

आयकर अपीलिय अधिकरण पुणे न्यायपीठ “एक सदस्य” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2509/PUN/2016
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Sarovar Enterprises,
114, Sai Pooja, M.C.C.H,
Near Ameya Clinic,
Panvel, Raigad – 410 206
PAN : AAWFS9785N

.... अपीलार्थी/Appellant

Vs.

ACIT, Panvel

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : None
प्रत्यर्थी की ओर से / Respondent by : Shri Achal Sharma, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 15.03.2018	घोषणा की तारीख / Date of Pronouncement: 21.03.2018
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आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

This appeal is filed by the assessee against the order of CIT(A)-2, Thane, dated 29-08-2016 for the Assessment Year 2010-11.

2. Grounds raised by the assessee read as under :

“1. The Ld.CIT-Appeal has erred in law and on facts in sustaining/confirming addition/disallowance of bad debts written off advance paid Rs.7,50,000/-. For purchase of land, inspite of clear provision of law in this respect.

2. The Ld.CIT-Appeal has erred in law and on facts by not considering submission of assessee in his order and confirmed addition by quoting irrelevant case law in facts, of DELHI H.C. CIT v. Jansampark Advertising and Marketing P. Ltd.

3. The Ld.CIT-Appeal has erred in law and on facts by not considering with reasoning the decision of SUPREME COURT and H.C. and other submitted in course of hearing by simply stating that same are not relevant.”

3. Briefly stated relevant facts are that the assessee is a Builder and Developer. Assessee filed the return of income declaring total income of Rs.3,99,360/-. Assessee's case was selected for scrutiny and notices were issued on the assessee. Assessee is engaged in construction of a project "Kanak Sarovar" at Thana Naka, Panvel. During the assessment year under consideration, the net profit of the assessee after remuneration to partners is shown at Rs.3,99,357/-. In the scrutiny proceedings, the AO noticed that assessee debited an amount of Rs.7,50,000/- on account of advance written off. AO opined that the said advance amount/expenditure does not form part of on-going project and by no stretch of imagination it constitutes a "revenue" expenditure. Accordingly, AO added the same to the total income of the assessee. Eventually, the AO determined the assessed income at Rs.12,49,360/- after making addition of Rs.7,50,000/- (debts written off) and Rs.1 lakhs adhoc disallowance on account of expenses made on purchases.

4. The core issue raised in the grounds relates to the said addition of Rs.7,50,000/- on account of advances written off. Relevant facts of this issue include that the assessee paid the said amount as advance for the purchase of land near Sortya Maruti Devsthan, Panvel. The said purchase transaction not only failed to materialize but also the assessee failed to recover the said advance. Therefore, this said failure resulted in write off of the said advance and debiting the same to the profit and loss account for the year under consideration. At the end of the assessment proceedings, AO held that the claim of the assessee is not allowable as the said advance is in the nature of capital. He further mentioned that the advance given by the assessee has nothing to do with the on-going project of the assessee.

5. During the First Appellate proceedings, assessee reiterated the said arguments. He also filed written submissions and the same are extracted in Para No.6 of the CIT(A) order. Accordingly, it is the case of the assessee that he is engaged in the business of Real-estate and it involves purchase and sale of land as a part of the business activities of the assessee. Giving advances is on trading account and therefore, when the said advance is written off, the same constitutes an allowable Revenue/business expenditure. Assessee raised the issue that the officers have erroneously invoked the provisions of section 36(2) of the Act which is inapplicable to the business transactions. On considering the same, CIT(A) dismissed the submission of the assessee holding that the assessee failed to discharge the onus in furnishing the credible evidences and documents to establish the existence of plot of land with said Sortya Maruti Devsthan, Panvel, attempts of the assessee in recovering the same, reasons for aborting of the said transaction etc. Contents of Para No.7.4 constitutes an operational para, therefore, the same is extracted here as under :

“7.4 From the above facts it is seen that the Ld. AR could not file any credible documents, namely copy of agreement for purchase of land, cancellation deed, reasons for cancellation of deal, steps taken for recovery of advance, confirmation from the party concerned regarding receipt of advance, plot details, Khasra no., size of the plot etc. in support of his above claim, therefore, the purpose of said advance could not be established. During the year under consideration, the appellant had declared the total turnover of Rs.3,41,85,821/-, opening WIP Rs.7,82,11,158/-, closing WIP at Rs.5,30,90,834/-, from construction business and declared a meager profit of Rs.3,99,357/- @1.6% only. These facts clearly establish that the appellant had suppressed its taxable income by writing of so called advance of Rs.7,50,000/- as above. The Ld. AR has squarely failed to furnish any credible documents which can establish the existence of land/plot with Sortya Maruti Devsthan, against which, so called the advance of Rs.7,50,000/- was given. In view of these facts, in my considered opinion, the appellant has squarely failed to establish the nature and purpose of said transaction, i.e. for business purpose or otherwise, therefore, the same cannot be allowed. Accordingly, the disallowance of Rs.7,50,000/- made by the AO is sustained.”

6. Before us, despite the issue of notice on couple of times, i.e., on 02-11-2016 and 20-02-2018, there is none to represent the case of the assessee before us. Considering the smallness of the addition as well as

the availability of the assistance of Ld. DR for the Revenue, we find it appropriate to adjudicate the appeal based on the information before us.

7. After narrating the above facts of the case in general and the issue in particular, Ld. DR for the Revenue submitted that this is a case where essentially the AO had to disallow the claim of the assessee of Rs.7,50,000/- for want of evidences and details. Failure to establish the business connection of payment of Rs.7,50,000/- for purchase of the land is a matter of fact and the same can be decided only based on the evidence or agreement or correspondence between the parties. The names and addresses of the payees are not available on record to explain the nature of the transaction leave alone the business nature of it. It is also evident that the manner of payment, purpose of payment, reason for debiting the transaction to the profit and loss account are not available on record. Considering the same, it is the request of the Ld. DR for the Revenue that the addition made by the AO should be confirmed.

8. After hearing the Ld. DR for the Revenue on this issue as well as the perusal of the orders available on record, we are of the opinion that there is no dispute about the assessee's business activities, i.e. Builder and Developer. Assessee has recorded the sales turnover of Rs.3.42 crores (rounded off) in the year under consideration. The closing WIP is reflected at Rs.5.21 Crores (rounded off). Considering the same, we are of the opinion that there is no dispute about the assessee's business of dealing with the developer of land and buildings. Therefore, the payment of advance of Rs.7,50,000/- for the purchase of the land as part of business activity, need not invite any suspicion or surmises.

The next limb of the same issue relates to write off of the said advance of Rs.7,50,000/-. In our view, so long as payment of advance is

for the purchase of the land, the same ought to constitute the business activities of the assessee. Consequently the same falls within the scope of Revenue. Accordingly, the loss by way of advance not recovered by the assessee constitutes an allowable business loss u/s.28 of the Act. In our view, this aspect of the assessee's submission is completely ignored by the revenue authorities. AO and CIT(A) were merely invoked the provisions of section 36(2) of the Act. Considering the nature of advance as well as the assessee's decision to write off the same in the year under consideration, we are of the opinion that the same constitutes an allowable expenditure. Even if the said advance is given in the context of any aborted business project of the assessee, the same is allowable u/s.28 of the Act. Accordingly, the grounds raised by the assessee are allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced on this 21st day of March, 2018.

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 21st March, 2018.
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Thane
4. आयकर आयुक्त / The CIT-2, Thane
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "एक सदस्य" / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune