

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORESHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER AND
SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.840/Bang/2015
Assessment Year : 2010-11

The Assistant Commissioner of Income-tax, Circle -4(1)(2), Bangalore.	Vs.	M/s. Maya Ventures Pvt. Ltd., No. 19 & 19/1, 3 rd Floor, South End Road, Basavanagudi, Bangalore – 560 004. PAN: AAECM 1257G
APPELLANT		RESPONDENT

Assessee by	:	Shri R. Ramakrishnan, CA
Revenue by	:	Shri B.R. Ramesh, JCIT (DR)

Date of hearing	:	20.09.2017
Date of Pronouncement	:	28.09.2017

ORDER

Per Shri A.K. Garodia, Accountant Member

This is a revenue's appeal directed against the order of Id. CIT(A)-IV, Bangalore dated 04.03.2015 for Assessment Year 2010-11.

2. The grounds raised by the revenue are as under.

"1. The Order of the Ld.CIT (A) is opposed to the law and facts of the case.

2. The Ld.CIT(A) ought to have appreciated the fact that the payment of Rs.65 lakhs made to the owner's sister has not been established to be laid out for the purpose of business, when Clause 33 & 34 of the Joint Development Agreement entered into by the assessee and the owner of the land, stipulates that the owner will bear the expenditure to keep the title clear and make the land usable for development till the developer's share is transferred.

3.The Ld.CIT(A) ought to have appreciated the fact that the assessee has not adduced any evidence to prove that the onus to

cure the defective title was shifted to the assessee during the course of assessment proceedings.

4. For these and other grounds, that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

5. The appellant craves leave to add, alter, amend and/or delete any of the grounds that may be urged.”

3. The Id. DR of revenue supported the assessment order. He also submitted that as per the JDA copy submitted by him, in Para no. 33 and 34, it is clearly specified that all the expenditure incurred to make the schedule land usable for development shall be borne by the owner or such amount shall be debited to his account. He also submitted that as per the assessment order, Shri Ramesh to whom the amount in question was paid decided to transfer three flats of his share to the assessee company for Rs. 1,40,11,200/- and it was from this money paid to Shri Ramesh, the amount in question of Rs. 65 lakhs was transferred to expenses account without any valid basis.
4. The Id. AR of assessee supported the order of CIT(A). He also submitted that he has already filed the written submissions as per which reliance has been placed on several judicial pronouncements in support of his contention for payments made to third parties to be in business and claimed as business expenses on account of business exigency and expediency, deduction is allowable u/s. 37 of IT Act. He submitted that these written submissions should be considered to decide this issue.

The judgments cited are as under.

1. CIT Vs. Deluxe Film Distributors Ltd. (114 ITR 434) (Cal)
2. Dalmia Jain and Co. Ltd. Vs. CIT (81 ITR 754) (SC)
3. CIT Vs. Bhowrisankara Steam Ferry Co. (87 ITR 650)(AP)
4. DCIT Vs. B. Kumara Gowda (396 ITR 386) (Kar)

He also submitted that the amount in question was paid to Shri Ramesh for settling dispute with his sister so the development work of the property can be

carried out smoothly and therefore, it should be accepted that this payment was for business exigency.

5. We have considered the rival submissions. There is no dispute that as per the para no. 33 and 34 of JDA entered into between the assessee company and Shri Ramesh, Ramesh was required to bear the expenditure incurred to make the schedule land usable for development and even if such expenses is paid by the other party, the same is to be debited to his account. In view of this clear understanding as per JDA, it cannot be accepted that this expenditure of Rs. 65 lakhs is because of business exigency because whatever may be the dispute between Shri Ramesh and his sister, it was to be settled by Shri Ramesh at his own cost and such expenses is not required to be borne by the assessee company.
6. In this view of the matter, we are of the considered opinion that the order of CIT(A) is not sustainable because these paras of JDA were not considered by CIT(A) at all. Regarding various judgments cited by Id. AR of assessee, we would like to observe that in view of this fact that the assessee had not been able to establish that the payment in question was on account of business exigency and it was required to be borne by the assessee company and not by Shri Ramesh, none of the judgments cited by Id. AR of assessee is relevant in the present case of the assessee. We therefore reverse the order of CIT(A) and restore that of AO.

7. In the result, the appeal filed by the revenue is allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 28th September, 2017.
/MS/

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.