

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.840/PUN/2012
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer,
Ward 1(3), Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

Lalitnirman Business Development Pvt. Ltd.,
Poddar House, Patil Lane-3,
College Road, Nashik

PAN: AAACN8249F

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं./CO No.35/PUN/2013
निर्धारण वर्ष / Assessment Year : 2009-10
(out of ITA No.840/PUN/2012)

Lalitnirman Business Development Pvt. Ltd.,
Poddar House, Patil Lane-3,
College Road, Nashik

PAN: AAACN8249F

... प्रत्याक्षेपक/ Cross objector

बनाम / V/s.

Income Tax Officer,
Ward 1(3), Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi
Revenue by : Shri S.B. Prasad

सुनवाई की तारीख / Date of Hearing : 19-09-2019
घोषणा की तारीख / Date of Pronouncement : 21-11-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue and Cross Objections by the assessee are directed against the order of Commissioner of Income Tax (Appeals)-I, Nashik, dated 23-02-2012 for the assessment year 2009-10.

2. The brief facts of the case as emanating from records are; the assessee is a company engaged in the business of trading and development of land. The assessee filed its return of income for the impugned assessment year on 30.09.2009 declaring total taxable income as nil. The notice u/s 143(2) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), was issued and duly served on the assessee. In scrutiny assessment proceedings, the Assessing Officer *inter-alia*, made additions / disallowances on following counts:

- i) Bad Debts written off disallowed - Rs.25,00,000/-
- ii) Addition on account of undisclosed income from sale of shares under the head 'Income from other sources' - Rs. 65,51,352/-.

2.1 Aggrieved against the assessment order dated 29-12-2011, the assessee filed appeal before the CIT(A). The CIT(A) upheld the findings of Assessing Officer in disallowing bad debts. *Qua* addition on account of undisclosed income from sale of shares under the head 'Income from other

sources', the CIT(A) held that the income of Rs.65,51,352/- declared by the assessee as short term capital gain is assessable under the head 'Income from business'. Thus, the CIT(A) changed the head on income.

3. We will first take up the appeal of Revenue for adjudication.

ITA No.840/PUN/2012 (Revenue's appeal)

4. Shri Sanket Joshi appearing on behalf of the assessee submitted at the outset that the appeal of Revenue is liable to be dismissed on account of low tax effect in the light of recent CBDT Circular No.17/2019 [F No.279/Mise.142/2007-ITJ (Pt)], dated 08-08-2019, wherein the monetary limit for filing of appeals by the Department has been enhanced to Rs.50 lakhs.

5. On the other hand, Shri S.B. Prasad representing the Department fairly admitted that the tax effect involved in the appeal by the Revenue is less than the monetary limit prescribed by CBDT for filing the appeals by the Department.

6. Both sides heard. The Revenue is in appeal against the order of Commissioner of Income Tax (Appeal) assailing the change of head of income from "Income from other sources" to "Income from Business", in respect of addition of Rs.65,51,352/-. Undisputedly, the tax effect involved in appeal is less than the monetary limit prescribed by the recent CBDT Circular No. 17/2019, dated 08-08-2019 for filing of appeals before the

Tribunal by the Department. The CBDT vide circular dated 08-08-2019 (supra) has amended Para 3 of Circular No. 3 of 2018 dated 11-07-2018 thereby enhancing monetary limit of tax effect from Rs.20 Lakhs to Rs.50 Lakhs for filing of appeals by the Department before the Tribunal. Thus, without going into merit of the issues raised in the appeal, the present appeal of the Revenue is dismissed on account of low tax effect.

7. Before parting, we clarify here that the Revenue shall be at liberty to approach the Tribunal for restoration of appeal, with the requisite material to show that the appeal is protected by the exceptions prescribed in Para 10 of the Circular dated 11-07-2018 and its amendment dated 20-08-2018.

8. In the result, the appeal of Revenue is dismissed.

CO No.35/PUN/2013

9. The assessee in Cross Objection has impugned the findings of CIT(A) in confirming the disallowance of Bad Debts written off Rs.25,00,000/-.

10. The ld. AR submitted that if the appeal of the Revenue is dismissed on account of low tax effect, the Cross Objections filed by the assessee would still be maintainable and shall be treated as an independent appeal. In support of his contentions, the assessee placed reliance on the following decisions:

(a) *ACIT Vs. Kripa Chemicals Pvt. Ltd. [82 ITD 449 (Pune)]*

(b) *DBS Bank Ltd. vs. DDIT [C.O.No.189/Mum/2013] dated 15.06.2016*

(c) *Solidcore Techsoft Systems vs. ITO [C.O.No.3/Bang/2019] dated 10.05.2019*

11. The Ld. AR submitted that there was delay of 10 days in filing of Cross Objections on account of mis-communication between the staff of assessee company and the office of Chartered Accountant to whom the task was assigned for filing of Cross Objections before the Tribunal. The assessee has given detailed reasons along with chronology of events causing delay in filing of Cross Objections in the application seeking condonation of delay in filing of Cross Objections.

12. On merits, the ld. AR submitted that the sole issue raised in the present Cross Objections is against disallowance of deduction claimed u/s 36(1)(vii) of the Act towards bad debts written off. The ld. AR submitted that the assessee entered into an agreement for purchase of land with M/s. Parasrampuriah Industries Limited on 07-12-2005 for purchase of industrial plot No.3, Survey No.215, Village & Tehsil Dadra, Dist. Silvassa. The total purchase consideration was mutually agreed between the parties at Rs.1,17,60,000/-. As per the terms and conditions of agreement, the assessee paid Rs.10,00,000/- to the Vendor at the time of execution of agreement and the balance amount Rs.1,07,60,000/- was to be paid by the assessee before 31-12-2005. As per clause 5 of the agreement, if the purchaser failed to comply with the terms of payment, the Vendor had the right to forfeit the amount paid and terminate / cancel the agreement. The

assessee could pay only Rs.25,00,000/- by the date fixed i.e. 31-12-2005. Since, the assessee could not pay the balance consideration, as mutually agreed, the entire advance amount paid was forfeited by the Vendor. As the assessee failed to recover advance paid for purchase of land, the assessee in A.Y. 2009-10 write off the same as irrecoverable.

13. The ld. AR submitted that the land which the assessee intended to purchase was for the purpose of trading and the same was reflected in the Balance Sheet under the head "Current Assets", in the nature of stock-in-trade. The ld. AR further pointed that a perusal of Balance Sheet as on 31-03-2006 would clearly show that the advance paid for purchase of land was not reflected under the investments or as fixed assets. The Assessing Officer has erred in coming to the conclusion that the assessee intended to purchase the land for setting up an industry by misreading clause (9) of the agreement. The ld. AR submitted that the assessee is a company registered under the provisions of the Companies Act, 1956. The object clause of Memorandum of Association does not permit the assessee to carry out industrial / manufacturing activities. The ld. AR referred to the Memorandum of Association of the assessee company at pages 91 to 108 of Paper Book. The ld. AR submitted that the assessee has never amended its Object Clause to include setting up of an industry or to carry out any manufacturing activity as its business. The Ld. AR further pointed that the CIT(A) has confirmed the findings of Assessing Officer in a mechanical manner without appreciating the facts and the documents on record.

14. On the other hand, ld. DR vehemently defended the order of CIT(A) in confirming the addition of Rs.25 lakhs by disallowing bad debts written off as claimed by the assessee. The ld. DR submitted that the assessee has not furnished any document to show that effort was made by the assessee to recover the advance or to seek extension of time for paying remaining amount. The ld. DR further pointed that as per clause (9) of the agreement, the assessee had purchased land for industrial activities, clause 9 further indicates that it was incumbent upon the Vendor to complete all formalities in the Government offices and Panchayat to clear the title of the land and make the land available for use for industrial activities. No document has been furnished by the assessee to show that the Vendor has performed its part as per the agreement. The investment in land is capital in nature, hence, the assessee cannot write off the amount paid as advance as bad debits.

15. We have heard the submissions made by rival sides and have perused the orders of authorities below. The Cross Objections filed by the assessee is time barred by 10 days. After examining the reasons given for delay in filing of Cross Objection, we are satisfied that the delay was for the bonafide reasons and not deliberate or negligence on the part of assessee. The delay of 10 days in filing of Cross Objection is condoned and the Cross Objection is admitted for hearing and adjudication on merits.

16. The appeal of Revenue has been dismissed on account of low tax effect. The ld. DR has questioned the maintainability of Cross Objection when the appeal of Revenue has been dismissed on account of low tax

effect. The assessee has placed reliance on the decision rendered in the case of ACIT Vs. Kripa Chemicals Pvt. Ltd. (supra). In the aforesaid case, the Department had withdrawn the appeal. The ld. DR therein raised preliminary objection on maintainability of Cross Objection. The Co-ordinate Bench after placing reliance on the decision of Hon'ble Supreme Court of India in the case of Superintending Engineer & Ors. Vs. B. Subba Reddy 1999 AIR SCW 1479 held that the Cross Objection of assessee is maintainable and decided the same on merits.

Similar issue regarding maintainability of Cross Objection of assessee in an appeal by the Revenue was considered by the Bangalore Bench of Tribunal in the case of M/s. Solidcore Techsoft Systems Vs. ITO (supra). In the said case, the appeal of Revenue and cross appeal by the assessee were disposed of by the Tribunal vide common order. However, the Cross Objection of assessee in the appeal filed by Department for same assessment year was listed separately. The Tribunal treated the Cross Objection as an independent appeal and adjudicated the issues raised therein by an independent order.

17. In the light of above decisions, the Cross Objection of assessee is treated as an independent appeal and is taken up for adjudication on merits, *dehorse* the fact that the appeal of Revenue is dismissed on account of low tax effect.

18. The assessee in Cross Objection has raised solitary ground against the findings of CIT(A) in confirming the findings of Assessing Officer in making addition of Rs.25 lakhs, written off as bad debts by the assessee.

19. The assessee had entered into an agreement for purchase of industrial plot with M/s. Parasrampur Industries Limited on 07-12-2005 for a total consideration of Rs.1,17,60,000/-. As per the terms of agreement (at pages 16 to 22 of the Paper Book), the purchaser / assessee was required to pay Rs.10 lakhs to the Vendor at the time of execution of said agreement. The balance consideration of Rs.1,07,60,000/- was to be paid by the assessee before 31-12-2005. As per the assessee, the assessee could only pay Rs.25 lakhs by the given date and could not pay the remaining agreed consideration. As per clause (5) of the said agreement, the Vendor had the right to forfeit the amount paid by the purchaser and cancel / terminate the agreement, if the purchaser failed to make the payment. The Vendor purportedly invoked the provisions of clause (5) of the agreement, as the assessee failed to comply with the conditions for making the payment of balance consideration by due date. The assessee has shown the advance paid towards purchase of industrial plot in its Balance Sheet as 'Current Assets'. It is relevant to mention here that the assessee is engaged in the business of trading in land / building and property development. Ostensibly, the assessee had purchased the industrial plot for trading and had held the same as stock-in-trade. This fact is evident from the books of account of assessee. The authorities below by placing reliance on clause 9 of the agreement have erred in coming to the conclusion that industrial plot was purchased by assessee for setting up industry and hence, the expenditure is on capital account. The authorities below were swayed by the phraseology used in para 9 of the agreement which mentions that "*the said land for the use of industrial activities of the PURCHASER*". The ld. AR of the assessee has drawn our

attention to the object clause of the assessee company, which clearly indicates that the object of the assessee is business of land and property developers, builder and general construction. The Ld. AR has stated at the Bar that at no point of time the assessee was engaged in industrial activity or the objects of the assessee were amended to include carrying on of industrial activity as its business. Hence, there is no question of purchasing land to set up any industrial activity. We find merit in the contentions of the assessee. The inevitable conclusion that can be drawn from examining the documents on record and facts of the case is that the industrial plot was held by the assessee as stock in trade. Since, the assessee failed to recover the advance paid which was forfeited by the Vendor of the plot in line with the terms and conditions of agreement dated 07-12-2005, the assessee had no other option but to write off the same.

20. However, we observe that as per terms and conditions of the agreement of sale, the assessee had paid Rs.10 lakhs at the time of execution of agreement, whereas, the assessee has written off Rs.25 lakhs. The authorities below have not examined the amount which the assessee has paid as advance for the purchase of industrial plot. Therefore, we deem it appropriate to restore this issue back to the file of Assessing Officer for limited purpose to verify the amount paid by the assessee as advance for purchase of industrial plot. In principle, we are of the view that advance paid by the assessee towards purchase of plot had become irrecoverable and hence, the claim of assessee deserves to be allowed. Thus, the ground No.1 raised in Cross Objection by assessee is allowed for statistical purposes, in the terms aforesaid.

21. The ground No.2 of Cross Objection is general in nature, hence, no adjudication. The Cross Objection of the assessee is allowed for statistical purposes.

22. To sum up, the appeal by Revenue is dismissed and Cross Objection of assessee is allowed for statistical purposes.

Order pronounced on Thursday, the 21st day of November, 2019.

Sd/-
(D.Karunakara Rao)
ACCOUNTANT MEMBER

Sd/-
(Vikas Awasthy)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 21st November, 2019
GCVSR

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-I, Nashik.
4. The CIT-I, Nashik.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

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