

IN THE INCOME TAX APPELLATE TRIBUNAL "T" BENCH, MUMBAI

BEFORE S/SHRI SANJAY ARORA, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No.5416/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2011-12)

Nam Develoeprs Pvt. Ltd. 43, Ramdas Nayak Marg, Hill Road, Opp. Elco Market, Bandra (West) Mumbai - 400050	बनाम/ Vs.	Income Tax Officer 9(2)(3) Aayakar Bhavan. M.K.Road, Mumbai - 400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN9198F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ajay C. Gosalia
Department by:	Dr. Suman Ratnam Darsi

सुनवाई की तारीख / Date of Hearing: 03.08.2016

घोषणा की तारीख /Date of Pronouncement: 28.09.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 16.09.2015 passed by the Commissioner of Income Tax (Appeals)-21, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The appellant has raised the following grounds:-

"1. Re: Ground 1: Reduction of Project in Progress – Rs.59,87,714/-

- a) *The ld. CIT(A) erred in upholding the reduction of Project in Progress of Rs.59,87,714/- u/s.40(a)(ia) on the ground of non deduction of tax at source from interest.*
- b) *He erred in holding that interest debited to Project in Progress A/c. Is current year's expenditure which is bound to increase WIP.*
- c) *He failed to appreciate that as the appellant had not started construction activities, it did not prepare any Profit and Loss A/c. And hence had not claimed the said interest of Rs.59,87,714/- as business expense for the year.*
- d) *Without prejudice to the foregoing, he failed to appreciate that the payees had offered the interest from the appellant as their income chargeable to tax in their individual returns of income.*
- e) *He therefore ought to have held that reduction of Project in Progress by interest of 59,87,714/- or any other amount was not justified.*

“2. **Re: Ground 1: Charging income under the head Income from House Property – 29,826/-**

- a) *The ld. CIT(A) erred in holding that rent of 29,826/- was chargeable under the head Income from House Property on the ground that appellant was not in the business of letting of property.*
 - b) *He failed to appreciate that the rents were received by the appellant incidentally in the course of its construction activity.*
 - c) *He therefore ought to have held that the rent of 29,826/- received by the appellant should be reduced from the cost of Project in Progress.*
3. *Each of the above grounds is without prejudice to one another.*

3. The brief facts of the case are that the assessee filed the return of income declaring total income to the tune of Rs.NIL on 26.12.2011. The return was processed u/s.143(1) of the Income Tax Act, 1961(in short “the Act”). Thereafter, the case was selected for scrutiny and accordingly notice u/s.143(2) of the Act dated 27.09.2012 was issued

and served upon the assessee. Thereafter, the notice u/s.142(1) of the Act dated 17.10.2012 was issued and served upon the assessee. The assessee company is engaged in the business of real estate developers and its one construction project was in process. At the time of assessment the Assessing Officer noticed that the assessee was paying the interest to the parties from whom the loan has been taken but the TDS was not deducted, therefore, the interest to the tune of Rs.59,87,714/- was disallowed u/s.40(a)(ia) of the Act and was reduced from the WIP and added to the income of the assessee. The Assessing Officer also added income from house property to the tune of Rs.75,050/-. Since the assessee was not satisfied, therefore the assessee filed an appeal before CIT(A) who dismissed the appeal of the assessee, therefore assessee has filed the present appeal before us.

ISSUE NO.1:-

4. Under this issue the assessee has raised the reduction of project in progress to the tune of Rs.59,87,714/-. The assessee paid the interest to the tune of Rs.59,87,714/- on the account which he had taken the loan. The Assessing Officer found that the assessee failed to deduct the TDS on the interest to the tune of Rs.59,87,714/- u/s.194A of the Act. Therefore, the said amount was reduced from WIP. The contention of the assessee is that no doubt the assessee did not deduct the TDS on the interest which was paid to the creditors but the creditors have shown these interest in their income and their income was assessed in view of the provision u/s.40(a)(ia) of the Act. Therefore, in the said circumstances the interest to the tune of Rs.59,87,714/- is not liable to

be deduct from the WIP in view of the law settled in ITAT Agra Bench in case of Rajeev Kumar Agarwal Vs. Additional Commissioner of Income-tax, Range-3, Mathura [2014] 149 ITD 363/45 taxmann.com 555 (Agra Trib.).

5. In view of the said law we deem it proper to remit the file before the Assessing Officer for fresh adjudication to carry out the necessary verification whether the recipients of the interest has shown the interest income in their I.T. returns or not. The Assessing Officer is also hereby directed to give a reasonable and fair opportunity of being heard to the assessee in accordance with law. Accordingly, we decide this issue in favour of the assessee against the revenue for statistical purpose.

ISSUE NO.2:-

6. Under this issue the assessee has challenged the income to the tune of Rs.29,826/- under the head Income From House Property. The contention of the assessee is that the assessee purchased the development rights in furtherance of its building construction project for which it was following project completion method of accounting and the assessee was receiving the rent merely incidental to its said business of building construction project. It is also argued that in accordance with Accounting Standard 2, valuation of inventories, prescribed by the Institute of Chartered Accountants of India, the cost of inventory can never exceed the total of costs incurred in bringing the inventory to its present location and condition and thus the expenses incurred on construction project are to be accumulated whereas receipts received

during the course of construction project are required to be reduced from Project in Progress.

7. However, on the other hand the learned representative of the department has strongly relied upon the order passed by the CIT(A) in question. Before discussing further it is necessary to advert the finding of the CIT(A) on record.

“5. Ground No.2 is in respect of the Assessing Officer computing the income from house property at Rs.75,050/-. The appellant has reduced the amount of rent received from the project WIP instead of showing the same as income from house property. Leasing out of the property is not the appellant’s business. It is developing the project. The rent received has to be assessed as income from house property. However, there is merit in the claim of the appellant that the rent received during the year is only Rs.29,826/- and not Rs.1,07,215/- and to that extent the amount considered by the Assessing Officer is incorrect. The Assessing Officer is directed to consider Rs.29,826/- as the annual rent and compute the income from house property at Rs.20,878/- after allowing deduction u/s.24(a) of the Act. As a corollary, the WIP will increase by the same amount of Rs.29,826/- since the WIP in the audited accounts is shown lower by the extent of rent received in the current year. This ground of appeal is partly allowed.”

8. The appellant is engaged in developing the project. The appellant is not in the business of leasing the property. He received the rent to the tune of Rs.29,826/-. However the rent to the tune of Rs.1,07,215/- was not relevant for the assessment year in question.

9. In the said circumstances how the income is required to be assessed has been held in East India Housing and Land Development Trust Ltd. Vs. Commissioner of Income Tax, West Bengal, Supreme Court of India [1961] 42 ITR 49 SC. In view of the said circumstances we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which does not required to be interfere with at this appellate stage.

10. In the result, the appeal of the Assessee is hereby partly allowed for statistical purpose.

Order pronounced in the open court on 28th September 2016

Sd/-

Sd/-

(SANJAY ARORA)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28th September, 2016

MP

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai