

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "A", MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.8209/Mum/2011 (Assessment Year- 2008-09)

M/s Acube Engineering Consultancy Ltd. Shop No. 208, 2 nd Floor, Acme Indl. Park, I.B. Patel Road, Goregaon (East), Mumbai-400063 PAN: AAFCA8128D	Vs.	ACIT-9(1) Room No. 223, Aayakar bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : Sh. Jitendra Singh (AR)

Revenue by : Sh. M.C. Omi Ningshen (DR)

Date of hearing : 16.01.2018

Date of Pronouncement : 13.04.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of Income Tax Act ('the Act') is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-19, Mumbai, [for short the ld. CIT(A)] dated 27.09.2011 for Assessment Year 2008-2009. The assessee has raised the following grounds of appeal:

1. The learned Commissioner of Income Tax (Appeals) committed a gross error of law and fact in confirming of assessing officers conclusion in partly denying the depreciation claim made by the appellant on the office premises purchased and used for the purpose of its business.

2. The learned Commissioner of Income Tax (Appeals) grossly erred in coming to the conclusion that the appellant is not eligible for depreciation on the alleged land component embedded in the purchase price paid for the impugned office premises.

3. The learned Commissioner of Income Tax (Appeals) committed a gross error of law and fact in not appreciating the contention of the appellant that it had paid only for the office premises and not for cost of land or proportionate cost of land as presumed by him.

4. The learned Commissioner of Income Tax (Appeals) committed a gross error of law and fact in not appreciating the submission of appellant that the land belongs to the Builder / Developer till it is conveyed to the Society and once the land is conveyed to the Society, the Society becomes the owner of the land and the individual member has only a right to occupy and enjoy the premises.

2. Brief facts of the case are that the assessee-company is in the business of Air-conditioning contractors, consultants and maintenance contractors, files its return of income for relevant Assessment Year on 29.09.2008 declaring loss at Rs. 1,13,12,620/-. The assessment was completed on 29.11.2010 under section 143(3) of the Act. The Assessing Officer while passing the assessment order besides the other additions/disallowances disallowed the depreciation on two premises of Rs. 16,97,606/-. On appeal before the Ld. CIT(A), the action of Assessing Officer was confirmed. Thus, further aggrieved by the order of Ld. CIT(A), the assessee has filed the present appeal before us.
3. We have heard the submissions of the 1e representatives of the parties and have gone through the orders of the authorities below. Though, the assessee has raised as many as four grounds of appeal. However, in our considered view, the sole ground of appeal relates to disallowance of deprecation on two office premises. The Ld. AR of the assessee argued that the assessee purchased two office premises, one at B-403, 4th Floor, Universal business Park, Chandivali, Andheri (East), Mumbai for a consideration of Rs. 1,52,97,000/- and another at 4th Floor, wing A, Gundecha Onclave, Kherani Road Sakinaka, Andheri (E) Mumbai for Rs. 1,17,78300/-. The assessee

claimed depreciation @10% on the total purchase cost of office premises during the assessment proceeding. The Assessing Officer asked the assessee to provide the bifurcation of land and cost of construction of the office premises. The assessee filed its reply and contended that they have purchased the premises on 4th Floors. The assessee specifically contended that they have paid the sale consideration only in respect of office premises and not for cost of land assumed by Assessing Officer. The Assessing Officer assumed the cost of land from the total consideration and accordingly disallowed proportionate depreciation. The Ld. CIT(A) has not appreciated the contention of the assessee and confirmed the action of Assessing Officer. In support of his submission, the Ld. AR of the assessee relied upon the decision of co-ordinate bench in Bharat homes Ltd. Vs. ACIT in ITA No. 6792/Mum/2011 dated 27.05.2016. On the other hand, the Ld. DR for the Revenue supported the order of authorities below. The Ld. DR for the Revenue submits that the office was not put to use.

4. We have considered the submission of both the parties and have gone through the orders of authorities below. The Assessing Officer during the assessment proceeding noted that assessee has purchased the office premises vide sale-deed dated 14.09.2007 for a total consideration of Rs. 1,45,40,000/- and another property situated at 4th Floor, Wing-A, Gundecha Onclave, Kherani Road, Sakinaka, Andheri(E), Mumbai for Rs. 1,17,78,300/-. The assessee claimed depreciation under the head "Building" at 10% on a total

purchase cost of Rs. 2,63,18,300/-. The assessee was asked to provide the bifurcation of cost of land and construction for “dwelling unit” whose composite cost is shown in the agreement. The assessee vide its reply dated 03.11.2010 contended that the assessee entered into agreement for purchase of Unit B-403, Universal Business Park, Chandivali, Andheri (E), admeasuring 107.43 sq.mtr carpet area for a total consideration of Rs. 1,52,97,000/- and not for proportionate cost of land assumed by Assessing Officer. The assessee is not the owner of land. The assessee has not paid consideration for land or proportionate cost of land. The Assessing Officer on the basis of Ready Reckoner 2007 authored by Government registered Valuer adopted the value of cost of construction at Rs. 21,34,325/- and allowed depreciation @ 10% on the said cost of construction. The assessee claimed depreciation for Rs. 19,11,038/-, thus, the Assessing Officer disallowed depreciation of Rs.16,97,606/-. The Ld. CIT(A) concluded that the assessee acquired the premises with business purpose and these property are not in stock-in-trade of the assessee. The Ld. CIT(A) also concluded that in the Metro cities where as property purchased in a high rise building, the undivided share of land allocable to the purchaser is well defined and well determinable. Under Maharashtra Apartments Ownership Act, the rights of owner of apartment and business entitlement to the common area and facilities included the right in the land underneath. Similarly, under co-operative societies, the owner is shareholder in proportionate land. On the

basis of his observation, the Ld. CIT(A) concluded that land component embedded in the purchase price is not eligible for depreciation. The Ld. CIT(A) was not in agreement with the Assessing Officer for ascertainment of value of land that the construction cost can be computed on the basis of rate provided in ready recknor. The ld. CIT(A) further concluded that the better option to value the undivided share of land, on the basis of rate of Stamp Valuation authority. Accordingly, the ld. CIT(A) directed the assessee to provide the necessary detail for computing depreciation.

5. We have noted that the co-ordinate bench of Tribunal in Bharat Homes Ltd. (supra) on similar facts and on adopting identical mechanism by revenue authorities while making disallowance of depreciation on premises, held that when the assessee has paid the price for purchase of premises and it is not discernable for the sale-deed that it had paid anything separately for land. On the contrary, the sale-deed makes it very clear that what was conveyed was only superstructure of the flat. The co-ordinate bench further concluded that it is not proper for revenue authority on the basis of presumption, without bringing any material on record that anything was paid for the transfer of land (proportionate area) while making payment of consideration. The assessee has placed on record the copy of agreement to sale registered on 14th September 2007 between the developer and the assessee in respect of premises bearing No. 403 admeasuring 107.43 sq. Mtrs. situated in Commercial Complex, Universal Business Park, Chandivali Road, Andheri

(E). The perusal of the said agreement shows that the assessee has not paid any consideration apart from the consideration paid for purchase of unit/premises. We have noted that the facts of the case and the issue raised by the assessee in the case in hand is similar as in case of Bharat Homes Ltd (supra), hence respectfully following the decision of the coordinate bench we direct the assessing officer to allow depreciation as claimed by the assessee on the basis of cost of acquisition of premises. In the result the grounds of appeal raised by the assessee are allowed.

6. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 13th day of April 2018.

Sd/-
(G.S. PANNU)

ACCOUNTANT MEMBER

Mumbai; Dated 13/04/2018

S.K.PS

Copy of the Order forwarded to :

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

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

BY ORDER

(Asstt.Registrar)
ITAT, Mumbai