

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA

BEFORE SHRI S.S.GODARA, JM & DR. A.L.SAINI, AM

आयकरअपीलसं./ITA No.1677/Kol/2018

(निर्धारणवर्ष / Assessment Year:2011-12)

DCIT, Circle-8(1), Kolkata	Vs.	M/s Ashiana Homes Pvt. Ltd. 5F, Everest 46C, J.L. Nehru Road, Kolkata-71.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AACCA 1100 E		
(Appellant)	..	(Respondent)

Appellant by : Shri Radhey Shyam, CIT

Respondent by :Shri Arvind Agarwal, Advocate & Shri Rajat Agarwal, FCA

सुनवाईकीतारीख/ Date of Hearing : 17/12/2019

घोषणाकीतारीख/Date of Pronouncement : 21/02/2020

आदेश / O R D E R

Per Dr. A.L. Saini, AM:

The captioned appeal filed by the revenue, pertaining to assessment year 2011-12, is directed against the order passed by the Commissioner of Income Tax (Appeal)-3, Kolkata in appeal no. CIT(A), Kolkata-3/10990/16-17, which in turn arises out of an assessment order passed by the Assessing Officer u/s 263 / 143(3) of the Income Tax Act, 1961 (in short the "Act") dated 23/12/2016.

2. The grounds of appeal raised by the revenue are as follows:

1.That on the facts and circumstances of the case and in law, the ld. CIT(A) erred in allowing the future development expense amounting to Rs. 3,00,00,000/- by ignoring the fact that the said expense was provision for unascertained liability.

2. That the appellant reserves the right to amend, alter or add to any ground(s) of appeal before or at the time of hearing of the appeal.

3. Brief facts qua the issue are that during the scrutiny proceedings, the Assessing Officer noticed that assessee had claimed expenses in its profit and loss account of Rs. 3,00,00,000/- on account of “future development expenses” which is in the nature of provision. The Assessing Officer was of the view that ‘further development expenses’ are in the nature of provision and unascertained liability therefore it should be disallowed. The Assessing Officer asked the assessee to furnish explanation. In response, the assessee submitted the break up of Rs. 3,00,00,000/- as provided for in the accounts in AY 2011-12 and the corresponding cost incurred in the future years against such provisions which was amounting to Rs. 3,84,81,000. The assessee further submitted that the costs are always ascertained in nature and not unascertained. The assessee further submitted that where the sales for a particular phase is accounted for in 2 years, if such provisions are not made for the ascertained costs to be incurred in future, the cost of sales cannot be rightly worked out for sales offered in the first year.

4. However, Assessing Officer rejected the contention of the assessee and observed that the expenses have not been crystallized during the year. The provision for future development amounting to Rs. 3,00,00,000/- was made by the assessee relating to the project 'Palm Court'. The assessee is following mercantile system of accounting. In this system of accounting, only crystallized liability is allowable and unascertained liability could not be allowed. The provision made by the assessee during the year is just an estimate which could not be termed as ascertained liability. Therefore, the provision for unascertained liability amounting to Rs. 3,00,00,000/- was disallowed and added back to the total income of the assessee under the normal provisions as well as under section 115JB of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A) who has deleted the addition made by the Assessing Officer observing the following:

“I have considered the submissions of the assessee carefully. The only issue in this appeal is disallowance of Rs. 3,00,00,000/- made by the AO on account of future development expenses by treating them as contingent in nature. The main contention of the AO was that the appellant is following mercantile system of accounting and under this system only those liability which had crystallized were allowable as an expense. The AO was of the opinion that the estimated liability cannot be treated as an ascertained liability as the expenditure has not actually been incurred. He therefore treated the future development expenses as unascertained liability and disallowed the same.

It has submitted before me that Future Development Expenses comprises of costs which are duly ascertained but not incurred at the time of handing over possession of the completed flats to the buyers. However the liabilities for these expenses are contractual based on the agreement signed with the buyers. Such expenses mostly relate to common facilities like Electric Work. Common flooring. Painting work. Club House. Sewerage Treatment Plant, and Fire Fighting Equipments etc. It was further submitted as the revenue with respect to the sold flats have already been realized and booked in the sales account: these costs need to be allocated amongst all the flats the possession of which is handed over during the financial year.

It was further submitted that the expenses are not unascertained and contingent in nature. The cost of such unfinished work is ascertained on the basis of purchase orders placed on vendors and orders placed on service suppliers. The computation of such expenses is supported by sanction plan, project engineers' drawings and requirements of materials & labour etc. Accordingly it was stated that the provision made for future expenses is in accordance with the AS-29 and similar provisions contained in ICDS-X under sec 145 of the Act. It was further submitted that the assessee has consistently been following the same method of accounting for a number of years. It is submitted that no such disallowance out of future development expenses were made in the scrutiny orders passed by the AO for Asst. Yr. 2012-13, 13-14 and 14-15. The A/R of the appellant placed reliance on the decision in the case of Consulting Engineering Services (India) Limited. 250 ITR 849 (Delhi) for the proposition that "Where a system of accounting (which includes allocation of indirect expenses) is consistently adopted and /allowed the same cannot be altered in subsequent years". In this case before analyzing the issue the methodology adopted for computing the future development expenses requires to be seen, it was stated that proportionate amount of future expenses debited to the P/L Account is based on the percentage of inventory sold during the year. In this respect the computation, project wise is depicted in the table below:

S. No.	Branch	Amount
1	Palm Court	3,00,00,000
	Total	3,00,00,000

The allocation of above expense is debited to P/L Account on the basis of sales made is shown below:

<i>Statement showing Impact of future expenses in profit and Loss account</i>	
<i>Project Details</i>	<i>Palm Court</i>
Future Expenses	3,00,00,000
Net Sales Booked	27,66,32,183
Cost of goods sold	21,23,51,762
Inventory(Area)	5,61,000
Inventory Sold during the year (Area)	1,42,800
% of inventory sold	25.45%
Proportionate amount of future expenses in P & L Account	76,36,364
Proportionate amount of future expenses in inventory	2,23,63,636

From the above table it can be seen that only an amount of Rs. 76,26,264/- has been debited to the P/L account. The expenses with respect to Village Centre was never charged to the P/L Account as it has been reflected as an investment. Therefore the future development expenses capitalized during the year is Rs. 2,22,62,626 which is proportionate to the inventory of unsold flats. Only to the extent the flats have been sold, the revenue realized, there being a contractual liability the proportionate expenses have been charged to the profit and loss account. This has been consistently done on the accounting principle AS-29 which is now recognized in the ICDS provisions. On these facts it is to be seen whether the expenses are allowable or not.

In this regard the assessee has placed reliance on the decision in the case of Mayura Infrastructure Development Company - ITA No.873 & 874/JP/2016 A.Y. 201 1-12 & 2012-14. order dated: 25/04/2017. where the issue before the Hon'ble Tribunal was regarding future development expenses. The Hon'ble Tribunal has considered the issue and has held as under:

-Held, (i) that the undertaking to carry out the developments within six months from the dates of the deeds of sale (which, in view of the fact that it was not of the essence of the contract, meant a reasonable time) was unconditional, the appellant binding itself absolutely to carry out the same. That undertaking imported a liability on the appellant which accrued on the dates of the deeds of sale, though that liability was to be discharged at a future date. It was thus an accrued liability and the estimated expenditure which would be incurred in discharging the same could be deducted from the profits and gains of the business, and the amount to be expended could be debited in accounts maintained in the mercantile system of accounting before it was actually disbursed. The difficulty in the estimation thereof did not convert the accrued liability into the conditional one, because it was always open to the Income-tax authorities concerned to arrive at a proper estimate thereof having regard to all the circumstances of the case.

(ii) That the sum of Rs 24,809 represented the estimated amount which would have to be expended by the assessee in the course of carrying on its business and was incidental to the business and, having regard to the accepted commercial practice and trading principles, was a deduction which, if there was no specific provision for it under section 10(2) of the Income-tax Act. was certainly an allowable deduction, in arriving at the profits and gains of the business of the appellant, under section 10(1) of the Act, there being no prohibition against it express or implied, in the Act, 10 ITA 873 & 874/JP/2016 ACIT vs. Mayura Infrastructure Devlp. Co. The expression "profits or gains" in section 10(1) of the Income-tax Act has to be understood in its commercial sense and there can be no computation of such profits and gains until the expenditure which is necessary for the purpose of earning the receipts is deducted there from-whether the expenditure is actually incurred or the liability in respect thereof has accrued even though it may have to be discharged at some future date In view of the ratio laid down by the Hon'ble Supreme Court in the above judgments, we do not see any infirmity in the order of the Id. CIT(A). therefore, revenue's appeal being ITA No. 873/JP/2016 stands dismissed. "

It is observed in the above order that it has been held that the claim of the expenditure, for which the provision was made, was having direct nexus with the income, as declared by the assessee. Therefore, such provision made by the assessee was allowable during the year under consideration. In the impugned case also it is seen that there is direct nexus with the income booked in the P/L account and the expenditure allocated.

Further, the assessee has placed reliance on the decision in the case of Ranka Colonizers Pvt. Ltd. ITA No-787/JP/2016. order dated: 24/03/2017 where the issue before the Hon'ble Tribunal was regarding provision for future development expenses. The Hon'ble Tribunal has considered the issue and has held as under:

"It is further submitted that the assessee has shown fulfillment of three elements of the Reasonableness of the provision ii) Honesty of Provisioning of expenses (iii) A fair basis, estimation of expenses for making provisions. It is also a fact that the AO has not brought any material to show that the provision made by the assessee is excessive, further. AO has examined the books of account but books of account were not rejected by him. It is submitted that the assessee has filed complete details of actual expenses and the AO has verified the same with vouchers and no deficiency has been pointed out by him. The provision for the development expenses were made at the same rate which was applied by the assessee in previous year. Therefore, in view of facts and circumstances of the case as well as respectfully billowing above case laws, addition of Rs. 62,67,210/- made by the Assessing Officer in total income of the assessee by disallowing 'Provision made for development expenses is hereby deleted Assessee's appeal stands allowed.

Further the assessee has placed reliance on the decision in the case of M/s. Green Triveni Developers – ITA No. 304/JP/2016 A Y. 2012-13 - Date of Pronouncement: 27/09/2016. The facts of the case and the findings of the Hon'ble Tribunal summarized in short are as follows:

Issue: Disallowance of the provision for Development Expenses of Rs. 43,23,423/-

Facts: The AO disallowed the provision for development expenses on account of it only being a provision and the expenditure not actually incurred. The AO treated the provision as an unascertained liability.

Held The cost of these expenses were already included in the sale price of the plot and the developer could not charge-any extra amount from the customers in Inline Jar complete development of the project.

The Hon'ble Tribunal relied on the Apex Court decisions in the case of Calcutta Co. Ltd. V CIT (1959) 37 ITR 1 (SC). Rotork Controls India (P) Ltd. vs. CIT [2009] 23 DTR (SC) 79 and in the case of Bharat Earth Movers v CIT [2000] 162 CTR (SC 325/[2000] 245 ITR -128 (SC), and held that the liability is allowable if it has arisen in the year though it may be quantified and discharged at a future date.

Further, the assesses has placed reliance on the decision in the case of M/s Spytech Buildcon vs. A.C.I T. Circle -6, Jaipur - ITA No. 149/JP/2015 & 205/JP/2015 - A.Y. 2010-11 - Date of Pronouncement -14/09/2016 , where the issue before the Hon'ble Tribunal was regarding provision for "expected expenses". The Hon'ble Tribunal has considered the issue and has held as under:

24. Here, it is seen that in spite of the assessee following the mercantile system of accounting, the ld. CIT(A) held the provision made by the assessee to be justified. The ld. CIT(A) has held that since till 31/3/2014, there was incurrance of expenditure to the tune of Rs. 4,68,43,199/- and that the sum of Rs. 43,06,801/- remained unspent even four years from the end of the year in which the provision was made. It was on this basis, that the provision made was taken to be excessive to the extent of Rs. 43,06,801/-. The question is as to whether this action of the ld. CIT(A) is justified.

25. It remains undisputed that the provision was made by the assessee for certain expected expenditure. As such, the provision was made due to the arising of the possibility of the expenditure in future. This was what had prompted the estimation. Now, if the provision does not stand exhausted even four years from the end of the year in which it was made, this does not mean that the provision to that extent was ill conceived. The details of the expenditure intended were duly made available. That such incurrance of expenditure did not come about, cannot put to naught the provision which was made bonafide. The legal position remains that the amount unutilized would be available for being offered to tax in the next assessment year. The basis of the provision made has not been observed by the ld. CIT(A) to be irrational. In this regard, the decision of the Hon'ble Supreme Court in the case of 'Bharat Earth Movers Vs CIT', (2000) 245 ITR 428 (SC), which was followed by the Hon'ble Delhi High Court in the case of 'Yum Restaurants (I)(P) Ltd.', (2015) 371 ITR 139 (Del), under similar circumstances, is directly attracted.

26. Therefore, we are of the considered opinion that the ld. CIT(A) has gone wrong in sustaining the addition to the extent of Rs. 43,06,801/-. The same should also have been deleted. We order so now. Therefore, the addition of Rs. 5,11,50,000/- is deleted in toto.

It is observed in the impugned case that the appellant has an obligation towards his customers to whom the flats have been sold and payment received to complete the pending work relating to common facilities, as a result of the sale deeds. The fulfilling of this obligation would result in an out flow of resources. An estimate of this expenditure has been made by the assessee the basis of which was given during the course of assessment proceedings. In this case the sale deed creates a contractual obligation on the assessee to provide the common amenities and facilities as promised to the buyers. As the revenue has been booked as per matching principle the expenses are also required to be booked to that extent. The future development expenses of Rs.3 Crores has been claimed over a period of 4 assessment years as follows:-

1. Assessment Year 2011-12	: Rs. 76,36,364/-.
2. Assessment Year 2012-13	: Rs. 199,77,273/-.
3. Assessment Year 2013-14	: Rs. 22,50,000/-.
4. Assessment Year 2014-15	: <u>Rs. 1,36,364/-.</u>
Total	: Rs.300,00,000/-.

The expenses claimed from Asst. Yrs 2012-13 to Asst. yrs 14-15 has been allowed in scrutiny proceedings by the Assessing Officer himself therefore, the Assessing Officer cannot take different stand, on the same issue, in different accounting years. Accordingly, in my considered opinion the disallowance made by the Assessing Officer of the future development expenses is not proper. Therefore, in view of the facts and decisions discussed above, the addition made by the Assessing Officer of Rs. 3,00,00,000/- is hereby deleted.”

6. Aggrieved by the order of the Id. CIT(A), the revenue is in appeal before us.

7. The Id. D.R. for the Revenue has primarily reiterated the stand taken by the Assessing Officer which we have already noted in our earlier para and the same is not being repeated for the sake of brevity and on the other hand, the Id. Counsel for the assessee has relied on the order of the Id CIT(A).

8. We have heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials available on record. We note that liabilities of Future Development Expenses are contractual based on the agreement signed with the buyers. The Future Development Expenses relate to common facilities like Electric work, common

flooring, painting work, club house, sewerage treatment, plant and fire fighting equipments etc. The Revenue with respect to the sold flats have already been realized and booked in the sales account. These costs need to be allocated amongst all the flats, the possession of which is handed over during the financial year. The Id. Counsel submitted before us that these expenses are not unascertained and contingent in nature. The cost of such unfinished work is ascertained on the basis of purchase orders placed on service suppliers. We note that assessee has an obligation towards his customers to whom the flats have been sold and payment received to complete the pending work relating to these common facilities, as a result of the sale deeds. Hence, it is accrued liability and therefore Id. CIT(A) has rightly deleted the addition. We have gone through the detailed findings of the Id. CIT(A) and we note that there is no infirmity in the order passed by the Id. CIT(A). That being so, we decline to interfere in the order passed by the Id. CIT(A), his order on this issue, is hereby upheld and the grounds of appeal raised by the revenue is dismissed.

9. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 21.02.2020

Sd/-
(S.S.GODARA)
न्यायिकसदस्य / JUDICIAL MEMBER

Sd/-
(A.L.SAINI)
लेखासदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 21/02/2020

(SB, Sr.PS)

Copy of the order forwarded to:

1. DCIT, Circle-8(1), Kolkata
2. M/s Ashiana Homes Pvt. Ltd.
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches

