

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA. No.849/Bang/2017
(Assessment Year: 2012-13)

M/s. Aurete Resorts & Realtors Pvt. Ltd., No.142, 18 th A Main, HAL 2 nd Stage, Indiranagar, Bangalore-560 008 PAN AAFCA 4205M	Vs.	Income Tax Officer, Ward 1(1)(2), Bangalore.
(Appellant)		(Respondent)

Assessee By: Shri Balram R Rao, Advocate.
Revenue By: Dr. P. V. Pradeep Kumar, Addl. CIT (D.R)

Date of Hearing : 08.07.2019
Date of Pronouncement : 02.08.2019

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of learned Commissioner of Income Tax (Appeals)-1, Bangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961.

2. The assessee has raised the following grounds of appeal :

1. The learned CIT (Appeals) erred in upholding the Order of the Assessing Officer in the manner as reflected in the impugned Assessment order.
2. The learned CIT (Appeals) erred in upholding that the land sold by the appellant was Non-Agricultural (residential) without appreciating the fact that the Lands were agricultural lands and are also sold as agricultural lands and income arising there from constituted to be agricultural income as defined under section 2(1A) of the I.T.Act.
3. The Ld. CIT (Appeals) failed to appreciate the fact that the land under dispute in this Appeal was situated beyond the distance of 8 kilometres from the nearest municipality. The Assessing officer as well as the CIT (Appeals) relied on the certificate of the Tahsildar which was obtained unilaterally and without any notice to the appellants. The contents of said certificate are contrary to prevailing facts and the documents placed by the appellant.
4. Even otherwise, said certificate issued by the Tahsildar stated that the land is situated approximately 8 Kms away from nearest municipality. The further statements regarding existence of residential plots and houses are not correct and do not reflect the actual state of affairs as on the date of sale.

5. The conclusion of Assessing officer that the appellant was running the business of resort in the land is not correct. The property did not have the basic amenity of electricity while selling land, which was obtained only during the year 2015. Hence, the findings are wrong.
6. The Ld. CIT(Appeals) failed to appreciate the fact that the building situated was a farm house and property tax for the same was paid.
7. The Ld. CIT(Appeals) failed to appreciate the fact that the Appellant had not claimed any over head expenditures in its books for running a resort and therefore, this proves that the claim made by the Appellant that there was a farm house was true and correct.
8. The Ld. CIT (Appeals) failed to appreciate the fact that though the Appellant had claimed depreciation the same was not set off against any Income as there was no business income and whereby the Ld.CIT(Appeals) upholding the view of the AO that depreciation claimed was not correct.
9. Without Prejudice to the above the Ld. CIT(Appeals) erred in upholding the indexed cost of improvement as computed by the AO at Rs. 25,96,329/- as against Rs.14,62,64,726/- as claimed by the Appellant. The assessment and findings in this regard are contrary to Sec.112 of the IT Act.

10. The Learned CIT(Appeals) erred in upholding the view of the AO that the Appellant was not eligible to claim the expenditure like interest on loan paid to Kerala Financial Corporation.

11. The learned CIT (Appeals) erred in upholding the interest levied U/s. 234B of Rs.87,99,300/- & 234D of Rs. 1,12,779/-.

12. For these and other such grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed.

3. The Brief facts of the case are that the assessee company had purchased wet lands from agriculturist and filed the Return of Income for the Assessment Year 2012-13 on 30.9.2012 with NIL income after setting off of the brought forward losses and subsequently the case was selected for scrutiny and notice under Section 143(2) and 142(1) of the Act were issued to the assessee. In compliance the learned Authorised Representative appeared from time to time before the Assessing Officer and case was discussed. Whereas the Assessing Officer has made disallowance of capital expenditure and other claim and declined the exemption of Long Term Capital Gains (LTCG) and assessed the total income of Rs.11,90,13,348 and passed the order under Section 143(3) of the Act Dt.31.3.2015. Aggrieved by the order, the assessee filed an appeal with the

CIT(Appeals). The learned Authorised Representative has raised various grounds of appeal before the CIT(Appeals). On the issue of building a farm house, the assessee submitted that certificate was obtained by the Assessing Officer from the Tahsildar of the concerned area on 20.03.2015 and same was not provided to the assessee. The CIT(Appeals) considered the submissions of the assessee and partly allowed the appeal. Aggrieved by the order of the CIT(Appeals) the assessee has filed an appeal before the Tribunal.

4. At the time of hearing, the learned Authorised Representative argued that the learned CIT(Appeals) has erred in upholding as non-agricultural lands without appreciating that the lands are utilized for agriculture usage, and were sold and further the certificate of Tahsildar was used against the assessee was not provided and also there is no finding of the learned CIT (Appeals) on this disputed issue and prayed for allowing the appeal. Contra the learned Departmental Representative supported the orders of learned CIT(Appeals).

5. We heard the rival submissions and perused the material on record. On the disputed issue, the Certificate was issued by the Tahsildar which is not disputed and same raised in the Ground NO.2 before the learned CIT (Appeals) which is as under :

2 Assessing officer also claimed the land is not at distance of 8 km form nearest municipality. For this he has to rely on notification dated Notification No. [SO 9447] (File No. 164/3/87ITA.I)], dated. 6-1-1994, wherein the exact distance in respect of every area is specified. But instead he interpreted the certificate of Tahsildar. Also copy of Tahsildar certificate was not enclosed in order copy or given to assessee. In view of this the argument of Assessing officer of distance less then 8 Km also does not hold good as the land is situated at 8km away from nearest municipality and in village/rural area.

On verification of fact, we found there is no proper finding on this dispute issue except the CIT (Appeals) discussed at para 5 of his order as under :

5. It is seen that to verify the claim of the assessee, a letter date 04/02/2015 was sent to the Tahsildar, Cherthala, Kerala, under section 133(6) calling for the details in respect of the land sold by the assessee as what was the nature of land - agricultural or residential or commercial and its distance from the nearest municipality limits.

5.1 In response to the same, the Tahsildar, Cherthala has replied vide his letter dated 23/03/2015 that the lands referred to in the sale deed were residential plot as per the Fair value Register at the time of sale and a resort was functioning at the time of execution of the sale deed. It is clear from the letter of the Tahsildar that the nature of the lands sold was residential and not agricultural and were also within 8 Km distance from the Municipal limits. Accordingly, the claim of the appellant that the profit from the sale of the lands is exempt from Income-tax is not correct.

5.2 It is also clear that the assessee is claiming depreciation on plant and machinery and building which shows that the assessee was running the business of resort on the said land and the same fact has been mentioned by the Tahsildar also. It may also be seen that the assessee is claiming depreciation on the land cost which is included in the cost of building. The same trend is observed from the returns of income filed for the earlier years also.

5.3 The information received from the Tahsildar was clearly brought to the notice of the authorized representative and he was asked to explain why the profit on sale of land should not be brought to tax as long term capital gains on non-agricultural residential land held by the company as capital asset.

5.4 In view of the above discussion, it is clear that the AO has taken the correct stand that the assessee has running the business of resort on the said land and the appellant cannot deny this fact, the AO has correctly taken the property as non agricultural. The action of the AO is

upheld and the contention of the appellant is hereby rejected.

The Assessing Officer without providing copy of letters to the assessee has completed assessment under Section 143(3) of the Act Dt.31.3.2015. The assessee was deprived to contest on the Certificate of Thasildar in the assessment proceedings. Hence, considering the overall facts and submissions of the assessee

and findings of the Assessing Officer, we are of the opinion that the assessee's ground of appeal No.2 before the CIT(Appeals) is not adjudicated and accordingly we restore this disputed issue to the file of CIT(Appeals) to adjudicate afresh and consider the submissions of the assessee on the Tahsildar Certificate and further the assessee should co-operate in submitting the information for early disposal of the appeal and allow the grounds of appeal for statistical purposes.

6. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the open court on 02-08-2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 02-08-2019.

*Reddy GP

Copy to

i)The Appellant	ii)The Respondent	iii)CIT (Appeals)
iv) Pr. CIT	v)DR, ITAT, Bangalore	vi)Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore