210/- debited in P&L account consist the provision for development made on are sold during the year @ Rs. 500/- per sq. yards in the scheme of assessee naming "Sachivalaya Enclave". The actual development expenses incurred during the year are being debited in the a/c naming "Provision for development expenses". The copy of such ledger a/c consisting the detail of nature of expenses incurred during the year is enclosed herewith. As regarding justification of provisions for development expenses we submit that as per the norms of JDA for Private Township, the developer has to incur several expenses on the development of the scheme such as expenses on internal roads, electrification, water supply and development of public parks and facilities etc. The cost of these expenses is included in the sale price of the plot and separate charges against the development expenses to be incurred by the developer is not being charged in addition to the sale price of the plot taken by the developer. The development work has to be carried out as per the specification of the JDA. The sales of the assessee represents to two things, first cost of land and second cost of development expenses. Since the cost of the development expenses is to be incurred in the next years, therefore, the sales to the extent of the cost of development expenses is carried forwarded for next years under the nomenclature "Provision against the development expenses. It is relevant to mention here that the development expenses are estimated only in respect of the plots sold during the year, not on whole land and such amount is carried forwarded. Thus, the sale proceed received by the assessee against the plots is subject to the liability of development work to be done by the assessee. The liability to incur the development expenses has arisen in the year of the sale of the plot. The said liability ought to have been deducted from the amount of income accrued in order to arrive the true and fair profits of a business or profession, therefore the estimation of further cost of development nomenclature in books of account as " Provision against development expenses" are allowable expenses u/s 37 of the Income Tax Act read with section 28 of Income Tax Act. The development work has to be carried out as per the specification of the JDA.

2.1 However, not convinced with the explanations offered he rejected the same and held that since no expenditure was actually incurred and the amount was only in the form of a provision, he added the same to the income of the assessee.

3. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the CIT(A). Reliance was placed on various decisions of the ITAT including the following decisions of the Hon'ble Supreme Court namely *Rotork*

Controls India (P) Ltd. Vs CIT (2009) 314 ITR 62 (SC) for the proportion that any provision made for the obligation of expenses to be incurred in future against the current year's sale is allowable expenses. Reliance was also placed on the decision of Hon'ble Supreme Court namely *Bharat Earth Movers Vs. CIT (2009) 245 ITR 428 (SC) for the proposition that if the business liability has arisen in the accounting year then deduction should be allowed although liability may have to be quantified and discharged at a future date.* Reliance was also placed in the decisions of different Hon'ble High Courts namely *Udaipur Mineral Development Syndicate (P) Ltd. Vs. Dy.CIT (2003) 181 CTR 251 (Raj)*; *CIT Vs Development Trust (P) Ltd. (1991) 99 CTR (All) 247* and *Welding Rods Mfg. Co. Vs. CIT (1997) 137 CTR (Guj) 569.*

3.1 Considering the submissions, the Id. CIT(A) granted relief holding as under:-

"3.1.3 *I have duly considered assessee's submission and carefully gone through assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. On perusal of assessment order, it is seen that AO at page 2 to 4 of the assessment order has held that during the year a sum of Rs. 62,67,210/- had been debited to the P&L account under the 'Development Expenses' when asked to furnish the complete details and evidences in support of the incurring of such expenditure, the assessee revealed that the said expenditure had not been actually incurred but was debited to the P&L account in the form of provisions for such expenses to be incurred in future. Finally, AO made addition of Rs. 62,67,210/- in total income of the assessee by disallowing 'Provision made for development expenses. The assessee's contention is that the provisions for development expenses are allowable u/s 37 r.w.s. 28 of the Act and this claim is covered by following decisions:*

**Calcutta Co Ltd 37 ITR 1 (SC)*

** The Green Triveini Developer ITA No 291 /JP/2014 ITAT Jaipur*

** M/s Shree Salasar Overseas (Pvt) Ltd ITAT Jaipur*

** Ram Chandra Agrawal ITAT Jaipur*

Further, it is also submitted that AO has failed to appreciate the provisions of Income Tax Act because there is no bar in section 37(1) of Act to allow the provisions made against certain expenses/liability. For the sake of clarity, provisions of section 37(1) of Income Tax Act, 1961 are read as under: -

"Any expenditure (not being expenditure of the nature described in sections 30 to 36[* *]) and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*

[Explanation : For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

On careful reading of above section, the expenses laid out or expended wholly and exclusively for the purpose of business or profession shall be allowed. The above section does not restrict that the future liability to incurred expenses will not be allowed in the relevant year in which the liability arose. Here it is pertinent to mention that Hon'ble Apex Court in the case of Rotork Controls India (P) Ltd Vs CIT (2009) 314 ITR 62 (SC) has laid down the principle that any provision made for the obligation of expenses to be incurred in future against the current year's sale is allowable expenses. Further Hon'ble Apex Court in the case of Bharat Earth Movers vs. CIT (2000) 245 ITR 428 (SC) has held that if the-business liability has arisen in the accounting year then deduction should be allowed although liability may have to be quantified and discharged at a future date. Hon'ble Jurisdictional Rajasthan High Court in the case of Udaipur Mineral Development Syndicate (P) Ltd. vs. Dy. CIT (2003) 1Q1 CTR (Raj) 251: (2003) 261 ITR 706 (Raj) had an occasion to consider the accrual of liability.

It is further submitted that The assessee has shown fulfillment of three elements (i) Reasonableness of the provision (ii) Honesty of Provisioning of expenses (iii) A fair basis/estimation of expenses for making provisions. It is also a fact that the AO has not brought any material to show that the provision made by the assessee is excessive. Further, AO has examined the books of account but books of account were not rejected by him. It is submitted that the assessee has filed complete details of actual expenses and the AO has verified the same with vouchers and no deficiency has been pointed out by him. The provision for the development expenses were made at the same rate which was applied by the assessee in previous year.

Therefore, in view of facts and circumstances of the case as well as respectfully following above case laws, addition of Rs. 62,67,210/- made by the AO in total income of the assessee by disallowing 'Provision made for development expenses is hereby deleted. Assessee's appeal stands allowed."

4. Aggrieved by the order, the Revenue is in appeal before the ITAT.
5. The Id. Sr.DR relying upon the assessment order submitted that no expenses have been incurred by the assessee and the CIT(A) without assigning any reason has granted relief. It was submitted that the Coordinate Bench on an earlier date had directed the assessee to file the approval of JDA in regard to the JDA's conversion scheme etc. as without considering the facts relief has been granted by the CIT(A).

6. The Id. AR in reply submitted that in terms of the direction of the Bench, the relevant details have been filed, It was also his submission that the assessee has given reasons before the Id. CIT(A) and considering the same, relief had been granted. Since reference to the reasons and facts is not found mentioned in the finding of the CIT(A), the Id. AR submitted that lack of discussion by the CIT(A) was not in the hands of the assessee. Attention was invited to paper book page Nos. 181 to 191, which, it was submitted, had also been filed before the Id. CIT(A) and in fact is copy of the written submissions dated 08/8/2016 filed before the Id. CIT(A). Inviting specific attention to page 185 of the same, it was submitted that the assessee had submitted that in the year under consideration, the assessee had incurred expenses to the tune of Rs. 19,70,524/- towards development of expenses and the same were debited in the account named "Provision for development" expenses. The following extract of the written submissions was heavily relied upon in support of its claim:-

The JDA Order No D-1694 dated 01/12/2005, which clearly demonstrates that the developer has to carry out internal development of the scheme and this internal development can either be carried out through JDA or by the developer himself. In case the development work is not carried out by the developer, he has to keep 12.5% of plots with JDA as security and these plots will be released only after the completion of the work. Therefore, there is ascertained liability of assessee against the development work to be carried out by it and there is inbuilt system in JDA which abide the developer to carry out the development work in accordance with the specification laid down by the JDA.

The sales to plots holders by assessee consists the sales made by the assessee in private Khatader scheme and the private Khatedar scheme is governed as per rules and regulations of Rajasthan Land Revenue Act and JDA. The assessee purchases the agriculture land and thereafter it applies to JDA for conversion of land for residential and commercial purpose as per the provision of Rajasthan Land Revenue Act and Jaipur Development Authority.

The assessee divides the land in plots of various sizes and carries development activities like construction of road, laying of water supply lines, electricity facility wiring, construction of overhead tanks etc.

As per the norms of JDA for Private Township, the developer has to incur several expenses on the development of the scheme such as expenses on internal roads, electrification, water supply and development of public parks and facilities etc. The cost of these expenses is included in the sale price of the plot and separate charges against the development expenses to be incurred by the developer is not being charged in addition to the sale price of the plot taken by the developer.

Thus the development work has to be carried out as per the norms and specification of the JDA. The development expenses are part of cost of assessee and the same are required to be incurred as per regulation of JDA. The development expenses incurred by the assessee are not on individual plot of plot holder but the same are incurred on entire scheme. If suppose a particular plot holder does not want road or water line or other development work even than the assessee has to carry out the development work in accordance with the JDA norms.

6.1 It was also submitted that similar expenses have been claimed by the assessee and have been allowed to the assessee by the Assessing Officer in scrutiny assessments for 2007-08, 2008-09 and 2009-10 assessment years. In 2010-11 it was submitted, no disallowance has been made as it was not a scrutiny assessment. It was only in the year under consideration that for the first time ignoring the rule of consistency, the department has made such an addition by way of disallowance. Accordingly, it was his prayer that the impugned order be upheld and the departmental ground be dismissed.

7. We have heard the rival submissions and perused the material available on the record. On a consideration of the peculiar facts and circumstances of the case, we find that, though, prima facie, the assessee appears to have an arguable case as canvassed before us. However, arguments have to be supported on facts and this is an area, which is required to be considered. Since the evidence and supporting facts have not been taken into consideration by the Id. CIT(A), we deem it appropriate to set aside the impugned order. We are of the view that since facts were brought to the notice of the Id. CIT(A) it was incumbent upon him to first address the facts and then proceed to consider the law applicable thereon. It is seen that the decision making process of the Id. CIT(A) is flawed and open to the challenge of being perverse as he has straightway proceeded to decide the issue on the basis of legal precedence without first caring to marshal the facts. Legal precedent is available both for and against a general proposition of law and it is only when the facts are first addressed and the material facts are culled out that the conclusion can be supported by legal precedent. Considering

the fact that it is a recurring issue for the assessee and the tax authorities, we deem it appropriate to set aside the impugned order and restore the issue back to the file of the Id. CIT(A) with a direction to pass a speaking order in accordance with law by first marshalling the facts of the instant case and thereafter consider the precedent available on those set of facts. Accordingly, the impugned order is set aside with the aforesaid direction. Needless to say that a reasonable opportunity of being heard shall be afforded to the assessee by the Id. CIT(A). Said order was pronounced in the open court at the time of hearing itself.

8. In the result, the appeal of the Revenue is allowed for statistical purposes in terms of the above direction.

Order pronounced in the open court on 24th March, 2017.

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member
जयपुर / Jaipur
*Ranjan

Sd/-
(दिवा सिंह)
(Diva Singh)
न्यायिक सदस्य / Judicial Member

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ITO, Ward-1(2), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Ranka Colonizers Pvt. Ltd., Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 787/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar