

आयकर अपीलीय अधिकरण न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos.294 & 295/NAG/2012

निर्धारण वर्ष / Assessment Years : 2006-07 & 2007-08

M/s. Universal Infrastructure,
C/o. Devarshi Security,
J.P Chambers, 2nd Floor,
A-Wing, Opp. Shradanand Peth
Anathalaya, South Ambazari Road,
Nagpur-440 022.
PAN : AABFU2671E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-8, Nagpur.

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Smt. Agnesh P. Thomas

सुनवाई की तारीख / Date of Hearing : 13.01.2020

घोषणा की तारीख / Date of Pronouncement : 13.01.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the common assessee emanates from the common order of the Ld. CIT(Appeals)-II, Nagpur dated 09.02.2012 for the assessment years 2006-07 & 2007-08 as per the grounds of appeal on record.

2. These cases were heard together. Since issues common and facts are similar, these cases are being disposed of vide this consolidated order.

3. At the time of hearing through video conference, neither the assessee nor his Authorized Representative had appeared. It is apparent from the record that the notice was duly served but the assessee is not keen to pursue his appeal before the Tribunal. Considering the totality of facts and issue under consideration, we are of the opinion that the issue can be adjudicated with the assistance of the Ld. DR for the Revenue and documents on record. The submissions of the Ld. DR are taken on record and case of the assessee is heard on merits.

4. The brief facts in respect of both the assessment years under appeal are that the assessee submitted return declaring income therein for Rs.13,75,762/- for assessment year 2006-07 and Rs.16,80,884/- for the assessment year 2007-08 and assessment was completed determining total income at Rs.45,25,762/- for assessment year 2006-07 and Rs.39,30,880/- for assessment year 2007-08 vide order dated 27.11.2009 by the Ld. DCIT, Circle-8, Nagpur for assessment years 2006-07 and 2007-08 respectively. The assessee during the year under consideration expelled one of the partner, due to business differences and paid him a sum of Rs.45 Lakhs in two years in equal installments i.e. Rs.22.50 Lakhs in assessment year 2006-07 and similarly, amount of Rs.22.50 Lakhs in assessment year 2007-08. The Assessing Officer made addition treating them as 'capital expenditure'. It is the contention of the assessee that the entire payment of Rs.45 Lakhs should be allowed as 'revenue expenditure' by placing reliance on the decision of the

Hon'ble Supreme Court in the case of **Devidas Vithaldas & Co. Vs. CIT (1972) 84 ITR 277 (SC)**.

5. The Ld. CIT(Appeals) while going through the retirement deed of the partner and other relevant documents as evident in his order observed that it is a case of a partner retiring from partnership and the retiring partner is paid for his capital and the entire goodwill at the time of retirement after due valuation mutually agreed and retiring partner sold 'everything' i.e. no claim whether was left in the reconstituted firm for retiring partner. In return the remaining partners' share have gone up from 1/4 to 1/3 each. The assessee relied on the case laws quoted is misplaced as the Hon'ble Supreme Court has clearly held that payment made for purchase of goodwill is capital expenditure and in the case at hand, payment is made by remaining partners of the firm to retiring partner both for his capital and goodwill i.e. to acquire the income earning apparatus along with the goodwill of the firm (at a mutually agreed price). Each of the remaining three partners are now partners for 1/3 share of income instead of 1/4 share earlier and no continuing payment is to be made to retiring partner for use of good will. Hence, the Assessing Officer has rightly treated the out go in both the years as capital expenditure following the judgment of **Minno Mehta Vs. CIT (1996) 217 ITR 578** as it is outright purchase of share of goodwill of retiring partner by continuing partners.

6. We have perused the case records and analyzed the facts and circumstances in this case. On going through the relevant documents specifically the retirement deed of the partners, it is evident that the amount of Rs.45 Lakhs paid in two years in equal installment of Rs.22.50 Lakhs in

each year is nothing but the amount paid by remaining partners of the firm to retiring partner for the purchase of share of goodwill of retiring partner by continuing partners. Therefore, it is capital expenditure and the disallowance made by the Assessing Officer and confirmed by the Ld. CIT(Appeals) for both the assessment years is upheld.

7. In the result, **both the appeals of the assessee for assessment years 2006-07 and 2007-08 are dismissed.**

Order pronounced on 13th day of January, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13th January, 2020.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-II, Nagpur.
4. The CIT-IV, Nagpur.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण,
नागपुर / DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

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

		Date	
1	Draft dictated on	13.01.2020	Sr.PS/PS
2	Draft placed before author	13.01.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		