

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. Nos: 943 & 944/AHD/2017
(Assessment Years: 2008-09 & 2009-10)**

M/s. Master Developers 5 Ashoknagar Society Radhanpur Road, Mehsana (Appellant)	V/S	The DCIT, Central Circle- 2(1),Ahmedabad (Respondent)
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PAN: AACFM 6761E

**Appellant by : Shri S. N. Devetia, AR
Respondent by : Shri O.P. Sharma, CIT/DR**

(आदेश)/ORDER

Date of hearing : 06 -02-2020

Date of Pronouncement : 11-02-2020

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeals filed by the Assessee are directed against the order of the Ld. CIT(A)-7, Ahmedabad dated 15.03.2017 & 17.03.2017 pertaining to A.Ys.

2008-09 & 2009-10. First, we take up ITA No. 943/AHD/2017 pertaining to the AY 2008-09. The assessee has taken following grounds of appeal:

1.1 The order passed u/s.250 on 15.03.2017 for A.Y.20008-09 by CIT(A)-7, Abad for the non-disposal of the ground relating to the booking cancellation charges of Rs.1,36,15,155/- is wholly illegal, unlawful and against the principles of natural justice.

2.1 The Ld.CIT(A) has grievously erred in law and on facts in not disposing off the ground of appeal relating to booking cancellation charges of Rs.1,36,15,155/- though it was not claim in the return of income filed by the appellant.

2.1 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have disposed off the ground of appeal relating to booking cancellation charges of Rs.1,36,15,155/- though it was not claim in the return of income filed by the appellant.

It is, therefore, prayed that the CIT(A) may be directed to disposed of the ground to booking cancellation charges of Rs.1,36,15,155/-.

2. The effective issue raised by the assessee in ground No. 1 to 2.1 is that the learned CIT (A) erred in not disposing off the assessee ground in relation to the claim of allowance of Rs. 1,36,15,155/- on account of Booking Cancellation Charges.
3. The facts in brief are that the assessee in the present case is a partnership firm and engaged in the businesses of real estate development and construction. A search operation under section 132(1) of the Act was carried out at the premises of Master Group as on 03.01.2013 where it was observed that the assessee during the year under consideration has earned interest income of Rs.1,80,31,595/- from its related party but did not file its return. Accordingly a notice u/s 148 of the Act was issued. In response to the notice the assessee filed its return and declared total income of Rs. 1,41,30,360/ after claiming the expenses of Rs. 39,01,235/- .

4. Thereafter the assessment under section 143(3) r.w.s. 147 of the Act was completed as on 08-03-2016 by enhancing the income of the assessee by Rs. 11,190/- on account of disallowances of interest expenses u/s 40(a)(ia) of the Act.
5. Aggrieved, assessee preferred an appeal before the Learned CIT (A) who confirmed the order of the AO.
6. However, the assessee before learned CIT (A) vide letter dated 10-3-2017 submitted that it had started various residential and commercial building projects, for which it had received advance booking. But it failed to get necessary approval from the Government and thus the projects could not run. Thus the fund received by it as an advance booking were utilized by way of advancing loan to its associates at prevailing interest charges. The assessee further submitted that it has refunded the booking advances in the year 2010, out of which sum of Rs. 1,36,15,155/- was crystallized as booking cancellation charges during the year under consideration. Hence, the interest income earned from the fund received on account of bookings advance, should be set off against booking cancellation expenses. The assessee also submitted that it failed to claim the same while filling the return due to wrong advice of its consultant with respect to allowability of such expenses. However the learned CIT (A) did not adjudicate the same.
7. Being aggrieved by the decision of learned CIT (A) the assessee is in appeal before us.
8. The learned AR for the assessee before us submitted that the assessee has claimed the booking cancellation expenses in the profit and loss account

against the interest income. But it has not claimed the deduction of such expenses in the income tax return filed in response to the notice issued under section 148 of the Act. The reason for not claiming such expenses in the income tax return was based on the advice given by the tax consultant. As such the tax consultant advised the assessee that such booking cancellation expenses are not admissible against such interest income.

9. However, the assessee before the learned CIT (A) vide letter dated 10 March 2017 has claimed the deduction of such booking cancellation expenses. Such claim was made before the date of passing the order by the learned CIT (A) i.e. 10 March 2017 whereas the order was passed on 15th March 2017. However, the learned CIT (A) without considering the submission of the assessee passed his order.
10. The learned AR in support of his contention drew attention on the submission made before the learner CIT (A), copy of the statement of income and profit and loss account which are placed on pages A to C, 2 & 3 and 6 of the paper book.
11. The learned AR also drew our attention on the ledger of booking cancellation charges, list of booking cancellation charges and the details of the payments which are placed on page 20 and 33 to 35 of the paper book.
12. In view of the above the learned AR before us prayed to restore the matter to the file of the AO for fresh adjudication as per the provisions of law.

13. On the contrary, the learned DR before us submitted that the assessee has not claimed any deduction on account of booking cancellation charges in the income tax return.
14. The assessee has not filed any ground of appeal for its claim qua the booking cancellation charges before the learned CIT (A). Accordingly, the learned CIT (A) was not under the obligation to adjudicate the claim of the assessee merely on filing of a letter.
15. The issue raised by the assessee before the ITAT is not a legal ground. Therefore the same cannot be accepted for the purpose of the adjudication.
16. The learned DR also claimed that the assessee in itself in the ground no. 2.2 of appeal raised before the ITAT has said that the ground of appeal ought not to have been disposed of. Thus, the ground raised by the assessee in itself is contrary to the claim made by it.
17. The learned DR also claimed that there was no income shown by the assessee in the profit and loss account from its real estate activities. Thus the question of allowing the deduction on account of booking cancellation charges does not arise.
18. The learned DR vehemently supported the order of the authorities below.
19. The learned AR in his rejoinder submitted that the assessee is engaged in real estate activities but the projects were abandoned due to the technical problem i.e. the approval was not granted by the concerned authority. The learned AR in

support of his contention drew our attention on the proposed construction plan of the site which is placed on pages 23 to 32 of the paper book.

20. The learned AR also claimed that there was typographical error in the ground raised before the ITAT. As such the assessee in the ground no. 1 and 2.1 of appeal raised the issue that the learned CIT (A) ought to have disposed of the ground.

21. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates whether deduction for the expenses not made in the income tax return can be claimed before the appellate authorities. From the preceding discussion, we note certain facts as detailed under:

i. Admittedly, the expenses were not claimed in the income tax return despite the fact that the same was shown in the profit and loss account as evident from the financial statements filed by the assessee before the authorities below.

ii. The list of the persons to whom the cancellation charges were paid through the banking channel which was available before the authorities below.

iii. The details of the proposed site construction plan evidencing the engagement of the assessee in the real estate development activity was also available before the authorities below.

22. Thus, from the above it is transpired that the necessary basic details about the claim of the assessee were available before the authorities below with supporting documents. The impugned expenditure was also claimed in the

profit and loss account. Now the controversy arises, the claim not made by the assessee in the income tax return out of ignorance/lack of knowledge/unawareness can deprive it from claiming the same and there was no duty on the revenue to enquire about the legitimate claim of the assessee if any.

23. In this connection, we find important to refer the CBDT circular bearing No. 14 (XL-35) dated 11-4-1955 which reads as under:

“3. Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department.”

24. The above circular requires the officers of the income tax not to take any benefit out of the ignorance of the assessee rather the officers of income tax should guide to the assessee and also extend the benefit granted under the Act.

25. We also draw support and guidance from the judgment of Jurisdictional High Court in the case of S.R. Koshti vs. CIT reported in 276 ITR 165 wherein it was held as under:

“The supreme court has observed in numerous decisions, including Ramlal V. Rewa Coalfields Ltd. AIR 1962 SC 361, State of West Bengal v. Administrator, Howrah Municipality AIR 1972 SC 749 and Babutmal Raichand Oswal v. Laxmibai R. Tarte AIR 1975 SC 1297, that the state authorities should not raise technical pleas if the citizens have a lawful right and the lawful right is being denied to them merely on technical grounds. The state authorities cannot adopt the attitude which private litigates might adopt.”

26. We are also conscious to the fact that the assessee has not made altogether a new claim before the appellate proceedings which was not disclosed in the financial statements. As such we note that the basic details about the claim of the assessee were very much available before the authorities below right from the profit and loss account of the assessee which is the crucial document to determine the income of the assessee.

27. In view of the above and after considering the details in totality, we are inclined to admit the claim of the assessee. Accordingly, we set aside the same to the file of the AO for fresh adjudication as per the provisions of law and in the light of the above stated discussion. Hence the ground of appeal of the assessee is allowed for the statistical purposes.

28. In the result the appeal filed by the assessee is allowed for the statistical purposes.

29. Coming to the ITA No. 944/AHD/2017 for A.Y 2009-10, the Grounds of appeal raised by the assessee are as follows:

1.1 The order passed u/s.250 on 17.03.2017 for A.Y.2009-10 by CIT(A)-7, Abad for the non-disposal of the ground relating to the booking cancellation charges of Rs.1,33,55,160/- is wholly illegal, unlawful and against the principles of natural justice.

2.2 The Ld.CIT(A) has grievously erred in law and on facts in not disposing off the ground of appeal relating to booking cancellation charges of Rs. 1,33,55,160/- though it was not claim in the return of income filed by the appellant.

2.3 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have disposed off the ground of appeal relating to booking cancellation charges of Rs.1,33,55,160/- though it was not claim in the return of income filed by the appellant.

It is, therefore, prayed that the Id. CIT(A) may be directed to disposed of the ground to booking cancellation charges of Rs. 1,33,55,160/-.

30. At the outset we note that the identical the issue raised by the assessee in ITA No. 943/AHD/2017 which has been decided by us for statistical purposes vide paragraph No. 21 to 28 of this order. For the detail discussion please refer the relevant paragraph as discussed above. Therefore respectfully following the same and to maintain parity with the findings, we allow the ground raised by the assessee for the statistical purposes.

31. In the result the appeal filed by the assessee is allowed for the statistical purposes.

32. In the combined result, both the appeals filed by the assessee are allowed for the statistical purposes.

Order pronounced in Open Court on 11 - 02- 2020

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 11 /02/2020

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad