

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1705/Ahd/2014
Assessment Year 2009-10**

M/s. Urban Development Group, 18, Aabona, Nr. Chitavan Club, Big Daddy Road, Ahmedabd-380058 PAN: AAAFU9491M (Appellant)	Vs	The ITO, Ward-9(4), Ahmedabad (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Parin Shah, A.R.**

Date of hearing : 22-11-2017
Date of pronouncement : 28-11-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2009-10, arises from order of the CIT(A)-XX, Ahmedabad dated 14-03-2014, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The assessee has raised following grounds of appeal:-

"1. Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of Rs. 25, 000/- written off as irrecoverable in account of B. A. Patel & Co. Ld. CIT

(A) failed to appreciate that appellant wrote off amounts advanced without any scope of recovery when income offered in the past established business connections. Under the facts of the case Id. CIT (A) ought to have allowed amount written off as business loss. It be so held now.

2. Ld. CIT (A) erred in law and on facts in confirming disallowance made by AO of Rs. 3, 59, 275/- being prefab model house development expenses. Ld. CIT (A) failed to appreciate that prefab model made as business tool to sell a concept got demolished due to lack of market as a prudent business decision. Ld. CIT (A) ought to have deleted disallowance made by AO of the loss suffered by the appellant. It be so held now.

3 Ld. CIT (A) further erred in law and on facts in holding the loss incurred on demolition of prefab model as capital loss not allowable against income of the current year as construction expenses were capitalized in the books. Ld. CIT (A) erred in not appreciating that the appellant designed low cost prefab model house resistant to earthquakes for demo and any loss incurred by demolishing the model house is allowable on abandonment of a project. Ld. CIT (A) ought to have allowed expenses/loss claimed. It be so held.

4 Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of Rs. 52,467/- in respect of interest on bank overdraft in absence of business activity carried out during the year. Ld. CIT (A) ought to have appreciated that appellant utilized overdraft for the purpose of and during the course of business whereas temporary lull resulting in lack of income would not tantamount to closure or stoppage of business. It be so held now.

5. Ld. CIT (A) erred in law and on facts in confirming disallowance by AO of salary expenses of Rs. 81, 552/- in absence of any business activity carried out by the appellant during the year. Ld. CIT (A) ought to have deleted disallowance appreciating that salary paid to employees during course of business not permanently closed is allowable expense. It be so held now.

6. Ld. CIT (A) erred in law and on facts in confirming action of AO reducing cost of capitalized expenditure from the cost of office while computing capital gain. Ld. CIT (A) ought to have accepted working of capital gain submitted by appellant in absence of claim of depreciation or usage of office premises the cost claimed was allowable on commercial principles. It be so held now.

7. Initiation of penalty u/s 271(1)(c) of the Act is not justified. 8. Levy of interest u/s 234A/B/C/D of the Act is not justified."

3. The fact of the case on the issues pertaining to the appeal of the assessee is as under:-

Disallowance of Rs. 25,000/- written off for as irrevocable

4. During the course of assessment proceedings u/s. 143(3) in the case of the assessee, the assessing officer observed that

assessee has given private advance of Rs. 25,000/- to B.P. Patel and Co. shown as outstanding at the end of the year. The assessing officer noticed that assessee has written off the same amount as business loss. The assessing officer has disallowed the claim of the assessee on the ground that assessee failed to establish the business connection and not furnished any contra account alongwith the detailed address of the person to whom the advance was made. In the appeal, the Id. CIT(A) has sustained the disallowance made by the assessing officer by observing as under:-

“ 5.4. I have considered the facts of the case and submission made by the appellant. The AO has made the disallowance of Rs.25,000/- written off by the appellant in respect of the loans given to B.A. Patel & Co. treating the same as business loss. During the course of assessment proceedings, the appellant could not explained the business exigency of giving the loans to B.A. Patel & Co. Moreover, the appellant did not furnish the contra account and detailed address of the person to whom the advance was given. Since during the year the assessee was not carrying out any business activity and closed down its business and shown the profit on sale of property thus the written off claimed by the appellant was disallowed. On the other side, the appellant has submitted that the various payments were made to the other parties as per instructions of B.A. Patel & Co. for whom the appellant was working as advisor for prefab house. It was also mentioned that to the A.O. it has been brought to the notice that in earlier years the appellant has received income from B.A. Patel & Co. and thus they were having business relation with B.A. Patel & Co. Since the amount thus paid to various parties when it is irrecoverable the same are written off as the loss was incidental to the business. The claim of the appellant is found not acceptable for the reason that the small amounts were advanced to various parties at the instance of B.A. Patel & Co. as claimed of which recovery could not be made. Although in the books of accounts the account of B.A. Patel & Co. has been debited but in spite of the specific requisition to the A.R. in the appellate proceedings that the appellant should establish the business connections with B.A. Patel & Co. by producing supporting evidences but he failed to produce the same. The appellant cannot claim the irrecoveries as bad debt as the necessary conditions u/s.36(l)(vii) are not complied with because no such income relating to those advances have been offered by the appellant either in the preceding years or in the year under consideration. Further appellant's claim that it should be allowed as business loss is also found unsubstantiated for the reason that he has failed to establish that the third parties or B.A. Patel & Co. was having any business connections and for such business requirements/exigencies the advances by the appellant were granted. In view of the above, the claim of loss

made by the appellant is not justified and therefore, disallowance made by the A.O. is confirmed. Thus this ground of appeal is dismissed.”

Disallowance of Rs. 3,59,275/- pertaining to Pre-fab Model House

Development Work Exp:-

5. During the course of assessment proceedings, the assessing officer noticed that assessee has debited an amount of Rs. 3,59,275/- towards Pre-fab Model House development work expenses. This expenditure incurred in the financial year 2000-2001 was reflected in the account of the assessee as capital expenditure. Thereafter, assessing officer observed that assessee had written off the entire value of cost of building in order to reduce its tax liability. Therefore, the claim of the assessee was disallowed. The Id. CIT(A) has confirmed the disallowance made by the assessing officer by observing as under:-

“6.4. I have considered the facts of the case and submission made by the appellant. The appellant has claimed of Rs.3,59,275/- being prefab model house development expenses which has been disallowed by the A.O. for the reason that these expenditures were incurred by the appellant in F.Y. 2000-2001 which was a prior period expenditure. The appellant has not shown any sale value of the building but simply stated that it has been demolished by the worker who has taken away the debris. The appellant has written off the claim as was shown in the balance sheet. During the course of appellate proceedings, the appellant submitted that the entire expenditure was shown in the balance sheet as carry forwarded but due to no attraction and lack of market the said model lost its purpose and therefore it was destroyed. The model thus was made was a tool of business and income was earned in earlier years based on such model being shown to the customers. Any loss therefore on the demolishing of the model house was a business loss. It has been noticed on the specific query raised by this office that this model house was stated to have been made on the land of other concern M/s. K. K. Enterprises and claimed that the appellant being a firm of professional were marketing the knowhow for showing what really the Prefab House is the apppllant could constructed in F.Y. 2000-01. Here it is to mentioned that the expenditure claimed to have been made on prefab model house was capitalized by the appellant and therefore the same has been shown as the capital asset in the balance sheet from the starting of the year of

construction. Further this prefab house model was prepared not on the appellant's own land but at the land of the other party. So, after construction, the appellant did not have any control over such house as it was not a movable asset. It has not been shown why this model was prepared at the land of other party and whether the business of the other party have in any connected with the model house. Moreover it is not known that in what manner the appellant has derived its business through making this prefab model. So the business requirements of the same has not been explained. Since the appellant has not claimed the construction expenses as revenue expenditure or in the closing stock at the end of the years but the same has been shown as capital asset therefore any expenditure made thereupon is also a capital loss on demolishan of the same and as such capital loss cannot be allowed against the income of the year under consideration. Therefore, the appellant's claim of written off of the construction expenses of the model house is not correct and the disallowance made by the A.O. is justified and the ground of the appellant is dismissed."

Disallowance of Rs. 52,467/- in respect of interest of bank overdraft

6. During the course of assessment proceedings, the assessing officer observed that assessee has debited an amount of Rs. 52,467/- interest on bank overdraft account. The assessing officer has disallowed the interest expenditure on the ground that assessee has not carried out any business activity during the year under consideration. In the appeal, the Id. CIT(A) has dismissed the appeal of the assessee by observing as under:-

"7.3. I have considered the facts of the case and submission made by the appellant. The AO has made the disallowance of interest expenses of Rs.52,467/- in respect of the bank overdraft. The AO observed that in the year under consideration the appellant has not carried out any business activities still he continued to avail the overdraft facility for which interest expenses could not be allowed. During the course of appellate proceedings, the appellant has simply contended that the appellant had carried out various activities as evidenced from the account and therefore it cannot be held that overdraft was not used for the business purpose. He relied upon the case law of Hon'ble IT AT Mumbai, The appellant neither in the assessment proceedings nor in the appellate proceeding have submitted any details of the uses of the overdraft taken from the banks establishing that those were only for business purposes. He did not explain the application of such overdraft on which interest has been paid. So it is held that the overdraft has been utilized for non-business purposes specifically when no business activities have been carried out in the year under Hence the

disallowance made by the A.O. is justified and the confirmed. Thus, this ground of appeal is dismissed.”

Disallowance of salary expenses of Rs. 81,552/-.

7. During the course of assessment proceedings, the assessing officer noticed that assessee has debited an amount of Rs. 81,552/- salary expenses for the year under consideration. The assessing officer has disallowed the same on the ground that assessee has not carried out any business activity during the year under consideration. The Id. CIT(A) has sustained the disallowance made by the assessing officer by observing as under:-

“8.3. I have considered the facts of the case and submission made by the appellant. The AO has made the disallowance of Rs.81,552/- being salary payments in view of the fact that no business activities have been carried out in the year under consideration. Only income from capital gains have been shown. On the other side during the course of appellate proceedings the appellant has claimed that the expenditures were incurred during the course of business and in fact it was not closed permanently but a temporary lull. The salary was given to the employees. The submission made by the appellant is not supported by any details and evidences establishing the business exigencies for keeping the employees and making the salary payments to them. Since no business activities have been carried out in the year under consideration and also in absence of any other details showing that in the subsequent years any business has been resumed and carried out the submission of the appellant is found unsubstantiated. Therefore, the disallowance of the salary made by the A.O. is justified and the same is confirmed. Thus this ground of appeal is dismissed.”

8. During the course of appellate proceedings before us, the learned counsel has furnished paper book containing ledger account of salary , provident fund, interest , statement of bank etc. He contended that while making above disallowances the Id. CIT (A) has not considered full facts and supporting evidences in respect of claim of the assessee. On the other hand the Id. departmental representative supported the order of the Id. CIT(A).

9. We have heard both the sides and perused the material on record carefully. Regarding disallowance of Rs. 25,000/- as advance given to B.A. Patel & company, we observed that the aforesaid advance was made in the financial year 2006-07 was written off during the year under consideration on the ground that it is irrecoverable. We observed that assessee has never shown any income in respect of impugned advances in the preceding or current year. The assessee failed to furnish any contra account, detailed address, loan confirmation etc. of the above party. After considering these facts and detailed findings of the Ld.CIT(A) we do not find any error in the decision of the Id. CIT(A) on this issue. Therefore, the appeal of the assessee on this issue is dismissed.

Regarding second ground of appeal pertaining to written off of Rs. 3,59,275/- pertaining to Pre-Fab Model House Development expenses. In this connection, we observed that the above expenditure was incurred in the financial year 2000-2001. The Pre-Fab House Model Development expenses was capitalized by the assessee and shown as capital asset in the balance sheet from the year of construction. After considering these facts, we observed that writing-off the aforesaid expenditure is of the nature of capital loss. Therefore, we do not find any error in the decision of Id. CIT(A). Accordingly, the appeal of the assessee is dismissed on this issue.

Regarding third ground of appeal pertaining to disallowance of interest expenses of Rs. 52,467/- in respect of bank overdraft, in this connection, we have gone through the page no. 33 to 38 of the paper book containing information pertaining to the bank overdraft of the

assessee maintained with Bank of India. We noticed that most of the expenditure reflected in the overdraft bank account was related to salary, transportation, legal and telephone expenditure etc. These facts demonstrate that expenses out of bank draft account were incurred for the business purpose of the assessee. In view of these facts we are not inclined with the finding of the Id. CIT(A) that overdraft has been utilized for non-business purposes. Therefore, the appeal of the assessee is allowed on this issue.

Regarding disallowance of salary expenses of Rs. 81,552/- we have gone through page no. 28 of the paper book containing details of salary expenses. We noticed that assessee has incurred these expenditure for making payment to office clerk, accountant etc. The nature of expenditure indicates that the same were incurred for the purpose of business of the assessee. The expenditure pertaining to contribution made to the provident fund of the employees were allowed by the assessing officer whereas the expenditure of salary payment to similar employees were disallowed without any valid reason. In view of the above facts, the claim of the assessee of payment of salary expenses is allowed. In the result, the appeal of the assessee is allowed on this issue.

10. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28-11-2017

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 28/11/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

