

आयकर अपीलीय अधिकरण “एक-सदस्य मामला” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, A.M.

आयकर अपील सं./I.T.A. No.307/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Krunal Industrial Estate Developers Pvt. Ltd. Gandhi Building, 1 st Floor, 2 nd Fanaswadi, Dadiseth Agiyari Lane, Mumbai-400 002	बनाम/ Vs.	ITO-4(2)(4), Aayakar Bhavan, M. K. Marg, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCK 3933 C		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri R. C. Modi
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Hemlata
सुनवाई की तारीख / Date of Hearing	:	30.08.2017
घोषणा की तारीख / Date of Pronouncement	:	10.10.2017

आदेश / ORDER

Per Shamim Yahya, A. M.:

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-9, Mumbai ('CIT(A)' for short) dated 18.10.2016 and pertains to the assessment year (A.Y.) 2012-13. The grounds of appeal read as under:

1. Addition Rs.15,05,265/- disallowed u/s 37 (1) of The Income Tax Act, 1961:
 - a. Professional Fees of Rs. 10,52,000/-:

On the facts and in the circumstances of the case, the Appellant submits that the Hon. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of the professional fees of Rs.10,52,000/- made by the Learned Assessing Officer.

The Appellant submits that the professional fees of Rs. 10,52,000/- be allowed.

b. Stamp Duty of Rs. 2,28,4007- and Registration Charges of Rs.1,28,4507-:

On the facts and in the circumstances of the case, the Appellant submits that the Hon. Commissioner of Income Tax (Appeals) has erred in upholding the disallowance of the stamp duty of Rs. 2,28,400/- and Registration Charges of Rs. 1,28,450/- made by the Learned Assessing Officer.

The Appellant submits that the Hon. Commissioner of Income Tax (Appeals) has erred in upholding the said expenses as not revenue in nature, in case of the Appellant being in the business of builder and developers.

The Appellant submits that the stamp duty of Rs. 2,28,400/- and registration charges of Rs.1,28,450/- be allowed.

c. Interest on Delayed Payments to Parties of Rs.77,999/- :

On the facts and in the circumstances of the case, the Appellant submits that the Learned Commissioner of Income Tax (Appeals) has erred upholding the disallowance of Rs. 77,999/- made by the Learned Assessing Officer of the expenses paid by the Appellant by way of interest on late payment to creditors as penalty.

2. Brief facts:

In this case, the Assessing Officer (A.O.) made enquiry with regard to the professional fee paid, stamp duty paid, and interest on delayed payments to parties.

The A.O. noted the assessee's response in this regard as under:

(i) Professional Fees paid - Authorized representative vide their letter dated 13.03.2015 stated that professional fees paid to Mandviwaia Qutub & Associate are paid for the interior design and drawing of the set -lip of the property already sold.

(it) Stamp Duty paid - There was a scheme during the year under consideration, where the company has borne the stamp duty & registration charges and the same were not required to be recovered from the purchase parties. The agreements on which stamp duty & registration charges were paid were recorded.

3. The A.O. was not satisfied and made disallowance of the impugned expenses by observing as under:

The contention/submission of the assessee company is considered but not found acceptable for the reasons as the said expenditure are not revenue expenditure and hence not allowable u/s 37(1) of the I.T. Act. Also, interest on delayed payments to the parties and interest on TDS are in penal nature cannot be allowed as business expenditure, therefore, same are also disallowed. Penalty proceedings initiated u/s 271(l)(c) r.w.s. 274 of the I.T. Act separately.

4. Against the above order, the assessee appealed before the Id. CIT(A).

5. Re: Professional fees:

As regards the payment of professional fee is concerned, the Id. CIT(A) noted that it was assessee's submissions that the professional fees were incurred in the course of business activity for issuing work completion certificate at site conditions, attending court matters, preparation of schematic and working drawings plan, etc. The major professional fees were paid for the interior designs and drawings for the set up of the property named Indigo Residence Project at Palghar.

6. However, the Id. CIT(A) was not convinced. He held that the assessee has claimed it as one of the expenses in the garb of professional fees which have been paid to Mandi wala Qutub and Associates for the purpose of interior design and drawing of the set up of property. The Id. CIT(A) observed that the assessee has not demonstrated an explanation as to how these expenses claimed is not related to benefit of enduring nature.

7. Against the above order, the assessee is in appeal before the ITAT.

8. I have heard both the Counsels and perused the records. I find that the professional fee was incurred for various works including completion certificate at site conditions, attending court matters, and preparation of drawings plan, etc. The Id. CIT(A) has held that the assessee has not explained that the expenditure is not relating to benefit of enduring in nature. I find that no reason whatsoever for this assumption of the Id. CIT(A) is on record. It is clear that the fee paid includes expenditure for attending court matters, etc. This by no stretch of imagination can be considered to be expenditure of enduring benefit. Furthermore, if the expenditure is related to setting up of any property, the expenditure needs to be capitalized and the assessee be accordingly given the depreciation thereon or if the property is under development, the expenditure needs to be added to the cost of the project. Hence, I remit this issue to the file of the A.O. to examine the issue and decide as per the direction given hereinabove.

9. Stamp duty and registration charges

On this issue, the Id. CIT(A) noted the assessee's submissions as under:

b. Stamp Duty of Rs. 2,28,400/-:

During the year under consideration, the Appellant incurred Stamp Duty of Rs.2,28,400/- and Registration Charges of Rs, 1,28,450/- on the flats registered and recorded as sales during the year. The Appellant came up with the scheme of bearing the expenses of registration and stamp duty to attract the buyers. The expenditure incurred for stamp duty and registration were borne the Appellant Company as per monsoon offer advertised in newspaper. The copies of relevant extract of the newspaper in which the advertisement was made were submitted before the Learned Assessing Officer and also enclosed in the Paperbook filed.

The Learned Assessing Officer disallowed the expenses incurred u/s.37(1) without stating the grounds of reason for disallowance.

It is submitted Your Honor that the expenditure was incurred towards Stamp Duty paid of Rs. 2,28,000/- and Registration Charges of Rs.1,28,450/- as per the monsoon offer and were not recovered from the purchase parties to whom the flats are sold. We submit that the addition of Rs.2,28,000/- and Registration Charges of Rs. 1/28,45Q/- made be deleted."

10. However, the Id. CIT(A) was not convinced. He held that the said expenditure cannot be held as revenue expenditure for the reasons given in preceding ground of appeal. Against the above order, the assessee is in appeal before the ITAT.

11. Upon hearing both the counsels and perusing the records, I find that no mention whatsoever has been given by the Id. CIT(A) for disallowing the expenditure except mentioning that it is not the revenue expenditure. When the assessee had made the expenditure on account of stamp duty and registration charges, as the incentive scheme by duly advertising the same, I do not see any reason as to how the same cannot be treated as revenue expenditure. This expenditure is in relation with the flat which the assessee deals in and the same is its stock-in-trade. Hence, the expenditure related to the sale of the item in which the assessee deals in, can by no stretch of imagination be deemed to be capital expenditure. Accordingly, I set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee.

12. Re: Interest for delayed payment

As regards the issue on interest of delayed payments to parties amounting to Rs.17,999/- is concerned, it was submitted by the assessee that this is charged on account of delayed payment to creditors for delaying the payment beyond credit period allowed.

13. The Id. CIT(A) has held that this interest payment on delayed payment cannot be treated as compensatory in nature. Hence, he uphold the disallowance made by the A.O.

14. Upon careful consideration, I find that the A.O. has made the disallowance by holding that this interest is of penal in nature and cannot be allowed as business expenditure. There is no discussion whatsoever as to how this is penal payment, not allowable as business expenditure. The Id. CIT(A) has upheld the disallowance by

observing that this cannot be treated as compensatory in nature. This observation by the Id. CIT(A) is absolutely mechanic and does not speak anything. When the assessee is paying the creditors' interest for payment made beyond the credit period allowed, the expenditure is undoubtedly in relationship to the business conducted by the assessee. Hence, the same is duly allowable. Hence, I set aside the orders of the authorities below and decide this issue in favour of the assessee.

15. In the result, this appeal by the assessee stands partly allowed.
परिणामतः निर्धारिती की अपील आंशिक स्वीकृत की जाती है ।

Order pronounced in the open court on 10.10.2017

Sd/-

(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 10.10.2017

व.नि.स./Roshani, Sr. PS

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

आदेशानुसार/ BY ORDER,

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

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai