

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA Nos. 957 & 958/JP/2015
निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

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|---|-------------|---|
| Model Properties Pvt. Ltd., Golcha Trade Centre, M.I. Road, Jaipur. | बनाम Vs. | Assistant Commissioner of Income Tax, Circle-1, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCM 4097 J | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri A.B. Dangyach (FCA)
राजस्व की ओर से / Revenue by : Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 14/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 31/10/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These two appeals by the assessee are directed against the two separate orders of Id. CIT(A)-I, Jaipur, both dated 14/09/2015 for the A.Y. 2004-05 and 2005-06 respectively. For the A.Y. 2004-05, the assessee has raised following grounds of appeal:

"1. *On the facts and in circumstances of the case, the Id. CIT(A) was not justified in confirming the disallowance of following expenses claimed by appellant company as revenue expenses before lower authorities:*

(i) Interest on term loan Rs. 11,58,187/-

(ii) Other interest Rs. 12,99,474/-

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|----------------------------------|--------------------|
| <i>(iii) Loan processing fee</i> | <i>Rs. 8,700/-</i> |
| <i>(iv) Bank Charges</i> | <i>Rs. 475</i> |

2. *On the facts and in circumstances of the case, the Id A.O. was not justified in disallowing the above expenses as revenue expenses. The above expenses should have been allowed as loss and should have been allowed to carried forward for set off against the income of succeeding assessment year of appellant company.*
3. *On the facts and in circumstances of the case the Id. CIT(A) has grossly erred in treating the land as capital asset and capitalizing the interest on the loan, processing fee and bank charges etc. incurred for purchase of land which has been shown as stock in trade of appellant company.*
4. *On the facts and in circumstances of the case, the Id. CIT(A) was not justified in disallowing following losses assessed U/s 143(1)(a) for carried forward and set off against the income of succeeding assessment years:-*

| | |
|--------------------------------|------------------------|
| <i>Assessment year 2002-03</i> | <i>Rs. 7,90,560/-</i> |
| <i>Assessment year 2003-04</i> | <i>Rs. 19,59,896/-</i> |
5. *The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal at or before the hearing."*

2. The assessee is a company and dealing in immovable properties. The assessee purchased land from JDA during the financial year 2001-02 for a consideration of Rs. 2,95,65,124/-. The assessee took loan for purchase of the said land. The assessee filed its return of income for the A.Y. 2004-05 on 01/11/2004. During the scrutiny assessment, the Assessing Officer noted that the assessee has claimed Rs. 22,66,836/- as financial expenses on account of interest on term loan for purchase of land. The Assessing Officer disallowed the said claim of expenses by

treating the same as capital in nature and added the same to the income of the assessee. The matter was carried to this Tribunal for both the assessment years i.e. 2004-05 and 2005-06 wherein the assessee has raised an additional ground regarding treating the loss declared by the assessee as capital loss arising from sale of land whereas the land was shown as stock in trade by the assessee. The Tribunal after considering the arguments vide order dated 04/6/2010 held in para 5 to 7 as under:

- “5. After considering the submissions and perusing the material on record, we are of the considered view that matter needs reverifications. It is seen that land in question was shown as stocking trade in past accordingly the sale proceeds were treated as business receipts by the assessee. However, the A.O. rejected the claim of the assessee by observing that assessee was required to file the details in support of the claim however assessee failed to file such details. The findings have been recorded in last but one para at page 2 of his order.*
- 6. Counsel of the assessee has stated that all the details were already on record of earlier years as well as current year. This fact needs verification.*
- 7. In view of these facts and circumstances and to meet the end of justice and also to consider the legal ground, we restore the issue to the file of the A.O.. The A.O. is directed to pass afresh order after affording reasonable opportunity of being heard to the assessee.”*

Therefore, the matter was set aside to the record of the Assessing Officer with direction to pass a fresh order after affording an opportunity of hearing to the assessee. In the order passed pursuant to the directions of

the Tribunal, the A.O. has repeated the finding as the transaction and activity of the assessee was only dealing in purchase and sale of capital asset and the outcome of the transaction was treated as capital gain/loss. Thus, the Assessing Officer disallowed the expenditure of Rs. 24,66,836/- being interest on term loan and consequently the total income of the assessee was assessed at Rs. 6,76,830/-.

3. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and claimed that the interest expenditure is an allowable claim U/s 36(1)(iii) of the Income Tax Act, 1961 (in short the Act). The Id. CIT(A) called for a remand report from the Assessing Officer. In the remand report, the Assessing Officer has stated that the assessee has not furnished any further evidence after the matter was set aside by the Tribunal and therefore, the disallowance made by the Assessing Officer in the original assessment was not found to be disturbed. The Id. CIT(A) has confirmed the order of the Assessing Officer on the ground that there was no business and trading activity during the years under consideration as well as for the assessment year 2002-03 and 2003-04 and the assessee has shown only income as rental income from the properties taken by it on lease from its group concern. Therefore, the financial charges claimed as deduction against the lease rental income is not permissible in view of the Id. CIT(A).

4. Before us, the Id AR of the assessee has submitted that the Assessing Officer as well as the Id. CIT(A) has accepted the fact that the land in question was shown by the assessee as stock in trade right from the assessment year 2001-02 onwards and therefore, the interest expenditure incurred by the assessee for purchase of land is an allowable deduction which was debited by the assessee in the P&L account under the head "financial expenses" and claimed as revenue expenses. Hence, the Id AR has submitted that whatever expenditure incurred in purchase of stock in trade be allowed as revenue expenditure. The Id AR has relied upon the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Vijay Solvex Ltd. 274 CTR 384. He has relied upon the following decisions:

- (i) K. Sampath Kumar Vs CIT 158 ITR 0025 (Mad)
- (ii) Orient Cosmetics Ltd. Vs DCIT 69 TTJ 0490 (ITAT Madras)

5. On the other hand, the Id DR has submitted that there is no business activity carried out by the assessee during all these years and therefore, once the factum of no business activity of purchase and sale of land is not in dispute then mere entries in the books will not decide the nature of transaction. He has referred to the finding of the Assessing Officer as well as the Id. CIT(A) and submitted that the assessee has shown only lease rental income for all these years against which the

financial charges has been claimed as deduction. Once it is not in dispute that the financial charges claimed by the assessee are not incurred for earning the lease rental income then the same cannot be allowed as the said expenditure was not incurred for earning the said income. The claim of the assessee was not found to be correct as to establish the activity as business, the assessee has to show the continuity of the activity and the same is done in an organized manner. There should be repeated purchase and sale and in the business of multiplicity of the transaction a solitary transaction of purchase of land cannot be treated as business activity. In support of this contention, he has relied upon the decision of Hon'ble Supreme Court in the case of Sulej Cotton Mills Vs CIT 116 ITR 1 that the entries made in the books of account is not determinative of the question whether the assessee has earned any profit or suffered any loss. What is necessary to be considered is true nature of transaction and whether in fact it has resulted in profit or loss to the assessee. The Id DR has relied upon the order of the Id. CIT(A).

6. We have considered the rival submissions as well as the relevant material on record. It is clear from the earlier order of this Tribunal dated 04/06/2010 that the Assessing Officer was directed to verify the fact whether the land in question was shown as stock in trade in past and consequently the sale proceeds to be treated as business receipt. The

scope of enquiry in the remand proceedings was only to ascertain whether the land in question was shown by the assessee as stock in trade and therefore, any income or expenditure incurred in respect of the stock in trade would be revenue in nature. The Assessing Officer in the order passed pursuant to the remand order of the Tribunal has observed and held as under:

“From the above submission of the assessee, it was clear that it had done some operation for doing the business of so called sale of the plots/residential houses/commercial complexes. But for doing the business as claimed has one and only one that the activity for the booking of the units for sale, for which no activity has been done or any concrete steps taken for the same.

Thus the claim of the assessee that by making the expenses of Rs. 5,13,843/- he has qualified for doing the activity of business is wrong and the A.O. was right, in treating the so called asset claimed as stock in trade, as capital asset. Penalty proceedings are also being initiated for the furnishing of the wrong facts U/s 271(1)(c) of the Income Tax Act, 1961.”

The Assessing Officer has accepted that the assessee has done some operation for doing business of so called sale of plots/residential houses/commercial complexes. However, the Assessing Officer denied the claim on the ground that the assessee has done only one activity i.e. taking of units for sale for which no activity has been done or any concrete steps taken for the same. During the appellate proceedings before the Id. CIT(A), the assessee has reiterated its claim which was also referred to the

Assessing Officer for filing the remand report even in the remand report, the Assessing Officer has not disputed the fact that for the earlier years i.e. the A.Y. 2002-03 onwards, the assessee has shown the land in question as stock in trade, however, since the returns were processed U/s 143(1), therefore, the Assessing Officer did not accept the claim for the year under consideration. The Id. CIT(A) has not disputed the fact that the assessee has shown the property under consideration as stock in trade as referred in para 3.1.2 (vii) page 17 and 18 as under:

“3.1.2(vii) The assessee has shown the property under consideration as stock in trade, however, it could be seen from the above discussion that it had not undertaken any activity which could lead to the inference that assessee was trading in immovable properties. It is a well established fact that substance takes over the form, therefore, it does not matter whether the assessee had shown the investment in properties as stock in trade in its books of accounts and financial statements.”

The fact of showing this land in the books of account as stock in trade is not in dispute, however, the Id. CIT(A) has denied the claim on the ground that the assessee has not undertaken any activity which could lead to the inference that the assessee was trading in immovable properties. Though, there was no sale by the assessee for all these years, therefore, the transaction in question is only the purchase of land however, to determine whether this is stock in trade or capital asset, the intention of the party

has to be taken into consideration. The assessee has undisputedly right from the year in which the land in question was acquired shown it as stock in trade in the books of account from year after year and therefore, it is not a case of claiming the land in question as stock in trade only for the year under consideration. The revenue has not disputed that for the A.Y. 2002-03 and 2003-04, the assessee's claim was accepted U/s 143(1) of the Act and therefore, if non-scrutiny of the return of income cannot be taken against the assessee once the fact of showing the land in question as stock in trade is not in dispute. Accordingly, even if there is no sale transaction after purchasing of land in question, but when the lands in question is shown as stock in trade in the books of account then whenever the assessee sales the land or any part of the land in question, the same will be business income of the assessee and the expenditure which is incurred for taking loan for purchase of land in question cannot be disallowed on the ground that after purchasing the land, the assessee has not carried out any business activity. Hence, in view of the undisputed fact that the assessee has right from the year in which the land in question was purchased treated the same as stock in trade in the books of account then the Assessing Officer cannot substitute the business decision of the assessee merely because there was no subsequent activity of sale of land. Accordingly, the claim of the assessee is an allowable revenue expenditure

and in absence of any business income, the same would be allowed as carry forward of the losses for the A.Y. 2004-05.

7. The appeal for the A.Y. 2005-06, the assessee has raised following grounds of appeal:

"1. *On the facts and in circumstances of the case, the Id. CIT(A) was not justified in confirming the disallowance of following expenses made by A.O. which were rightly claimed by appellant company as revenue expenses:*

| | |
|---|-------------------------------|
| <i>(i) Interest paid to the bank</i> | <i>Rs. 5,29,936/-</i> |
| <i>(ii) Other interest</i> | <i>Rs. 11,38,908/-</i> |
| <i>(iii) Pre payment charges of fee</i> | <i>Rs. 1,44,550/-</i> |
| <i>(iv) Bank Charges</i> | <i><u>Rs. 252/-</u></i> |
| | <i><u>Rs. 18,13,646/-</u></i> |

2. *On the facts and in circumstances of the case, the Id A.O. was not justified in confirming the order of Assessing Officer and assessing income to the extent of Rs. 6,35,885/- against the loss returned at Rs. 11,45,482/- by the appellant company.*

3. *On the facts and in circumstances of the case the Id. CIT(A) was not justified in not allowing above expenses (Loss) which should have been allowed and should be carried forward for set off against the income of the succeeding assessment year.*

4. *On the facts and in circumstances of the case, the Id. lower authorities were not justified in disallowing following expenses and treating land as capital assets and capitalizing the following expenses in hands of appellant company:-*

| | |
|---|------------------------|
| <i>(i) Interest paid to the bank</i> | <i>Rs. 5,29,936/-</i> |
| <i>(ii) Other interest</i> | <i>Rs. 11,38,908/-</i> |
| <i>(iii) Pre payment charges of fee</i> | <i>Rs. 1,44,550/-</i> |

*(iv) Bank Charges*Rs. 252/-Rs. 18,13,646/-

5. *The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal at or before the hearing."*

8. The issues raised by the assessee for the A.Y. 2005-06 are common to the issue raised in the appeal for A.Y. 2004-05, accordingly in view of our finding on these issues that the expenditure incurred by the assessee on account of financial charges are an allowable business expenditure and consequently the losses brought forward from the assessment year 2005-06 would be set off against the income if any for the A.Y. 2005-06. The Assessing Officer is directed to allow the claim of carry forward of loss for setting off against the income of the succeeding year. Hence, in this year also, we set aside the order of the Id. CIT(A).

9. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 31/10/2018.

Sd/-

(विक्रम सिंह यादव)

(VIKRAM SINGH YADAV)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 31st October, 2018***Ranjan**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Model Properties Pvt. Ltd., Jaipur.

2. प्रत्यर्थी/ The Respondent- The ACIT, Circle-1, Jaipur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 957 & 958/JP/2015)
आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar