

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)**

**SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA NO. 6374/Del/2016
(ASSESSMENT YEAR : 2011-12)**

M/s. God Gift Properties Pvt. Ltd. C/o. R. N. Marwah & Co., LLP, CAs, 4/80, Janpath New Delhi PAN : AAACG9053G (APPELLANT)	vs	DCIT Circle 10(1), New Delhi (RESPONDENT)
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Assessee by : Sh. U.N. Marwah, CA
Revenue by : Sh. S.N.Meena, Sr. DR
Date of Hearing : 27 .01.2020
Date of Order : 31.01.2020

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, M/s. God Gift Properties Pvt. Ltd., New Delhi (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 02/09/2016 passed by Ld. Commissioner of Income Tax(Appeals)-16, New Delhi qua the Assessment Year 2011-12 on the grounds inter alia that:

1.1 *“That on facts and in law the Ld. CIT(A) erred in confirming proportionate disallowance of interest of Rs. 8,98,325/- on account of utilization of loan funds for purposes other than for purchase of house property.*

1.2 *That the Ld. CIT(A) while confirming the impugned disallowance failed to appreciate that deduction for interest is allowable u/s 36(1)(iii) as the appellant has carried business activity during the year.*

2.1 *That on facts, the Ld. CIT(A) erred in confirming addition of Rs. 88,00,000/- u/s 68 of the Act, by holding that the appellant company has failed to explain the source of cash deposited in the bank account of the appellant.*

2.2 *That the Ld. CIT(A) while confirming the impugned addition failed to consider and appreciate that the said cash was deposited out of Rs. 90,00,000/- withdrawn earlier in April 2010 for purchase of stamp duty which has been deposited back in the bank account subsequently.*

3. *That the appellant craves leave, to add, alter, amend, forgo, and substitute any or all the grounds of appeal before or at the time of hearing.”*

2. Briefly stated the facts necessary for adjudication of the controversy at hand are: during the year under assessment The Assessing Officer noticed that the assessee has purchased a property no. B.P-4A, Jangpura B, New Delhi for purposes Of re-development as stock in trade for Rs. 17.50 Crores, for which it has taken loan from the bank to the tune of Rs. 15 crores. AO noticed that the assessee company has utilized only an amount of Rs. 13,97,38,686/- for purchase of house property and claimed interest on 15 crores, which the AO has proportionately disallowed u/s 24(b) of the Act to the tune of Rs. 898.325/-.

3. Assessing Officer also disallowed an amount of Rs.

88,00,000/- and made addition thereof u/s 68 of the Act on the ground that the assessee company has failed to explain immediate source of cash deposit and thereby framed the assessment u/s 143(3) at total income of Rs. 7,52,56,940/-.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has partly allowed the same. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representative of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

Ground no. 1.1 & 1.2

6. Undisputedly, assessee has purchased property no. B.P-4A, Jangpura B, New Delhi for the purpose of re-development as stock in trade for Rs. 17.50 Crore after availing of loan of Rs. 15 crore from the bank during the year under assessment. It is also not in dispute that the assessee utilized the amount of Rs. 13,97,38,686/- out of the loan of Rs. 15 crore being the sale consideration, processing fees, legal and professional charges, brokerage / commission etc.

6.1 In the backdrop of the aforesaid undisputed facts the

question arises for determination in this cases as to, “whether assessee is entitled to claim interest expenses of Rs. 8,98,325/- qua the amount stated to be not utilized during the year under assessment”.

6.2 The Ld. AR for the assessee challenging the impugned order passed by AO as well as Ld. CIT(A) contended that remaining amount of Rs. 1.2 crore out of the total loan amount of Rs. 15 crore was spent on paying the stamp duty for executing / registering the sale deed of the property in question in its favour and this fact has been brought to the notice of AO as well as Ld. CIT(A) during the assessment as well as appellate proceedings and drew our attention towards letter dated 25.10.2013 submitted to AO during assessment proceedings available at page 22 to 33 A of the paper book.

6.3 Perusal of para 2 at page 30 and detail of utilization of loan taken from the bank at page 33A of the paper book categorically goes to prove that the assessee has specifically claimed the stamp duty charges at Rs. 1,05,00,000/-. However both AO as well as Ld. CIT(A) has lost sight of this fact. We have perused the copy of sale deed showing payment of stamp duty charges of Rs. 1,05,00,000/- paid by the assessee for getting the sale deed executed qua the property in question. When it is not in dispute that the assessee has

purchased the property during the year under assessment stamp duty charges paid by the assessee are part and parcel of sale consideration paid by the assessee on which interest cannot be disallowed.

6.4 So the addition of Rs. 8,98,325/- made by the AO and confirmed by Ld. CIT(A) is ordered to be deleted. Consequently ground no. 1.1 and 1.2 is determined in favour of the assessee.

Ground no. 2.1 & 2.2

7. AO after noticing that the assessee company has introduced cash in bank account during the period 25.05.2010 to 17.03.2011 by way of different amounts to the tune of Rs. 88,00,000/- and made addition thereof u/s 68 on the ground that the assessee company has failed to explain immediate source of cash deposit. Ld. CIT(A) confirmed the addition made by AO.

7.1 Before AO as well as Ld. CIT(A) assessee company has come up with specific plea that “in order to carry out the property transaction situated at Jangpura in May, 2010 assessee company has issued a cheque no. 275368 dated 30.03.2010 for Rs. 90 lakhs favouring its employee namely Sandeep Jain for effecting cash withdrawal to be utilized for payment of stamp duty. The said cheque was reflected in the balance sheet as 31.03.2010 as “cheque in hand”. Thereafter assessee came to know that stamp papers no

longer required to be purchased against cash and consequently the said cash was re-deposited in the bank in F.Y. 2010-11 from time to time in view of business exigency”.

7.2 Aforesaid factual plea has been dealt with by the AO as well as Ld. CIT(A) on the basis of “preponderance of probability” by observing that “ the assessee’s assertion is highly improbable if not unbelievable. The person going to acquire a property for such a huge sum is aware or made aware by the broker regarding rules and regulation for requisition of property and assessee is not novice or illiterate. Withdrawal of huge cash and keeping the same with himself for no apparent reason and the depositing the same cash in the bank account, in installment is against normal, prudent behavior”.

7.3 We are of the considered view that aforesaid findings returned by AO as well as Ld. CIT(A) on the basis of “preponderance of probability” in the face of facts on record are not sustainable in the eyes of law for the reasons inter alia that AO has accepted that assessee has carried out its business activities by purchasing property at Jangpura after availing loan of Rs. 15 crore for which sale deed has been executed; that amount of Rs. 90 lakhs withdrawn by way of cheque by the employee of assessee company on 30.03.2010, has been duly reflected in the balance

sheet as on 31.03.2010 which has never been disputed; that from the bank statement it is proved on record that cash was withdrawn on 03.04.2010 and when the source of having amount of Rs. 90 lakhs with assessee company is proved, the said source cannot be disputed merely because of the fact that the amount remained unutilized with the assessee company for about one month.

7.4 It is highly probable that in case of purchasing property one has to be extra cautious to keep the cash ready to purchase the stamp paper etc. Moreover, when assessee company proved to have purchased the stamp paper on 20.05.2010 for which assessee company made the payment through banking channel and only thereafter it has deposited the amount of Rs. 88 lakhs in the banks on numerous date as per its convenience, there is no question of unexplained cash deposit.

7.5 So when availability of Rs. 90 lakhs and its withdrawal in cash by the assessee company is not disputed, subsequently depositing the said amount by way of cash in the same bank account cannot make the source of deposit doubtful. A businessman is otherwise entitled to exercise its best discretion to withdraw the cash from its account and then re-deposit the same as per its business exigency.

7.6 Moreover, assessee company's books of account are audited

one and has not been disputed by the revenue. Even no evidence has been brought on record by the AO that the cash was not existed before re-depositing in the bank.

7.7 It is not case of the revenue that amount of Rs. 90 lakhs withdrawn by way of cash by the assessee company have already been spent. So merely on the basis of the fact that there is a time gap in withdrawing the cash of Rs. 90 lakhs and re-depositing the same in the bank its source cannot become doubtful. So, we are of the considered view that explanation furnished by the assessee for keeping the cash deposit with it till the execution of the sale deed in its favour is correct and beyond any comprehension. So the addition made by AO and confirmed by Ld. CIT(A) is not sustainable in the eyes of law, hence, ordered to be deleted. Consequently, Grounds no. 2.1 & 2.2 are determined in favour of Assessee.

8. In view of what has been discussed above, present appeal filed by the assessee is allowed.

Order pronounced in open court on this 31st January

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Dated: 31/01/ 2020

BR

Sd/-

(KULDIP SINGH)

JUDICIAL MEMBER

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT(A), New Delhi.

AR, ITAT
NEW DELHI.

Date of dictation	30/01/2019
Date on which the typed draft is placed before the dictating Member	31/01/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	