

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
DELHI**

**BEFORE SHRI AMIT SHUKLA, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6692/Del/2013
(Assessment Year :2009-10)**

Dy. Commissioner of Income Tax Central Circle-15 Room No.354 3 rd Floor, Jhandewalan Extension, New Delhi- 110055	Vs.	M/s. Realtech Infrastructure Ltd., D-22, 2 nd Floor Defence Colony New Delhi – 110 024
PAN/GIR No. AADCR4608R		
(Appellant)	..	(Respondent)

Revenue by	Shri Amit Kumar Jain
Assessee by	Shri R.S. Ahuja
Date of Hearing	23/01/2020
Date of Pronouncement	01/07/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.6692/Del/2013 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-XVIII, New Delhi in appeal No.363/11-12 dated 29/08/2013 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2011 by the Id. Income Tax Officer, Ward 15(3), New Delhi (hereinafter referred to as Id. AO).

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of interest paid in the sum of Rs.1,32,79,515/- in the facts and circumstances of the case.

2.1. We have heard the rival submissions and perused the materials available on record. It is not in dispute that assessee is engaged in the business of real estate. We find that assessee during the year had paid a sum of Rs.1,32,79,515/- as interest @10% in respect of advances received from buyers of property. We find that the Id. AO had observed that assessee had given interest free advances to the tune of Rs.163,93,07,264/- on one hand, but on the other hand had paid interest on advances received from buyers of the property. Hence, he presumed that the interest free advances given to the sister concerns and to the outsiders were made out of interest bearing funds of the assessee. Accordingly, the Id. AO proceeded to disallow the entire interest payment in the sum of Rs.1,32,79,515/- in the assessment. We find that the Id. CIT(A) had deleted the same by appreciating the fact that assessee had sufficient interest free funds of Rs 176,82,74,751/-. As against this, the interest bearing liabilities were only to the tune of Rs.13,27,95,150/-. Hence, it could be safely presumed that assessee had sufficient own funds to make interest free advances to its sister concerns and to its outsiders. By placing reliance on the decision of the Hon'ble Bombay High Court in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340 and HDFC Bank Ltd., reported in 366 ITR 505, we hold that no disallowance of interest paid by the assessee could be made in the facts of the instant case. Accordingly, the ground No.1 raised by the revenue is dismissed.

3. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance of remuneration paid to the Director at 20% as against 50% made by the Id. AO, in the facts and circumstances of the case.

3.1. We have heard rival submissions and perused the materials available on record. We find that assessee company had paid salary of Rs.45 lakhs to its Director Mr. Pankaj Dayal who is also a proprietor of M/s. NAI Collaborators India which was also in respect of substantial commission income. Based on this, the Id. AO concluded that the said Director could not have devoted full time and attention to the functioning of the assessee company warranting the remuneration to the tune of Rs.45 lakhs. The Id. AO had further observed that the assessee company had engaged a full time CEO Mr. A.K.Sheth on an annual salary of Rs.18 lakhs and accordingly, the salary paid to the Director Mr. Pankaj Dayal is excessive in terms of Section 40A(2)(a) of the Act. Accordingly, he disallowed 50% of the salary paid to the Director and disallowed Rs.22,50,000/- in the assessment. This was reduced to 20% of the Id. CIT(A) in the first appellate proceedings.

3.2. Aggrieved, the revenue is in appeal before us. We are informed by both the parties that assessee had not preferred any appeal before us against the order of the Id. CIT(A).

3.3. We find admittedly the disallowance has been made @ 20% by the lower authorities by applying the provisions of Section 40A(2)(a) of the Act without bringing any comparable instances to drive home the point as to why the salary paid to the Director Mr. Pankaj Dayal was excessive or unreasonable. There is no finding by the lower authorities that the said

Director is not competent or not technically qualified to receive such remuneration. In any case, the disallowance has been made only on an adhoc basis by the lower authorities. Since, the assessee has not preferred any appeal against the order of the Id. CIT(A) before us, we do not deem this as a fit case to interfere with the finding recorded by the Id. CIT(A). Accordingly, we direct the Id. AO to restrict the disallowance to Rs.9 lakhs at 20% of total salary paid to the Director. Accordingly, the ground No.2 raised by the revenue is dismissed.

4. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance of 50% of total advertising and publicity expenses in the facts and circumstances of the case.

4.1. We have heard the rival submissions and perused the materials available on record. We find that a sum of Rs.17,92,000/- was paid by the assessee company to M/s. GMR Sports Pvt. Ltd. towards cost of 32 corporate box booking tickets for each of the 7 IPL cricket matches held at Feroz Shah Kotla Cricket Stadium, New Delhi. It is not in dispute that M/s. GMR Sports Pvt. Ltd possessed the sponsorship of IPL team of Delhi Dare Devils. Hence, for providing advertisement during the IPL matches in Delhi, GMR Sports Pvt. Ltd. provided corporate box on purchase of specified number of tickets and accordingly, assessee had paid Rs.17,92,000/- for purchase of 32 tickets in corporate box for each of the 7 matches of IPL. We find that the assessee had pleaded that this expenditure was incurred towards advertisement and publicity. The Id. AO observed that the said expenditure was not incurred wholly and exclusively for the purpose of business. We find that the Id. CIT(A) had observed that assessee had not explained to the justification for purchase

of tickets for watching the IPL matches at Feroz Shah Kotla Cricket Stadium, New Delhi and accordingly, restricted the disallowance to 50% of the total sum of Rs.17,92,000/-.

4.2. Aggrieved, the revenue is in appeal before us and assessee has not preferred any appeal before us.

4.3. As stated earlier, it is not in dispute that GMR Sports Pvt. Ltd., possessed the sponsorship of IPL team of Delhi Dare Devils and this sum of Rs.17,92,000/- paid for purchase of 32 tickets in corporate tax for watching IPL matches enabled the assessee company to advertise its real estate projects by way of display boards in all the matches at Feroz Shah Kotla Cricket Stadium, New Delhi. This obviously improved the performance of the functioning of the assessee company and hence, the same would be wholly and exclusively for the purpose of business. But since the assessee has not preferred any appeal before us, against the order of the Id. CIT(A) granting relief only to the extent of 50% of the said expenditure, we do not deem it fit to interfere with the said finding of the Id. CIT(A). Accordingly, ground No.3 raised by the revenue is dismissed.

5. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance of rent expenses to 10% as against 60% disallowed by the Id. AO, in the facts and circumstances of the case.

5.1. We have heard rival submissions and perused the materials available on record. We find that assessee company has taken the premises D-22, Defence Colony, New Delhi – 110024 (basement and

ground floor) and rent during the F.Y.2008-09 relevant to A.Y.2009-10. Out of the total rent paid of Rs.40,44,960/-, a sum of Rs.1,14,000/- has been debited to the account of M/s. Realtech Maintenance Services Ltd., The Id. AO observed that since the said premises was occupied by various group concerns of Realtech Group, the expenditure together with the allied maintenance expenses should have to be shared between various concerns in the proportion of area occupied by respective companies. The Id. AO had observed that 16 companies (group companies) were having their offices at the same premises. The assessee submitted that it had occupied only basement and ground floor whereas the first, second and third floor were occupied by the remaining 16 companies. This explanation was not found satisfactory to the Id. AO on the ground that assessee being a single company was occupying basement and ground floor, whereas the remaining 16 companies were occupying three floors. Accordingly, the Id. AO proceeded to disallow 60% of the total rent paid amounting to Rs.24,26,976/- (60% of 40,44,960/-) as expenditure not relatable to the business of the assessee. We find that the Id. CIT(A) had observed that the Id. AO had not given any concrete finding to arrive at the conclusion that 60% of the rent is to be disallowed in view of the fact that total 17 concerns are operating in the same premises including the assessee and out of that 16 concerns were using only three floors and single company i.e. the assessee was using basement and ground floor. The Id. CIT(A) also observed that the Id. AO should have analysed the requirement of each company and payment made by each company in this regard in view of the fact that out of 16 companies, only three companies were having operations and the remaining 13 companies were having nil turn over. Later, the Id. CIT(A) restricted the disallowance to 10% of total rent of Rs.40,44,960/- and accordingly, restricted the disallowance to Rs.4,04,496/-. We find that the Id. CIT(A) had given

proper finding with regard to apportionment of rent not being done by the assessee to its group companies and had restricted the disallowance to 10% of the total rent paid. When a particular premises is occupied by the assessee and others (whether it is a group company or not), the rental payment and other maintenance expenses included therein are to be apportioned in a just and fair manner. When this is not done by the assessee, disallowance of expenses had to be made in the hands of the assessee. In the instant case, the Id. CIT(A) had restricted the disallowance to 10% of the total rent paid in the hands of the assessee. We find that assessee had not preferred any appeal against the order of the Id. CIT(A) before us and hence, we do not deem it fit to interfere with the said finding of the Id. CIT(A). Accordingly, the ground No.4 raised by the revenue is dismissed.

6. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance of business promotion, electricity, legal and professional charges, repairs & maintenance, travelling and conveyance and miscellaneous expenses to 10% of total sum of Rs.30,29,954/- as against 40% disallowed by the Id. AO on adhoc basis in the facts and circumstances of the case.

6.1. We have heard rival submissions and perused the materials available on record. We find that the primary basis for disallowance of these expenses on adhoc basis was only for the reason that the bills / invoices are mostly in the name of Realtech Group and not in the name of assessee company specifically, whereas the entire payment had been made by the assessee herein. Since, the said premises had been occupied by various group companies of the Realtech group including the assessee, the Id. AO had proposed to make adhoc disallowance @40% of

the total expenses of Rs.30,29,954/- in the assessment. Accordingly, he disallowed a sum of Rs.12,11,982/- (40% of 30,29,954/-) in the assessment. This was reduced to 10% by the Id. CIT(A) in line with the disallowance made by him towards rental expenses supra. We find that assessee had not preferred any appeal against this order of the Id. CIT(A) before us. We have already held that since the same premises has been occupied by various concerns of the assessee, the entire expenses has to be apportioned in a just and fair manner based on the usage and the Id. CIT(A) had restricted the disallowance to 10% thereon. As stated supra, since no appeal has been preferred by the assessee before us against the order of Id. CIT(A), we do not deem it fit to interfere with the finding of the Id. CIT(A) especially when assessee was not categorically able to prove even before us that the subject mentioned expenditure were incurred only for the business purpose of the assessee. Hence, the disallowance restricted to 10% on adhoc basis by the Id. CIT(A) does not require any interference. Accordingly, the ground No.5 raised by the revenue is dismissed.

7. The ground No.6 raised by the revenue is with regard to the action of the Id. CIT(A) in deleting the addition of Rs.4,14,39,084/- made on account of disallowance with respect to cost of goods sold.

7.1. We have heard rival submissions and perused the materials available on record. We find that assessee company has shown income from sales of Rs.51,79,88,556/- and other income of Rs.11,60,11,141/-. We find that the assessee had shown cost of goods sold of Rs.59,36,99,173/- worked out as under:-

Opening Stock
Additions made

Rs. 37,44,42,042

Project expenses	Rs. 12,20,06,681
Purchase of area	Rs. 14,51,00,000/-
Closing Stock	Rs. 4,78,49,550

Cost of Goods sold	Rs. 59,36,99,173

7.2. During the course of assessment proceedings, the assessee company had provided the following calculation for arriving at the value of closing stock in respect of Medicity Project as under:-

Total Area (A)	1,09,573
less: Area Sold (B)	88874
Closing Stock (C) - (A) - (B)	20699
<u>Estimated Cost</u>	
Estimated Cost	500000000
Total Estimated Cost (D)	500000000
Construction cost incurred	195100000
Less : Material Stock	-
Total Construction cost incurred (E)	195100000
Land Cost	-
Add : Other cost incurred	5613800
Total (F)	5613800
Percentage of completion (E)/(D)*100	39%
Indirect cost incurred (G)	37880185

<u>Details of closing inventory as on 31-03-2009</u>	
Direct Cost (Unsold Area) (E/A*C)	36855718
Other Cost (Unsold Area) (F/A*C)	1060485
Other Cost (Sold Area) (F/A*B*61%)	2777522
Indirect Expenses (G/A*C)	7155825
	4,78,49,550

7.3. We find that the Id. AO has observed that assessee company had not provided any documentary evidence for its claims and accordingly, computed the cost of goods sold at 92% of the income from sales on an estimated basis and arrived at the figure of Rs.47,65,49,472/- (92% of Rs.51,79,88,556/-). Accordingly, the Id. AO made an addition of Rs.4,14,39,084/- towards cost of goods sold (Rs.51,79,88,556/- – 4,76,59,472/-) in the assessment.

7.4. We find that the assessee before the Id. CIT(A) had pleaded that the cost of goods sold comprises of opening stock, purchase and project expenses as well as closing stock and that the details of the same alongwith documentary evidences were duly filed during the course of assessment proceedings and details in respect of which are given below.

“a) Opening stock

The opening stock for the A Y 2009-10 is the closing stock of A Y 2008-09 and the scrutiny assessment u/s 143(3) of the Income Tax Act for the A Y 2008-09 has already been completed in the case of Assessee Company. As the scrutiny assessment has already been completed and

as such details in respect of opening stock have already been verified by the department and are a/so available with the assessing officer.

b) Purchase and project expenses

From the perusal of the Para of the assessment order it may be observed that the cost of goods sold have been estimated in respect of project at Medicity. The cost incurred on project at medicity comprises or purchase or area and project expenses. The details in respect of purchase of area being the copy of the collaboration agreement along with the copy of account in respect of amount paid for .purchase, of area has already been filed during the course of assessment proceeding vide submission dated 23/12/2011 (the copy of submission dated 23/12/11 is enclosed and forms part of paper book at page no 01 to 06. Further documentary evidence in respect of construction and other direct, expenses incurred in respect of project has also been filed during the course of assessment proceeding.

c) Closing stock

As mentioned earlier the assessee follows AS-7 (Accounting standard - 7) and recognizes sale on the basis of percentage of completion method. In the percentage of completion method sale as well as closing stock is determined on the basis of percentage of completion of the project. In this connection we would like to draw your kind attention that, working of closing stock on the basis of percentage of completion method (AS-7) has been furnished during the course of assessment proceeding and the same has also been quoted by the assessing officer in the assessment order.

7.5. We find that the Id. CIT(A) had given a categorical finding that the Id.AO had grossly erred in rejecting the book results of the assessee without pointing out any discrepancy in the books of accounts produced before him during the course of assessment proceedings. We also find that the entire details of opening stock, purchases and project expenses and closing stock were also filed before the Id. AO as narrated hereinabove and the same were duly reproduced in the order of the Id. CIT(A). The said facts as reproduced in the order of Id. CIT(A) has not

been controverted by the Id. DR before us. The law is now very well settled that without pointing out any discrepancy in the books of accounts produced by the assessee, the Id. AO cannot reject the book results as per his whims and fancy. Reliance in this regard has been rightly placed by the Id. CIT(A) on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Poonam Rani reported in 326 ITR 223 and CIT vs. Jaspack Elegant Exports reported in 324 ITR 95. The relevant operative portion of the said judgements are not reiterated herein for the sake of brevity in view of the settled position of law involved therein. Hence, we do not find any infirmity in the order of the Id. CIT(A) deleting the addition made on account of cost of goods sold to the tune of Rs.4,14,39,084/-. Accordingly, the ground No.6 raised by the revenue is dismissed.

8. The ground No.7 raised by the revenue is general in nature and does not require any specific adjudication.

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

Order pronounced in the open court on this 01/07 /2020

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

01/07/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Delhi.
4. CIT
5. DR, ITAT, Delhi

6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Delhi