

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. 210/JP/2018
निर्धारण वर्ष / Assessment Year :2012-13

M/s. Gem Buildhome Pvt.Ltd 5 th Floor, K Tower, Mahaveer Marg, C-Scheme, Jaipur-302001	Vs.	I.T.O., Ward-5(4), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECG2006K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rajeev Sogani (CA)
राजस्व की ओर से / Revenue by : Smt. Roshanta Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 15/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 11/06/2019

आदेश / ORDER

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Jaipur dated 18/12/2017 for the A.Y. 2012-13 in the matter of order passed U/s 143(3) of the Income Tax Act, 1961 (in short the Act).

2. Grounds of appeal raised by the assessee are as under:-

- "1. *In the facts and circumstances of the case and in law, the Id. CIT(A) has erred, in confirming the action of the Id. AO in disallowing a sum of Rs.1,00,000/- u/s. 40A(3) of the Income Tax Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs.1,00,000/-.*

2. *In the facts and circumstances of the case and in law, the Id. CIT(A) has erred, in confirming the action of the Id. AO in disallowing following expenses for the alleged reason of being in the nature of preoperative expenses:-*

Nature of expenses	Amount
Interest on loan taken	9,95,310
Salary to employees	93,210
Other expenses	95,442
Total	11,83,962

The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said disallowance of Rs.11,83,962/-.

3. *The assessee company craves its right to add, amend or alter any of the grounds on or before the hearing."*

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of real estate. During the year under consideration, the assessee Company purchased a piece of land through a registered deed on 10.02.2012 for a total consideration of Rs. 1,78,00,000. Out of Rs, 1,78,00,000, only a sum of Rs. 1,00,000 was paid in cash on 10.02.2012 i.e. on the date of Registry. However, the A.O. declined the assessee's claim by invoking the provisions of Section 40A(3) of the Act, which was confirmed by the Id. CIT(A).

4. I have considered the rival contentions and carefully gone through the orders of the authorities below. From the record I found that there is no doubt raised by the Lower Authorities on either the payment or the source or the business expediency or the payee.

These things have not been doubted. Therefore, disallowance is unjustified. The issue is covered by the decision of the ITAT Jaipur Bench in the case of A. Daga Royal Art vs. Income-tax Officer, Ward- 2(2), Jaipur [2018] 94 taxmann.com 401, IT APPEAL NO 1065. (CLC: 1-23). The head notes of the same are reproduced for ready reference:-

"Section 40A(3) of the Income-Tax Act, 1961, read with rule 6DD of the Income-Tax Rules, 1962 - Business disallowance - Cash payment exceeding prescribed limit (Immovable property) - Assessment year 2013-14 - Assessee-firm had purchased of plot of land from various persons for a total consideration, out of which part of payment was made in cash and balance through cheque - Assessee submitted copies of sale deed and other details which contained name of seller, date of sale deed, plot No., purchase value, stamp duty, Court fee and mode of payment (cash/cheque) - Assessee submitted that payment for purchase of land had been made in cash because sellers were new to assessee and refused to accept payment through banks and that due to mode of payment, it could have lost land deals - Further cash payments were made from disclosed sources being amount withdrawn from bank - Whether since identity of sellers and source of cash payments as withdrawals from assessee's bank account had been established, genuineness of transaction had also been established as evidenced by registered sale deeds and lastly, test of business expediency had been met, no disallowance under section 40A(3) was called for - Held, yes [Paras 35-43].

5. Respectfully following the decision of the Coordinate Bench, I do not find any merit in the disallowance of Rs.1.00 lac so made by the A.O..

6. The A.O. has also disallowed interest of Rs. 9,95,310/- and salary of employee of Rs. 93,210/- by stating that the assessee has not started

business, the same should be capitalized. The action of the A.O. was confirmed by the Id. CIT(A), against which the assessee is in further appeal before the ITAT.

7. I have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that the assessee Company was incorporated on 03.03.2011. During the F.Y. 2011-12, assessee Company commenced its business and purchased 10 plots for aggregate consideration of Rs. 3,11,00,582. All these were small plots and purchased mainly for trading purposes. All these plots at the end of the year remained in stock. The AO disallowed the expenses alleging that no business activity by way of sale of any of the plots took place and, therefore, the entire expense is not allowable and is to be added to the closing stock. From the record I found that the business was commenced because as many as 10 plots were purchased during the relevant previous year. The interest was paid on working capital fund raised for purchase of stock in trade. The same is allowable under section 36(1)(iii). Since, the plots were purchased for trading, the same cannot be a qualifying asset in terms of AS-16. I also observe that ICDS-XI, Borrowing Cost, requiring interest capitalization on inventories,

came into force from assessment year 2017-18. Accordingly, I do not find any merit for the disallowance of interest and salary to employees.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 11th June, 2019.

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

जयपुर / Jaipur
दिनांक / Dated:- 11th June, 2019

*PP/SPS

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

1. अपीलार्थी / The Appellant- M/s Gem Buildhome Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 5(4), 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. 210/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar