

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 521/JP/2019  
निर्धारण वर्ष/Assessment Year : 2015-16

The DCIT Central Circle – 1 Jaipur	बनाम Vs.	M/s. Anukampa Buildhome Pvt Ltd. 401, Anukampa Mansion, M.I. Road, Jaipur – 302 001
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCA 8145 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri B.K. Gupta , CIT DR  
निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

सुनवाई की तारीख / Date of Hearing : 16/01/2020  
उदघोषणा की तारीख / Date of Pronouncement: 23 /01/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the Revenue against the order of CIT(A) -4,Jaipur dated 11.02.2019 for the assessment year 2015-16 wherein the Revenue has raised the following grounds of appeal.

“1. Whether on the facts and circumstances of the case the ld. CIT(A) was right in deleting the addition made by AO of Rs. 3,96,99,161/- by rejecting the books and treating the receipts from customers as an income.

2. Whether on the facts and circumstances of the case the ld. CIT(A) was right in granting relief of Rs. 24,79,385/- out

of total addition of Rs. 25,79,385/- on account of disallowance of commission expenses ignoring the fact that these persons could not furnish the details of the flats of project of flat number or person to whom they had allegedly sold the flats. This proves that they were paid commission only for claiming bogus expenses.”

2.1 In Ground No. 1, the Revenue is aggrieved that the Id. CIT(A) has erred in deleting the addition of Rs.3,96,99,161/- made by the AO.

2.2 Brief facts of the case are that the assessee is engaged in the business of Real Estate. It has e-filed its return of income for A.Y. 2015-16 on 26/09/2015 declaring a total income at Rs. Nil/- (loss of Rs. 1,59,40,582/-). During the year under consideration, assessee booked sales of two projects namely Hanging Garden at Jaisinghpura & Grandeur at Swej Farm, Sodala, Jaipur. Out of them, project Hanging Garden was completed long back in preceding years but in project Grandeur construction expenses were also incurred during the year under consideration. The assessee regularly follows the Project Completion Method of accounting, according to which income from sale is recognised when entire consideration is received and possession/registry is done. The AO during the course of assessment proceeding observed that the projects Hanging Garden & Project Grandeur have been completed but in the Balance sheet of the company, the advances relating

to Project Grandeur amounting to Rs. 3,96,99,161/- are reflected. The AO, thereafter, referred to Accounting Standard and Guidance Note issued by the ICAI and held that a real estate developer is required to follow Percentage completion method. Accordingly, the assessee should have recognized the revenue equivalent to Rs. 3,96,99,161/- being advances received from customers. The AO, thereafter, rejected the books of accounts u/s 145(3) and computed the income by applying Percentage Completion Method and consequently assessed the advances relating to project 'Grandeur' of Rs.3,96,99,161/- as income of the assessee and made addition for the same.

2.3 In first appeal the ld. CIT(A) at page 8 of order in para 5.3 stated that various High Courts including Rajasthan High Court have held that choice of following a particular method of accounting is on the assessee . The same can't be thrust upon by the department. In the present case, assessee has been regularly following an accounting policy whereby sales were recognized on execution of the sale deed and the same has been accepted by the department in the past. Therefore, such accounting policy which is regularly followed can't be disturbed in the year under consideration. There is no provision under the Act which makes percentage completion method of accounting in real estate project

mandatory as observed by the AO. Even the Guidance Note issued by ICAI is recommendatory. The same do not override the choice of the method of accounting to be followed by the assessee provided under the Act. Out of the total advance of Rs.3,96,99,161/- received from customers as on 31.03.2015, a sum of Rs.2,39,28,441/- is recognized as sales in the FY 2015-16, Rs.57,50,766/- in FY 2016-17 & Rs.89,50,348/- in FY 2017-18 when the registry was executed on receipt of the balance payment and amount of Rs.10,67,029/- refunded in respect of booking being cancelled. This also proves that the assessee is offering the income on project completion basis. The Id. CIT(A) has taken into consideration the case laws relied on by the Id.AR of the assessee before him. The Id. CIT(A) further noted that even otherwise, it is found that by making addition of Rs. 3,96,99,161/- the AO has taxed the entire receipt itself which is incorrect. If the deduction for cost is allowed, there does not remain any income as assessee is in loss. Accordingly, the Id. CIT(A) deleted the addition of Rs.3,96,99,161/- made by the AO.

2.4 During the course of hearing, the Id. DR relied on the order of the AO praying that the Id. CIT(A) has erred in deleting the addition of Rs. 3,96,99,161/- made by the AO.

2.5 On the other hand the Id.AR has supported the order of the Id. CIT(A). However, to this effect, the Id.AR of the assessee relied on the decision of ITAT Bangalore Bench in the case of S.K. Properties vs ITO (2017) 162 ITD 419.

2.6 We have heard the Id. counsel of both the parties and perused the materials available on record. In this case, the AO made the addition of Rs. 3,96,99,161/- by treating the entire advance received from the customers as income of the assessee by holding that the assessee has not followed percentage completion method whereas as per the Guidance Note issued by ICAI the assessee is required to follow percentage completion method of accounting. It is noted from the available records that the assessee is regularly following an accounting policy whereby sales is recognized by following project completion method . According to this method, the sales are recognized when the sale deed is executed and possession of the flat is given to the buyer. There is no provision under the Act which makes percentage completion method of accounting in real estate project mandatory as observed by the AO. The Guidance Note issued by the ICAI is recommendatory. The same do not override the choice of method of accounting to be followed by the assessee provided under the Act. The Id.AR of the assessee relied on the decision

of ITAT Bangalore Bench in the casde of S.K. Properties vs ITO (supra)

holding as under:-

“appellant firm had recognized the income in respect of sale of plots by adopting completed contract method, whereas the Assessing Officer is of the view that income should be offered to tax received on year to year basis at the stage of receipt of consideration, irrespective of the fact that the title in the plots have been passed on the buyer or not. It is an undisputed fact that the plots forms a part of stock in trade in the business of the appellant firm and are immovable properties. The title in the immovable property can be passed on only in terms of transfer of Properties Act. Provisions of section 2(47) of the Act have no application to the transactions of stock-in-trade. In this case, the stock-in-trade is immovable property and the title in immovable property can be transferred or alienated in accordance with the provisions of the Transfer of Properties Act. The right, title or interest in the immovable property can be transferred only by way of registering the conveyance deed executed in this behalf. Even the accounting standard 9 dealing with the recognition of income also lays down that the income in respect of transfer of immovable property can be recognized only when the risks, rewards and ownership of the property is transferred to the buyer.”

It is further noted that out of the total advance of Rs.3,96,99,161/- received from customers as on 31-03-2015, a sum of Rs. 2,39,28,441/- is recognised as sales in the F.Y. 2015-16, Rs. 57,50,766/- in F.Y 2016-17 & Rs. 89,50,348/- in F.Y 2017-18 when the registry was executed on receipt of the balance payment and amount of Rs. 10,67,029/- refunded in respect of booking being cancelled. The complete detail of subsequent recognition is also placed by the assessee at page PB 27 of the paper

book. Therefore when such amount is already recognised as revenue or reflected back in the subsequent years, assessing the same in the year under consideration has resulted into double taxation. The AO has not considered the expenditure incurred by the assessee against such receipt. In the present case in the project Grandeur, total value of stock as on 31-03-2015 was Rs. 6,10,28,779/-. Therefore, deduction on account of cost against the receipt of Rs.3,96,99,161/- ought to have been allowed instead of assessing the receipt as income. Hence, taking into consideration the facts and circumstances, we find no reason to interfere with the order of the Id. CIT(A). Thus Ground No. 1 of the Revenue is dismissed.

3.1 In Ground No. 2, the Revenue is aggrieved that the Id. CIT(A) has erred in granting relief of Rs. 24,79,385/- out of total addition of Rs. 25,79,385/- on account of disallowance of commission expenses ignoring the fact that these persons could not furnish the details of the flats or project of flat number or person to whom they has allegedly sold the flats. This proves that they were paid commission only for claiming bogus expenses.

3.2 Brief facts of the case are that during the year assessee claimed commission expenses of Rs.80,79,385/- in respect of following projects:-

- Hanging Garden- Rs.39,04,385/-

- Grandeur-  $\frac{\text{Rs.41,75,000/-}}{\text{Rs.80,79,385/-}}$

In assessment proceeding, assessee filed the details of commission expenses. AO issued summons u/s 131 of the Act to some of these persons to verify the claim of expenses. AO at page 15 of order in para 5.2 observed that statements of some of the persons were recorded (at page 17 to 30 of assessment order) from which it is found that these persons are having no knowledge regarding commission work done by them. Moreover, they could not submit the details of the flats or project or flat nos. or persons to whom they had allegedly sold the flats. The AO further held that the persons are used as entry providers for the purpose of claiming commission expenses by the assessee company. The AO required assessee to prove such expenses claimed vide notice dated 07.12.2017. The assessee vide letter dated 18.12.2017 submitted the documents and evidences to prove the genuineness of the commission expenses. However AO rejected the contention of the assessee and accordingly, made disallowance of Rs. 25,79,385/- in respect of 12 persons out of commission expenses of Rs.39,04,385/- claimed for 20 persons in respect of Hanging Garden project.

3.3 In first appeal, the Id. CIT(A) held at page 13 of the order at para 8.3 that in respect of all these 12 persons, for which disallowance is made by AO, assessee had filed complete address. They are assessed to tax. Tax has been deducted at source. Payment is made by account payee cheque. Out of seven persons produced before AO six have accepted the fact of receipt of commission. Accordingly, the Id. CIT(A) restricted the disallowance made by AO to one person namely Smt. Taruna Jain amounting to Rs.1,00,000/- and allowed relief of Rs.24,79,385/- in respect of remaining 11 persons.

3.4 During the course of hearing, the Id. DR relied on the order of the AO and prayed that the Id. CIT(A) has erred in granting the relief of Rs. 24,79,385/- out of total addition of Rs. 25,79,385/- made by the AO on account of disallowance of commission expenses.

3.5 On the other hand, the Id.AR of the assessee supported the order of the Id. CIT(A)

3.6 We have heard the Id. counsel of both the parties and perused the materials available on record. As per facts of the present case, during the year under consideration, the assessee claimed commission expenses of Rs. 80,89,385/- in respect of two projects. In this respect, the assessee had

filed certain details of commission expenses and out of details furnished by the assessee, the AO summoned some parties in order to verify the claim raised by the assessee with regard to rendering of services by those persons. After recording the statements of those persons , the AO denied such expense on the ground that those who were summoned by him were having no knowledge regarding the commission work done by them and they could not submit the details of flats or project of flat number of persons to whom they had allegedly sold the flats. On the contrary, the Id. CIT(A) restricted the disallowance to one person who had denied the receipt of commission of Rs. 1.00 lac and had allowed the relief to other persons by holding that those persons were assessed to tax. Tax has been deducted at source and out of 07 persons whose statements were recorded, 06 persons accepted the fact of receipt of commission. After verifying the statements recorded by the AO in respect of total commission payment made by the assessee of Rs. 25,79,385/-, we found that statements of those persons summoned u/s 131 of the Act were recorded on oath and as per their statements it is found that these persons have no knowledge at all regarding the commission work done by them. They could not furnish the details of flats or projects or flat number or persons to whom they had allegedly sold the flats. One of them even

denied any receipt of commission from the assessee company. It was confirmed from the statements of 05 persons namely mentioned as under:-

- (a) Paridhi Jain
- (b) Ritu Jain
- (c) Swena Jain
- (d) Jagarti Jain
- (e) Shivani Jain

It is noted that these persons either reside outside Jaipur or are housewives and therefore, they could not have performed any commission work during the year under consideration for the assessee company. It is a settled law that for claiming the commission expenses, it was the onus upon the assessee to prove before the lower authorities regarding rendering the services. The Hon'ble Supreme Court in the case of Umakant B Agarwal vs DCIT (2015) 57 Taxmann. Com 137 has held as under:-

“Section 37(1) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Commission) - Assessee was engaged in trading of cement and its related product and was appointed as agent by company 'G' to procure business - Assessee engaged sub-agents P and S on commission basis - High Court by impugned order held that since assessee failed to produce evidence regarding nature of services rendered by sub-agents, sub agency commission

claimed could not be allowed - Whether Special Leave Petition filed against impugned order was to be dismissed - Held, yes [In favour of revenue]”

The Hon'ble Punjab & Haryana High Court in the case of Smt. Malti Devi vs CIT, Jalandhar (Punjab) (2019) 110 Taxmann. Com 413 (P&H) has held as under:-

“Section [37\(1\)](#) of the Income-tax Act, 1961 - Business expenditure - Allowability of (Commission) - Assessment year 2009-10 - Appellant, engaged in sending students in foreign countries, claimed expenditure paid as commission for referring students to her - Details of students sent abroad was withheld on ground that hard disc of computer crushed - Such commission was paid on last day of year - No account was produced to substantiate as to how much commission was paid - Assessee was able to produce only 21 persons out of 43 who had received commission - Recipients of commission, who appeared in proceedings were not able to give details even of a single student whom they had referred to appellant - Commission was paid to husband and daughter of assessee and to family members of certain persons who were neither connected with education nor were engaged in sending students abroad - Still Assessing Officer disallowed only 50 per cent of expenses paid as commission - Whether there was no perversity in disallowance - Held, yes [Para 7] [In favour of revenue]”

Keeping in view the facts of the present case and also the judgment of Hon'ble Supreme Court and Hon'ble Punjab & Haryana High Court cited above, we are of the view that it was the onus upon the assessee to prove before the Revenue authorities and to furnish the evidence with regard to rendering of services to whom alleged commission was paid. Since the assessee could not prove the actual rendering of services, therefore, the assessee is not entitled to claim commission expenses. Thus while taking into consideration the entire facts and circumstances of the case, we allow

the commission expenses to Shri Akhil Boolia only and with regard to commission expenses paid to other persons are concerned, we set aside the order of the ld. CIT(A) and uphold the order of the AO. Therefore, the Ground No. 2 of the Revenue is partly allowed.

4.0 In the result, the appeal filed by the Revenue is partly allowed with no order as to cost.

Order pronounced in the open court on 23/01/2020.

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 23/01/2020.

\*Mishra

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

1. अपीलार्थी / The Appellant- The DCIT , Central Circle-1, Jaipur
2. प्रत्यर्थी / The Respondent-M/s. Anukampa Buildhome Pvt. Ltd. Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA No. 521/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar