

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A.No.297/Mds/2017
(निर्धारणवर्ष / Assessment Year: 2009-10)

The Deputy Commissioner of Income Tax, Corporate Circle – 1(2), Chennai – 600 034.	Vs	M/s. Ceebros Property Development Pvt. Ltd., No.19/1, 3 rd Cross Road, R.A. Puram, Chennai – 600 028.
		PAN: AAACC3052H
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri N. Madhavan, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Shri S. Sridhar, Advocate

सुनवाईकीतारीख/Date of hearing	:	20.10.2017
घोषणाकीतारीख /Date of Pronouncement	:	27.10.2017

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-1, Chennai dated 18.09.2015 in ITA No.119/2011-12 for the assessment year 2009-10 passed U/s.250(6) r.w.s. 143(3) of the Act.

2. The Revenue has raised several grounds in its appeal, however the cruxes of the issue are that

(i) the Ld.CIT(A) has erred in deleting the addition made by the Ld.AO U/s.14A of the Act, amounting to Rs.50,31,542/- relating to TTK Road Residential project.

(ii) The Ld.CIT(A) has erred in deleting the disallowance made by the Ld.AO U/s.14A r.w.r. 8D of the Rules amounting to Rs.9,81,067/- towards investment in shares in sister concerns

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of promoting residential flats and buildings, filed its return of income for the assessment year 2009-10 electronically on 26.09.2009 admitting loss of Rs.1,09,90,641/-. The case was taken up for scrutiny under CASS and finally assessment order was passed U/s.143(3) of the Act on 24.10.2011, wherein the Ld.AO made disallowance U/s.14A of the Act amounting to Rs.50,31,542/- being the expenditure incurred for earning exempt income viz., the proportionate expenses related to cost of the four flats retained by the assessee amounting to Rs. 2,19,45000/- and the other disallowance of Rs.9,81,067/- being expenditure incurred towards investments made in sister company for earning exempt income by invoking the provisions of Section 14A r.w.r. 8D of the Rules.

4. Ground No.2(i) : Disallowance U/s.14A for Rs.50,31,542/-:-

During the course of scrutiny assessment it was observed by the Ld.A.O that the assessee had entered into a joint venture agreement on 19.01.2006 for constructing eight residential flats consisting of 950 sq.ft., each. As per the agreement three flats aggregating to 2850 sq.ft., was allotted to the owner of the land, one flat consisting of 950 sq.ft., was sold for Rs.31,28,600/- and the balance four flats of 950 sq.ft., each aggregating to 3800 sq.ft. was retained by the assessee. The cost of construction of the total built-up area of 7600 sq.ft., including the cost of land paid to the owner of the land worked out to Rs.2,74,26,713/-. Thus the assessee claimed to have incurred loss of Rs.23,53,113/- in the project as detailed herein below:-

1. Total construction of 7600 sq.ft. building including cost of land	-	Rs.2,74,26,713
2. Less		
a. Sale of one flat of 950 sq.ft. - Rs.31,28,600		
b. Cost of four flats retained by the assessee aggregating to 3800 sq.ft.	-	Rs.2,19,45,000
		----- Rs.2,50,73,600

	Loss	Rs. 23,53,113
		=====

Since the assessee has incurred other routine administrative expense and financial cost, the total loss was arrived at Rs.1,09,90,640/-. The Ld.AO opined that while valuing the cost of the 4 flats retained by the assessee aggregating to 3800 sq.ft., the proportionate expenses relating to the indirect cost amounting to Rs.50,31,542/- was not included as detailed herein below:-

<i>F.Y.</i>	<i>2006-07</i>	<i>2007-08</i>	<i>2008-09</i>	<i>Total</i>
<i>Administrative Costs</i>	<i>6064641</i>	<i>6777588</i>	<i>8418998</i>	<i>21261227</i>
<i>Finance Costs</i>	<i>215501</i>	<i>106589</i>	<i>207999</i>	<i>530089</i>
<i>Depreciation</i>	<i>668320</i>	<i>546680</i>	<i>399215</i>	<i>1614215</i>
<i>Total</i>	<i>6948462</i>	<i>7430857</i>	<i>9026212</i>	<i>23405531</i>
<i>Total constructed value</i>	<i>39258359</i>	<i>28810615</i>	<i>29397379</i>	<i>97466353</i>
<i>Construction cost of TTK road project</i>	<i>2618957</i>	<i>4772970</i>	<i>14964894</i>	<i>223556821</i>
<i>Portion of indirect costs attributable to TTK Road Project</i>	<i>463538</i>	<i>1231048</i>	<i>4594842</i>	<i>6289428</i>

Based on the above tabulation the Ld.AO from the Portion of indirect costs attributable to TTK Road Project worked out the proportionate cost attributable to the flats retained by the assessee as Rs. 50,31,542/-. Thereafter the Ld.AO came to the conclusion that provisions of Section 14A will be applicable in the case of the assessee with respect to the amount of Rs.50,31,542/- and accordingly disallowed the expenditure of Rs.50,31,542/-. On appeal, the Ld.CIT(A) deleted the addition by observing as under:-

“6. I have carefully considered the facts in issue, the view taken by the AO, the arguments advanced by the appellant and material on record. From the facts brought out by the AD and the appellant it is clear that the revenue generated by the housing project in the form of contract receipts had formed part of the gross profit for the assessment year under consideration. Therefore, the basic ingredient as envisaged in s.14A that being, the expenditure incurred in relation to income not includible in total income was not satisfied. In the case of Walfort Share & Stock Brokers P Ltd 326 ITR 1, summarized by the AD in para 2.8 of the assessment order itself shows the non-application of s.14A of the Act to the facts of the present case. In the case of the appellant as has been stated earlier there was no expenditure in relation to income which does not form part of the total income. This fact is clear as the appellant has accounted for the contract receipts in its gross profit while arriving at the taxable total income for the assessment year under consideration. Now coming to the alternate contention of the AO that the impugned indirect expenses which has been apportioned would not be allowable u/s 37(1) of the I.T.Act. In this regard, the plea taken by the appellant that the said expenses relate to the income earning apparatus of the appellant, including the housing project under consideration as well as other on-going projects and also in view of the appellant being a developer, the said alternate contention of the AO also cannot be upheld. In short, the view taken by the AO on the facts of the case and for reasons discussed in the foregoing cannot be upheld. The AO is directed to delete the disallowance made. This ground of appeal is allowed.”

4.1 The Ld.DR argued in support of the Ld.AO, while as the Ld.AR relied on the orders of the Ld.CIT(A).

4.2 We have heard the rival submissions and carefully perused the materials available on record. From the facts of the case, it is apparent that the Ld.AO has held that the proportionate indirect cost pertaining to administrative cost, finance cost, depreciation etc., attributable towards the cost of construction of the retained flats amounting to Rs.50,31,542/- has to be disallowed by virtue of Section 14A of the Act. At the outset, we do not find any merit in the order of the Ld.AO on this issue. The assessee has entered into a joint venture to execute a mini project during its lien period of operation. In this situation, the entire establishment cost of the assessee company cannot be loaded on the project, because in that case the cost of the project will not be in parity with the cost of construction of the project in the prevailing market scenario. Further it is apparent that only one of the flat consisting of 950 sq.ft., for a value of Rs.31,28,600/- could be sold in the open market which works out to Rs.3,293/- per sq.ft. Even in this market scenario, the assessee have retained the flats at the value of Rs.5,775/- per sq.ft., being the actual cost of construction of the project. Further the assessee has retained the flats as its investment wherein the income derived from which is taxable under the head 'income from house property'. Therefore the provisions of Section 14A of the Act will not be applicable in the

case of the assessee at all because the aforesaid provision only deals with expenditure incurred for earning exempt income. In the case of the assessee the income earned from the investment of the retained flats will be liable for taxable under the head 'income from house property' as stated earlier. Therefore the Ld.AO is hereby directed to delete the addition made by invoking the provisions of Section 14A of the Act, as held by the Ld.CIT(A).

5. Ground No.2(ii) : Disallowance U/s.14A r.w.r 8D for Rs.9,81,067/- being the expenditures incurred towards investment made in sister company for earning exempt income:-

The assessee had made investments in shares of sister company, the dividend income from which is exempt from tax. Therefore the Ld.AO invoked the provisions of Section 14A r.w.r. 8D of the Rules and worked out the disallowance at Rs.9,81,067/-. On appeal, the Ld.CIT(A) following the decision of the Chennai Bench of the Tribunal in the case M/s. EIH Associates Hotels Ltd vs. DCIT in ITA No.1503/Mds/2012 for the assessment year 2008-09 dated 17.07.2013 held that the provisions of Section 14A r.w.r. 8D would not apply in situations where the investments are made in subsidiary company. Further it is not a case, where the assessee

had invested in the shares of its sister company from its interest bearing funds. Therefore the decision of the Tribunal supra will be squarely applicable in the case of the assessee. Hence we do not find any infirmity in the order of the Ld.CIT(A) on this issue, accordingly we hereby sustain the same.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced on the 27th October, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य / Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th October, 2017

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |