

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SRI AMIT SHUKLA, JUDICIAL MEMBER  
AND SRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 115/Del/2013**

**AY: 2009-10**

DCIT, Circle 11(1)  
Room no.312  
CR bldg.  
New Delhi

vs. Embryonic Properties (P) Ltd.  
1<sup>st</sup> floor, ECE House  
28, Kasturba Gandhi Marg  
New Delhi 110 001

PAN: AABCE 5708 R

**(Appellant)**

**(Respondent)**

**Appellant by** : Sh. Anil Kumar Sharma, Sr.D.R

**Respondent by** : Sh. VK Aggarwal, A.R.

**ORDER**

**PER AMIT SHUKLA, JUDICIAL MEMBER**

The aforesaid appeal has been filed by the Revenue against the impugned order dt. 15.06.2010, passed by the Ld.CIT(A)-13, New Delhi, for the quantum of assessment passed u/s 143(3) of the Income Tax Act, 1961 (the Act) for the Assessment Year (A.Y.) 2009-10.

2. The Revenue has taken the following ground of appeal.

*“On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.4,32,42,500/- made on account of disallowance of advance written off.”*

3. The brief facts qua the issue involved are that, the assessee company is engaged in the business of promotion, construction, development and sale of integrated townships, residential and commercial multi-storeyed buildings, flats, shopping malls, IT parks, Hotels SEZs, houses and apartments. As culled out from the impugned order the assessee in the financial year 2006-07 has made payment of

Rs.11,64,20,000/- to one Mr.M. Kishore for acquisition of land at Pilerne, Goa in the normal course of its business activity. However, out of the total advance made, the registration of the land at Pilerne, Goa was done for Rs.7,31,77,500/- and the balance amount of Rs.4,32,42,500/- was shown as outstanding amount recoverable from Mr.M.Kishore. The land which was purchased through Mr. M.Kishore has been shown as 'stock in trade' in the books of the assessee company for the year ending 31<sup>st</sup> March, 2007 which is reflected as inventory in the balance sheet. This plot of land was subsequently sold and the surplus was offered to tax as business income in this year.

4. Before us the Ld.Counsel for the assessee, explaining the facts and background of the case pointed out that the assessee company had intended to purchase 1,77,000 square metres of land which was owned by as much as 42 co-owners, the list of which has been given at page 35 of the assessee's paper book. The said piece of land was intended to be purchased @ Rs.875/- per square metre. However, Mr.M.Kishore was unable to procure the entire land and was only able to facilitate the purchase of 1,31,050 square metres which was bought by the assessee @ Rs.550/- per sq.metre. The balance amount was to be settled with mutual understanding later on. However, the amount of Rs.4,32,42,500/- which was to be received from Mr.M.Kishore could not be recovered and this is an admitted fact before Investigation Wing of the department. The assessee in its books of accounts has written off the said amount as bad debt and the same was appropriated towards the cost of the land. A copy of ledger account in the name of Mr.M.Kishore wherein this amount has been shown as recoverable was also filed before the authorities below. It has also been pointed out by him that these facts were disclosed even before the Joint Director of Income Tax (Investigation Wing), Panaji, Goa vide letter dated 23.1.2010, under proceedings issued under section 131 of the Income Tax Act,1961 (the Act). The A.O. first of all disallowed the claim of 'bad debt' on the ground that he has not filed any confirmation from Mr. M.Kishore, and, thereafter he proceeded to invoke the provisions of section 79 of the Act on the ground

that, 100% shareholding of the assessee company has been changed during the year under consideration. Therefore, any previous losses/bad debts cannot be allowed as per section 79 of the Act.

5. The Ld.CIT(A) after noting down the facts and the background of the acquisition of the land, gave a categorical finding that firstly, an amount of Rs.4,32,42,500/- has become irrecoverable; and secondly, the amount written off is to be allowed as business loss of the assessee company. For coming to this conclusion he has strongly relied upon the following decisions of Honourable Delhi High Court.

\* CIT vs. Rose Services Apartment (India) P.Ltd. (2010) 326 ITR 100 (Del.)

\* Mohan Meakin Ltd. vs. CIT 348 ITR 109 (Del.)

6. The learned counsel first of all drew our attention to the sale deed executed between the assessee company and M/s Advitiya Fabrics Private Limited to whom the said land in Pilerne, Goa was sold. From the said sale deed he pointed out that the entire background of the acquisition of the land has been mentioned, that out of total plot of land admeasuring 1,71,050 square metres only a part of it was acquired. The said land has been sold for a sum of Rs.20,66,85,900/- on 20th of January,2009, i.e. in the year under consideration. He also drew our attention to the copy of ledger accounts of Mr. M.Kishore as on 31st March,2007 and 31st March,2009 and also the ledger account of bad debts. From these details he submitted that first of all, there cannot be any doubt that the part of the advance amount paid to Mr. M.Kishore, i.e. Rs.4,32,42,500/- was irrecoverable till this year. Even otherwise also the said amount is to be treated as 'business loss' incurred during the normal course of business, because it amounts to transaction relating to purchases of stock in trade. Therefore, any loss in the course of such a transaction is to be allowed as business loss only. He also strongly relied upon the decisions of Honourable Delhi High Court as have been relied upon by the learned CIT(A).

ITA 115/Del/2013  
AY 2009-10  
Embryonic Properties P.Ltd.

7. The Ld.D.R. had strongly relied upon the order of the Assisting Officer and also submitted that the amount which was advanced to Mr. M.Kishore as not been demonstrated or substantiated that, how it has become irrecoverable. Further the assessee cannot claim the loss both as a 'bad debt' and also as a 'business loss', because the conditions precedent for allowing the claim under both the provisions are entirely different.

8. We have heard the rival submissions, perused the relevant findings given in the impugned order as well as the material placed on record. First of all, so far as the observation of the Ld.A.O. that Provisions of section 79 are applicable, cannot be upheld for the reason that, here there is no issue of any brought forward losses which have been claimed to be set off against the current year's income. Hence, such a reasoning of AO is hereby rejected. It is undisputed fact that the assessee company is engaged in the business loss of real estate development and during the course of its normal business activity it has sought to acquire a plot of land in Pilerne, Goa. The assessee had intended to purchase an area of land of 1,71,000 square metres through one, Mr.M.Kishore who was to facilitate the acquisition of the said land from various co-owners. For this purpose an advance of Rs.11,64,20,000/- was made to Mr.M.Kishore. However instead of acquiring 171000 sq.metres of land which was agreed for a rate of Rs.875/- per square metre, he could only facilitate to acquire 1,31,050 sq.metres of land which was purchased by the assessee at the rate of Rs.550/- per square metre. In the ledger account of Mr.M.Kishore maintained its books of account, it had shown the following payments between the period 1<sup>st</sup> April, 2005 and 31<sup>st</sup> March, 2007.

The relevant ledger account for the said period is reproduced hereunder.

Date	Particulars	Vch type	Debit – Rs.	Credit-Rs.
31.3.2006	To Emmar MGF Land P.Ltd.-SD Being advance paid to M.Kishore towards advance	Journal	40,000,000	

**ITA 115/Del/2013**  
**AY 2009-10**  
**Embryonic Properties P.Ltd.**

	against land			
15.5.2006	To HSBC A/c 051-330918-001 Ch.no.288252 issued in favour of M.Kishore Alia Kishore Mulla	Payment	31,420,000	
30.6.2006	To Emmar MGF Land P.Ltd.-SD Being payment made By Emmar to M.Kishore on our behalf	Journal	45,000,000	
31.3.2007	By Index No.78/0 & 84/0 Date of registry 23.5.2006, registry amount Rs.7,31,72,000/- ,stamp duty 29,28,900/- (Paid by Chintz Buildcon P.Ltd.) & Misc. Rs.5,500/-.	Journal		73,177,500
			116,420,000	73,177,500 43,242,500
	Closing Balance		116,420,000	116,420,000

Thus, the payment of Rs.11,64,20,000/- was made to Mr.M.Kishore up to 31<sup>st</sup> March, 2007 which is not in dispute. Further the assessee had acquired the land for a sum of Rs.7,31,77,500/- and the balance amount which was paid to Mr.M.Kishore remained as advance receivable by the assessee in the accounts in the Financial Year 1<sup>st</sup> April,2008 to 31<sup>st</sup> March, 2009. In the current financial year, the assessee has first made a journal entry whereby the 'provision for bad debts' for amount of Rs.4,32,42,500/-

ITA 115/Del/2013  
AY 2009-10  
Embryonic Properties P.Ltd.

was shown on credit side and corresponding debit was made in the account of Mr. M.Kishore. At the year end on 31.3.2009, the assessee had passed the following entry in the ledger account for claiming it as a 'bad debt'.

Embryonic Properties P.Ltd.  
Bad debts  
Ledger account  
1<sup>st</sup> April,2008 to 31<sup>st</sup> March, 2009

Date	Particulars	Vch type	Debit	Credit
31.3.2009	To Provision for bad debts Being amount transferred	Journal	43,242,500	
31.3.2009	By cost of sales Being amount written off	Journal		43,242,500
		Closing bal.	43,242,500	43,242,500

9. On this basis of the above entry in the books of accounts, the said amount of Rs.43,24,500/- receivable from Mr.M.Kishore has been claimed as bad debt.

10. We are unable to understand the aforesaid manner in which the bad debts have been written off. If the assessee would have taken the cost of the inventory/stock in trade in the trading account by including this sum of Rs.4,32,42,500/- that is added to the cost of land, and in this year if the assessee had made sales and part of the said amount which remained irrecoverable, would have written off, then the assessee would have claimed it as a bad debt. The conditions precedent for claiming the bad debt has laid down in S.36(2) read with S.36(1)(vii) is not satisfied. The said claim cannot be allowed as bad debt. Further, in the balance sheet the amount appearing as advance to others for land under 'loans and advances', in Schedule 5 is still showing outstanding in the year, and, therefore, this

amount appears to be different, hence it is not a case of bad debts. However it is an undisputed fact that the amount of Rs.43,24,500/- which has been paid to Mr.M.Kishore prior to 31<sup>st</sup> March, 2007, till date has not been recovered which is even evident from the letters written before the Investigation Wing and also admitted by Mr.M.Kishore, before the investigation wing, that the said amount is lying with him which would be settled later on. This is evident from the facts and submissions, noted by Ld.CIT(A). If the said amount was not being recovered and has been claimed as loss by the assessee in this year, i.e. when sale of land was made, then the same needs to be allowed as business loss because, it was incidental and linked to the purchase of stock-in-trade and was taken as part of the cost of the land in this year while determining the business income from the sale of land in this year. Accordingly, the observation and finding of the Ld.CIT(A) following the decision of Hon'ble Delhi High Court is affirmed and thus the revenue's appeal is dismissed.

11. In the result the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 28<sup>th</sup> February, 2017.

Sd/-  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Dated: the 28<sup>th</sup> February, 2017

- *Manga*

ITA 115/Del/2013  
AY 2009-10  
Embryonic Properties P.Ltd.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**