

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-2": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 7250/Del/2019
(Assessment Year: 2016-17)

Vatika One on One Private Limited, 224,A, 2 nd Floor, Devika Towers 6, Nehru Place, New Delhi PAN: AA ECC2937P	Vs.	ACIT, Circle-26(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri C. S. Aggarwal, Sr. Adv
Revenue by:	Shri R. K. Gupta, Sr. DR
Date of Hearing	04/11/2020
Date of pronouncement	25/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-9, New Delhi dated 17.06.2019 for the Assessment Year 2016-17, wherein, the disallowances made by the Id ACIT, Circle-26(1), Delhi of Rs. 355999/- as per assessment order passed u/s 143(3) of the Act on 16.12.2018 is upheld. The assessee aggrieved with the order has preferred the following grounds of appeal:-
 - "1. That the Id CIT(A) has erred both on facts and in law in sustaining a disallowance of a sum of Rs. 3,55,999/- claimed as deduction.
 2. That the Id CIT(A) has failed to comprehend the factual substratum of case and had failed to appreciate that the sum claimed as deduction since had been included in the total income of the preceding year on account of an amount forfeited was liable to be allowed as a deduction, while computing the total income of the appellant on its refund."
2. Brief facts of the case shows that the assessee is a company carrying on business as owners, developers, builders, colonizers, hirers and dealers of real estate, filed its return of income declaring loss of Rs. 4897466/-

on 16.10.2016. The Id AO found that the assessee has paid an amount of Rs. 355999/- on account of flat forfeiture. The assessee was questioned, explanation was obtained however, and same was rejected. The Id AO was of the view that this amount is not in the nature of revenue expenses as these are in nature of advance made therefore, cannot be allowed u/s 37 of the Act. It was held to be a capital expenditure.

3. These disallowances was contested by the assessee before the Id CIT(A) who also confirmed the same. Therefore, the assessee is in appeal before us.
4. We have heard the rival parties and found that appellant is a company who was granted license for development of commercial colony. On 18.03.2015 one M/s. Vatika Ltd by a business transfer agreement transferred the development right to the assessee. Appellant forfeited those unit which was also allotted and had returned the amount to such allottees during the year 2015-16 . Such consideration received of Rs. 1245994/- was considered as real estate income and offered for taxation in that year. During the year the assessee returned a sum of Rs. 355999/- to M/s. Pramajit Singh & Amarjit Singh in respect to an area booked in their names of 500 sq ft. at the rate of Rs. 7400/- per sq ft. which was paid back since the unit booked in their name already cancelled and amount forfeited. The assessee cancelled the forfeiture of the amount of Rs. 355999/- since the amount already forfeited was already considered as an income and revenue receipt in assessment order 2015-16, the amount now paid out of above income was considered as a revenue expenditure and claimed as a deduction. Both the lower authorities held that the sum is capital expenditure and even otherwise not allowable u/s 37 of the Act. The above claim of the assessee on account of repayment of forfeited amount earlier received by the assessee, taxed duly in AY 15-16, subsequently, those persons received forfeited amount from assessee, booked the real estate during the year and therefore, forfeited amount was returned by the assessee is definitely an expenditure which springs from the business of the assessee of the real estate. The above expenditure has been incurred by the

assessee wholly and exclusively for the purpose of booking of a real estate, cannot be held to be a capital expenditure. Further, same forfeited amount received from the same person has already been taxed for AY 2015-16, when the same is returned during the current year on booking of the flat, cannot be held to be capital expenditure. When the said sum was received, the revenue taxed as revenue receipt and when the same sum is refunded the revenue treated it as a capital expenditure. Thus blowing hot and cold in the same breath by revenue is not acceptable. Accordingly, reversing the order of the lower authorities the Id AO is directed to delete the disallowance of Rs. 355999/- as above expenditure incurred by the assessee is wholly and exclusively incurred for the purpose of the business and it is not a capital expenditure. Accordingly, the solitary ground of appeal is allowed.

5. In the result ITA No. 7250/Del/2019 is allowed.
Order pronounced in the open court on 25/11/2020.

Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 25/11/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.11.2020
Date on which the typed draft is placed before the dictating member	25.11.2020
Date on which the typed draft is placed before the other member	25.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	25.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	25.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	25.11.2020
Date on which the final order is uploaded on the website of ITAT	25.11.2020
date on which the file goes to the Bench Clerk	25.11.2020
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	