

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'SMC' KOLKATA

[Before Hon'ble Shri N.S.Saini, AM]

ITA No.761/Kol/2018
Assessment Year : 2012-13

M/s Satts Estates Ltd.
Kolkata
(PAN:AAOCS 3797 F)
(Appellant)

-versus-

I.T.O., Ward – 8 (4)
Kolkata
(Respondent)

For the Appellant: Shri Rakesh Jain, FCA
For the Respondent: Shri Sanjoy Mukherjee, Addl.CIT

Date of Hearing : 11.07.2018.

Date of Pronouncement : 13.07.2018.

ORDER

PER N.S.SAINI, AM

This is an appeal filed by the assessee against the order dated 19.03.2018 of C.I.T-(A)-3, Kolkata for A.Y. 2012-13.

2. The sole issue involved in this appeal of the assessee is that the CIT(A) has erred in confirming the addition of Rs.2,60,000/- on account of directors' remuneration paid to the directors made by the Assessing Officer.

3. The brief facts of the case are that the Assessing Officer observed that the assessee has claimed loss from business of Rs.3,58,644/- whereas its only business did not recognise revenue as all the expenditure incurred till the end of this year i.e. 31.03.2012 were included in work in progress. He observed that on verification of the profit and loss account vis-a-vis the composition of increase in work in progress as well as the expenditure relatable to house property income, it is found that its claim of expenditure in profit and loss account aggregating to Rs.5,53,358/- was related to increase in work in progress which is its principal business. The assessee claimed it as a expenditure against the business income whereas the assessee itself did not recognise the revenue during the year by following the project completion method.

Therefore he show caused the assessee to explain why the claim for expenditure aggregating to Rs.5,53,358/- should not be disallowed.

4. In reply to the show cause the assessee submitted that the remuneration was paid to the directors of Rs.5,20,000/- cannot be included in the capital work-in-progress incurred during the year as such expenditure is recurring in nature. The Assessing Officer observed that from the income composition it is found that the assessee's main source of income is 'income from house property' and all the allowable deduction as per law claimed by the assessee has been accepted by the department. In absence of revenue recognition the assessee's claim of business loss aggregating to Rs.5,53,358/- cannot be accepted as justified and accordingly he disallowed the expenditure of Rs.5,53,358/-.

5. On appeal the CIT(A) observed that the Assessing Officer was of the opinion that there is no business income to the assessee. The Assessing Officer accordingly disallowed the remuneration paid to directors of Rs.5,20,000/-. It was contended before him that the directors of the company are entrusted with the responsibility to manage the day to day affairs of the company. It was submitted that during the year the assessee had entered into a property related transaction for which compensation charges of Rs..2,00,000/- was received by the assessee on cancellation of the deal. This receipt of Rs.2,00,000/- was offered as business income. Accordingly it was submitted that Director's remuneration should be allowed.

6. The CIT(A) observed that rental receipt of the appellant company has been assessed under the head 'House Property'. There is only one other receipt of Rs.2,00,000/- being compensation on cancellation of the property transaction. The remuneration to the directors is on a higher side looking at the extent of business and the revenue of Rs.2,00,000/- shown. Accordingly the compensation to the directors of Rs.2,60,000/- would be fair and reasonable and therefore he restricted the disallowance to Rs.2,60,000/-.

7. Before me the Authorised Representative of the assessee reiterated the submissions made before CIT(A).

8. The Learned Departmental Representative relied on the order of CIT(A).

9. I have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case the assessee had claimed directors remuneration at Rs.5,20,000/- The Assessing Officer disallowed the same on the ground that the assessee has shown the entire expenditure incurred under the head work in progress. It has not shown any income on the basis of project completion method as no business income was earned during the year and disallowance was made by the Assessing Officer.

10. On appeal the CIT(A) found that the assessee has earned business income from Rs.2,00,000/- from cancellation of property transactions and therefore he found that remuneration claimed of Rs.5,20,000/- is on a higher side and restricted the disallowance to Rs.2,60,000/-.

11. I find that the Hon'ble Gujarat High Court in the case of Coronation Flour Mills vs ACIT 188 Taxman.com 257 has held that *“In relation to the disallowance under the provisions of section 40A(2) of the Act, a plain reading of the provision reveals that where an assessee incurs any expenditure in respect of which payment is required to be made or has been made to any person referred to in clause (b) of section 40A(2) of the Act and the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to (a) fair market value of the goods, services or facilities for which the payment is made ; or (b) the legitimate needs of the business of the assessee ; or (c) the benefits derived by or accruing to the assessee on receipt of such goods, services or facilities, then the Assessing Officer shall not allow as a deduction so much of the expenditure as is so considered by the Assessing Officer to be excessive or unreasonable. Therefore, it becomes apparent that the Assessing Officer is required to record a finding as to whether the expenditure is excessive or unreasonable in relation to any one of the three requirements prescribed, which are independent and alternative to each other. All the three requirements need not exist simultaneously. In a given case, if any one condition is shown to be satisfied the provision can be invoked and applied, if the facts so warrant. It is only shown that if paid to a person referred to clause (b) are allowable*

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which are found either excessive or unreasonable has to be disallowed. It is well settled that the provisions of section 40A(2) (a) of the Act cannot have any application unless it is first concluded that the expenditure was excessive or unreasonable as held in the case of Upper India Publishing House (P) Ltd. vs CIT 117 ITR 569 (SC).

12. It is observed that the CIT(A) has brought no material on record on the basis of three criterias as listed out by the Hon'ble Gujarat High Court to show that the remuneration paid to the directors is excessive or unreasonable. In absence of the same in my considered view the disallowance made cannot be sustained in law. I therefore set aside the orders of the CIT(A) and vacate the disallowance of Rs.2,60,000/- on account of director's remuneration and allow the grounds of appeal of the assessee.

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

Order pronounced in the open Court on 13.07.2018.

Sd/-

[N.S.Saini]
Accountant Member

Dated : 13.07.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1.M/s Satts Estates Limited, 4C, Wood Street, Unit-1A, Park Street, Kolkata-700016.

2. I.T.O., Wd-8(4), Kolkata

3. C.I.T.(A)-3, Kolkata

4. C.I.T.-3, Kolkata..

5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches

