

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.1066/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Hemraj Shankarlal Mundada,
16/1, Parvati Chambers,
Opp. Krishna Society,
Pune-411 038
PAN : AAXPM1636P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward 3(1), Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Vipin K. Gujarathi
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 19.11.2018
घोषणा की तारीख / Date of Pronouncement : 26.11.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3, Pune dated 15.03.2016 for the assessment year 2011-12.

2. Shri Vipin K. Gujarathi appearing on behalf of the assessee narrating the facts of case submitted that assessee is a builder and developer. The assessee is following Project Completion Method for reckoning profits of the

housing project. During scrutiny assessment proceedings, the Assessing Officer made addition of Rs.14,06,671/- in respect of interest free advances given to relatives and sister concerns. The assessee had given interest free advances to the following persons:

i) Anjali R Mundada	Rs. 1,00,000/-
ii) R.B Kharade	Rs. 2,75,000/-
iii) Saj Realtors	Rs.41,25,000/-
iv) Sangram Patil	Rs.22,25,000/-
v) Sanjay Ruikar	<u>Rs. 2,00,000/-</u>
Total	Rs.87,25,000/-

The ld. AR submitted that a perusal of the Balance Sheet at page 5 of the paper book would show that own funds of the assessee are much more than the loans and advances given by assessee to sister concerns/relatives. Hence, no disallowance is called for in the light of decision by the Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd. reported as 313 ITR 340.

2.1 The ld. AR submitted that during assessment proceedings, the Assessing Officer further made additions on following counts:

- Commission on sale of flats	Rs. 21,65,596/-
- Bank finance charges and interest	Rs.1,42,31,004/-
- Flat cancellation compensation	<u>Rs. 5,39,002/-</u>
Total	Rs.1,69,35,602/-

The ld. AR submitted that though all these amounts were debited to P & L account under the head "Other Expenses", however, all these expenditures were capitalized while computing closing work in progress.

The Assessing Officer in scrutiny assessment proceedings has failed to appreciate that the expenditures have been capitalized and were not separately claimed as expenditure in the assessment year under appeal. In proceedings before the Commissioner of Income Tax (Appeals), the assessee reiterated the submissions and further explained that entire construction cost of current financial year has been carried forward as work in progress. However, the Commissioner of Income Tax (Appeals) failed to appreciate the contentions of the assessee and confirmed the findings of Assessing Officer.

3. On the other hand, Shri Pankaj Garg representing the Department vehemently defended the order of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of assessee. The ld. DR submitted that assessee after debiting the expenditure in respect of commission on sale of flats, bank finance charges and interest and flat cancellation charges in the P & L Account has not added back the same in the computation of income at the time of filing return of income. Hence, it cannot be inferred that the assessee has claimed expenditure in the current financial year.

4. We have heard the submissions made by representatives of rival sides and have perused the orders of Authorities below. The assessee in appeal has raised five grounds.

- Ground No.1 and 2 is in respect of disallowance of bank interest and finance charges to the tune of Rs.1,42,31,004/-.

- In ground No. 3 of the appeal, assessee has assailed disallowance of interests Rs.14,06,671/- on interest free advances to sister concerns/relatives.

- In ground No. 4, the assessee has assailed disallowance of compensation paid on cancellation of flats of Rs.5,39,002/-

- The assessee has raised additional ground of appeal challenging disallowance of commission paid Rs.21,65,596/-

5. First we shall take up the issue of interest free advances to sister concern and relatives raised in ground No.3 of the appeal. The assessee has paid bank finance charges and interest to the tune of Rs.1,42,31,004/-. This includes interest on vehicle loan and other credit facilities. Admittedly, the assessee had advanced Rs.87.25 lacs to sister concerns and relatives without charging interest. The Assessing Officer disallowed interest to the tune of Rs.14,06,671/- on notional basis in respect of abovementioned interest free advances. A perusal of the Balance Sheet at page 5 of the paper book shows that own funds of the assessee in capital account are to the tune of Rs.12,11,33,809/-. Thus, own funds of the assessee are sufficient to cover interest free advances made to sister concerns/relatives. The Hon'ble Bombay High Court in the case of CIT Vs. Reliance Utilities and Power Ltd. (supra.) has held that where both interest free funds and interest bearing funds are available and the interest free funds are more than the investment made, the presumption is that the investments are made out of interest free funds available with the assessee. In the light of the ratio laid down by the Hon'ble Jurisdictional High Court, we find merit in the submission of the assessee. Hence, disallowance of interest expenditure Rs.14,06,671/- in respect of interest free advances made to

sister concerns/relatives is directed to be deleted. Accordingly, **ground No. 3 of the appeal is allowed.**

6. In so far as other additions i.e. bank interest and finance charges Rs.1,42,31,004/-, disallowance of compensation paid on cancellation of booking flats Rs.5,39,002/- and commission on sale of flats Rs.21,65,596/- are concerned, the contention of the assessee is that the same have been capitalized. A perusal of the P & L Account of the assessee for the financial year 2010-11 at page 32 to 34 shows that these expenditures have been debited to P & L account. The assessee has also placed on record return of income along with computation at page 1 and 2 of the paper book. A perusal of the computation of income reveals that the assessee has carried negative balance of P & L account, while computing total income, however, afore-mentioned amounts have not been added back while computing the total income. This itself shows that the assessee has claimed the expenditures in the current assessment year. Purported capitalization of expenditure by adding the same to closing work in progress would not result in nullifying the effect of debiting expenditure in P & L Account, unless the same has been added back while computing total taxable income of the relevant assessment year. We do not find merit in the submissions of the ld. A.R. of assessee. The finding of Authorities below qua the above mentioned three additions are upheld. Accordingly, **ground Nos. 1, 2, 4 and additional ground raised in the appeal are dismissed being devoid of any merit.**

7. The ground No. 5 raised in appeal is general in nature and hence, requires no adjudication.

8. In the result, appeal of the assessee is partly allowed in the terms aforesaid.

Order pronounced on Monday, the 26th day of November, 2018.

Sd/-
R.S. SYAL
VICE-PRESIDENT

Sd/-
VIKAS AWASTHY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th November, 2018.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-3, Pune.
4. The Pr. CIT-2, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.