

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

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष  
BEFORE: SHRI RAMESH C SHARMA, AM

आयकर अपील सं./ ITA No.103/JP/2018  
निर्धारण वर्ष / Assessment Year :2009-10

आयकर अपील सं./ ITA No.104/JP/2018  
निर्धारण वर्ष / Assessment Year :2010-11

आयकर अपील सं./ ITA No.105/JP/2018  
निर्धारण वर्ष / Assessment Year :2011-12

I.T.O. Ward 2(4), Jaipur	बनाम Vs.	M/s. Shree Ram Green Valley Pvt. Ltd A-14, Heera Nagar, Shipra Path, Opposite: J.K Petrol Pump, Mansarovar, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No. AAKCS1094F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Smt. Roshanta Meena, JCIT, Id.DR  
निर्धारिती की ओर से / Assessee by: Shri Vijay Goyal, FCA, Id.AR

सुनवाई की तारीख / Date of Hearing : 16/04/2019  
उदघोषणा की तारीख / Date of Pronouncement : 23/04/2019

आदेश / ORDER

These appeals are filed by the revenue against the order of Id.CIT(A)-1, Jaipur dated 29-11-2017 for the A.Ys. 2009-10, 2010-11 and 2011-12 in the matter of assessment orders passed u/s. 147/143(3) of the Income Tax Act, 1961 (in short the Act).

2. Grounds taken by the revenue in all the A.Ys under consideration are common. Ground taken in A.Y 2009-10 by the revenue reads as under:-

*(i) Whether on the facts and in the circumstances of the case and in law, the Id. CIT(Appeals) has erred in deleting disallowance made by the AO on account of provisions for development expenses amounting to Rs.14,70,226/- for A.Y 2009-10 referring the decision of Hon'ble Rajasthan High Court in the case of M/s. Green Triveni Developer V/s. CIT in ITA No. 114/2015 connected with ITA No. 256/2016 are not similar as in the instant case the assessee company has debited the respective amount to the P & L account and thereafter made provisions for development expenses which would have to be incurred during the year but the same was not incurred during the relevant year.*

*(ii) The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing. "*

3. Rival contentions have been heard and record perused.

4. The facts in brief are that the assessee company is in the business of real estate development. The assessee company purchases agriculture land and thereafter it applies to JDA for conversion of land for residential and commercial purposes. After approval of township plan and map by JDA the assessee made development work in the schemes as per norms of the JDA such as construction of internal roads, electrification, water supply and development of public parks and facilities etc. During the year under consideration the assessee was developing scheme situated at Raghu Nandan Enclave C-3.

5. The AO framed the assessment u/s. 153A/143 of the Act..

Thereafter, the AO re-opened the assessment u/s. 147 on the plea that the assessee made a provision for development expenses. The assessment was completed, wherein addition(s) was made, but disallowing the provision for development as expenses.

6. By the impugned order, the Id. CIT(A) deleted the addition(s) by observing as under:-

*(i) I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that the appellant has made a provision for development expenses amounting to Rs. 14,70,2266/- and has debited the same to the profit and loss account, which was disallowed by the AO by observing that the same was not incurred by the appellant during the year under consideration. It is noted that the issue is covered by the decision of Hon'ble High Court of Rajasthan in the case of CIT vs. Salasar Overseas Private Limited vide common order dated 29.04.2016 in DB ITA No. 149/2014 and 147/2014 wherein, it was held by the Hon'ble High Court that :*

*"7. We have already taken into consideration the salient features of the business being carried on by the assessee being a coloniser/builder, developing various colonies, developing the lands, cutting the plots and selling thereof, and have also named the colonies which have been developed by the assessee. It is admitted fact on perusal of the orders that the assessee is not charging anything over and above towards development of the internal roads electrification, sewer lines or other similar expenses for developing of the land from the ultimate buyers of plots. Equally important fact is that a plot owner would purchase a land only when it is satisfied that the plot in question would have all basic facilities of internal development not only of the plot but also of the colony which is being developed by the coloniser (assessee). Both the Appellate Authorities have taken into consideration the scheme of JDA for private townships wherein it has been expressly stated that the coloniser cannot charge separate charges from the buyers of the plots in addition to the cost of the land for the internal development work to be carried out by it. Though the JDA carries out external development work, such as providing Sector Road for the colony etc. but at the expense of the coloniser. Now it is option of the coloniser to carry out the development work by itself or through the JDA. In case the coloniser opts to carry out internal development work in the colony through the*

*JDA, it has to pay the amount to the JDA at predetermined rate prescribed by the JDA. However, if a coloniser opts to carry out internal development work of the colony by itself, then the work has to be carried out under the supervision of the JDA and the JDA monitors the quality control of the work. As per the norms of the JDA, if a coloniser opts to carry out the internal development works by itself, then the JDA takes 12.5% of the total plots as security against the internal development work of the colony to be carried out by the coloniser. The JDA releases there 12.5% plots only after completion of entire internal development by the coloniser in accordance with the quality control being specified by the JDA. In case the coloniser does not do the work of internal development, the JDA is free to sell these 12.5% plots in open market and do the work of internal development of the colony from the sale proceeds of these plots for the benefit of the plot owners. It is only when the JDA is satisfied about the infrastructural development, 'Patta' is issued and unless a 'Patta' is issued, a plot may not be salable even, as 'Patta' in a case of immovable asset in most vital and important for having ownership of a immovable asset.*

*8. Admittedly, the assessee is following the mercantile system of accounting and it is recognising the same on accrual basis as and when the possession of the plot is passed/given. The sale of plot is subject to liability of development work to be carried out in the colony in future. This liability accrues as soon as sale of a plot is made. The assessee, admittedly made a provision for development of land for the plots sold during the years under reference and actual expenses on development work incurred in the colony accounted for by reversing the provision made in respect of the plots sold by it.*

*9. The Appellate Authority in the instant case have taken into consideration the directives of the JDA to develop the colonies by the various works which we have already referred to hereinbefore and naturally a prospective buyers of a plot gets attracted the moment a developer/builder specifies that the land in question would be provided with basic infrastructure, such as internal roads, waterlines, sewer lines, electrification, boundary walls etc. so that once a plot holder, wants to construct a house, then for these things one need not look to other agencies. Once a sale price has been received and accounted for, the expenses which are obligatory and int eh nature of committed liability, ordinarily has to be accounted for. The development expenses as found by the Appellate Authorities, in our view as well are ascertained committed legal liability.*

*10. We find that both the Appellate Authorities have allowed the expenditure on a finding of fact based on the appreciation of evidence and in our view, no substantial question of law can be said to emerge out of the impugned orders so as to call for interference by this Court. We find no perversity or illegality in the impugned orders. Consequently, the appeals are dismissed."*

*(ii) It may further be mentioned that on the similar issue in the case of M/s. The Green Triveni Developer v/s CIT in ITA No. 114/2015 connected with ITA No. 256/2016, the Hon'ble High Court of Rajasthan has confirmed the order of hon'ble ITAT, Jaipur, involving the similar issue.*

*(iii) Therefore, in view of the above discussion, it is held that the AO was not justified in disallowing the provisions for development expenses made by the appellant and thus, the disallowance of Rs.14,70,226/- made by the AO cannot be sustained, hence deleted."*

7. Against the above order of the Id.CIT(A), the revenue is in appeal before me.

8. I have considered the rival contentions and carefully gone through the orders of the authorities below and found from record that the assessee is engaged in the business of real estate development. In the P & L account, the assessee has claimed expenditure under the head 'provisions for development expenses', which was disallowed by the AO. It was the contention of the Id. AR that provisions was made for ascertained liability(ies) towards the development of road, electricity, water and land to be incurred as per plot(s) sold by the assessee. The assessee was following the mercantile system of accounting. The assessee consistently made provision of expenses on accrual basis. The Id. CIT(A) has deleted the disallowance of expenses after observing that the issue under consideration is covered by the decision of the Hon'ble Jurisdictional Rajasthan High Court in the case of *Salasar Overseas Private Limited (supra)*, wherein it was held that :

*"....., the assessee following the mercantile system of accounting and it is recognizing the same on accrual basis as and when the possession of the plot is passed/given. The sale of plot is subject to liability of development work to be carried out in the colony in future. This liability accrues as soon as sale of a plot is made. The assessee admittedly made a provision for development of land for the plots sold during the years under reference and actual expenses on development work incurred in the colony accounted for by reversing the provision made in respect of the plots sold by it."*

9. The Hon'ble High Court also observed that the expenditure has been incurred as per directives of JDA to develop the colonies by the various works, which are required by prospective buyer of plots. In the instant case also provision has been made in respect of similar expenditure. As the facts and circumstances in the instant case are similar to what has been decided by the Hon'ble Rajasthan High Court in the case of *Salasar Overseas Private Limited, supra*, I do not find any infirmity in the order of Id. CIT(A) for following the proposition laid down by the Hon'ble Rajasthan High Court, while deleting the disallowance of expenditure. Accordingly, I do not find any infirmity in the impugned order(s) of the Id. CIT(A). As the facts and circumstances in all the three A.Ys under consideration are same, following the same reasoning as given hereinabove by me, I do not find any infirmity in the impugned orders of the Id. CIT(A) for deleting the disallowance. Grounds raised by the revenue in all the appeals for the A.Ys under consideration are dismissed.

10. In the result, appeals of the revenue are dismissed.

Order pronounced in the open court on ...23... April, 2019.

Sd/-  
(रमेश सी शर्मा)  
(RAMESH C SHARMA)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 23 April, 2019

\*PP/SPS

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

1. अपीलार्थी / The Appellant/Revenue-The ITO, Ward 2(4), Jaipur.
2. प्रत्यर्थी / The Respondent- M/s. Shree Ram Green Valley Pvt. Ltd, 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 Nos. 103,104 & 105/JP/2018  
आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar