

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1588/PUN/15
निर्धारण वर्ष / Assessment Year : 2006-07

M/s. Ssilverwoods,
125, Atlanta,
Nariman Point,
Mumbai – 400 021
PAN : AASFS9706P

Vs. ACIT, Range-15(1),
Mumbai

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Dharmesh Shah
Shri N.Ashok Babu

Date of hearing 06-05-2019
Date of pronouncement 07-05-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee arises out of the order dated 07-08-2015 passed by the CIT(A)-12, Pune in relation to the assessment year 2006-07.

2. Though the assessee has challenged confirmation of disallowance of expenses of Rs.78,30,000/- in the memorandum of appeal, the Id. AR limited his assail only to the disallowance of Rs.59,43,452/-, being, payments made to Pune Municipal Corporation and Rs.2,36,780/- towards Furniture.

3. Briefly stated, the facts of the case are that the assessee is a Developer and Builder. During the course of assessment proceedings for the year under consideration, the assessee filed a revised claim of incurring of further expenses of Rs.78.30 lakh towards the Project completed in the instant year. Such expenses were actually incurred in a later year in which these were shown as prepaid expenses as relating to the instant year. The Assessing Officer (AO) did not accept the revised claim made before him during the course of assessment proceedings. Out of total expenses of Rs.59,43,452/- paid to Pune Municipal Corporation (PMC), the assessee claimed that a sum of Rs.27,77,074/- was paid to Pune Municipal Corporation as Premium charges for extra FSI in lieu of stairs case, balcony and terrace for the project completed in the year under consideration; a sum of Rs.27,51,578/- were charges paid to Pune Municipal Corporation to compound the offence of excess construction in violation of the plan approved by the PMC; and the remaining sum was towards Development charges etc. The AO observed that such expenses claimed to have been incurred by the assessee were not in relation to the projects which were completed during the year under consideration. He, therefore,

made disallowance, *inter alia*, of Rs.59,43,452/-. The Id. CIT(A) found that the expenditure of Rs.27,54,578/-, being, compounding charges was not allowable in terms of Explanation (1) to section 37. The other expenses were also held to be not allowable because the assessee could not co-relate such expenses with the project completed during the year under consideration and shown as prepaid in a later Assessment year 2009-10. Aggrieved by such an order of the Id. CIT(A), the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. In sofaras the first payment of Rs.27,51,578/- is concerned, the Id. CIT(A) has invoked the provisions of Explanation (1) to section 37(1). Such charges were paid to Pune Municipal Corporation as compounding fee for offence of excess construction in violation of the plan approved by the PMC. The Pune Bench of the Tribunal in the case of Modi Builders (ITA No.1728/PUN/2013), a copy of which has been placed on record, has held that compounding charges paid under similar circumstances are hit by the Expl. to section 37(1) of the Act. The Tribunal while sustaining the disallowance, has relied on a direct judgment of the Hon'ble

Karnataka High Court in *CIT Vs. Mamta Enterprises (2004) 264 ITR 356 (Kar.)*, in which it has been held that compounding fine for offence of unauthorized construction is not allowable in terms of Explanation (1) to section 37. In view of the direct judgment of the Hon'ble Karnataka High Court in *CIT Vs. Mamta Enterprises (supra)*, we are inclined to follow the view canvassed by the Pune Bench of the Tribunal in preference to another order passed by the Hyderabad Benches of the Tribunal in which the issue has been decided in favour of the assessee. On a specific query, the ld. AR could not point out any direct judgment of any High Court in favour of the assessee. In view of the above position and respectfully following the judgment of Hon'ble Karnataka High Court in the case of *CIT Vs. Mamta Enterprises (supra)*, we hold that the ld. CIT(A) was justified in sustaining the addition to this extent.

5. The other amount of Rs.27,77,074/- was claimed to have been paid by the assessee to PMC on 06-05-2008, being, Premium charges for extra FSI in lieu of stairs case, balcony and terrace relating to project which was completed in the year under consideration. The AO has categorically recorded in para no.7 of his order that the plots for the project completed by the

assessee during the year were different from those given in respect of which the assessee had claimed to have paid such amount. The AO has given plot Nos. and the name of the owner for the project completed during the year and the plot No. and name of the owner for which such payment was made and found the same to be different. On a specific query, the Id. AR could not place on record any notice of demand issued by the PMC to co-relate this payment with the project completed two years ago. It is a known fact that municipal charges relating to a particular building are to be paid before the obtaining a Possession certificate. Without clearing all the municipal charges in respect of any building, no NOC is issued. Obviously the amount paid to PMC in Financial year 2008-09 cannot ordinarily relate to a building where the Possession certificate was given in the Financial year 2005-06, unless an evidence to this extent is adduced. In view of the foregoing discussion, we are satisfied that the assessee could not correlate this expenditure with the project completed during the year under consideration. As such, no deduction can be allowed for this expenditure.

6. The remaining amount out of total sum of Rs.59,43,452/- being the amount paid to PMC has been disallowed by the AO by specifically observing that the plots on which project was completed during the year was different from those in respect of which such expenses were paid. No material has been brought on record to controvert such a view. We, therefore, uphold the disallowance of Rs.59,43,452/-.

7. The only other disallowance challenged in this appeal is a sum of Rs.2,36,780/-, being, the amount of Prepaid expenses towards purchase of furniture. The facts of this disallowance and its confirmation by the Id. CIT(A) are similar to those of the earlier expense. Here again, the assessee could not show that the purchase of furniture after two years pertained to the project completed by the assessee during the year. We, therefore, uphold the disallowance.

8. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 07th May, 2019.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

पुणे Pune; दिनांक Dated : 07th May, 2019.
सतीश

Sd/-
(R.S.SYAL)
VICE PRESIDENT

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-12, Pune
4. The CIT Central, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-05-2019	Sr.PS
2.	Draft placed before author	06-05-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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